

ANNEX TO THE OSCE/ODIHR OPINION ON THE DRAFT CRIMINAL PROCEDURE CODE OF THE KYRGYZ REPUBLIC

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DRAFT CRIMINAL PROCEDURE CODE OF THE KYRGYZ REPUBLIC

UNOFFICIAL ENGLISH TRANSLATION

GENERAL PART

SECTION 1. MAIN PROVISIONS

Chapter 1. Criminal Procedure Laws in the Kyrgyz Republic and Its Jurisdiction

Article 1. Criminal Procedure Laws in the Kyrgyz Republic

(1) Criminal procedure within the territory of the Kyrgyz Republic is established by the procedural criminal laws of the Kyrgyz Republic.

(2) Procedural criminal laws of the Kyrgyz Republic are composed of the corresponding provisions of the Constitution of the Kyrgyz Republic and this Code. All other legal provisions of the Kyrgyz Republic regulating criminal procedure are to be applied only in case they are included in this Code.

(3) All international agreements taking effect in accordance with the procedure established by law, a participant of which being the Kyrgyz Republic, are deemed an integral part of the procedural criminal laws, as well as the generally recognized principles and norms of international law and expressly represent human rights and freedoms in the sphere of criminal procedure.

(4) If the necessity arises to examine a matter while criminal case proceedings are in progress, which is to be decided in accordance with civil and administrative law, it is to be decided in the manner established by civil or administrative procedure.

Article 2. Territorial Application of the Code

Criminal procedure on the territory of the Kyrgyz Republic, independent of the location where a misdemeanor or a crime was committed, are to be conducted in accordance with this Code unless other territorial application rules are established for this Code by an international agreement and ratified by the Kyrgyz Republic.

Article 3. Duration of the Code

(1) Criminal procedure shall be carried out in accordance with the laws in effect at the moment that the legal proceedings are carried out and the proceeding decision is made unless otherwise established by this Code.

(2) Procedural criminal laws that impose new obligations, annul, or derogate a participant's right in the process whether directly or indirectly, or employ additional conditions to limit their application shall have no retroactive force of any kind.

Article 4. This Code's Application to Foreign Citizens and Stateless Persons

(1) Proceedings concerning crimes and misdemeanors committed by foreign citizens or stateless persons on the territory of the Kyrgyz Republic shall be conducted in accordance with

the norms of this Code unless otherwise specified by international mutual legal assistance agreements of the Kyrgyz Republic.

(2) For legal proceedings envisaged in this Code with respect to persons that are immune, in accordance with the generally recognized principles and norms of international law and relevant international agreements of the Kyrgyz Republic, consent shall be established on the part of the foreign government that the foreign citizen is subject to or was subject to that is immune or the international organization, of which the person was or is a staff member. Information about whether the specific person is immune and about the degree of such immunity shall be presented by the Ministry of Foreign Affairs of the Kyrgyz Republic.

Article 5. Definitions of the main terms used in this Code

The terms featured in this Code have the following definitions barring other relevant, express indication by law:

1) **court administrator** - an employee of the corresponding local court staff, on whom obligations are imposed to ensure activity in the court on the part of jury members;

2) **juror questionnaire** - a list of questions for jury members composed by the parties in order to determine objectivity and lack of bias;

3) **appeals instance** - a court that investigates criminal cases based on appeals and adductions for court sentences and rulings not yet bearing legal force;

4) **close relatives** - a spouse, parents, children, guardians, brothers, sisters, grandfather, grandmother, or grandchildren;

5) **verdict** - a ruling that a defendant is guilty or not guilty carried out by the jury on issues envisaged by the Code;

6) **prosecuting attorney** - a member of the prosecuting body leading a charge in a criminal case on behalf of a state;

7) **preliminary investigation** - a form of investigation performed by an interrogating officer (investigator) for a criminal case, for which an inquisition is not required;

8) **pre-trial procedure** - a criminal procedure beginning as of the moment a notification of a crime has been received from a prosecutor by the court to be investigated on its merits;

9) **plea agreement** - an agreement between the defense and prosecution, in which the parties negotiate the conditions of cooperation or the consequences of such cooperation;

10) **appeal** - an objection brought about by the criminal procedure participants as well as organizations to a ruling or action (inaction) of a preliminary investigation agency, investigator, prosecutor, or court;

11) **dwelling** - an individual residential building, including residential and non-residential facilities or residential unit independent of the form of ownership, included in the housing and used for permanent or temporary residence as well as any other building or unit not included in the housing but used for temporary residence;

12) **detention of a suspect** - a measure of procedural compulsion applied by a preliminary investigation agency or an investigator for no more than 48 hours after the moment an individual is detained for suspicion of having committed a crime;

13) **court ruling** - a conclusion of guilt or lack of guilt associated with the actions of an individual, to which certain procedure is applied in a criminal case;

14) **legal representatives** - parents, adopters, guardians, or care-givers of a defendant or a victim or representatives of an institution or organization taking on the care of a suspect, defendant, or victim who is still a minor as well as a body of guardianship or custody;

15) **defense** - procedures and actions taken on the part of the defense in order to ensure the rights and interests of persons suspected of committing a crime to refuse or soften a prosecution as well as rehabilitation of persons unlawfully subject to criminal prosecution;

16) **appellant** - an individual seeking protection of his or her own (someone else's) valid or presumable rights from an investigation body in under criminal procedure;

17) **measure of restraint selection** - a decision made by an investigator or also a court on

a measure of restraint for a suspect or defendant;

18) **cassational instance** - a court investigating an appeal or adduction on a criminal sentence, writ, or ruling of a court not yet bearing legal force in the first instance court or appeals instance;

19) **telephone and other conversation forms monitoring** - a hearing or recording of negotiation by means of using other means of communication, inspection, or hearing a sound recording;

20) **misdemeanor materials** – proceedings conducted by a functionary of a preliminary investigation agency for one or more misdemeanors committed;

21) **case materials** - documents and objects composing the entire case as well as subsequent materials added to them; information, as well as documents and objects, which may be important in establishing circumstances for the case;

22) **moment of detention** - a moment of the proceeding in accordance with this Code embodying the moment at which a suspect is deprived of freedom to leave a venue due to suspicion of having committed a crime;

23) **supervisory authority** – the Supreme Court of the Kyrgyz Republic investigating criminal cases on appeals and adductions for sentences, writs, and rulings of courts;

24) **chief of preliminary investigation agency** - a person in charge of preliminary investigation, including the assistant executive of preliminary investigation authorized to give orders for preliminary investigation procedures and prompt investigation proceedings as well as implementing other powers envisaged by this Code;

25) **prompt investigation proceedings** - actions performed by preliminary investigation agencies and investigation with an aim to uncover and identify traces of the crime as well as evidence requiring prompt attention and examination. ;

26) **night time** - time gap between 10 pm and 6 am local time;

27) **charge** - an affirmation regarding commission of an action by a certain person, which is forbidden by criminal law and expressed in the manner established in this Code;

28) **public defense attorney** – representatives of legal entities, political parties, professional unions, non-commercial organizations, companies, organizations, and institutions, in which the defendant or the accused has worked;

29) **explanation** - an oral or written argument brought by the proceeding participants and appellants in support of their claim or claim of the person they represent;

30) **writ** - any decision other than a sentence carried out by a court during the proceedings of a criminal case;

31) **preliminary investigation agencies** - government bodies and functionaries authorized in accordance with this Code to implement preliminary investigation and other procedural powers;

32) **attesting witness** - an adult who is disinterested in the outcome of a case who has been brought in to ascertain during an investigative action, its progression, and its end;

33) **ruling** - any decision other than a sentence carried out solely by a judge for a proceeding in a criminal case; a judicial act of the Supreme Court of the Kyrgyz Republic carried out during a review of the corresponding judicial act; decisions of the prosecutor, investigation agency director, or an investigator carried out during a proceeding;

34) **chief justice** - a judge in charge of directing a court session during a collegial investigation as well as a judge investigating a criminal case by himself;

35) **adduction** - an act for the reaction on the part of the prosecutor to a legal act carried out in the fashion established by the Code;

36) **sentence** - a decision as to the guiltiness or the lack thereof of a defendant and the relevant sentencing of such an individual or his or her liberation from punishment carried out by the original court or by an appeals instance;

37) **measure of restraint exercise** - procedural actions performed from the moment a decision is made on measure of restraint selection before it is canceled or changed;

38) **juror** - a citizen of the Kyrgyz Republic legally included into a list of candidates into a jury as duly established by law and selected to participate in the examination of a criminal case;

39) **proceedings** - a combination of proceedings and rulings implemented for a specific criminal case in the course of its introduction, investigation, court examination, and the sentence (ruling) of a court;

40) **prosecutor** - the General Prosecutor of the Kyrgyz Republic, regional prosecutors, the city of Bishkek, the city of Osh, regional (municipal) prosecutors, military prosecutors, and prosecutors equal to regional prosecutors (municipal prosecutors, their assistant prosecutors, and other functionaries of a prosecuting body taking part in the criminal procedure and those appointed by law by the corresponding authorities);

41) **procedural action** - is an investigative, court, or other type of action envisaged by this Code;

42) **proceeding decision** - is a decision made by court, prosecutor, or investigator in the manner established by this Code;

43) **rehabilitation** - means of restoring person's rights and freedoms illegally or unjustifiably subject to criminal prosecution and his or her reimbursement of losses incurred;

44) **rehabilitated person** - a person in possession of a right to reimbursement for losses caused in accordance with this Code that has been caused to him or her due to an unlawful or groundless criminal prosecution;

45) **replica** - a comment of a participant on a discussion of the parties concerning something that has been said by the other participants

46) **relatives** - all other persons other than close relatives that are in a particular person's family;

47) **search measures** - measures taken by an investigator as well as a preliminary investigation agency in assigning an investigator to establishing persons suspected for the commission of a crime;

48) **investigation agency director** - the main functionary in charge with running a corresponding investigator division as well as his or her assistant director;

49) **sanction** - an act of a prosecutor's proceeding decision made by an investigative body;

50) **witness immunity** - the right of a person to not give testimony against oneself and one's close relatives as well as in other cases envisaged by this Code;

51) **forensic investigator** - a person authorized to implement an investigation of a criminal case as well as participate in the assignment of an investigation agency director in proceedings of investigative and other procedural actions or undertake separate investigative or other procedural actions without taking a legal case into his own proceedings;

52) **investigator** - a person authorized to implement an investigation for a criminal case as well as other powers envisaged by this Code;

53) **investigation judge** - a regional (municipal) judge of a court or a military garrison court, in the powers of which the implementation of court monitoring in observance of the rights, freedoms, and interests of persons in a criminal procedure is included as well as other authorities envisaged by this Code;

54) **detention under custody** - the presence of a person detained for suspicion of having commissioned of a crime or a person accused of a crime for whom such a measure of restraint as detention under custody in a relevant detention center or other place determined by law is exercised;

55) **notification of a crime** - notification on the commission of a crime, acknowledgement of guilt, or a rapport on the discovery of a crime;

56) **preliminary investigation agency functionary** - a functionary authorized to implement proceedings for misdemeanor cases;

57) **specialized institution for minors** - a specialized government organ that provides for the correction of minors created in accordance with the law;

58) **parties** - criminal procedure participants carrying out the function of prosecution

(criminal prosecution) on the basis of competitiveness or defense from prosecution;

59) **defense** – a suspect, accused, or defendant as well as their legal representative, defense attorney, public defense attorney, civil defendant, or his or her representative;

60) **prosecution** - a prosecutor or also an investigator, investigation agency director and a private prosecutor; a victim, a victim's legal representative, and representative; or a civil plaintiff and his representative;

61) **court** – a body of justice investigating a criminal case in all legal venues as well as implementing judicial monitoring of the legality of investigative actions and decisions on the part of the prosecutor, investigator, preliminary investigation agency, and carrying out judicial acts envisaged by this Code;

62) **judicial expertise** - an expertise held in the fashion established by this Code;

63) **court session** - a procedural form of implementing justice over the course of proceedings occurring before and over the course of a criminal case;

64) **court examination** - a court session, whether it be the first, second instance court or supervisory authority;

65) **first instance court** - a court investigating criminal case on its merits, which is authorized to carry out a sentence as well as make decisions over the course of pre-trial procedure for a criminal case;

66) **second instance court** - appeals and cassational instance courts;

67) **judge** - a person authorized by law to ensure justice, a chairman of a court, and an assistant chairman of a court;

68) **criminal case** - a specialized proceeding conducted by an investigation body and a court for one or more crimes that have been committed (or supposedly have been committed) or that there is a conspiracy to commit;

69) **criminal prosecution** - procedural activity implemented by the prosecution with an aim to reveal a wrongdoer, a suspect, an accused having committed a misdemeanor or crime;

70) **criminal procedure** - proceedings for a criminal case before or during of a case ;

71) **criminal law** - the Criminal Code of the Kyrgyz Republic;

72) **criminal procedure participants** - persons taking part in the legal proceedings of a criminal case;

73) **loss** - emotional, physical, or property damage subject to monetary reimbursement;

74) **private prosecutor** - a victim and his legal representative and representative in criminal private prosecution cases;

75) **prejudication** - a decision carried out by a court to which the attention of government bodies, organizations, and functionaries is directed for established violations of law and the grounds and conditions facilitating the commission of the crime as well as the corresponding measures required to be undertaken;

76) **expert institution** - a government court expert or other institution assigned with providing judicial expertise in the fashion established by this Code;

Chapter 2.

Assignments and principles of criminal procedure

Article 6. Criminal procedure assignments

Assignments of the criminal procedure include:

- 1) protection of an individual, a community, or government from crime and misdemeanors;
- 2) protection of an individual from an unlawful or groundless charge, condemnation, and deprivation of his or her rights and/or freedoms;
- 3) a speedy and full investigation of alleged crimes and misdemeanors;
- 4) incrimination of individuals and the implementation of the relevant consequences for such people who have committed crimes and/or misdemeanors;

5) a fair court examination with proper application of criminal law.

Article 7. Legality

(1) An investigator, prosecutor, court, or other bodies and persons participating in criminal procedure are obliged to strictly adhere to the provisions of the Constitution of the Kyrgyz Republic, this Code, and other laws in power in accordance with the Constitution of the Kyrgyz Republic as well as other legal normative acts corresponding to universally recognized principles and norms of international law and the international agreements of the Kyrgyz Republic.

(2) A sentence and other decisions of a court having implemented criminal procedure for a case that is not within its jurisdiction and having acted outside of its authority or having otherwise violated the principles of criminal procedure envisaged in this Code shall be deemed as unlawful.

Article 8. Implementation of justice only by court

Justice in criminal cases of the Kyrgyz Republic are to be implemented only by court. In cases envisaged by this Code, criminal procedure shall be implemented with the inclusion of a jury.

Article 9. Independence of judges

(1) Judges are independent and subject to the Constitution of the Kyrgyz Republic and laws of the Kyrgyz Republic.

(2) Impediment of the activity of judges in implementing justice is illegal and shall entail legal responsibility.

(3) Independence of judges is guaranteed by the Constitution of the Kyrgyz Republic.

Article 10. Ascertainment of justice provision

(1) A prosecutor, investigator, and preliminary investigation agency functionary shall oblige in each case that any indications of crime or misdemeanor should arise to initiate pre-trial procedure and undertake all measures envisaged by law to establish the events of a crime or misdemeanor of a person who has committed a crime or misdemeanor.

(2) A court, prosecutor, investigator, and preliminary investigation agency functionary are obliged to provide a victim access to justice and compensation for losses caused by crime or misdemeanor in cases and in the manner established by law.

Article 11. Legal defense

Each individual shall be guaranteed at any stage of a process legal defense of his rights and freedoms.

Article 12. Acknowledgement of an individual's rights, freedoms, honor, and dignity

(1) Acknowledgement of an individual's rights, freedoms, honor, and dignity shall be obligatory for all entities and persons taking part in a criminal procedure.

(2) Threats, violence, or other unlawful measures in the course of interrogation as well as other investigatory and judicial actions are inadmissible.

(3) Detention of an individual for whom a bail has been set while an individual is held in custody, as well as a person detained for suspicion of committing a crime must be implemented under conditions excluding the use of threats to his life and health.

(4) None of the individuals participating in a case may be subject to violence or any other crude manner, including humiliation.

Article 13. Inviolability of an individual

(1) A person may be detained or otherwise taken into custody only on the basis and in the manner envisaged by this Code. Up to the point of a court's decision, an individual may not be

subject to detention for a time period of more than 48 hours.

(2) A court, prosecutor, investigator, and preliminary investigation agency are obliged to immediately release any unlawfully detained individual, or any individual whose freedoms have been compromised, or an individual who is unlawfully placed into a medical or psychiatric facility, or who has been held under custody for more than the time period envisaged by this code.

Article 14. Protection of the rights and freedoms of citizens during court proceedings for criminal cases

(1) A court, judge, prosecutor, investigator, and preliminary investigation agency functionary are obliged to ensure protection of a citizen's rights and freedoms participating in a criminal justice process, provide for the conditions of their implementation, and undertake measures in a timely manner to the satisfaction of the legal requirements of a process participants.

(2) No person shall be obliged to testify against oneself, his or her spouse, or close relatives, which relatives are defined in this Code.

(3) Losses caused to a citizen as a result of violation of his rights and freedoms during a proceeding in a criminal case shall be subject to reimbursement on the bases and in the manner established by law.

(4) Should sufficient data be present that a victim, witness, or other participants in the case, as well as members of their families or other close relatives are threatened by violence, annihilation, or property damage as well as any other dangerous unlawful actions, the court, prosecutor, investigator, or preliminary investigation agency shall take measures envisaged by law within their power to preserve the life, health, honor, dignity, and property of such persons.

(5) No individual may be condemned solely on the basis of his own personal confession that he or she has committed a crime.

Article 15. Equality of citizens before the law and in court

(1) Justice is to be implemented on the basis of equality of citizens before the law and in court independent of social standing, property or employment status, racial or national origin, gender, education, language, religious beliefs, general beliefs, membership of public groups, place of residence, or any other circumstances.

(2) Conditions of a criminal procedure with respect to individuals possessing immunity from criminal prosecution shall be defined by the Constitution of the Kyrgyz Republic, and international agreements ratified by the Kyrgyz Republic, constitutional laws, and this Code.

Article 16. Inviolability of an individual's dwelling

(1) No individual or entity shall be entitled to penetrate the dwelling of an individual against the will of the persons residing there other than in cases and in the manner established by this Code.

(2) A survey of the dwelling of an individual shall be performed only with the consent of the persons residing inside it or on the basis of a judicial decision.

(3) A search and extraction of objects within a dwelling are to be implemented on the basis of a judicial decision with the exception of cases envisaged by this Code.

Article 17. Inviolability of property

(1) No individual may be deprived of property other than in the cases and in the manner envisaged by this Code.

(2) Extraction of items within the property of an individual may occur only in the condition that it is used as material evidence for a case as well as in cases and in the manner established by this Code.

Article 18. Protection of a person's own life and secrecy of a transcript, telephone, and other conversational, postal, or telegraph and other types of communication

(1) Limitation of the rights of a citizen for the secrecy of transcript, telephone, or other forms of communication shall be allowable only on the basis of a judicial decision.

(2) Arrest of postal or telegraph messages and their extraction in communication institutions, monitoring and recording of other conversations, and receipt of information regarding the connections between users and (or) users' devices may be performed only on the basis of a judicial decision.

Article 19. Assumption of innocence

(1) An accused shall be deemed innocent until his guilt in a crime is proven and established by a sentence of a court holding legal force.

(2) A suspect or accused shall not be obliged to prove his or her innocence. The burden of proving guilt or refuting conclusions performed in defense of a suspect or accused shall lie on with the prosecution.

(3) All doubts regarding the guilt of an accused that cannot be eliminated in the fashion established by this Code shall be interpreted in favor of the accused.

(4) Guilty verdict may not be based on assumptions.

Article 20. Implementation of criminal procedure on the basis of equality and competitiveness of the parties

(1) Criminal procedure shall be implemented on the basis of equality and competitiveness of the prosecution and the defense.

(2) Prosecution, defense, and resolution of a case by a court are separate from one another and are implemented by different bodies and individuals.

(3) A court, in preservation of objectivity and lack of bias, shall create the necessary conditions for the parties' implementation of their procedural rights and obligations

(4) The parties taking part in a criminal procedure are to be deemed equal in rights. Court makes a proceeding decision only based on evidence, the inclusion in the investigation of which has been provided by each of the parties on equal grounds.

(5) The parties select their position, methods, and means for their affirmations independent of the court, other entities, and persons in the course of criminal procedure. Court is obliged by motion of a party to provide mediation in the receipt of necessary materials in the manner established by this Code.

Article 21. Ensuring the defense right of a suspect, accused, or defendant

(1) A suspect, accused, and defendant are entitled to legal defense. Court, prosecutor, investigator, and preliminary investigation agency functionary are obliged to provide the suspect, the accused, or the defendant an opportunity to defend his or herself according to the established methods and means in this Code.

(2) The right to defense shall be provided to a person as well, with respect to whom a proceeding for the exercise of compulsory medical measures is conducted.

(3) In cases envisaged by this Code, the obligatory inclusion of a defense attorney and/or legal representative of a suspect, accused, or defendant shall be provided by functionaries implementing proceedings for a criminal case.

(4) In cases envisaged by this Code, a suspect, accused, or defendant shall be entitled to guaranteed legal assistance from a defense attorney by the government.

Article 22. Provision of the rights of those who have been victimized by crime, abuse of power, and judicial errors

(1) Rights of victims of crime and misdemeanors, abuse of power, and judicial errors limiting such victims' rights shall be provided in the course of the criminal procedure.

(2) A person who has been a victim of a crime or misdemeanor, abuse of power, and judicial errors shall be entitled to participate in the implementation of criminal procedure, in the manner established by this Code, as a victim, a private prosecutor, as well as to get compensation for the losses caused to such a person.

Article 23. Language of criminal procedure

(1) Criminal procedure is to be conducted in government or official language.

(2) Persons participating in a case who are not fluent in the language of the court proceeding shall have the right to file motions, give testimony, make statements, become acquainted with the case materials, speak in their own language in the court, and use interpreting services.

Article 24. Appeals of procedural actions and decisions

(1) Actions and decisions of a court, prosecutor, investigator, and preliminary investigation agency functionary may be appealed in the manner established by this Code.

(2) Participants of a judicial process are entitled to appeal a sentence in a higher court in the manner established by this Code.

Chapter 3.

General conditions for the implementation of a criminal prosecution

25. Charge

(1) Depending on the type and the weight of the crime committed, a criminal prosecution, including prosecution in court, is to be implemented in a private, semi-private, or public fashion.

(2) . Cases on the crimes envisaged by the first part of article 180, article 189, article 190, the first part of article 192, the first part of article 193, the first and second parts of article 194, the first part of article 195, article 199, article 203, and article 223 of the Criminal Code of the Kyrgyz Republic, part of criminal cases of private prosecution, may only be brought about by statement of a victim or his or her legal representative other than cases envisaged by the fourth part of this article and are subject to termination due to an agreement that may be reached between the victim and the accused. Such agreement is allowed to be negotiated outside of court in a special room for sentencing.

(3) Criminal cases regarding medium-gravity crimes are among the criminal cases of semi-private prosecution and pre-trial procedure is initiated by statement of a victim only or by his or her legal representative.

(4) Prosecutor or investigator initiates the pre-trial procedure in regards to any crime indicated in the second and third parts of this article as well as in the absence of a statement from a victim or his or her legal representative if due to a dependent or helpless state or by other reasons such an individual cannot defend his or her rights and legal interests or if it is a semi-private prosecution case that affects the essential interests of other persons, a community, or government.

(5) criminal cases regarding crimes other than those indicated in the second and third part of this article shall be public prosecution cases. Criminal prosecution on such matters is to be implemented independent of a statement given by a victim.

Article 26. The obligation to implement a criminal prosecution

(1) Criminal prosecution on behalf of the government in criminal public prosecution or semi-private prosecution cases is to be implemented by a prosecutor as well as an investigator.

(2) In each case regarding the discovery of indications of a crime or misdemeanor, a prosecutor, investigator, preliminary investigation agency, preliminary investigation agency functionary conducting pre-trial procedure for cases of misdemeanors are to undertake measures envisaged by this Code for the establishment of the events of a crime or misdemeanor and the

incrimination of a person or persons guilty of committing a crime.

(3) A prosecutor, investigator, and preliminary investigation agency functionary shall be authorized, in these cases envisaged by the fourth part of article 25 of this Code, to implement criminal prosecution for criminal cases independent whether or not it is brought about by a victim.

(4) Requirements, assignments, and requests of a prosecutor, investigation division director, investigator, and preliminary investigation agency functionary, presented within the bounds of their authority and established by this Code, must obligatorily be followed by all institutions, companies, and organizations independent of the ownership form, functionaries, and citizens.

(5) The prosecutor is entitled after the beginning of the pre-trial procedure to conclude a plea agreement with a suspect or an accused.

Article 27. The right of a citizen to implementation or inclusion in a criminal prosecution and prosecution

(1) In case of a victim's death or his or her inability due to age or health to express his or her will in a criminal procedure, any of his or her close adult relatives shall possess the right in the manner established by this Code to participate in a criminal prosecution of an accused and in cases of private prosecution: to display and support accusation against the corresponding person. A victim or his inheritor shall be entitled at any moment during the proceeding to decline to support the prosecution.

(2) Should a prosecutor refuse to prosecute, a victim shall nevertheless be entitled to support the prosecution.

Article 28. Circumstances outside criminal procedure

(1) A criminal procedure shall be subject to termination:

- 1) in the absence of a criminal event or a misdemeanor;
- 2) in the absence of an action of a criminal act or misdemeanor;
- 3) if the action that has caused losses due to criminal law or the Misdemeanor Code is legal (necessary protection, supposed defense, extreme necessity, physical or psychological force, losses caused during the detention of a person who has committed a crime, performance of an order or other instructions, as well as occupational obligations, justified risk, performance of a special assignment as part of an organized crime group or crime organization);
- 4) in the absence of a statement from the victim in cases envisaged by this Code;
- 5) if in relation to an individual there is a court sentence already in legal force based on the same accusation or other unannulled court ruling constituting the impossibility of a criminal prosecution;
- 6) if in relation to an individual there is an unannulled court ruling of a prosecutor, investigator, preliminary investigation agency functionary, on termination of a criminal case for the same action;
- 7) in relation to a deceased at the moment the criminal court proceeding is implemented other than cases when case proceedings are necessary for the rehabilitation of a deceased or investigation of a case in relation to other persons;
- 8) in relation to a person voluntarily declining to bring a crime into fruition;
- 9) in relation to a person subject to release from criminal responsibility due to provisions of a Special part of the Criminal Code of the Kyrgyz Republic;
- 10) in case of expiration of the statute of limitations;
- 11) in the event that a victim declines supporting a private or semi-private prosecution and (or) when an accused acquires consent from a victim;
- 12) when a prosecutor declines to support a semi-private prosecution for a case, for which a person is not a victim;
- 13) when a victim or prosecutor declines to support public prosecution;

(2) If the circumstances indicated in items 1 and 2 of this first article are discovered during court examination, the court shall complete case examination and shall issue an exoneration.

(3) Termination of a case on the grounds indicated in item 10 of the first part of this article shall not be allowed if the accused objects. In this case the proceedings for the case shall continue and reach a conclusion should there be grounds for it with guilty verdict for the condemned person liberation from punishment.

(4) Termination of a case on the basis indicated in item 11 of the first part of this article shall not be allowed if the person has committed a crime as part of an organized crime group, crime community (crime organization), armed group (gang), or has been previously condemned for such crimes;

5) The court (judge) shall terminate a criminal case in relation to a person who has committed an act prohibited by criminal law if it has been completed in a state of incapacity.

SECTION 2. CRIMINAL PROCEDURE SUBJECTS

Chapter 4. Court

Article 29. Court

(1) Court, as a body of judicial power, implements justice in criminal cases and misdemeanor materials.

(2) Criminal case or misdemeanor materials must be examined by an independent, competent, and unbiased court.

(3) For resolution of separate categories of criminal cases, specialized courts, bodies, and court groups may be created.

Article 30. Authority of a court

(1) Court is authorized:

1) to decide whether or not an individual is guilty for committing a crime or misdemeanor and assign punishment for him or her;

2) in cases when a criminal procedure is implemented with the inclusion of a jury carrying out a verdict regarding a defendant's guilt or lack thereof, to qualify actions based on the norms of the criminal Code and appoint a punishment for the defendant;

3) to exonerate a defendant;

4) to apply measures of medical compulsion to an individual;

5) to apply measures of educational influence to an individual;

6) to annul or modify a decision made by a lower court;

7) to affirm procedural agreements.

(2) Only the court, including during the pre-trial procedure, shall be authorized to make decisions regarding:

1) measure of restraint selection in the form of keeping an individual in custody, house arrest, extradition arrest, and bail;

2) prolonging of an individual's detention under custody or house arrest;

3) placing an accused who is not currently in custody into a medical or psychiatric facility for the corresponding expertise;

4) proceedings of exhumation in the absence of consent on the part of a deceased's relatives;

5) proceedings of dwelling surveying in the absence of consent from persons residing inside it;

6) proceedings of extraction and/or search;

7) proceedings of personal search with the exception of cases envisaged in article **102** of this

Code;

8) proceedings of item and document extraction containing government secret or other secret preserved by the law as well as objects and documents containing information about investments and accounts of citizens in banks and other credit organizations;

9) placing items under arrest used for correspondence, permission for such items' survey, and their extraction in communication institutions;

10) placing property under arrest, including monetary funds of persons and legal entities in accounts and investments or stored in banks and other organizations;

11) monitoring and recording telephone and other types of communication;

12) receiving information about connections between users (or) user devices;

13) temporary extraction of a defendant from his occupation;

14) implementation or elimination of material evidence;

(3) In cases and in the manner established by this Code, the court shall consign evidence by motion of the parties.

(4) Court is authorized during pre-trial procedure to examine appeals for actions (inactions) and resolutions of a prosecutor, investigator, and preliminary investigation agency in cases envisaged in chapter 19 of this Code and executed in the corresponding manner.

(5) Court is entitled to examine a case according to new and repeatedly introduced circumstances.

(6) If a case is examined in court, circumstances will be determined, which could have led to a crime being committed as well as violations of citizens' rights and freedoms occurring during preliminary investigation and investigation, the court will be entitled to issue a prejudication directing the attention of the corresponding organizations and functionaries to the given circumstances and violations of the law calling for the necessary measures. Court is entitled to carry out a prejudication and in other cases if it is deemed necessary. Prejudication toward a lower court shall not be carried out.

Article 31. Composition of the court

(1) Investigation of criminal cases is to be implemented by court collegially or solely by one judge; Court composition for the examination of a specific case is formed with consideration of the specialization of the judges in a fashion excluding influence on the formation of the persons interested in the outcome of a court examination, including with the use of an automated system.

(2) Examination of criminal cases in the first instance court is to be implemented solely by one judge other than the criminal cases envisaged in the third part of this article.

(3) Examination of criminal cases with the inclusion of a jury is to be implemented based on the rules of chapter 50 of this Code.

(4) Examination of criminal appeals is to be implemented by a judicial board in the form of three judges.

(5) Examination of criminal cases, such as cassation is to be implemented by the Judicial Board for criminal cases and cases about misdemeanors of the Supreme Court of the Kyrgyz Republic in the form of five judges.

(7) When a court in the form of three judges examines a criminal case, one of them shall be selected chairman of the given court or his assistant.

(8) In cases involving circumstances impeding the judges of a board from participating in the examination of a case in appeals or cassational instance, the chairman of a regional or equal court shall be entitled to call a judge from another board to participate in the examination of the case.

Article 32. Judges and investigation judges

(1) The authority of a court belong to a judge within the bounds of his or her power examining a case individually while implementing administrative actions for the preparation of a court meeting or ensuring the performance of a sentence or other decision permitting motions and

appeals indicated in the second part of this Code.

(2) A judge examining case alongside a board of judges shall possess equal rights with the chief justice and other judges while resolving issues appearing due to case in examination. In the event that a judge shall have a separate opinion from other judges while examining issues, the judge shall be entitled to express his or her opinion in written form. Opening an envelope and familiarizing oneself with the opinion of the judge shall be allowable only to a higher court in examining the case.

(3) An investigation judge shall implement his authority according to the rules of this Code.

Article 33. The authority of the jury

When implementing criminal procedure with the inclusion of a jury, the jury shall resolve the issues envisaged by items ----- of this Code set in front of them in the fashion established by this Code.

Article 34. Rights and obligations of the jury in criminal procedure.

(1) The jury shall be entitled:

1) to participate in the examination of evidence presented in court to receive an opportunity to independently evaluate the circumstances of the case according to its internal beliefs and give answers to the questions that are set in front of the jury;

2) ask questions to the participants of the criminal court process, which are passed on in written form to the chief justice;

3) participate in the survey of material evidence and documents, proceedings of a venue and facility survey, and in all other actions regarding the examination of evidence;

4) request the chief justice to clarify the norms of the law related to the case as well as any other unclear issues;

5) make written notes during the court session.

(2) Jurors shall be obliged:

1) to observe order during the court session and follow the orders of the chief justice;

2) arrive at the time indicated by a court for the continuation of a court session in case a break is announced or the hearing for a case is postponed;

3) not to leave the hall of the court session during the hearing of the case;

4) not to associate with persons outside the court composition about the circumstances of the criminal case in examination;

5) not to collect information on the case during the examination of the case and outside the court session;

6) not to violate secrets of the meeting and votes on jury for question set in front of them;

7) not to disclose information made known to them during the closed court session as well as facts that were learned by them about the jury members in their selection;

8) not to disclose information composing government secrets or other preserved secret by law if such information is contained in the criminal case under investigation. In such cases jury members will provide a signature regarding their promises not to disclose information.

(3) Jurors' failure to fulfill the obligations envisaged by this article shall entail the juror's elimination from the jury by the chief justice from continuing inclusion in the examination of the case and responsibility established by law.

Chapter 5.

Participants of the process carrying out functions of a criminal prosecution

Article 35. Prosecutor

(1) A prosecutor is a functionary authorized within the bounds of his or her power envisaged by this Code to implement:

1) monitoring of the observance of law on the part of the bodies implementing operational investigations, investigations, and preliminary investigations;

2) monitoring of the observance of laws in performing court decisions for criminal cases as well as while applying compulsory measures entailing the limitation of a person's personal freedom;

3) representation of the interests of an individual or government in court in cases defined by the law;

4) maintain governmental prosecution in court;

5) criminal prosecution of government bodies functionaries.

(2) In the course of the pre-trial procedure, the prosecutor is authorized to:

1) full access to materials, documents, and other information related to pre-trial procedure;

2) verify the completion of legal and normative act requirements on acceptance, registration, and permission of communication about complete crimes or conspiracies to commit crimes;

3) assign and transfer for investigation to an investigator or group of investigators criminal cases in accordance with the competence and in exclusive cases - independent from competence;

4) appoint a revision and verification in the manner defined by law;

5) implement monitoring of the legality of an investigation of criminal cases and misdemeanor materials;

6) carry out rulings on the release of persons held with the violation of the requirements of this Code;

7) give consent or refuse to give consent to an investigator to select restraint measure in the form of taking an individual into custody, house arrest, bail, as well as give consent or carry out a ruling to refuse the prolonging of a time period for an individual to be held in custody or under house arrest;

8) give consent or refuse to give consent to an investigator for an accused's temporary removal from office;

9) permit removal stated to an investigator as well as his recusal;

10) give written indications to an investigator about the proceedings of procedural actions;

11) demand elimination of violations of laws occurring during the course of pre-trial procedure from investigation bodies and preliminary investigation agencies;

12) give a preliminary investigation agency written indications about operational search actions to be held due to the proceedings for a criminal case as well as undertaking of measures to ensure appearances called for a court session of persons from the prosecution;

13) examine the objections of an investigator concerning indications of a prosecutor implementing monitoring;

14) annul unlawful and unfounded rulings of an investigator and a lower prosecutor;

15) give consent or carry out a ruling to refuse the prolonging of an investigation's time period;

16) permit appeals for decisions and actions of preliminary investigation agencies, an investigator, and a lower prosecutor;

17) carry out rulings to eliminate a preliminary investigation agency functionary, investigator, or lower prosecutor from continuing inclusion in the implementation of a criminal procedure for a given case if they have in some manner violated the law;

18) refer to the corresponding bodies with adductions on the deprivation of immunity from criminal prosecution of persons benefiting from it if these persons are subject to accusations;

19) refuse criminal prosecution of an accused or a wrongdoer and modify the charge presented for an accused;

20) affirm a ruling to bring in an individual as an accused or return a criminal case to an investigator with indications of the proceedings of additional investigative actions;

21) give assignments entailing the exercise of measures for a victim's, witness', or other individuals' defense participating in a criminal procedure;

- 22) maintain prosecution in court;
- 23) present a civil lawsuit to a legal entity for exercise of measures of criminal and legal influence envisaged by the Criminal Code of the Kyrgyz Republic;
- 24) appeal judicial decisions in the manner established by this Code.
- 3) Prosecutor is to implement other powers that are envisaged by this Code.
- 4) Written indications of a prosecutor to a preliminary investigation agency and investigations due to the examination of statements, notification of crimes, the investigation of a criminal case, and date in the fashion established by this code are obligatory for these bodies. Appealing received indications from a higher prosecutor shall not suspend their performance.

Article 36. Investigator

- (1) Investigator is a functionary authorized within the bounds of his or her power as envisaged by this Code to implement investigation for a criminal case.
- (2) All decisions regarding the trend of an investigation and proceedings of investigative actions are to be taken on by an investigator independently other than cases where the law envisages the receipt of consent from a prosecutor or court decision established by this Code and bears responsibility for their legal and timely proceeding.
- (3) After the registration of a statement or communication of a crime committed or planned to be committed or the spontaneous discovery of a crime, an investigator shall begin a pre-trial procedure, taking the criminal case into his or her own proceedings or transferring it to the investigation division director for it to be sent out according to power.
- (4) Investigator shall be authorized to:
 - 1) interrogate a suspect, accused, victim, witness, expert, or specialist; appoint expertise; and undertake surveys, searches, extractions, and other investigative actions in accordance with the requirements of this Code;
 - 2) undertake measures to reimburse losses to a victim;
 - 3) demand and obtain documents and materials containing information about the event and persons accessory to it;
 - 4) request to execute revision, inventory, knowledge expertise, or other verification measures;
 - 5) receive from a preliminary investigation agency information connected with the case under investigation to hold operational search actions and measures to be held in uncovering a crime and finding missing persons and property;
 - 6) give a preliminary investigation agency written assignment for it to hold special investigative actions connected with the proceedings for a criminal case;
 - 7) assign a preliminary investigation agency to carry out decisions about detention, transport, holding an individual under custody, and also receive on first request from the preliminary investigation agency assistance in implementing special investigation and other procedural actions;
 - 8) assign a preliminary investigation agency to implement measures in ensuring safety of witnesses, victims, and other criminal procedure participants;
 - 9) request from the corresponding government and other bodies to ensure the availability of translators, specialists, and experts;
 - 10) detain a person suspected of committing a crime;
 - 11) ensure inclusion of a defendant in the proceedings of a criminal case as well as with respect to persons entitled to guaranteed legal assistance from the government and request the appointment of a defense attorney;
 - 12) carry out a ruling on bringing in a person as an accused and bring forth a charge;
 - 13) bring for an employee of a probation body to depict a pre-trial report;
 - 14) recognize a victim, a civil plaintiff, a civil defendant and permit their participants to participate in the proceedings of a criminal case;
 - 15) initiate and bring in the representatives of legal entities to apply measures of criminal

and legal impact envisaged by the Criminal Code of the Kyrgyz Republic and allow them to participate in the proceedings of a criminal case;

16) permit removals stated to a translator, specialist, or expert;

17) permit motions connected with the proceedings of a criminal case;

18) permit appeals within the bounds of power;

19) carry out rulings on the selection, modification, and annulment of measures of restraint and application of another measures of a criminal procedure if the consent of a prosecutor or decision of a judge is not required by this Code;

20) carry out rulings on the suspension and termination of proceedings for a criminal case;

21) perform written indications and the assignments of a prosecutor;

22) implement other authority envisaged by this Code.

(5) Should an investigator disagree with the decision of a prosecutor in a criminal case, the investigator shall be entitled to consult a higher prosecutor with a written description of his or her objections. In this case the higher prosecutor shall be entitled by his or her own ruling to annul a decision of a lower prosecutor or assign the investigation proceedings to another investigator.

(6) A ruling of an investigator in a criminal case is required to be carried out by citizens and directors of organizations. Failure to fulfill the ruling of an investigator shall entail responsibility in accordance with the law.

Article 37. An investigation division director authority

(1) Investigation division director shall organize the proceedings of the investigation.

(2) Investigation division director shall be authorized to:

1) assign the proceedings of an investigation to an investigator or group of investigators as well as impound a criminal case from an investigator and transfer it to another with an obligatorily indicated reason for such a transfer.

2) halt an investigator from continuing investigation in a proceeding if he or she has violated requirements of this Code;

3) implement monitoring of the timeliness of the actions of investigators in the criminal cases within their proceedings, the investigators' observance of the time schedule of the investigation and detention of individuals under custody, the performance of the prosecutor's directions, and the assignments of other investigators in cases envisaged by this Code.

4) An investigation division director shall be entitled to participate in the investigation of a case within the proceedings of an investigator and personally pursue an investigation, meanwhile enjoying the authority of an investigator.

3. Instructions of an investigation division director for a criminal case may not limit the independence of an investigator as well as his rights, which are established in article **40** of this Code. Instructions are given to an investigator in written form and are compulsory, but in case a disagreement shall occur, they may be appealed to a prosecutor.

Article 38. Preliminary investigation agency

(1) Preliminary investigation agencies are:

1) internal affairs bodies;

2) the chiefs of penal institutions and detention facilities in criminal cases, which crimes have been committed by the employees of these institutions connected with performance of their obligations equally in criminal cases as well, which crimes have been committed in the location of the indicated parts;

3) commanders of military units, unions, and chiefs of military institutions;

4) national security bodies;

5) narcotics control body of the Kyrgyz Republic;

6) commanders of border units;

- 7) customs bodies;
- 8) economic crimes fighting bodies;
- 9) emergency service bodies;
- 10) directors of mining lots and expeditions in faraway locales;
- 11) head of diplomatic representative offices and consular institutions of the Kyrgyz Republic for criminal cases, which crimes have been committed within the bounds of the territories of the given representation offices and institutions.

(2) Preliminary investigation agency within the bounds of applicable power shall:

- 1) conduct proceedings for cases about misdemeanors in the manner established by section **16** of this Code;
- 2) provide for the registration of statements and communication on the commission of a crime;
- 3) undertake measures to preserve traces of the event;
- 4) undertake operational search actions for crime restraint as well as the discovery of persons that committed them;
- 5) present to the prosecutor and investigator acting within his or her authority the information and materials they request;
- 6) organize completion of assignments from the prosecutor and investigator, including assignments involving the proceeding of separate investigative actions and exercise of defense measures for victims, witnesses, and other persons participating in the criminal procedure.
- 6) carry out assignments from the court;
- 7) implement monitoring for the observance of measures of restraint other than measures of restraint in the form of taking an individual into custody.

Article 39 An authorized preliminary investigation agency functionary conducting pre-trial procedure in misdemeanor cases

(1) A preliminary investigation agency functionary is a functionary authorized within the bounds of his power, as envisaged in this Code, to implement proceedings for misdemeanor materials.

(2) All decisions on the proceedings for misdemeanor materials shall be made by the preliminary investigation agency functionary independently with the exception of cases when the law has envisaged that consent should be received from a prosecutor or decision should be received from court, as established by this Code, and shall bear responsibility for their legal and timely proceeding.

(3) A preliminary investigation agency functionary shall begin, after registration of a statement or communication about a misdemeanor, proceedings for materials about such misdemeanor after accepting the case materials into his or her own proceedings.

(4) A preliminary investigation agency functionary shall be authorized to:

- 1) interrogate a wrongdoer, victim, witness, expert, or specialist; appoint expert; and undertake surveys and other procedural action in accordance with the requirements of this Code;
- 2) undertake measures to reimburse losses to a victim;
- 3) demand and obtain documents and materials containing information about the event and persons accessory to it;
- 4) request from the corresponding government or other bodies provision of translators, specialists, and experts;
- 5) detain a wrongdoer or suspect for the commission of a misdemeanor;
- 6) recognize an individual as a victim, civil plaintiff, or civil defendant and allow their representatives to participate in criminal proceedings for materials on misdemeanors;
- 7) allow for removals stated to translators, specialists, and experts;
- 8) allow for motions connected with proceedings for misdemeanor materials;
- 9) allow for appeals within applicable power;
- 10) carry out rulings on suspension and termination of proceedings for misdemeanor

materials;

- 11) carry out written indications and prosecutor assignments;
- 12) implement other authority envisaged by this Code.

(5) In the absence of a preliminary investigation agency functionary's consent to the prosecutor's decision for misdemeanor materials, he or she shall be entitled to address a higher prosecutor with a written statement of his objections. In this case, the higher prosecutor shall be entitled to annul with his ruling the decision of the lower prosecutor or to assign proceedings for misdemeanor materials to another preliminary investigation agency functionary.

(6) A ruling of a preliminary investigation agency functionary for misdemeanor materials is required to be carried out by citizens and directors of organizations. Failure to fulfill the rulings of a preliminary investigation agency functionary shall entail responsibility in accordance with the law.

Article 40. An investigation division director authority

(1) Investigation division director shall organize the proceedings of the investigation.

(2) Investigation division director shall be authorized to:

- 1) assign the proceedings of an investigation to an investigator or group of investigators as well as impound a criminal case from an investigator and transfer it to another with an obligatorily indicated reason for such a transfer.
- 2) halt an investigator from continuing investigation in a proceeding if he or she has violated requirements of this Code;
- 3) implement monitoring of the timeliness of the actions of investigators in the criminal cases within their proceedings, the investigators' observance of the time schedule of the investigation and detention of individuals under custody, the performance of the prosecutor's directions, and the assignments of other investigators in cases envisaged by this Code.
- 4) An investigation division director shall be entitled to participate in the investigation of a case within the proceedings of an investigator and personally pursue an investigation, meanwhile enjoying the authority of an investigator.

(3) Directions of an investigation division director for a criminal case may not limit the independence of an investigator and his or her rights established in article **40** of this Code. Instructions are given to an investigator in written form and are compulsory, but in case a disagreement shall occur, they may be appealed to a prosecutor.

Article 41. Chief of preliminary investigation agency

(1) Chief of preliminary investigation agency: assigns an authorized preliminary investigation agency functionary with the implementation of pre-trial procedure for misdemeanor cases.

(2) Instructions of the chief of preliminary investigation division for a case are to be given in written form and must obligatorily be fulfilled, but may be appealed to a prosecutor. Appeal of directions will not suspend their fulfillment.

Article 42. Victims

(1) A person shall be referred to as a victim, to whom emotional, physical, or property losses have been caused by crime or misdemeanor. A ruling shall be carried out as to whether a person is a victim by a judge, prosecutor, investigator, or preliminary investigation agency functionary. A decision to deem a person a victim is to be made after the establishment of the event of a crime or misdemeanor, which has incurred losses to the victim and is independent of the persons' age or psychiatric or physical condition.

(2) A victim shall have a right:

- 1) to know the essence of an accusation presented to the accused;
- 2) to give testimony in his or her native language or in a language in which he or she is fluent;

- 3) to present evidence;
 - 4) to announce motions and removals;
 - 5) to use the services of a translator (interpreter);
 - 6) to have a representative;
 - 7) to participate in investigative actions held according to his or her motion or motion of his or her representative;
 - 8) to become acquainted with the records of investigative actions undertaken with his inclusion and submit comments on them;
 - 9) to become acquainted at the end of the investigation with all case materials and take notes from them for necessary information;
 - 10) to receive copies of rulings on the origin of the criminal case, acknowledgment of a victim, termination of a criminal prosecution, accusation, as well as copies of judicial decisions;
 - 11) to participate in court;
 - 12) to speak at court discussions and support the prosecution;
 - 13) to become acquainted with the record of a court session and submit comments on it;
 - 14) to appeal actions of a preliminary investigation agency functionary as well as the actions and decisions of an investigator, prosecutor, or court;
 - 15) to appeal court decisions;
 - 16) to know about appeals and adductions based on the case and submit objections to them;
 - 17) to participate in a judicial examination of appeals and reports;
 - 18) to conclude a procedural agreement with the accused in the cases allowable according to this Code;
 - 19) to receive at the expense of the government compensation for losses caused by a crime;
 - 20) to receive property back that has been taken from him or her for the conduct of the criminal process as material evidence or taken from the individual based on other reasons who has committed a crime as well as the originals of official documents belonging to him or her;
 - 21) to request from the condemned reimbursement for losses caused by a crime;
 - 22) to request measures of criminal and legal influence toward legal entities in cases envisaged by the Criminal Code of the Kyrgyz Republic;
- (3) A victim shall be obliged:
- 1) to appear by request of an investigator, prosecutor, or court;
 - 2) to give testimony and truthfully provide everything he or she knows relative to the case;
 - 3) to present all objects, documents, as well as samples for comparative investigation that he or she has;
 - 4) to be subject to testimony by request of an investigator, prosecutor, or the court;
 - 5) not to disclose information on the circumstances known to him or her concerning the case if he or she had been previously warned ahead of time in the manner established by article ... of this Code;
 - 6) to observe the procedure established by this Code during investigative actions proceedings as well during a court session.
- (4) In case a victim does not appear as called without respectable grounds, he or she may be subject to compulsory transfer or monetary compensation of up to twenty account figures in the manner established by articles **126 and 127** of this Code.
- (5) For refusal to give testimony and knowingly providing false testimony, the victim shall bear responsibility according to articles 330 and 331 of the Criminal Code of the Kyrgyz Republic.
- (6) For cases on crimes leading to the death of the victim, the rights envisaged by this article shall transfer to one of the victim's close relatives.
- (7) Inclusion of a legal representative and representative of a victim in a criminal case shall not deprive him or her of his rights as envisaged by this article.

Article 43. Private prosecutor

(1) Private prosecutor is a person who has submitted an appeal to a court for a private prosecution case, supporting prosecution in court, as well as a victim in public and semi-private prosecutions independently supporting prosecution in court in case of a refusal of a prosecuting attorney to prosecute.

(2) Private prosecutor is to be provided with the rights envisaged in article 258 of this Code.

Article 44. Civil plaintiff

(1) A person or legal entity shall be deemed a civil plaintiff who has brought forth a demand to reimburse property losses caused directly by a crime or a misdemeanor. A civil lawsuit may be brought about for compensation of emotional damage as well. A person shall be recognized a civil plaintiff by a ruling of a judge, prosecutor, investigator, or preliminary investigation agency functionary.

(2) A civil lawsuit may be presented during the pre-trial procedure and before the beginning of a court trial when a criminal case is investigated in a first instance court. In presenting a civil lawsuit, a civil plaintiff shall be liberated from having to pay a government fee.

(3) In the defense of the interests of minors, as well as persons duly recognized as not legally competent or not fully legally competent and cannot for some reason or other protect their rights and legal interests on their own, a civil lawsuit may be presented by their legal representatives or prosecutor and a prosecutor may act in the defense of the interests of the government.

(4) A civil plaintiff shall have a right:

1) to support a civil lawsuit;

2) to present evidence;

3) to give explanations for the presented claim;

4) to announce motions and removals;

5) to give testimony in his or her native language or in a language in which he or she is fluent;

6) to use the services of a translator (interpreter);

7) to refuse to testify against oneself, one's spouse, or other close relatives, which relatives are defined in this Code. Given the consent of a civil plaintiff to give testimony, he or she may be warned that his testimony may be used as evidence for the criminal case, including the case of a subsequent refusal to give testimony;

8) to have a representative;

9) to participate in investigative actions held by his or her motion or by motion of his or her representative;

10) to become acquainted with the records of investigative activities held with his or her inclusion;

11) to become acquainted at the end of a pre-trial procedure with the materials of a case related to a civil lawsuit and take notes of necessary information contained in it;

12) to know about decisions that have been made that affect his or her interests and receive copies of procedural decisions related to the civil lawsuit brought forth.

13) to participate in court;

14) to participate in the discussions of the parties;

15) to become acquainted with the record of a court session and submit comments on it;

16) to appeal the actions and decisions of a court, prosecutor, investigator, or preliminary investigation agency functionary;

17) to appeal court decisions in part concerning a civil lawsuit;

18) to know about appeals and adductions based on the case and submit objections to them;

19) to participate in the judicial examination of appeals and adductions and request a court,

prosecutor, investigator, and preliminary investigation agency functionary to undertake measures in providing the claim he or she has brought to court;

20) to drop the claim at any moment of the proceeding for the criminal case, but before seclusion of a court to the special room for sentencing;

21) to request exercise of measures of criminal and legal influence toward legal entities in cases envisaged by the Criminal Code of the Kyrgyz Republic;

(2) A civil plaintiff shall be obliged:

1) to appear by request of preliminary investigation agency functionary, investigator, prosecutor, and court;

2) to present to the court copies of the claim statement according to the amount of civil defendants;

3) to present all objects, documents, as well as samples for comparative investigation that he or she has on the request of the body conducting the criminal process;

4) to observe the procedure established by this Code during investigative actions proceedings as well during a court session.

5) not to disclose information on the circumstances known to him or her concerning the case if he or she has been previously warned ahead of time in the fashion established by article ... of this Code;

(3) A civil plaintiff may be called on as a witness.

(4) A civil plaintiff also possesses other rights and bears other obligations envisaged by this Code.

(5) A civil plaintiff enjoys the rights belonging to him or her and fulfills the obligations imposed on him or her personally or through his or her representative. In the manner established by this Code, rights of a minor or incompetent civil plaintiff shall be implemented instead of him or her by his or her legal representative.

Article 45. Representatives of a victim, civil plaintiff, and private prosecutor

(1) People that may be representatives of a victim, civil plaintiff, or private prosecutor may be lawyers and other persons authorized by law to represent legal interests of a victim, civil plaintiff, and private prosecutor in the proceedings of a criminal case.

(2) Legal representatives and representatives must obligatorily be called into for case in defense of the rights and legal interests of a victim, civil plaintiff, or private prosecutor who is a minor or is physically or psychiatrically unable to independently protect his or her rights and legal interests.

(3) Legal representatives and representatives of a victim, civil plaintiff, and private prosecutor have the same procedural rights and obligations as the victim, civil plaintiff, and private prosecutor.

(4) Personal participation in a case of a victim, civil plaintiff, and private prosecutor will not deprive them of the right to maintain a representative for such a case.

Chapter 6.

Participants of a process implementing defense functions

Article 46. Wrongdoers

(1) A wrongdoer is a person:

1) with respect of which a proceeding has been initiated for misdemeanor materials;

2) who has been detained for suspicion of a misdemeanor in the manner established by this Code.

(2) A person shall cease to be a wrongdoer from the moment that a ruling is carried out by an authorized person to terminate proceedings for misdemeanor materials.

Article 47. Rights and obligations of a wrongdoer

- (1) A wrongdoer shall have a right:
- 1) to know what misdemeanor he is suspected of having committed;
 - 2) to make one free phone call;
 - 3) to receive copies of the communication about the misdemeanor and record of detention;
 - 4) to receive a written explanation of his or her rights;
 - 5) to have a defense attorney;
 - 6) to request verification of legality and grounds for detention;
 - 7) to give testimony or refuse to give testimony;
 - 8) to give testimony in his or her native language or in a language, in which he or she is fluent;
 - 9) to use the services of a translator (interpreter);
 - 10) to present evidence;
 - 11) to announce motions and removals;
 - 12) to become acquainted with the records of procedural actions conducted with his or her participation and submit comments to be included into the record;
 - 13) to appeal to actions and decisions made by a preliminary investigation agency functionary or prosecutor.
- (2) A wrongdoer shall be obliged:
- 1) to appear by order of the body conducting proceedings for misdemeanor materials;
 - 2) to subject his or herself to the instructions of a prosecutor and a preliminary investigation agency functionary;
- (3) A wrongdoer may be subjected by the request of the body conducting proceedings for misdemeanor materials to:
- 1) inspection as well as personal search;
 - 2) examination by a doctor, fingerprinting, imprinting, extraction of biologic samples (blood taken from an individual);
 - 3) examination;
 - 4) expertise.
- (4) A wrongdoer shall possess other rights and bear other obligations envisaged by this Code.

Article 48. Suspect

- (1) A suspect is a person who:
- 1) has been notified of suspicion of having committed a crime;
 - 2) is being held for suspicion of committing a crime in the manner established by this Code.
- (2) A person is no longer deemed a suspect from the moment a ruling is carried out by an authorized person to terminate pre-trial procedure or the consideration of his or her guilt.

Article 49. Rights and obligations of a suspect

- (1) A suspect shall have a right:
- 1) to know what crime he is suspected of having committed;
 - 2) to make one free phone call;
 - 3) to receive copies of the notification of a crime and records of detention;
 - 4) to receive a written explanation of his or her rights;
 - 5) to have a defense attorney from the moment of his or her first interrogation and from the moment of detention in case he or she is taken into custody;
 - 6) to request verification of legality and grounds for detention;
 - 7) to give testimony or refuse to give testimony;
 - 8) to give testimony in his or her native language or in a language, in which he or she is fluent;
 - 9) to use the services of a translator (interpreter);
 - 10) to present evidence;

- 11) to announce motions and removals;
 - 12) to become acquainted with the records of investigative actions conducted with his or her participation and submit comments to be included into the record;
 - 13) to participate by permission of an investigator or functionary in investigative actions held by his or her motion or by motion of a defense attorney or legal representative;
 - 14) to appeal the actions of a preliminary investigation agency functionary and actions and decisions of an investigator or prosecutor.
 - 15) to get medical examination and assistance from a doctor after he or she is detained.
- (2) A suspect shall be obliged:
- 1) to appear by order of the body conducting a pre-trial procedure;
 - 2) to subject him or herself to the orders of a prosecutor or investigator;
- (3) A suspect may, by request of a body conducting a pre-trial procedure, subject him or herself to:
- 1) inspection as well as personal search;
 - 2) examination by a doctor, fingerprinting, imprinting, extraction of biologic samples (blood taken from an individual);
 - 3) examination;
 - 4) expertise.
- (4) A suspect also has other rights and bears other obligations envisaged by this Code.
- (5) During each delivery of a suspect to a temporary containment cell, he or she shall be subject to obligatory medical examination along with the compilation of the corresponding document as well as when appeals are made from him or her, his or her defense attorney, or relatives on physical violence performed by preliminary investigation agency functionaries and during investigations. Obligation to ensure medical examination shall be imposed on the administration of a temporary containment cell.

Article 50. Accused, defendant, and condemned

- (1) A person shall be considered an accused if in respect of him or her a ruling about indictment is carried out in the manner established by this Code.
- (2) An accused in respect of whom a case has been accepted into the court proceedings shall be termed a defendant, a defendant with respect of whom a conviction has been carried out and has taken legal force shall be termed a condemned, and in case a non-guilty verdict is reached, an individual will be referred to as an acquitted.

Article 51. Rights and obligations of an accused, defendant, and condemned (acquitted)

- (1) An accused shall have a right:
 - 1) to know of what crime he or she is accused;
 - 2) to defend his or her rights and legal interests by methods and means not contradicting the law and have sufficient time for preparation for defense;
 - 3) to receive copies of rulings about indictment and appointment of an expertise;
 - 4) to give testimony for the accusations presented to him or her or refuse to give testimony;
 - 5) to present evidence;
 - 6) to announce motions and removals;
 - 7) to give testimony in his or her own language or in a language in which he or she is fluent;
 - 8) to use the service of a translator (interpreter) as well as a defense attorney, including during court investigation of a motion by an investigator to select measures of restraint in the form of detention, house arrest, or bail;
 - 9) to participate in investigative actions conducted by his or her motion or the motion of his or her defense attorney or legal representative;
 - 10) to become acquainted with the conclusion and testimony of an expert
 - 11) to unimpededly speak with his or her defense attorney privately without limitation in the amount of time and frequency;

12) to become acquainted with all the case materials and copy necessary information out of it at the end of the investigation;

13) to appeal actions of a preliminary investigation agency functionary, as well as actions and decisions of an investigator or prosecutor;

14) to motion about the investigation of his or her criminal case by a court with the inclusion of a jury if he or she is accused of having committed a crime, for which punishment is envisaged in the form of life incarceration.

15) to conclude procedural agreements in cases envisaged by this Code.

(2) An accused shall be obliged:

1) to appear by order of the body conducting investigation;

2) to subject him or herself to search when taken into custody;

3) to subject him or herself to medical examination, fingerprinting, imprinting, witness identification, expertise, and extraction of biological samples (blood taken from an individual);

4) to subject him or herself to the orders of an investigator or prosecutor.

(3) A defendant shall be obliged:

1) to appear in court by order;

2) to subject him or herself to the orders of the chief justice;

3) not to leave court session hall without the permission of the chief justice;

4) observe order during a court session.

(4) An accused or a defendant shall also have other rights and bear other obligations envisaged by this Code.

(5) In the manner envisaged by this Code, the rights of a minor or legally incompetent accused or defendant shall be implemented by his or her legal representative.

(6) During each delivery of a suspect to a temporary containment cell, he or she shall be subject to obligatory medical examination along with the compilation of the corresponding document as well as when appeals are made from him or her, his or her defense attorney, or relatives on physical violence performed by preliminary investigation agency functionaries and during investigations. Obligation to undertake medical examination shall be imposed on the administration of a temporary containment cell or an investigation facility.

(7) A condemned or acquitted shall have a right:

1) to become acquainted with the record of a court session and submit comments on it;

2) to receive copies of a court decision and appeal them;

3) to know about appeals and adductions brought for the case and submit objections to them;

4) to participate in a judicial examination of appeals or adductions.

Article 52. Legal representatives of a minor suspect, accused, defendant, and employees of an authorized government body for child protection

(1) For cases when crimes are committed by minors, their legal representatives as well as the employees of an authorized government body for child protection shall obligatorily be called to the case.

(2) Inclusion in a case on the part of authorized government body employees for child protection as well as the legal representatives of a minor suspect, accused, or defendant shall be implemented in the manner established in chapter **44** of this Code.

Article 53. Defense attorney

(1) A defense attorney is a person implementing protection of the rights and interests of a wrongdoer, suspect, accused, defendant, or witness for a criminal case and providing him or her legal assistance.

(2) Lawyers shall participate as defense attorneys both during pre-trial procedure and in court. Close relatives, legal representatives of a defendant, and an employee of an authorized government body for child protection are permitted to act as a defense attorney in court.

(3) A defense attorney shall participate in a case from the first moment that a wrongdoer,

suspect (accused), or witness is interrogated or after a wrongdoer or suspect is first detained. A defense attorney shall be entitled to participate in proceedings for criminal cases and cases on misdemeanors after presenting an assignment order or license.

(4) The same person may not be a defense attorney of two wrongdoers, suspects, accused, defendants, or witnesses if the interests of one of them contradict the interests of the other.

Article 54. Invitation, appointment, and replacement of a defense attorney and payment for his or her services

(1) A defense attorney is to be called by a wrongdoer, suspect, accused, defendant, witness, their legal representatives, as well as other persons by assignment or with the consent of a wrongdoer, suspect, accused, defendant, or witness.

(2) The right of a suspect, accused, or defendant to use the services of a defense attorney in a proceeding for a criminal case shall be provided by court, prosecutor, or investigator.

(3) Individuals with the right to receive legal assistance at the expense of the government shall be provided a defense attorney in accordance with the laws of the Kyrgyz Republic. Payment for the services of a lawyer rendering legal assistance at the expense of the government shall be provided in accordance with the laws of the Kyrgyz Republic.

(4) In cases where the inclusion of a selected or appointed defense attorney is impossible, the investigator, investigation judge, and the court shall be entitled to propose to the suspect, accused, or defendant to invite or appoint another defense attorney in accordance with the laws of the Kyrgyz Republic.

Article 55. Obligatory participation of a defense attorney

(1) Participation of a defense attorney in the proceedings for a criminal case shall be obligatory in cases if:

1) a suspect, accused, or defendant experiences difficulty in independently implementing his or her right to defense as a result of a substantial violation of his or her speech, hearing, vision, prolonging cumbersome disease, as well as lunacy, clear mental immaturity, and physical and psychiatric flaws;

2) a suspect, accused, or defendant is not fluent or not sufficiently fluent in the language of the criminal procedure;

3) a suspect, accused, or defendant has not reached full age;

4) a person is suspected and accused of committing especially grave crime;

5) a suspect, accused, or defendant is a compulsory duty serviceman;

6) there are contradictions between the interests of suspects, accused, or defendants and if at least one of them has a defense attorney;

7) representatives of a victim (private prosecutor) or civil plaintiff participates in the proceedings for a criminal case;

8) criminal case is subject to examination by a court involving jury;

9) exercise of compulsory medical measures is envisaged or an issue is being decided about their application with respect to persons from the moment a fact that an individual has psychological illness is established or other information causing doubt as to his or her medical capacity is received;

10) a motion is announced on a procedural agreement and its conclusion.

(2) Participation of a defense attorney is obligatory during investigator's motion examination by a court to select measures of restraint with respect of an accused in the form of taking him or her into custody, implementing house arrest, or setting bail. This requirement expands to the procedure of extending the time period of an accused's detention under custody and house arrest.

Article 56. Waiver of a defense attorney

(1) A suspect, accused, or defendant shall have a right to waive a defense attorney. Such a waiver shall be allowed only on the initiative of a suspect, accused, or defendant and shall not be

an obstacle for the participation of a prosecutor just as defense attorneys of other suspects, accused, and defendants.

(2) Waiver of a defense attorney shall be implemented in the presence of a defense attorney.

(3) When a defense attorney is waived, defense shall be implemented by a suspect, accused, or defendant himself.

(4) Waiver of a defense attorney announced by a suspect, accused, or defendant in cases envisaged in article 55 of this Code shall not be obligatory for an investigator or court.

(5) Release of a defense attorney by a suspect, accused, or defendant from participation in a case shall be processed by ruling of an investigator, judge, or court writ.

Article 57. Rights and obligations of a defense attorney

(1) When rendering legal assistance, a lawyer shall participate in a proceeding as a defense attorney or other representative on the initiative of competitiveness and equality between the parties.

(2) From the moment of his or her inclusion into a case, a defense attorney shall have a right to:

- 1) collect and present evidence providing an argument in favor of a suspect, accused, defendant, witness, personally or with the assistance of a private detective during investigation and in court;
- 2) receive written notices and explanations from witnesses and compile private reports from a survey;
- 3) deposit evidence;
- 4) be present at the announcement of charge;
- 5) participate in the interrogation of a wrongdoer, suspect, accused, or witness as well as in investigative actions undertaken with their participation and by their motion;
- 6) have a private meeting with a wrongdoer, suspect, accused, defendant without limitation to their length, frequency, and conditions other than the possibility of being overheard;
- 7) become acquainted with the records of detention; the ruling on the execution of a measure of restraint; the records of investigation actions undertaken with the inclusion of a wrongdoer, suspect, accused, and the defense attorney himself; documents, which were presented or were subject to presentation to a wrongdoer, suspect, or defendant; and all case materials at the end of a pre-trial procedure;
- 8) take copies of case materials and copy all necessary information to form an attorney file (case);
- 9) announce motions;
- 10) participate in court;
- 11) announce removals;
- 12) appeal actions of a preliminary investigation agency functionary; actions and decisions of an investigator, prosecutor, or court; and participate in their examination;
- 13) use other means and methods of defense not in contradiction to the law.

(3) A defense attorney participating in investigative actions is entitled by permission of an investigator or preliminary investigation agency functionary to ask questions to interrogators. An investigator or preliminary investigation agency functionary may retract the issues of a defense attorney, but is obliged to enter the retracted issues into record. A defense attorney shall be entitled to make written comments in the record of investigative actions concerning correctness and completeness of its recording.

(4) A defense attorney shall be obliged:

- 1) to use all methods and means indicated by law in an effort to uncover and present evidence proving the lack of guilt of a wrongdoer, suspect, accused, or defendant or to soften their responsibility and render them necessary legal assistance;
- 2) without the consent of a wrongdoer, suspect, accused, defendant, or witness not to disclose information, which he or she has found out due to participation in a criminal procedure and

compose other secrecy preserved by law;

3) to observe the rules of professional etiquette of a lawyer.

(5) A defense attorney shall not have a right to undertake any actions against the interests of an individual under prosecution.

(6) Evidence collected by a defense attorney shall be obligatory for his or her motion in order to apply it to a case. These materials shall be subject to investigation and evaluation by a preliminary investigation agency functionary, investigator, prosecutor, or court in accordance with the requirements of this Code

Article 58. Civil defendant

(1) An individual or legal entity who bears property responsibility by law for damage caused by a crime or misdemeanor or other action prohibited by the Criminal Code of the Kyrgyz Republic for an insane person or a minor shall be considered a civil defendant.

(2) In order to indict a person as a civil defendant, a preliminary investigation agency functionary, investigator, or judge must carry out a ruling.

Article 59. Rights and obligations of a civil defendant

(1) A civil defendant shall have a right:

- 1) to know the essence of an accusation and a civil lawsuit;
- 2) to object to a lawsuit;
- 3) to find out from the body conducting the criminal process about decisions made that affect his or her rights and interests and also to receive copies of these decisions on his or her request, a copy of a ruling to indict the accused, and copies of judicial decisions;
- 4) to give explanations and testimony according to the essence of a lawsuit presented;
- 5) to have a representative;
- 6) to present evidence;
- 7) to announce motions and removals;
- 8) become acquainted at the end of the pre-trial procedure with the case materials related to the civil lawsuit and copy necessary information;
- 9) to participate in court;
- 10) to speak at the discussions of the parties and appeal the actions of a preliminary investigation agency functionary as well as actions and decisions of an investigator, prosecutor, or court;
- 11) to become acquainted with the record of a court session and submit comments on it;
- 12) 12) to appeal court decisions in part concerning a civil lawsuit;
- 13) to know about adductions and appeals for a case and submit objections for them;
- 14) to participate in a judicial examination of appeals and adductions.

(2) A civil defendant shall be obliged:

- 1) to appear by order of the body conducting criminal process;
- 2) to present all objects, documents, as well as samples for comparative investigation that he or she has on the request of the body conducting the criminal process;
- 3) to observe the procedure established by this Code during investigative actions proceedings as well during a court session.

(3) A civil defendant may be called as a witness.

(4) A civil defendant also has other rights and obligations envisaged by this Code.

(5) A civil defendant shall enjoy the rights belonging to him or her and fulfill the obligations imposed on his personally or through a representative.

Article 60. Representatives of a civil defendant, legal entity, in relation to which criminal legal measures are undertaken

(1) Persons that may be considered representatives of a civil defendant include lawyers, close relatives, and other persons authorized by law to represent legal interests of a civil defendant during the proceedings of a criminal case or cases about misdemeanors.

(2) Persons considered representatives of a legal entity, with respect of whom criminal legal measures are undertaken, shall include lawyers and other persons authorized by law to represent a legal entity during the proceedings of a criminal case.

(3) Representatives of a civil defendant or legal entity, with respect of whom criminal legal measures are taken, have the same procedural rights that are possessed by the represented persons.

(4) Personal participation of a civil defendant in a court shall not deprive him or her of the right to have a representative for the case.

Chapter 7.

Other persons participating in a criminal procedure

Article 61. Witness

(1) A person that has been called to give testimony about circumstances on which he or she has knowledge relevant to a criminal case shall be considered a witness.

(2) A witness may not participate in a case as a prosecutor, defense attorney, or representative of the interests of a victim, civil plaintiff, or civil defendant.

(3) Participation of legal representatives of a victim, accused, or defendant in a case shall not exclude the possibility of using such persons as witnesses.

(4) The following people shall not be subject to interrogation as witnesses:

1) a judge - regarding the circumstances of a criminal case, which he or she has found out about due to participation during the proceeding of a criminal case;

2) a juror - regarding the circumstances of a criminal case, which he or she has found out about due to participation during the proceeding of a criminal case;

3) a defense attorney as well as a representative of a victim, civil plaintiff, or civil defendant - regarding the circumstances of a criminal case, which he or she has found out about due to fulfilling his or her obligations for the criminal case;

4) a lawyer or associate lawyer - regarding the circumstances of a criminal case, which he or she has found out about due to legal consultation and its provision;

5) a person who due to psychological or physical flaws is not capable to correctly perceive the circumstances significant for the case or give testimony on them;

6) a minister - regarding circumstances, which have become known to him or her during confessions;

7) close relatives of a suspect, accused, or defendant;

8) a mediator - regarding circumstances, which have become known to him or her due to conducting mediation other than cases envisaged by this Code.

(5) If the persons referred to in the seventh item of the fourth part of this article desire to give testimony, then they will be interrogated according to the rules of this Code.

(6) A witness shall have a right:

1) to give testimony in his or her native language or in another language in which he or she is fluent and also use the services of a translator (interpreter);

2) to announce removal of a translator (interpreter) participating in interrogation;

3) to personally recite his or her own testimony;

4) to become acquainted with the record of interrogation and make additions and changes to it;

5) to use written notes and documents when giving testimony;

6) to appeal the actions of a preliminary investigation agency functionary, investigator, prosecutor, or court;

7) to get compensation of expenses born during the proceedings of a criminal case as well as losses illegally caused by the actions of the body conducting the criminal process;

8) to receive property and originals of official documents that belong to him or her taken from him or her by the body conducting criminal process as material evidence or confiscated

based on other reasons;

9) to have a defense attorney during interrogation.

(7) A witness shall be obliged:

1) to appear by order of an investigator, prosecutor, or court;

2) to truthfully provide all information that he or she knows relevant to the case and reply to questions asked;

3) not to disclose information on circumstances that he or she might know from the case without permission.

(8) In case a witness fails to appear without an adequate excuse, he or she may be subject to compulsory transfer and to monetary compensation by court in the amount of twenty calculated rates in the manner established by the article of this Code.

(9) For intentional false testimony, refusal, or evasion of testimony, a witness shall bear responsibility in accordance with articles 330 and 331 of the Criminal Code of the Kyrgyz Republic.

Article 62. Expert

(1) An expert is a person disinterested in the criminal process appointed by a preliminary investigation agency functionary, investigator, court or, on their request, by a director of an expert organization to resolve issues appearing over the course of the pre-trial procedure or the court examination with the use of special knowledge in the field of science, technology, art, a trade and to give a conclusion based on such knowledge. An expert may be appointed out of the list of proposed participants of the process or invited by the parties.

(2) An expert must possess special knowledge in the field of science, technology, art, or trade to a sufficient degree to be able to provide a conclusion for questions he or she is asked.

(3) A person may not be appointed or otherwise brought into a proceeding for a criminal case as an expert on legal issues.

(4) When necessary, there may be several experts appointed for a case.

(5) Calling, appointing, and using an expert is to be implemented in the manner established by this Code.

(6) An expert shall have a right:

1) to become acquainted with the case materials related to the subject of his or her expertise;

2) to receive necessary objects and samples for comparative investigation and to provide a conclusion;

3) to request additional materials, which are necessary to provide a conclusion or conduct expertise with the participation of other experts;

4) to refuse to provide a conclusion if the questions asked are outside the realm of his or her special knowledge;

5) to be present at the proceedings of investigative actions and ask questions related to the subject of his or her expertise;

6) to participate in a court examination regarding issues related to his or her expertise.

(7) An expert shall be obliged:

1) to appear by order of a preliminary investigation agency functionary, investigator, prosecutor, and court;

2) to provide an objective conclusion according the questions asked;

3) not to disclose materials of the investigation;

4) to observe the procedure during investigative actions proceedings as well during a court session.

(8) In case an expert fails to appear without a sufficient explanation, there may be monetary compensation imposed on him or her of around twenty calculated rates in the manner established by the articles of this Code.

(9) In case of an expert's refusal or evasion to fulfill his or her obligations with a sufficient

explanation, he or she shall bear responsibility according to article **331** of the Criminal Code of the Kyrgyz Republic and for giving a false conclusion, he or she shall bear responsibility according to article **330** of the Criminal Code of the Kyrgyz Republic.

(10) An expert shall not have a right:

- 1) to conduct negotiations with the participants of the process on issues related to the provision of expertise;
- 2) to independently collect materials for investigation;
- 3) to conduct investigations, which may entail full or partial destruction of objects presented or change their outer appearance or fundamental properties, unless there is special permission to do so from the investigator or court.

Article 63. Specialist

(1) A specialist is a person disinterested in a criminal process brought in by a preliminary investigation agency functionary, investigator, or court to assist them in the proceedings of investigative or other procedural actions with the use of special skills and knowledge in the field of science, technology, art, or a particular trade. A teacher participating in an interrogation of a minor victim, a suspect, an accused, a defendant, or a witness, is also considered a specialist. A specialist may also be appointed out of the list of persons who have been proposed by the participants of a process.

(2) A specialist shall have a right:

- 1) to know the reason for being called;
- 2) to refuse to participate in the proceedings if he or she does not possess the corresponding special knowledge and skills;
- 3) to ask questions to the participants of the investigative actions with the permission of an investigator;
- 4) to become acquainted with the record of investigative actions, in which he or she takes part, and to enter the necessary statements and comments into the record;
- 5) to appeal the actions of preliminary investigation agencies, an investigator, or a court;
- 6) to get compensation for work performed and reimburse the expenses born during the proceedings for the criminal case.

(3) A specialist shall be obliged:

- 1) to appear by order;
- 2) to participate in proceedings of investigative actions and in a court examination using his or her special knowledge, skills, and technical means;
- 3) to provide clarifications for the actions he or she has performed;
- 4) to observe the procedure during investigative actions proceedings as well during a court session.
- 5) not to disclose information about the circumstances of a case or other information made known to him or her due to participating in a case.

(3) In case a specialist fails to appear without a sufficient explanation, there may be monetary compensation imposed on him or her of around twenty calculated rates in the manner established by the articles of this Code.

Article 64. Translator (interpreter)

(1) A translator (interpreter) is a person who is disinterested in the criminal process, fluent in a language possibly including sign language, the knowledge of which is necessary for translation and has been brought in for participation in investigation and court actions in cases where a suspect, accused, defendant, their defense attorneys, or a victim, civil plaintiff, civil defendant, or their representatives as well as witnesses and other participants of the process are not fluent in the language in which the proceedings are being conducted and also competent in translating written documents.

(2) Regarding the appointment of a translator (interpreter) a preliminary investigation

agency functionary, investigator and judge shall carry out a ruling and court shall carry out a writ.

(3) A translator (interpreter) shall have a right:

1) to familiarize his or herself with the record of investigative actions, in which proceedings he or she has taken part as well as the record of a court session and make comments to be entered into the records;

2) to refuse to participate in the proceedings if he or she does not possess the knowledge necessary for translation;

3) to appeal the actions of a preliminary investigation agency functionary, investigator, prosecutor, or court;

4) to get compensation of the work performed and reimbursement of expenses born.

(4) A translator (interpreter) shall be obliged:

1) to appear by order of a preliminary investigation agency functionary, investigator, prosecutor, and court;

2) to fully and precisely perform the translation (interpreting) task assigned to him or her;

3) to ensure accuracy of a translation by signature in the record of investigative actions performed by him or her as well as in procedural documents provided to the participants of the process in translation to their native language or a language in which they are fluent;

4) not to disclose information about the circumstances of a case or other information made known to him or her due to his or her translations.

5) to observe the procedure during investigative actions proceedings as well during a court session

(5) In case a translator fails to appear without a sufficient explanation, there may be monetary compensation imposed on him or her of around twenty calculated rates in the manner established by the articles of this Code. In case a translator should intentionally provide an incorrect translation of what has been said, he or she shall bear responsibility according to article **330** of the Criminal Code of the Kyrgyz Republic.

Article 65. Attesting witness

(1) No less than two adult attesting witnesses maybe invited by their consent who are disinterested in the outcome of a case to participate in investigative actions in cases envisaged by this Code. Persons that may not be called as attesting witnesses include an accused, a victim, a civil plaintiff, a civil defendant, relatives, a defense attorney, employees, including non-salary employees, of the preliminary investigation agency, investigation, prosecution, and court, located in the proceedings of which are pre-trial procedure materials.

(2) An attesting witness shall have a right:

1) to request additions to records by his or her comments according to actions undertaken with his or her participation;

2) to receive reimbursement for expenses born as a result of participating in the pre-trial procedure.

(3) An attesting witness shall be obliged:

1) to participate in the proceedings of the corresponding investigative actions from the beginning and up to its end;

2) to ascertain occurrence, composition, and results of actions, at which proceedings he or she has been present;

3) to subject him or herself to the legal orders of the person conducting an investigative action;

4) not to disclose case materials;

Article 66. Mediator

(1) A mediator is an independent person brought in by the parties to provide professional mediation in accordance with the requirements of this Code.

- (2) A mediator shall have a right:
- 1) to become acquainted with the information presented to the mediation parties by the body conducting criminal process;
 - 2) to become acquainted with the data on the criminal process participants who are mediation parties;
 - 3) to meet with the criminal process participants who are mediation parties privately and confidentially without any limitation on the amount and frequency of meetings in accordance with this Code;
 - 4) to assist the parties in concluding mediation agreement.
- (3) A mediator shall be obliged:
- 1) to act only based on the consent of the mediation parties during mediation;
 - 2) to explain to the mediation parties its goal before the beginning of the mediation as well as their rights and obligations;
 - 3) to observe the professional etiquette Code of mediators passed by the association (union) of mediators.
- (4) A mediator shall be entitled to participate in a criminal process from the moment that a statement or notification of a crime is registered as well as on any subsequent stage of the criminal process.

Article 67. Court session secretary

- (1) A court session secretary is a public servant who is disinterested in the criminal process who conducts records of the court session.
- (2) A court session secretary shall be obliged:
- 1) to remain inside the court session hall at all times that recording is necessary and not leave the court session without consent from the chief justice;
 - 2) to fully and correctly depict in the corresponding record actions and decisions of a court, motions, objections, testimony, and explanations of all persons participating in a explanation as well as other circumstances subject to objection in the records of a court session with the use of technical means;
 - 3) to compile a record of a court session within the time period established by this Code;
 - 4) to subject his or herself to the legal orders of the chief justice;
 - 5) not to disclose information about circumstances that have become known due to his or her participation in a closed court session.
- (3) A court session secretary shall bear personal responsibility for the completeness and accuracy of the records compiled from a court session.
- (4) In case of corrupt or invalid information introduction into the records of the court session, a secretary shall bear responsibility as envisaged by law.

Article 68. Bailiffs

- (1) A bailiff is a functionary carrying out tasks imposed on him to provide for the established procedure of court activity.
- (2) A bailiff shall:
- 1) provide for the proper condition of the court session hall and invite criminal proceedings participants;
 - 2) announce entrance into the court room for court sessions and exits out of the court room;
 - 3) preserve order in the court room on the part of those present in the court session hall;
 - 4) take documents and materials from the participants of criminal proceedings and transfer them to the court during a court session;
 - 5) provide assistance to marshals in the compulsory performance of court orders;
 - 6) carry out other instructions of the chief justice connected with the provision of conditions necessary to implement the judicial process;
- (3) Requirements of a bailiff, connected to the fulfillment of obligations and envisaged by

this article, are obligatory for all persons in the court session hall;

Chapter 8.

Circumstances eliminating participation in a criminal court proceeding.

Removals.

Article 69. Circumstances eliminating participation in a proceeding for a criminal case.

(1) A judge, prosecutor, investigator, and preliminary investigation agency functionary may not participate in the proceedings for a criminal case if he or she:

- 1) is a victim, civil plaintiff, civil defendant, or witness for a given criminal case;
- 2) has participated as a juror, investigation judge, expert, specialist, translator, attesting witness, court session secretary, defense attorney, legal representative of a suspect or accused, or representative of a victim, civil plaintiff, or civil defendant as well as a judge as a preliminary investigation agency functionary, investigator, or prosecutor in the proceedings for a given criminal case;
- 3) is a close relative or relative of any of the participants of a proceeding for a given criminal case;

(2) Persons indicated in the first part of this article cannot participate in the proceedings for a criminal case as well as in cases where there are other circumstances providing a reason to suppose that they are personally, directly, or indirectly interested in the outcome of a given criminal case.

Article 70. Inadmissibility of participation in a proceeding for a criminal case for persons subject to removal.

(1) Should there be grounds for removal as envisaged by his chapter, a judge, investigator, court session secretary, translator, expert, specialist, defense attorney, and also representatives of a witness, civil plaintiff, or civil defendant must cease participation in the proceedings for a criminal case.

(2) In case that persons indicated in the first part of this article have not ceased participation in the proceeding for a criminal case, their removal may be announced by a suspect, accused, defendant, legal representative, defense attorney, or also by a prosecuting attorney, victim, civil plaintiff, civil defendant, or their representatives.

Article 71. The inadmissibility of repeat participation of a judge in case examination

(1) A judge who has participated in the examination of a case in the first instance court may not participate in the examination of the case in an appeals, cassation, or supervisory court and also in the new examination of the case in the first instance court after a sentence or ruling (writ) is annulled to terminate a case, which has been carried out by him or her.

(2) A judge may not repetitively participate in case examination in an appeals or cassation court in case a judicial decision should be annulled, which has been carried out in his or her participation.

(3) A judge who has participated in case examination in an appeals or cassation court or for newly discovered circumstances may not participate in the examination of this case in a first instance court.

(4) A judge who has participated in case examination with the participation of jurors may not participate in its examination in a cassation court as well as in case a verdict is annulled, which was carried out in his participation with a jury, for the results of the examination of the cassation of appeals and adductions and direction of the case for a new examination.

Article 72. Judge removal

(1) Should there exist circumstances indicated in article 69-71 of this Code, the judge shall be obliged to cease participation in the case. On the same bases, removal may be announced to

the judge by the parties.

(2) A removal must be announced before the beginning of a trial and if a case is being examined involving a jury it shall be announced before the formation of the jury. In the course of court session, removal may be announced only in case the reason for such was not previously known by a party.

(3) Unfounded refusal to implement justice shall not be allowed.

(4) Unfounded announcement to remove a judge is not satisfactory.

Article 73. Results of a satisfactory removal announcement

(1) In case a judge who is examining a case in a first instance court should be removed, this case shall be examined by another judge in the same court. A case shall be transferred to another first instance court through a higher court should the replacement of a judge be impossible in the court where case is examined.

(2) In case of judges removal while examining a case in an appeals or cassational instance, the case shall be examined in the same court, but in another composition.

(3) If as a result of satisfactory removal or based on the reasons indicated in article 72 of this Code it is not possible to form a new composition in a regional court to examine a given case in the same court, the case shall be transferred to another court of the same level through a higher court.

Article 74. Procedure for allowing a removal announced by the participants of a process

(1) Issue of removing a judge, as well as the participants of the process, shall be allowed by court in another facility.

(2) Removal announced to a judge shall be permitted by other judges in the absence of the judge being removed who is entitled to preliminarily publicly expound to the rest of the judges his explanation regarding his or her removal. Should the votes turn out to be equal, a judge shall be considered removed.

(3) Removal announced for several judges or for the entire court composition shall be decided by court in full composition by the majority of votes.

(4) Removal announced for a judge examining case alone shall be decided by one judge by carrying out a ruling.

(5) Should a removal be simultaneously announced for a judge, a prosecutor, a defense attorney, a representative, a court session secretary, a translator, an expert, or a specialist, the issue of removing the judge shall be determined first.

(6) Issue of recusal and removal of a prosecutor, expert, specialist, translator, defense attorney, representative, or court session secretary shall be decided by a court examining the case by means of carrying out a substantiated ruling or writ, which are not subject to appeal.

(7) Private appeal for a ruling or court writ on removal or recusal of a judge shall be submitted simultaneously with an appeal to court decision for a case that has been examined.

Article 75. Prosecutor removal

(1) The decision whether to removal a prosecutor during a pre-trial procedure for a criminal case shall be made by a higher prosecutor and in the course of court proceedings by the court examining a criminal case.

(2) Participation of a prosecutor in the proceedings of an investigation as well as his or her participation in a trial shall not be an obstacle for his or her continued participation in the proceedings of a given criminal case.

Article 76. Investigator removal

- (1) Issue of recusal and removal of an investigator shall be decided by the prosecutor.
- (2) Statement for the removal of an investigator shall be sent no later than 24 hours to the prosecutor who shall be obliged in the course of two days to decide the question of removal.
- (3) Leading up to the decision regarding the question of recusal or removal of an investigator, the proceedings for an investigation shall not be suspended.
- (4) Previous participation of an investigation agency director or an investigator in the proceedings of an investigation for a criminal case shall not be the basis for his or her removal.

Article 77. Preliminary investigation agency functionary removal

- (1) Question of recusal or removal of a preliminary investigation agency functionary shall be decided by a prosecutor.
- (2) Statement on removal of a preliminary investigation agency functionary shall be sent no later than 24 hours to a prosecutor who shall be obliged to make a decision regarding the removal within 2 days.
- (3) Before a decision is made regarding recusal or removal of a preliminary investigation agency functionary, proceedings for a case shall not be suspended.

Article 78. Court session secretary removal

- (1) Rules depicted in article 69-71 of this Code shall also apply to a court session secretary. His or her previous participation as a court session secretary in a case shall not serve as grounds for removal.
- (2) Issue of removal of a secretary shall be decided by the court judge examining the case or the chief justice with the participation of jurors.

Article 79. Translator removal

- (1) A translator may not take part in the proceedings for a case should there be grounds indicated in articles 69-71 of this Code and equally in case when his or her incompetency has been established.
- (2) Should the bases exist, which are indicated in the first part of this article, removal may be announced to a translator by a suspect, accused, defendant, their legal representative, defense attorney, prosecutor, and also a victim and his representative, civil plaintiff, civil defendant, or their representatives.
- (3) Removal of a translator may be announced by a witness, the testimony of whom he or she is translating, if the incompetency of a translator is established.
- (4) Previous participation in a case of a person as a translator shall not be grounds for his removal.
- (5) Issue of removal of a translator shall be decided during the investigation proceedings by an investigator and in court by a judge examining a case or by a chief justice in a court room with the participation of a jury.

Article 80. Expert removal

- (1) An expert may not participate in the proceedings for a case:
 - 1) should there exist the grounds indicated in articles 69-71 of this Code. His or her previous participation in a case as an expert shall not serve as grounds for removal;
 - 2) if he or she has been or is currently in service or other kind of dependence on an investigator, prosecutor, judge, suspect, accused, defendant, their defense attorneys, legal representatives, a victim, civil plaintiff, civil defendant, or their representatives;
 - 3) if he has conducted a revision for the given case;

4) if his or her incompetency is established;

(2) Participation of an expert in a given case as a specialist in the field of forensic medicine in the outer survey of a dead body and a forensic specialist who has participated in the survey of the location of an event shall not be a basis for the removal of an expert.

(3) Issue of removal of an expert shall be decided in the manner established by the fifth part of article 79 of this Code.

Article 81. Specialist removal

(1) A specialist shall not take part in the proceedings for a case should there be the grounds envisaged in article 80 of this Code. His or her previous participation in a case as a specialist shall not serve as grounds for his or her removal.

(2) Issue of removal of a specialist shall be decided in the manner envisaged by the fifth part of article 79 of this Code.

Article 82. Circumstances eliminating participation of a defense attorney, representatives of a victim, civil plaintiff, or civil defendant in a case

(1) A defense attorney and also representative of a victim, civil plaintiff, or civil defendant shall not be entitled to participate in the proceedings for a criminal case:

1) if they have previously participated in a case as a judge, prosecutor, investigator, court session secretary, witness, expert, specialist, or translator;

2) if they are related to a judge, prosecutor, investigator, or court session secretary who has taken part either in the preliminary investigation or in the court examination of a given case or are related to a person, the interests of whom are in contradiction to the interests of a participant of the process who has concluded an agreement with them to render legal assistance;

3) if they assume position of a judge, prosecutor, or investigator other than cases that they are legal representatives of minor suspects, accused, defendants, or legally incompetency persons or are presented as a representative of an organization where they work if it is recognized as a civil plaintiff or brought into case as a civil defendant;

4) if they are rendering or have previously rendered legal assistance to a person whose interests contradict the interests of a suspect, accused, or defendant they represent or a victim, civil plaintiff, or civil defendant they represent.

(2) Issue of removal of a defense attorney, representative of a victim, civil plaintiff, or civil defendant shall be decided in the manner envisaged by the fifth part of article 79 of this Code.

Chapter 9.

Criminal procedure participants safety

Article 83. Safety of judges, jurors, prosecutors, investigators, preliminary investigation agency functionaries, defense attorneys, experts, specialists, court session secretaries, and bailiffs ascertainment

(1) A judge, jury, prosecutor, investigator, preliminary investigation agency functionary, defense attorney, expert, specialist, court session secretary, bailiff, and equally their close relatives shall be under the protection of the government.

(2) The persons listed in the first part of this article are ensured safety measures from life threats and other threats of violence by the government connected with the examination of criminal cases and materials in court and the proceedings of a pre-trial procedure.

Article 84. Obligation to take safety measures for victims, witnesses, suspects, accused, defendants, and other persons participating in the criminal process

(1) A body in the proceedings of which is a criminal case shall be obliged to undertake safety measures for a suspect, accused, defendant, victim, witness, and other persons

participating in a criminal process as well as members of their families and close relatives if there exist data on the threat to commit violence toward them, in connection with the proceedings for a criminal case, to commit violence or other actions prohibited by criminal law.

(2) When it is necessary to provide for the safety of a suspect, accused, defendant, or condemned or his close relatives with whom a procedural agreement has been completed for cooperation by consent of the indicated persons, measures shall be undertaken for government protection and security envisaged by this Code and applicable law.

(3) The body within the proceedings of which is a criminal case shall undertake safety measures for the persons indicated in the first part of this article on the basis of their oral (written) statement or on their own initiative for which a ruling is carried out to undertake safety measures.

(4) Statements from persons participating in a criminal procedure and members of their families and close relatives to undertake measures for their safety must be examined by the body within the proceedings of which is a criminal case, prosecutor, or court no later than 24 hours after the moment that they are received. Appellant shall immediately be informed of the decision made by a copy of the corresponding ruling being sent to him or her.

(5) Appellant shall be entitled to appeal to a prosecutor or court of his or her satisfactory refusal of a motion to undertake safety measures for him or her.

(6) Refusal to undertake measures of safety shall not impede a repeat request with a motion to undertake the indicated measures if circumstances should arise that were not reflected upon in the earlier statement.

Article 85. Measures for the safety of victims, witnesses, suspects, accused, defendants, and other persons participating in a criminal process

(1) With an aim to ensure measures of safety for victims, witnesses, suspects, accused, defendants, and other persons participating in a criminal procedure, members of their family, and close family members, body in the proceedings of which a criminal case is shall:

1) carry out an official warning to a person for whom a threat of violence has been issued or other acts prohibited by criminal law on his or her possible criminal responsibility for such;

2) limit access to information about the person under protection;

3) carry out an assignment to ensure his or her personal safety;

4) select measures of restraint for a suspect or accused (in the form of house arrest, taking him or her under custody, or release from custody) eliminating the exercise (application of exercise) of violence or the commission (organizing the commission) of other criminal actions with respect of the participants of the criminal process;

5) exercise a measure of procedural compulsion in the form of proximity restraint order.

(2) A warning carried out by the body, within the proceedings of which is the criminal case shall be announced to a person against acknowledgement.

(3) The limitation of access to information about a person under protection may take place from the beginning of the criminal process by statement of the individual and will comprise the extraction of the information materials of a criminal case on the questionnaire data of the person and their storage separately from the main proceedings and the use of a pseudonym by this person. An investigator shall carry out a ruling on the application of the given measure, in which the reasons for such a decision to keep the information of an individual as secret are depicted, pseudonym and the sample of the signature of the person under protection which he or she will use in the records of investigative actions are indicated. Procedural actions with the participation of a person under protection may be undertaken under conditions eliminating the possibility of him or her being recognized in necessary cases. Ruling and materials separated from the main proceeding shall be stored in a stamped envelope, which will hitherto be stored in the body investigating the criminal case and the contents may be reviewed by a prosecutor and court in addition to an investigator.

(4) Procedure of ensuring personal safety of victims, witnesses, suspects, accused, and

other persons participating in a criminal procedure and their close relatives shall be determined by law.

(5) Independent from measures of safety, the criminal prosecution body shall be obliged to begin a pre-trial investigation with due grounds in connection with a threat to commit actions prohibited by law with respect to a victim, witness, other person participating in a criminal procedure.

(6) In cases when statements for the necessity to ensure safety of a suspect, accused, witness, or their family members with respect of whom during the investigation or preliminary investigation torture or other types of crude or inhumane treatment forms have been applied independent of the undertaking of safety measures, are received a prosecutor is to perform a pre-trial investigation.

(7) Safety measures shall be annulled with a substantiated ruling of the body conducting a criminal process when there is no longer a necessity for their use. A person under protection must immediately be informed regarding the annulment of safety measures or disclosure of data about him to persons participating in the criminal process. Submission of an appeal to a court or prosecutor by a person under protection for the decision of the body conducting the criminal process regarding the annulment of safety measures shall suspend performance of an appeal decision.

Article 86. Safety for persons participating in a court examination

(1) To ensure safety of the participants of a court examination, a chief justice shall hold a closed court examination and shall also undertake measures envisaged by the first, second, third and fourth parts of article... of this Code.

(2) By motion of a person under protection, prosecution, and also on his own initiative with an aim to provide for the safety of a person and his close family members, court shall be entitled to carry out a ruling about the interrogation of a witness:

- 1) without the voicing of data on a person under protection and using a pseudonym;
- 2) in conditions eliminating the person under protection being recognized for the rest of those present by voice and looks: accent, gender, nationality, age, height, build, attitude, or walk;
- 3) without visual observation of him or her by the other participants of a court examination, including with the help of video transmission.

A judge shall personally ascertain the identity of a person being interrogated by means of becoming acquainted with the questionnaire data of a person separate from the main proceeding and documents ascertaining an identity without their voicing and presentation of other participants of a court session, including a court session secretary and reflections in a record of a court session and/or legal acts.

(3) A chief justice shall be entitled: to prohibit production of video, sound, and other types of implementing interrogation;

(4) Testimony of a person under protection interrogated by a court in the absence of a participant of a process or outside their legal observation shall be voiced by a chief justice in court in the presence of its participants without indication of information about this person under protection.

(5) In all necessary cases court shall undertake other measures as well for the safety of the process participants and other persons envisaged by law.

(6) Performance of a court ruling to provide for the safety of the participants of a trial shall be imposed on criminal prosecution bodies, institution, and bodies carrying out punishment as well as a bailiff.

SECTION 3. EVIDENCE AND PROOF

Chapter 10.

Evidence

Article 87. Evidence

(1) Evidence for a criminal case is information on the basis of which in the manner defined by law a preliminary investigation agency, investigator, prosecutor, and court establish the presence or absence of circumstances subject to proof for a criminal case as well as other circumstances significant for a criminal case.

(2) The following shall be permitted as evidence:

- 1) testimony of a suspect, accused, defendant, victim, or witness;
- 2) conclusion and testimony of an expert;
- 3) material evidence;
- 4) records of special investigation and investigation and other actions;
- 5) other documents.

(3) Evidence received in violation of the requirements of this Code are inadmissible and considered not having legal force and may not be used as a foundation for the case as well as used for proof of any fact and circumstance indicated in article ... of this Code.

(4) The following shall be considered inadmissible evidence:

- 1) testimony of a suspect or accused on the commission of a criminally punishable action and data during investigation of a criminal case in the absence of a defense attorney as well as testimony from a defendant in the absence of his or her defense attorney given in court;
- 2) testimony of a victim or witness based on guesses, assumptions, rumor, or the testimony of a witness, which may not indicate a source of verifiability if they are not confirmed by the combination of assessed evidence in the course of investigation or court examination;

Article 88. Facts and circumstances subject to proof in a criminal case

(1) Subject to proof in a criminal case are:

- 1) event of a crime (time, place, method, and other circumstances of a crime commission and its harmful consequences);
- 2) guilt or lack of guilt of a person for the commission of a crime, form of his or her guilt, and his or her motives;
- 3) circumstances affecting the degree and nature of an accused or defendant responsibility;
- 4) circumstances personifying identity of an accused or defendant;
- 5) nature and magnitude of losses caused by a crime;
- 6) circumstances eliminating criminal action;
- 7) circumstances entailing liberation from criminal responsibility and punishment.

(2) Other circumstances are subject to detection, which have led to the commission of a crime.

Article 89. Testimony of an investigator, victim, suspect, accused, or defendant

(1) Testimony of a witness shall be considered information given in the course of interrogation conducted during pre-trial procedure for a criminal case or in a court in accordance with the requirements of articles... of this Code.

(2) A witness may be interrogated about any circumstances related to the criminal case, including regarding the identity of a suspect, accused, defendant, victim, and those who have interacted with them along with other witnesses.

(3) Testimony of a victim shall be considered information given in the course of interrogation conducted during pre-trial procedure for a criminal case or in a court in accordance with the requirements of articles... of this Code.

(4) A victim may be interrogated about any circumstances subject to proof during the proceedings of a criminal case, including his or her interactions with a suspect or defendant.

(5) Testimony of a suspect shall be considered information given in the course of interrogation conducted during pre-trial procedure in accordance with the requirements of

articles... of this Code.

(6) Testimony of an accused shall be considered information given in the course of interrogation conducted during pre-trial procedure for a criminal case or in a court in accordance with the requirements of articles... of this Code.

(7) Confession of an accused or defendant of his or her guilt in committing a crime may be used as the foundation of incrimination by his or her confirmation of his or her guilt along with the evidence contained for the criminal case.

Article 90. Conclusion and testimony of an expert

(1) Conclusion of an expert is a collection of arguments made in written form containing examination and arguments to questions asked by an investigator, court, or parties.

(2) Testimony of an expert shall be considered information given in the course of interrogation conducted after his conclusion receipt, with an aim to clarify or verify a given conclusion in accordance with the requirements of articles... of this Code.

(3) Conclusion of an expert shall not be compulsory for an investigator, prosecutor, or court, however their disagreement with the conclusion must be substantiated correspondingly in the ruling, sentence, or writ.

Article 91. Material evidence

(1) Material evidence shall be regarded as objects having a basis to suppose that they have served as weapons in crime or have preserved traces of a crime or have been objects of criminal actions as well as money, objects, documents, and other valuables, which may serve as a means to reveal a crime, establish the circumstances of a case, determine guilty persons, refute accusations, or soften responsibility.

(2) Material evidence must be depicted in detail in the survey record and in necessary cases filmed or photographed by a camera. Material evidence shall be added to a case by ruling of a preliminary investigation agency functionary, investigator, judge, or court writ and must be stored with the criminal case.

(3) If some objects for whatever reason cannot be stored with the criminal case, they must be photographed or filmed on camera, imprinted, and be preserved in such a form in the location indicated by an investigator or court.

(4) If bulky or large material evidence requiring special warehouse facilities for storage as well as significant expenses for storage and subject to ruining quickly and may not be returned to the owner after procedural actions are fulfilled, then they shall immediately be handed over to the corresponding organizations for their intended use and implementation based on consent of a prosecutor in a pre-trial procedure or with the participation of a bailiff after a sentence has been carried out and entered into legal force.

(5) When a case is being transferred from one investigator to another and equally when a case is sent over to a prosecutor or court material evidence is transferred from one court to another along with the case other than those cases envisaged by the second and third parts of this article.

(6) Material evidence is to be stored until the a sentence is carried out and enters into legal force or until the expiration of the time period for an appeal ruling or writ to terminate a case.

(7) In separate cases, material evidence may be returned to their owners before the end of the relevant time periods as well as indicated in the first part of this article if it is possible to do so without losses for the proceedings of an investigation or court examination.

(8) In a sentence, writ, or ruling to terminate a case, there must be a decision on the material evidence, including:

- 1) weapons from a crime belonging to an accused or defendant subject to confiscation;
- 2) items prohibited for use shall not be issued and are subject to transfer to the corresponding organizations or elimination;

- 3) items without any value that are no longer any good for use are subject to elimination and in case of a motion from the interested person or organization shall be given to them;
- 4) money and other valuables obtained due to crime shall be subject, by sentence, court writ, court ruling, and in termination of the case due to the death of a defendant or consideration of an individual as insane - by ruling of an investigator, to treatment by the government and the rest of his or her things shall be given to his or her legal owners and shall be transferred into possession of the government should no such owners be established. A dispute as to belongings of such items shall be subject to resolution under a civil procedure;
- 5) money and other valuables, which have been the object of a bribe or contraband by sentence of a court shall be subject to government disposal in accordance with the criminal law. In case a person voluntarily announces extortion of a bribe and assists in the detention of such bribe recipient with mainour, then the object of the bribe shall be returned to the owner by court decision;
- 6) documents, which are material evidence shall be stored with the case for the entire course of the case or transferred to the corresponding organizations or citizens.

Article 92. Other documents

(1) Other documents shall be recognized as evidence if the information depicted in them is significant for the establishment of the facts and circumstances indicated in article 88 of this Code.

(2) Documents may contain information both in written and oral form. Also categorized as such documents are photographs, films, and sound recordings received, demanded, or presented in the manner established by this Code and recognized as evidence for the case.

(3) Documents shall be added to a case and stored for the time period established by law. If the documents added and extracted from cases shall be requested for accounting, bookkeeping, or other legal assessments, they may be returned to the legal owner or presented for temporary use at no loss to the cases or transferred as copies.

(4) Documents containing signs indicated in article... of this Code shall be considered as material evidence.

Article 93. Records of special investigation, investigation, and court actions

Records of special investigation, investigation, and court actions shall be admissible as evidence if they are compiled in accordance with the requirements of this Code.

Chapter 11. Proof in a criminal procedure

Article 94. Proof

Proof consists in collection, investigation and evaluation of evidence with an aim to establish circumstances significant for legal, based, and fair resolution of a case.

Article 95. Collection of documents

(1) Collection of evidence shall be implemented in a criminal procedure by means of conducting procedural actions envisaged by this Code.

(2) Body in the implementation of which is a criminal case, shall be entitled by motion of the process participants or on its own initiative for a criminal case conducted in its proceeds to call any person in the manner established by this code for interrogation or submission of a conclusion as an expert; conduct procedural actions envisaged by this Code; and request observance of procedure to disseminate information in observance of the established legal acts of the Kyrgyz Republic representing commercial, bank, or other preserved secret by law from organizations,

directors, functionaries, citizens, and also bodies implementing operational search actions, the presentation of documents and objects significant to the case, and request from authorized bodies and functionaries revisions and verifications of the proceedings.

(3) A defense attorney or representative of a victim admitted in the manner established by this Code to participate in a pre-trial investigation or court examination shall be entitled in observance of the procedures of the established legal acts of the Kyrgyz Republic for the disclosure of information composing a commercial, bank, or other secret preserved by law to receive information necessary for the implementation of defense by:

1) requesting certificates, data, and other documents from organizations. Certificates, data, and other documents may be requested by a defense attorney, representative of a victim from government bodies, public unions, and other organizations as well. Failure to fulfill the requirements of the given item entails responsibility established by law. Indicated legal entities shall be obliged to present to a defense attorney or representative of a victim the documents or their notarized copies in the course of 10 days;

2) initiation on the basis of an agreement of judicial expertise proceedings;

3) bringing in a specialist on the basis of an agreement;

4) interrogation with the consent of persons supposedly in possession of information relevant to the criminal case. If a defense attorney has not secured appearance of a person that has been interrogated to the body conducting criminal process for the execution of procedural or investigative actions, the interrogation shall be deemed insufficient and shall not be added to the case.

(4) Information both in written and oral form as well and objects and documents to be added as evidence to the criminal case shall be entitled to be presented by a suspect, accused, defense attorney, private prosecutor, victim, civil plaintiff, civil defendant, and their representatives, as well as other citizens and organizations.

Objects and documents, after their evaluation according to the rules of article 96 of this Code, shall be added to the criminal case, on which the record is being compiled.

Taking of objects and documents from the participants of the criminal process and other persons shall be implemented on the basis of a motion.

Article 96. Examination of evidence.

Evidence collected for a case are subject to objective and thorough examination. Examination entails analysis of the evidence received, its comparison to other evidence, and collection of additional evidence for verification as well as verification of the sources from which they were received.

Article 97. Evaluation of evidence.

(1) All evidence is subject to evaluation from the perspective of relevance, admissibility, validity, and all evidence collected as a whole - from the perspective of sufficiency for it to resolve a criminal case.

(2) A preliminary investigation agency functionary, investigator, prosecutor, judge, and jury shall evaluate the evidence by their own internal beliefs based on objective and sufficient inspection of evidence as a whole, meanwhile operating with honesty and according to the law.

(3) Evidence shall be recognized as related to a case if it represents information about facts that confirm, refute, or put in doubt conclusions as to the existence of obligations significant for the case.

(4) Evidence shall be recognized as admissible if it is received in the manner depicted in article 87 of this Code.

(5) Evidence shall be deemed as verifiable if as a result of verification it becomes clear that it is valid.

(6) Cumulative evidence shall be recognized as sufficient to resolve a criminal case if admissible and verifiable evidence is collected relative to the case and undisputedly establishes the entire

truth about all relevant details and each circumstance.

Article 98. Scientific-technical means in the process of proof

(1) Scientific-technical means in the process of proof for a criminal case may be used by the body within the proceedings of which is a criminal case, including by motion of a defense attorney as well as by an expert or specialist in fulfilling his or her procedural actions envisaged by this Code.

(2) For the provision of cooperation in using scientific-technical means by the body in the proceedings of which is a criminal case, a specialist may be brought in.

(3) The use of scientific-technical means shall be deemed admissible if it:

- 1) is directly envisaged by law or does not contradict its norms and principles;
- 2) is scientifically based;
- 3) ensures efficiency in a proceeding for a criminal case;
- 4) is safe.

(4) The use of scientific-technical means by a body, within the proceedings of which is a criminal case, shall be recorded in the records of the corresponding procedural actions and in the record of a court session with an indication of the data of scientific-technical means, conditions, and procedure of their use as well as objects for which these means have been applied and the results of their use.

Article 99. Prejudice

(1) A sentence taking legal effect as well as another court decision taking legal effect for a criminal case essentially resolving it are compulsory for all government bodies, organizations, and citizens with respect of both established circumstances and their legal evaluation in relation to the person for whom they have been carried out. The given situation shall not impede verification, annulment, or modification of a sentence or other court decisions in an appeals or cassation court in case of new and repeatedly appearing circumstances.

(2) Effective court decision for a civil case is compulsory for a body, within the proceedings of which is a criminal case, during the proceedings of a pre-trial investigation or for a criminal case regarding only the question of whether the actual event or action occurred and must not pre-decide conclusions of guilt or lack thereof of a defendant.

(3) Effective court sentence, by which the right to satisfy a lawsuit is recognized, is compulsory in this part for a court during examination of a civil case.

SECTION 4.

MEASURES OF PROVIDING CRIMINAL PROCEDURE AND FOUNDATIONS FOR THEIR USE

Chapter 12.

Detention of a suspect

Article 100. Grounds for detaining a person suspected of committing a crime

(1) A person suspected of having committed a crime may be detained in the manner established by this Code:

- 1) if a person has been caught while committing a crime or directly afterwards;
- 2) if witnesses, including victims, can point out the face of a given person who has committed a crime;
- 3) if there are clear traces of a crime on the suspect, at his dwelling, or on his clothes.

(2) Should other data be discovered presenting grounds to suspect a person of having committed a crime, he may be detained in case such person has attempted to escape or his identity has not been established.

Article 101. Procedure for detaining a person suspected of committing a crime

(1) Record of a person detention suspected of having committed a crime shall be compiled at the moment he or she is detained. If based on objective reasons the compilation of a record is not possible at the moment of detention, then a record shall be compiled immediately after the suspect is delivered to the preliminary investigation agency (investigation). In any case it must be announced to the suspect at the moment of detention what he or she is suspected of and also he or she must be informed of his or her right not to testify against his or herself and his or her right to an attorney.

(2) Indicated in the detention record are date and location of its preparation, including occupation, last name, first name of a person having prepared the record, information about a suspect, and his physical condition at the moment he or she is detained along with the grounds, motives, time and place of his or her detention (with an indication of the hour and minute), and information on the explanation of his rights envisaged by article 50 of this Code and results of a personal search. In cases when the detention record is compiled after the suspect is delivered into the preliminary investigation agency (investigation), it must contain objective reasons for which the record has not been compiled at the moment of detention.

(3) Detention record shall be announced to the suspect and signed by the person who filled it out with an indication of the exact time of delivery of the suspect to the preliminary investigation agency (investigation) as well as to his or her defense attorney.

(4) Copy of the record with a list of rights and obligations shall immediately be handed over to the person detained and shall be sent to a prosecutor in the course of 24 hours.

(5) Record shall be signed by an authorized preliminary investigation agency functionary (investigation) with an indication of the exact time of the suspect's delivery to the preliminary investigation agency (investigation).

(6) In the course of 46 hours from the time he or she has been detained, a suspect must be delivered to court to resolve an issue of the legality of his or her detention.

(7) In case of an appeal on the detention to a court, the appeal of the detained shall immediately be sent by the chief of detention facility where the person is detained to a court. Such appeal shall be examined by court at the same time as the motion from an investigator to select measures of restraint if it has been announced or verification of the detention legality according the rules envisaged in article 114 of this Code.

Article 102. Personal search of a detainee

A detainee may be subject to personal search in cases when there is a reason to suppose that he or she might have a weapon on them or is attempting to free from incriminating evidence. Person implementing the detention shall be entitled to immediately perform a personal search of a detainee according to the rules of article ... of this Code.

Article 103. The basis for the release of an individual detained on suspicion of committing a crime

(1) A suspect shall be subject to release by decision of a court or ruling of an investigator or prosecutor if:

- 1) the suspicion for his or her having committed a crime has not been confirmed;
- 2) the detention time established by law has expired;
- 3) there are no grounds or necessity to apply measures of restraint in the form of taking him or her into custody;
- 4) the detention has been conducted in violation of the requirements of article ... of this Code.

(2) When a suspect is released by ruling of an investigator or prosecutor, the investigator shall within 24 hours from the moment of release send materials serving as the basis for his detention to court for verification of the detention legality.

(3) If in the course of 48 hours after the moment of detention, the chief of the detention facility has not received a ruling to apply measures of restraint in the form of custody, then the

chief of the detention facility shall immediately release the detainee, of which he or she shall inform an investigator in the proceedings of which the criminal case is held and a prosecutor. In this case, an investigator shall be obliged to fulfill the requirements of the second part of this article.

(4) Should the chief of the detention facility fail to fulfill the requirements of the third part of this article, he or she shall bear responsibility as established by law.

(5) During the release of a suspect by the chief of the detention facility, a certificate shall be issued to him or her in which it is indicated by whom he or she has been detained, place and time of detention, and the basis and time of his or her release.

Article 104. Judicial procedure for verification of the legality of detention released by ruling of an investigator or prosecutor.

(1) Verification of the legality of a suspect detention released by ruling of an investigator or prosecutor shall be implemented by an investigation judge with the participation of a prosecutor, investigator, suspect, defense attorney, or legal representative at the place of detention at a court session within 10 days from the moment that the materials are presented to court.

(2) Failure of the parties properly notified of the time of the court session to appear without sufficient explanation shall not be an obstacle for court verification.

(3) In each case that a suspect is released by rulings of an investigator or prosecutor, the court must be presented notarized copies of the ruling to call the criminal case, detention record of suspect for committing a crime, document verifying identity of a detainee, and other case materials, which the court should consider necessary to investigate to verify the detention legality.

(4) At the beginning of a session, a chief justice shall announce with respect to which person the legality of detention for suspicion of committing a crime is being verified and shall inform the rights and obligations of persons who have been called to appear in court. Then, an investigator shall base the legality of the person's detention for suspicion of having committed a crime after which other persons appearing in the court session shall be heard.

(5) At a court session, the court shall carry out a ruling as to the legality or illegality of the person detained for suspicion of having committed a crime.

(6) Such ruling of the court regarding the legality or illegality of the person's detention for suspicion of committing a crime may be appealed to a higher court in the fashion established by article ... of this Code.

(7) In each case that a detention is deemed illegal, the court shall carry out a prejudication, to which it shall direct the attention of the corresponding supervising prosecutor for the established facts of violation for the case requesting the undertaking of measures. No later than a monthly time period for a prejudication of a court, measures must be undertaken and the results reported to the court.

(8) Ruling of a judge entering into legal force regarding the detention legality shall be the basis for proceedings envisaged by chapter 46 of this Code.

Article 105. Procedure for containing detainees suspected of committing a crime

(1) Detainees for suspicion of committing a crime shall be contained in a temporary containment cell. Procedure and conditions for containing detainees shall be determined by the laws of the Kyrgyz Republic.

(2) Participation of a detained suspect in operational search actions and a suspect conversation with the preliminary investigation agency functionaries implementing operational search actions shall be allowed only by the written permission of an investigator in the proceedings of which is a criminal case.

Article 106. Notification of relatives and a lawyer of a suspect's detention

(1) At the moment of detention, an investigator shall be obliged to notify one member of a

suspect's family regarding the detention and in their absence one of the relatives or close people or lawyer or provide a free phone call to the suspect himself. If for objective reasons notification at the moment of detention is not possible, such an opportunity must be provided immediately after the suspect is delivered to the investigation body. A note shall be made regarding the notification in the detention records.

(2) If a suspect is a citizen of another nation, the embassy of the given nation, as established in the first part of this article, must be notified, for which a note is to be made in the detention record.

Article 107. Interrogation of a detainee for suspicion of committing a crime

(1) A person detained for suspicion of having committed a crime may be interrogated as a suspect. During interrogation of a suspect, a defense attorney must be present with the exception of cases where he refuses to have a defense attorney and his refusal is accepted in accordance with this Code.

(2) An interrogation of a suspect shall be conducted in observance of the general rules envisaged in articles ... of this Code. Before interrogation of a detainee, his or her rights shall be explained to him or her envisaged by article ... of this Code and it shall be announced to him or her what crime he or she is suspected of.

Chapter 13. Measures of restraint

Article 108 Measures of restraint and their types

(1) Measures of restraint are compulsory measures applied to an accused or defendant to halt his or her inappropriate behavior in the course of investigation proceedings and the court examination for a criminal case and the ascertainment of a sentence fulfillment.

(2) Types of measures of restraint:

- 1) recognizance not to leave;
- 2) transfer under the observation of a military unit commander;
- 3) transfer of a minor under supervision of parents or persons and organizations and the like;
- 4) bail;
- 5) house arrest;
- 6) detention under custody;

Article 109. Bases for measures of restraint

(1) An investigator, prosecutor, or court shall be entitled within the bounds of their authority to select a measure of restraint for an accused or defendant envisaged by this Code should there be sufficient bases to suppose that the accused or defendant:

- 1) shall hide out from investigation or the court;
- 2) may impede objective conduct of an investigation and court examination;
- 3) may continue his or her criminal activity;

(2) Measure of restraint may also be selected after a guilty verdict to ensure that the sentence is fulfilled or the possible transfer of a person in the procedure envisaged in article 557 of this Code.

Article 110. Circumstances considered when selecting measures of restraint

When resolving a matter regarding the necessity of restrain, the determination of its type when the foundations are present as envisaged in articles ... of this Code, an investigator, prosecutor, or court must also consider weight of a crime, information on the identity of the accused or defendant as well as his age, health condition, marital status, occupations, and other circumstances.

Article 111. Rulings and writs on selecting measures of restraint

(1) When selecting measure of restraint, an investigator, prosecutor, or judge shall carry out a ruling and court shall carry out a writ containing indication of a crime, for which the person is accused as well as the grounds for the selection of this measure of restraint.

(2) Copy of the ruling or writ shall be immediately be presented to the person with respect of whom it has been carried out as well as his defense attorney, legal representative, or prosecutor.

(3) At the same time, the person with respect of whom a measure of restraint has been selected shall be explained the procedure for appealing a decision on the measure of restraint as defined in chapter 16 of this Code.

Article 112. 1) recognizance not to leave;

Recognizance not to leave consists of a written obligation of an accused or defendant not to leave his or her permanent or temporary residence without permission from an investigator, prosecutor, or court and also not to impede the objective conduct of investigation and trial in court and appear to court at the appointed times.

Article 113. Observation of military unit commanders of military servicemen;

(1) Observation of military unit commanders of an accused or defendant who are military servicemen or obliged to the military called for training sessions shall consist of measures to be taken as envisaged by the articles of association of the Armed Forces of the Kyrgyz Republic and capable of providing for the proper behavior of this person and his appearance when called by an investigator, prosecutor, or court.

(2) A commander of a military unit shall be informed as to the crux of the case for which a given measure of restraint shall be selected. A commander of a military unit shall be informed in written form by the body who chose measure of restraint as to the establishment of observation of an accused or defendant.

(3) In case a defendant or accused undertakes actions for the warning of which the given measure of restraint has been selected, the commander shall be obliged to immediately inform the corresponding body of such.

Article 114. Transfer of a minor into supervision

(1) Transfer of a minor into supervision of parent, guardian, care-givers, or other persons worthy of trust, authorized functionaries of a government body for child protection and other representatives of special institutions for children shall take place with one of the given entities assuming written obligation to ensure proper behavior of a minor and his appearance to see an investigator, prosecutor, or appear in court.

(2) Transfer of a minor into supervision of parents or other persons is possible only according to their written motion, meanwhile they will be informed of the nature of the crime, of which a minor is being accused and their responsibility in case they violate obligations that they are assuming for supervision.

(3) For persons who have taken a minor into their supervision, penalty measures may be applied in case the corresponding obligations are not fulfilled that they have assumed as envisaged by article 127 of this Code.

Article 115. Bail

(1) A bail is an amount of money payable by an accused or defendant or by another person to a special account or property of any kind, which may be taken under arrest as a guarantee that an accused or defendant will fulfill his obligations, which are listed in articles ... of this Code. Burden of the proof of bail value shall rest with the individual giving bail.

(2) Bail as a measure of restraint shall be exercised by an investigator, with the consent of a prosecutor, or by permission of an investigation judge.

(3) Bail shall not be exercised with respect of persons accused of committing especially grave crimes other than the cases envisaged by articles ... of this Code.

(4) The amount of bail shall be determined by the body selecting the given measure of restraint of between one hundred and two thousand calculated rates.

(5) In all other cases, bail amount shall be defined by the amount caused by losses incurred and the degree of magnitude of a presented accusation and shall consist of:

- 1) the amount of losses and five hundred calculated rates for cases of non-grave crimes;
- 2) the amount of losses and one thousand calculated rates for cases of less grave crimes;
- 3) the amount of losses and two thousand calculated rates for cases of grave crimes;

(5) A record shall be compiled on the acceptance of a bail, a copy of which shall be provided to the person giving bail. Meanwhile, a person giving bail shall be informed of the crux of a case for which a given measure of restraint is selected and of the foundations for giving a bail to the government, which shall be indicated in the record.

(6) The bail shall be transferred into the possession of the government if a defendant or accused incurs one of the following violations:

- 1) failure to appear by order of a court or investigator without sufficient grounds;
- 2) he or she has hidden from investigation or court;
- 3) he or she has undertaken actions to impede establishment of the truth for a criminal case;
- 4) he or she has once again committed a premeditated, criminally punishable act.

(7) Regarding violations listed in the sixth part of this article, a record shall be compiled with inclusion of circumstances of violation and the data confirming the act. A record shall be signed by an accused, defendant, person who has given bail, and persons confirming the facts depicted in the record. In case a defendant undertakes indicated violations during examination of a case by a court, circumstances of the violation shall be depicted in the record of the court session.

(8) If a defendant or accused has hidden from investigation or from court, the record will be signed by the persons indicated in the seventh part of this article.

(9) Issue of the return of bail shall be decided by a court after a ruling, writ, or sentence is carried out for a criminal case. If a criminal case is terminated during the stage of investigation, the issue of returning the bail or its transfer into government funds shall be decided by an investigator or prosecutor by means of carrying out a substantiated ruling.

(10) In case a measure of restraint is changed from bail to custody, the bail shall be returned to the person who has given it, unless it is due to improper conduct on the part of a defendant or accused.

Article 116. House arrest

(1) House arrest shall consist of limitations connected with the freedom of a defendant or accused to change location and prohibition to:

- 1) speak with specific persons;
- 2) receive and send letters;
- 3) leave the dwelling during night time;
- 4) go outside the limits of the administrative territory without the permission of an investigator, court, or body within the proceedings of which the criminal case is.
- 5) use methods of telecommunication.

Court may also impose other limitations and prohibitions.

(2) House arrest as a measure of restraint shall be selected with respect of an accused or defendant by ruling of a judge with relevant grounds and in the fashion established by articles 102, 103, and 111 of this Code with due consideration of age, health condition, marital status, and other circumstances.

(3) Conditions of performing these measures of restraint (place where an accused or defendant must remain, time period of house arrest, time period for which an accused or defendant is permitted to be outside the location at which he or she is fulfilling restraint obligation in the form of house arrest, as well as prohibitions and (or) limitations established with respect of an accused or defendant and the locations, which he or she shall be allowed to visit) as well as the body and functionary who will be monitoring the individual's observation of the established limitations shall be indicated in a court ruling for measures of restraint in the form of house arrest.

With an aim to implement monitoring, audio-visual, electronic, and other technological monitoring methods may be employed in the manner established by Law.

(4) A court ruling for measure of restraint selection may be appealed by a prosecutor, accused, defendant, and his defense attorney to a higher, appeals court in the course of five days.

Lodging of adductions and appeals up to their resolution shall not suspend the action of a ruling and the application of house arrest in the form of measure of restraint and shall not entail annulment of house arrest.

(5) A suspect or defendant shall be delivered to the preliminary investigation agency or investigation body and also to court by means of transportation belonging to the monitoring body.

(6) Meetings of an accused or defendant under house arrest in the conditions of full isolation from society with his or her defense attorney or legal representative shall be held at the location of restraint.

(7) In case an accused or defendant violates conditions of house arrest, measure of restraint shall be applied to him or her in the form of taking him or her into custody, which shall be indicated in the ruling of a court for the measure of restraint selection.

Article 117. Detention under custody

(1) Detention under custody as a form of measure of restraint shall be applied by court decision with respect of an accused or defendant after committing crimes, for which criminal law has envisaged punishment in the form of deprivation of freedom for a time period of over five years should it not be possible to apply any other softer measure of restraint. When selecting a measure of restraint in the form of detaining an individual under custody by ruling of a judge, specific, actual obligations must be indicated, on the basis of which a judge has made such a decision. Such circumstances may not be data that have not been verified during the court session, including the results of operational search actions presented in violation of the requirements of this Code. In exclusive cases, this measure of restraint may be selected with respect of an accused or defendant for committing a crime, for which punishment is envisaged in the form of deprivation of freedom for a time period of up to five years should one of the following circumstances exist:

- 1) an accused does not have a permanent residence on the territory of the Kyrgyz Republic;
- 2) his or her identity has not been established;
- 3) he or she has violated the previously selected measure of restraint;
- 4) he or she has hidden from the investigative bodies or court.

(2) Taking an individual into custody as a measure of restraint shall not be exercised with respect of an accused for committing a crime in the sphere of economics independent of the type and time period of the punishment envisaged by criminal law in the condition that such an accused or other person has paid the amount of bail to a special account equal to the amount of losses.

(3) When necessary to select custody as measure of restraint, an investigator shall bring a motion to court with the consent of a prosecutor. In a ruling to undertake a motion, motives and grounds shall be established, due to which the necessity to take an accused into custody has arisen and another form of restraint is not possible. Materials shall be attached to a ruling confirming the grounds for a motion. If a motion shall be undertaken with respect of an accused

detained in the manner established by articles 99 and 100 of this Code, the indicated materials must be presented to a judge by an investigator within the course of 48 hours after the detention, but no later than two hours before the time period of the detention runs out.

(4) A ruling to undertake a motion to select taking an individual into custody as measure of restraint is subject to examination solely by an investigation judge with the participation of an accused, prosecutor, investigator, defense attorney at the location of the proceeding of the investigation or at the location where a suspect (accused) is being detained in the course of two hours after the materials are delivered into court. An accused detained in the manner established by articles ... of this Code shall be delivered into a court session. Legal representative of an accused minor shall also have a right to participate in the court session. Failure by the parties duly informed previously of the time of the court session to appear without sufficient grounds, other than a defense attorney, shall not impede examination of a motion. A defense attorney shall be entitled in a court session to announce motions, in written or in oral form, as to the necessity to select a measure of restraint not leading to placing of an individual under custody. A written motion shall be added to a case. In circumstances eliminating participation of a defense attorney (serious illness or death), he or she shall be replaced by another defense attorney in accordance with the laws of the Kyrgyz Republic.

(5) Other judicial decisions on the selection of a measure of restraint in the form of custody in the absence of a defendant or accused shall be allowed only in case an accused or defendant is announced as under search with the compulsory participation of his or her defense attorney.

(6) In the beginning of a session, a judge shall announce which motion shall be subject to examination and shall explain to the persons appearing at the court session their rights and obligations. Then, an investigator shall base his or her motion, after which the other persons attending the court session will be heard.

(7) At a court session, a judge shall carry out one of the following decisions:

- 1) detention legality;
- 2) detention illegality and immediate release of a detainee in the court room;
- 3) placing of an accused into custody after establishing the legality of his or her detention;
- 4) refusal to satisfy a motion to select a measure of restraint in the form of placing an individual into custody and select another measure of restraint.

(8) Should an accused or defendant refuse to satisfy a motion to select a measure of restraint in the form of detention under custody on their own initiative, he or she shall be entitled with the sufficient grounds envisaged in articles ... of this Code and with consideration of the circumstances indicated in article ... of this Code to select another measure of restraint with respect of the accused or defendant.

(9) A ruling of a judge shall be sent to the person making a motion or a prosecutor to an accused or defendant and shall be subject to immediate fulfillment.

(10) If a measure of restraint in the form of detention under custody has been applied on the basis of court decision with respect of a person in his or her absence or in accordance with item 4 of the first part of this article, the given person shall be delivered to a court for legal verification and relevancy of such a detention within 48 hours from the moment he or she is delivered to an investigation body.

(11) A person or body, within the proceedings of which is a criminal case, shall immediately inform relatives of a defendant or accused and should a military serviceman be taken into custody - commander of a military unit, on this individual's detention location under custody or regarding a change of detention location under custody.

(12) A meeting with his or her relatives and other persons may be organized for a person with respect to whom a measure of restraint has been selected in the form of detention under custody only with the consent of a person or the body within the proceedings of which the case is.

(13) A ruling of a judge for the selection of a measure of restraint or a refusal for such may be appealed by a prosecutor, accused, and his or her defense attorney to a higher, appeals court

in the course of five days.

(14) Administration of a detention facility shall, in case an appeal is received from a person to the ruling of a court to select a measure of restraint in the form of custody (arrest), shall be obliged within twelve hours after the moment of its receipt to send an appeal to the corresponding court with a notification of such to a prosecutor.

(15) Making an appeal before its resolution shall not suspend the action of a ruling to detain an individual under custody as a measure of restraint and shall not release a person from custody.

(16) A repeat submission of a motion to a court to detain the same individual under custody for the same criminal case after the judge has carried out a ruling to refuse the selection of this measure shall be possible only in case new circumstances arise serving as the grounds for necessity to detain the person under custody.

(17) If such a question should arise regarding the selection of a defendant's measure of restraint under custody in court, then the relevant decision shall be made by the court by motion of the party or on the court's initiative, for which a writ or ruling is carried out.

Article 118. Time period of detention under custody and house arrest and procedure for their extension

(1) A measure of restraint in the form of detaining an individual under custody or house arrest during the investigation of a criminal case shall be selected by decision of an investigation judge for a time period of two months.

(2) In case that it is not possible to conclude an investigation over a period of two months and in the absence of grounds for change or annulment of the measure of restraint, this time period may be extended by an investigation judge:

1) by up to six months - by motion of an investigator agreed on by a supervising prosecutor;

2) by up to nine months - by motion of an investigator agreed on by assistants of the General Prosecutor of the Kyrgyz Republic;

3) by up to one year - by motion of an investigator agreed on by the General Prosecutor of the Kyrgyz Republic;

(3) Further extension of the time period shall not be admissible and the accused under custody shall be subject to immediate release. With respect of an individual released from custody or house arrest, another measure of restraint shall be selected.

(4) A ruling on the undertaking of a motion to extend the time period of an individual's detention under custody or house arrest must be presented to the court on the location of the criminal case investigation no later than five days before the expiration of the individual's time period under custody or house arrest. Such ruling must depict the reasons why it is necessary to extend the time period as well as the circumstances, which must be investigated and the basis of the necessity to maintain these measures of restraint. A motion shall be examined by a judge in the manner established in the fifth part of article ... of this Code.

(5) An investigation judge shall make one of the following decisions no later than three days after he or she receives a motion:

1) to extend the time period of an accused detention under custody or house arrest;

2) to refuse to grant the motion of an investigator and release an accused from custody and annul or modify house arrest.

(6) Time period of an individual's detention under custody or house arrest shall begin from the moment that an accused is detained up to the point that the case is sent to court. Time period for an accused to acquaint him or herself with the case materials in the cases envisaged in the second part of this article shall begin at the moment he or she is detained under custody or house arrest.

(7) Time period of an individual's detention under custody shall begin at the time:

- 1) an individual is detained as a suspect;
- 2) of house arrest;
- 3) his or her compulsory attendance of a medical or psychiatric institution by court decision;
- 4) during the course of which a person has been detained under custody on the territory of a foreign government by request to render legal assistance or transfer him back to the Kyrgyz Republic.

(8) In case an individual is taken into custody or placed under house arrest a second time for the same case as well as for the criminal case related to it or arising out of it, the time period for detention under custody or house arrest shall begin with consideration of the amount of time spent under custody or house arrest previously.

(9) When a case is returned to fill in the gaps of an investigation for which the time period of an accused's detention under custody has expired, but the circumstances of a restraint case in the form of detention under custody has been left by a court without changes, the time period for the accused's detention shall begin as of the moment of return to the prosecutor and may not exceed one month. Continued extension of the indicated time period shall be implemented in the manner and within the limits established in the second part of this article.

(10) A ruling of an investigation judge to extend the time period of detention under custody or house arrest or a refusal for such may be appealed by a prosecutor, accused, and his or her defense attorney to a higher, appeals court in the course of five days.

(11) Administration of a detention facility of an individual shall, after receiving an appeal to the ruling of a court to extend the time period of detention under custody from the individual addressed to a higher court, shall be obliged immediately and in all cases to send the appeal to the corresponding court after no longer than twelve hours from the moment of its receipt with a notification of such to a prosecutor.

Article 119. Annulment or modification of restraint measure

(1) A measure of restraint shall be annulled in case that there is no longer a necessity for it and it shall be modified to become more or less severe in case the circumstances of the case are established. Annulment or modification of a measure of restraint shall be effected based on the substantiated ruling of an investigator, prosecutor, judge, or court writ.

(2) A measure of restraint in the form of detention under custody may also be changed to become more or less severe after establishing a serious illness born by an accused or defendant impeding his detention under custody and confirmed by a medical statement. List of serious illnesses impeding detention under custody of accused or defendants shall be confirmed by the Government of the Kyrgyz Republic.

(3) Measure of restraint may be modified to a more severe one only in cases:

- where a new accusation of committing a premeditated crime should be presented to the accused envisaged by the corresponding article of the Criminal Code of the Kyrgyz Republic;
- where an accused has violated his or her obligation or has made a violation indicated in article ...or in the sixth part of article ... of this Code.

(4) Measure of restraint in the form of detention under custody selected on the basis of a court decision in cases where a criminal prosecution is terminated and investigation time periods are not extended, may be annulled by decision of a court or ruling of an investigator or prosecutor with the consent of a supervising prosecutor with a notification of the court after making a decision.

(5) Annulment or modification of a measure of restraint shall be effected based on the ruling of an investigator, prosecutor or judge by the court writ.

Chapter 14.

Other measures of conducting criminal procedure

Article 120. Bases for the use of other measures of providing criminal procedure

(1) With an aim to ensure methods of conducting preliminary investigation and court proceedings envisaged by this Code and the proper execution of a sentence, the body conducting criminal procedure shall be entitled to apply measures of ensuring criminal procedure to a suspect, accused, or defendant in the form of undertaking to appear, appearance by force, temporary removal from office, property arrest, and proximity orders.

(2) Based on the same grounds, measures of ensuring criminal procedure may be applied to a wrongdoer in the form of undertaking to appear, appearance by force, and proximity orders.

(3) In cases envisaged by this Code, the body in the proceedings of which is a criminal case shall also be entitled to apply measures of procedural compulsion in the form of undertaking to appear, appearance by force, and proximity orders to a victim, witness, and other participants of a process.

Article 121. Undertaking to appear

(1) Should there be sufficient evidence to suppose that a wrongdoer, suspect, accused, defendant, victim, or witness might avoid participation in investigative actions or court examination or they have already failed to appear as ordered without sufficient reasons, the given persons undertaking to appear may be taken away from them.

(2) The body conducting criminal procedure with an aim to ensure progress at a fair pace shall be entitled to remove a written undertaking to appear in a timely manner from persons indicated in article... of this Code by order to the corresponding body or to court and in case that he or she changes residence - to immediately make an announcement of such. Should an undertaking to appear be removed, the indicated persons shall be warned as to the consequences should they fail to do so.

(3) Should a suspect, accused, or defendant fail to fulfill an undertaking to appear a more severe measure of restraint may be applied.

(4) Should a victim or witness fail to fulfill an undertaking to appear, a monetary fine as depicted in article ... of this Code may be imposed on them.

Article 122. Appearance by force

(1) Should a wrongdoer, suspect, accused, defendant, victim, or witness fail to appear as ordered without sufficient explanation, they may be subject by substantiated ruling of an investigator or judge (court) to compulsory appearance (delivery by force). Considered as sufficient grounds for failure to appear shall be those circumstances indicated in article ... of this Code. In cases where sufficient reasons do exist, which shall impede the ordered appearance of a wrongdoer, suspect, defendant, accused, witness, or victim at the specified time, they shall be obliged to notify the body that ordered them to appear.

(2) A ruling to appearance by force shall be announced to a wrongdoer, suspect, accused, defendant, witness, or victim, which will be ascertained by their signature on the ruling.

(3) Appearance by force may not be undertaken during night time.

(4) Minors who are fourteen years old and below shall not be subject to appearance by force as well as pregnant women and diseased persons who are unable and must not leave their place of residence due to their health condition, which shall be subject to confirmation by the medical institution.

(5) Appearance by force shall be implemented by the internal affairs body.

Article 123. Temporary removal from office

(1) Pre-trial procedure body with consent of a prosecutor or decision of a judge shall be entitled to direct an accused or defendant to take temporary leave if there should be sufficient reason to suppose that he or she may impede the objective investigation and court examination while at the occupation, the reimbursement of losses caused, or continue his or her criminal

activity related to this occupation.

(2) A ruling for temporary removal from office for an accused or defendant shall be sent to their place of work to the director of the organization who within three days after receiving it shall be obliged to fulfill this obligation and inform the person of such or the body that made the decision to direct the individual to temporary leave from his or her occupation.

(3) An accused's or defendant's temporary removal from his or her office shall be annulled by ruling of a judge or prosecutor as well as by ruling of the person implementing pre-trial procedure when there is no longer a need to continue applying the measure.

Article 124. Property arrest

(1) With an aim to ensure that a sentence is carried out related to a civil lawsuit, other property extractions or possible confiscation of property, the person implementing the proceedings shall be obliged to undertake measures of property arrest.

(2) Property arrest shall consist of prohibition addressed to the property owner to manage and in necessary cases to use as well as of extraction of the property and transfer of such in custody.

(3) Property may be arrested that is in the possession of other persons if there is sufficient reason to suppose that it has been received as a result of criminal actions on the part of a suspect or accused.

(4) Property that is included in the List of property that is not subject to confiscation by sentence of a court may not be arrested as envisaged by the Penal Code of the Kyrgyz Republic.

(5) A specialist may participate in the process of property arrest.

(6) Property subject to arrest may be extracted or transferred by the discretion of a person undertaking the arrest to the owner of the property or another person who must be warned of responsibility for being in possession of property for which the corresponding record is being compiled.

(7) When arresting monetary funds or other valuables in his or her account, invested or stored in a bank or other credit organization that belong to a suspect or accused, operations for the given account shall be completely terminated or partially terminated within the bounds of monetary funds or other valuables subject to arrest. Directors of banks or other credit organizations shall be obliged to present information on such monetary funds and other valuables by request of court, prosecutor, or investigator with the consent of a prosecutor.

(8) In cases where there are sufficient grounds to suppose that the property subject to arrest may be hidden or spent, a person conducting investigation shall be entitled to carry out a ruling to suspend completion of deals or other property operations or such property may be extracted before the receipt of a decision of an investigation judge with a notification of a prosecutor or court in the course of twenty four hours.

(9) Should property be arrested, a record shall be compiled in accordance with the requirements of articles ... of this Code. Should there be no property subject to arrest, this will be noted in the record. A copy of the record shall be handed to the person whose property is subject to arrest.

(10) Property arrest shall be annulled on the basis of a ruling, person or body within the proceedings of which a criminal case is when the application of such measure is no longer necessary.

(11) With an aim to ensure a possible confiscation of property or reimbursement of losses caused by a crime, arrest for valuable papers or their certificates shall be imposed at the place of such property location or storage of the owner's the rights to the valuable papers in observation of the requirements of article... of this Code.

(12) Indicated in the records of the arrest of valuable papers are:

- 1) the total amount of valuable papers under arrest, and their type, category, and series number;
- 2) their nominal value;

- 3) their state registration number;
 - 4) information on the issuer or persons who have issued valuable papers or implemented the record of ownership rights of the person who owns them as well as the place where such a record was conducted;
 - 5) information about the document ascertaining the ownership right to the valuable papers under arrest.
- (13) Procedure for undertaking actions for the redemption of valuable papers, which were under arrest and payment according to income on them, converting them, and other actions with them shall be established by law.

Article 125. Property arrest procedure

(1) When implementing property arrest, a person implementing pre-trial procedure shall carry out a ruling to undertake a motion to an investigation judge to place the property of a suspect or accused under arrest as well as persons bearing material responsibility by law for their actions. Notarized copies of a criminal case shall be attached to such ruling confirming the grounds for a motion.

(2) A ruling shall contain short summary of crime's theory, qualification, information on the suspect, accused, or person bearing responsibility for the losses incurred by the crime and also the value of the property under arrest if a lawsuit is presented, its location, and conclusions regarding the necessity to place the property under arrest.

(3) A ruling of a person implementing pre-trial procedure, on a motion for property arrest, and the materials for it must be presented to an investigation judge no later than 48 hours after the moment that the property subject to arrest is established.

(4) When resolving an issue regarding the support of a motion for property arrest, an investigation judge is obliged to become acquainted with all of the materials containing the bases for the property arrest. In the course of 8 hours after the motion is received, an investigation judge must undertake a decision to support the motion for property arrest and issue a ruling along with the corresponding materials for execution to the corresponding body.

(5) A ruling of an investigation judge to refuse to support a motion for property arrest may be appealed by the person who implemented the pre-trial procedure to a higher court or by the participants of a process protecting their own or representing rights and interests.

(6) Ruling of a person who implemented pre-trial procedure to undertake a motion for property arrest supported by a prosecutor shall be subject to examination by an investigation judge at a court session with the participation of a prosecutor at the location of pre-trial procedure in the course of 24 hours after the materials arrive in court. A defense attorney and specialist determining the value of property shall be entitled to participate at a court session. Failure by the participants of the process to appear in case of timely, prior notification by a court regarding the place and time of the court session shall not impede the holding of a court session. A record shall be conducted during a court session.

(7). After examining a motion for property arrest, an investigation judge shall carry out a ruling to grant or turn down the property arrest. When resolving an issue regarding property arrest, to ensure possible confiscation of property, an investigation judge must indicate the circumstances proving that the property belongs to the suspect or accused and was used by him or her in committing the crime or received as a result of it being committed. Should there exist verifiable date that the property was received criminally, but the establishment of the given property is not presented as possible, the investigation judge shall be entitled to arrest other property equivalent in value.

(8) In a ruling for property arrest property subject to such arrest must be indicated, also how it has been established during the pre-trial procedure, and value of the property, which is great enough to satisfy the civil lawsuit as well as information on the location of such property up to the final decision that is made regarding the case.

(9) A ruling of an investigation judge to arrest property shall be sent to a person who

implemented pre-trial procedure, suspect, accused, or a person bearing responsibility for the losses incurred by the crime or act prohibited by the Criminal Code of the Kyrgyz Republic by an insane person as well as to a prosecutor, civil plaintiff, victim.

(10) Property arrest by court decision taking the case into its own proceedings shall be conducted by a bailiff.

(11) Bailiff shall compile a description of the effected property arrest, a copy of which with the corresponding mark shall be given to the person owning such property.

(12) Property subject to arrest may be extracted or transferred on the discretion of an investigation judge to the possession of a representative of the local administration, a housing management organization, owner of this property, or any other person that must be warned about responsibility for being in possession of property, for which being pledged.

(13) Should monetary funds or other valuables become subject to arrest that are located in banks and credit institutions as accounts and investments, the operation of the expenditures for such an account shall terminate within the bounds of the funds under arrest.

Article 126. Fines

For failure to fulfill procedural obligations and also for violation of the court session procedures, fines may be imposed on a victim, witness, specialist, expert, or translator of up to twenty calculated rates and in the manner established by articles ... of this Code.

Article 127. Procedure for imposing fines and submitting bail to the government account

(1) Fines shall be imposed by an investigation judge and court.

(2) If the corresponding violation is made during a court session, then fines shall be imposed by a judge or court in the court session where the violation has been established, for which a writ or court ruling is carried out.

(3) If the corresponding violation has been made during a pre-trial procedure, a preliminary investigation agency, investigator, or prosecutor shall compile a record of violation, which shall be sent to a court and subject to examination by an investigation judge in the course of 24 hours from the moment it arrives in court. A person on whom a fine may be imposed and a person compiling the record shall be called into a court session. Failure of an offender to appear without sufficient reason shall not impede examination of the record.

(4) For the results of a record investigation, a judge shall carry out a ruling on the fine or refusal to issue it. A copy of the ruling shall be sent to the person compiling a record and a person who is being fined as well as to the corresponding body for execution .

(5) In imposing fine, a court shall have a right to postpone or order by installments the fulfillment of a ruling for a time period of up to three months.

(6) In the manner established by the third and fourth part of this article, issue of submitting bail to a government account is decided in cases envisaged by the sixth part of article ... of this Code.

Article 128. Proximity orders

(1) A proximity order shall consist of the limitation of an accused or defendant to meet with a victim or other persons participating in a case with an aim to protect them.

(2) A person conducting criminal process shall be entitled to prohibit the accused or defendant to search, investigate, and visit persons under protection and conduct oral or telephone negotiations with them as well as in other forms and also come within a distance of 10 meters from them and visit certain places.

(3) A proximity order shall be applied on the basis of an investigative body ruling sanctioned by the prosecutor according to the statement of the individual subject to protection. In such ruling, the foundation for applying such measures shall be indicated to ensure criminal court proceedings and types of proximity orders as well as the body on which monitoring is

imposed for its observation. Copy of a ruling for a proximity order shall be given to an accused, defendant, person subject to protection, and the body implementing monitoring.

Should a proximity order be violated, one of the types of measures of restraint envisaged in article ----of this Code may be applied to a defendant or accused.

SECTION 5.
MOTIONS APPEALING THE ACTIONS AND DECISIONS OF GOVERNMENT
BODIES AND FUNCTIONARIES IMPLEMENTING PROCEEDINGS FOR A
CRIMINAL CASE

Chapter 15.
Motions

Article 129. Persons entitled to undertake motions

(1) A suspect, accused, defendant, or wrongdoer and their defense attorneys, a victim, his legal representative and representative, private prosecutor, expert, civil plaintiff, civil defendant, their representatives, representative of an administration of an organization, and other person the rights and legal interest of which are affected during the pre-trial or court proceedings shall be entitled to refer to a preliminary investigation agency, investigator, court with motions on the proceedings of procedural actions or the undertaking of procedural decisions for the establishment of circumstances significant for a criminal case as well as for misdemeanor materials and the ascertainment of rights and legal interests of a person submitting a motion or persons and organizations represented by them.

(2) A prosecuting attorney shall also have a right to submit a motion during the court examination.

Article 130. Undertaking and resolution of motions

(1) A motion may be undertaken at any stage of the criminal procedure for a criminal case. Written motion shall be added to a case and oral motion shall be entered into the record of investigation actions or a court session.

(2) Motions shall be subject to examination and immediate resolution after their announcement. In cases where an immediate decision for a motion is impossible, it must be resolved no later than three days after its announcement.

(3) A preliminary investigation agency, investigator, investigator or court shall carry out a ruling for full or partial refusal to approve a motion and court shall also carry out a writ, which may be brought to a person who announced a motion.

(4) Refusal of a motion shall not impede its repeated announcement on subsequent stages of the criminal procedure.

(5) A decision by motion may be appealed in the manner established by this Code

Chapter 16.
Appealing the actions and decisions of government bodies and functionaries
implementing the proceedings for a criminal case.

Article 131. The right to appeal

Actions (inactions) and decisions of a preliminary investigation agency, investigator, investigation division director, prosecutor, or court may be appealed in the manner established by this Code by the criminal procedure participants as well as other persons if the procedural actions (inactions) undertaken or decisions affect their interests.

Article 132. Submission of appeals

(1) Appeals shall be submitted to the same government body or functionary implementing criminal procedure for a criminal case, which are authorized to examine appeals and make decisions based on them.

(2) Appeals may be both oral and written. Oral appeals are entered into a record, which shall be signed by the appellant and a functionary accepting the appeal. Additional materials may be added to an appeal.

(3) A person submitting an appeal shall also be entitled to call off the appeal. A suspect or accused shall be entitled to call off the appeal of a defense attorney and a civil plaintiff, victim (private prosecutor), or civil defendant shall be entitled to call off an appeal by his or her representative excluding his or her legal representative. Calling off an appeal shall not impede a second submission of an appeal.

(4) Making an appeal shall not suspend proceedings of an appealed action and execution of the appealed decision unless it shall be deemed necessary to do so by the investigator, prosecutor, or judge.

Article 133. Terms for submitting an appeal

Appeals for actions of a preliminary investigation agency, investigator, investigation division director, prosecutor, or court may be submitted over the course of the whole pre-trial or court proceeding. Appeals to decisions to terminate a criminal case as well as to sentences and rulings by the first instance courts are to be submitted within the terms established by this Code.

Article 134. Method for detainees and those under custody to send an appeal

(1) Administration of a detention facility shall be obliged to immediately transfer appeals to an investigation division director, investigator, prosecutor, or court addressed to them by persons held under suspicion of committing a crime or detained under custody.

(2) Appeals of persons held or detained under custody regarding torture and actions of a preliminary investigation agency functionary or investigator of the administration of a detention facility must be immediately transferred to a prosecutor or court and appeals to actions and decisions of a prosecutor shall be transferred to a higher court.

Article 135. Means for examining an appeal by a prosecutor or investigation division director.

(1) A prosecutor or investigation division director shall examine an appeal in the course of 3 days from the day of its receipt. In exclusive cases when it is necessary to request additional materials or undertake other measures to verify appeals, the examination of an appeal shall be allowed within ten days, of which appellant should be notified.

(2) Based on the results of an appeal examination, a prosecutor or investigation division director shall make a decision to fully or partially approve an appeal with an annulment or modification of an appealed decision or refusal to approve an appeal, of which the appellant is to be notified immediately.

(3) Preliminary investigation agency and investigator shall be entitled to appeal a decision made by a prosecutor or investigation division director to a corresponding higher prosecutor or a higher investigation division director.

Article 136. Court procedure for examining appeals

(1) Rulings of a preliminary investigation agency, investigator, or prosecutor to terminate a criminal case or material about a misdemeanor and equally other decisions and actions (inactions), which can cause losses to the constitutional rights and freedoms of the criminal procedure participants or hindering citizens' access to justice may be appealed to a court by the location of the proceedings of the investigation.

(2) A judge shall verify the legality and basis for actions (inactions) and decisions of an investigator or prosecutor no later than three days after an appeal is received at a court session

with the participation of the appellant and his or her defense attorney, legal representative, or representative if they are participating in a criminal case or according to materials about misdemeanors and other persons whose interests are directly affected by an action to appeal (inaction) or decision as well as with the participation of a prosecutor. Failure of persons who have been notified ahead of time about the time of appeal examination who do not insist that the appeal be examined with his or her participation shall not impede its examination by a court.

(3) In the beginning of a court session, a judge shall announce which appeal shall be subject to examination, present himself to the persons appearing at the court session and explain to them their rights and obligations. Then, appellant, if he or she is participating in the court session, shall base his or her appeal, after which the other persons attending the court session will be heard. Appellant will be presented an opportunity to voice a reply brief.

(4) Based on the results of the appeal examination, the judge shall carry out one of the following rulings:

(5) of illegality or inconsistency of an action (inaction) or decision of a corresponding functionary and his or her obligation to correct the violation that has been incurred;

(6) to dismiss the appeal without approval;

(7) Copies of the ruling of a judge shall be sent to the prosecutor and appellant.

(8) Making an appeal shall not suspend the proceedings of an appealed action and execution of appealed decision unless it shall be deemed necessary to do so by an investigator, prosecutor, or judge.

Article 137. An appeal (adduction) to a sentence, writ, or ruling of a court

(1) An appeal (adduction) to a sentence, writ, or ruling of the first instances courts and appeals instances shall be submitted in accordance with the rules of chapter 38 of this Code.

(2) An appeal (adduction) about the review of judicial decisions taking legal effect shall be submitted in accordance with the rules of chapter 42 of this Code.

SECTION 6.

COURT MONITORING IN PRE-TRIAL PROCEDURE

Chapter 17. Subject of court monitoring and authority of an investigation judge

Article 138. Subject of court monitoring

(1) Court monitoring in a pre-trial procedure shall be implemented by an investigation judge.

(2) An investigation judge, within the bounds monitoring functions, shall verify the legality and basis of:

1) detaining persons suspected of committing a crime;

2) selecting measures of restraint and application of other measures of ensuring criminal procedure;

3) conducting operational search actions or special investigative actions;

4) proceedings of investigative actions limiting constitutional rights and freedom of an individual;

5) actions and decisions of a preliminary investigation agency, investigator, or prosecutor limiting citizens' right of access to justice or otherwise limiting their constitutional rights.

Article 139. Authority of an investigation judge

(1) Within the bounds of court monitoring of the legality and basis of applying measures to ensure criminal procedure limiting the constitutional rights and freedom of participants of a process, an investigation judge shall make decisions:

1) on the legality and basis of the detention of an individual suspected of committing a crime;

- 2) on measure of restraint selection in the form of taking an individual into custody, placing him or her in house arrest, and having the individual post bail;
 - 3) on extension of a time period for keeping an individual under custody or house arrest;
 - 4) on placing of a suspect or accused not under custody into a medical or psychiatric facility for executing the corresponding expertise;
 - 5) on placing property under arrest, including monetary funds of individuals or legal entities on the accounts and in the investments or storage in banks and other credit organizations for valuable papers and certificates;
 - 6) on ordering an accused to temporarily take leave from his or her occupation;
- (2) Within the bounds of court monitoring of the legality and basis for undertaking special search events or operational search actions, an investigation judge shall give permission for their conduct in accordance with chapter 34 of this Code.
- (3) Within the bounds of court monitoring of the legality and basis for undertaking investigation actions limiting the constitutional rights and freedoms of an individual, an investigation judge shall give permission for the conduct of the following investigative actions:
- 1) survey of a dwelling without the consent of those living there;
 - 2) search and seizure;
 - 3) personal search with the exception of cases envisaged by article ... of this Code;
 - 4) seizure of objects and documents containing information about investments and bank accounts or other credit organizations;
 - 5) exhumation of a dead body in case close relatives or relatives of a deceased are against exhumation.
- (4) An investigation judge shall verify the legality and basis of conducting special investigation actions or proceedings of investigation actions envisaged by items 1-3 of the third part of this article without receiving a court decision in the exclusive cases established by this Code when their proceedings cannot be postponed.
- (5) Within the bounds of judicial monitoring, an investigation judge shall examine appeals of criminal procedure participants for the actions and decisions of a preliminary investigation agency, investigator, or prosecutor.
- (6) In cases envisaged by this Code, an investigation judge shall:

- 1) consign during pre-trial procedure the testimony of persons, the appearance of whom at a court examination is impossible for sufficient reasons or with an aim to avoid a traumatic experience for them by interrogation at a court session while examining a case by its merits;
 - 2) impose fines on persons for failure to fulfill their procedural obligations in a pre-trial procedure;
 - 3) resolve an issue on posting bail to a government account in cases where the accused has undertaken one of the violations envisaged by the sixth part of article ... of this Code.
 - 4) make a decision to exercise measures to ensure safety with respect of witnesses, victims, and other criminal procedure participants.
 - 5) confirm procedural agreements.
- Investigation judge
- (7) An investigation judge must not make premature decisions on issues, which in accordance with this Code may not be the subject of court examination when resolving a case based on its merits, give instructions for the trend of an investigation and conduct of investigative actions, and undertake actions and make decisions for persons implementing pre-trial procedure and the supervising prosecutor as well as the court examining the case based on its merits

Chapter 18. Procedural order of judicial monitoring in a pre-trial procedure

Article 140. General conditions for an investigation judge's implementation of authority

(1) An investigation judge shall implement his or her authority in accordance with the rules of this article and the features envisaged by the corresponding articles of this Code.

(2) An investigation judge shall solely examine issues within his or her power in a court session.

(3) The time period for the examination of issues within the power of an investigation judge shall be determined by the corresponding articles of this Code.

(4) An investigation judge shall be entitled to become acquainted with all of the materials of a pre-trial procedure and request additional materials when necessary.

(5) Based on the results of the examination of issues within his or her power, an investigation judge shall carry out a ruling.

(6) Ruling of an investigation judge shall immediately take legal effect and shall be subject to obligatory execution. An appeal in a cassation court of the ruling of an investigation judge shall not suspend its execution

Article 141. Judicial procedure for the verification of the legality of detaining a suspect

(1) Verification of the legality of detaining a suspect released by ruling of an investigator or prosecutor shall be implemented by an investigation judge with the participation of a prosecutor, investigator, suspect, defense attorney, or a legal representative at the location of the detention facility where the suspect is held in an open court session in the course of two hours after the materials are presented to the court. Failure to appear by the parties with the exception of the suspect, his defense attorney, or the prosecutor who have been duly informed ahead of time of the place and time of the court session, shall not impede the examination of a motion. In case a defense attorney should fail to appear, a suspect shall be entitled to replace him or her with another. In case a defense attorney should be absent, an investigator shall provide for one in accordance with the laws of the Kyrgyz Republic.

(2) In the beginning of a session, an investigation judge shall announce with respect of whom the legality of detention is being verified taken into custody for suspicion of a crime and shall explain to those present at the court session their rights and obligations. Then, an investigator shall base his decision on the detention of the person for suspicion of committing a crime after which other persons appearing at the court session shall be heard

(3) At the court session, the investigation judge shall carry out a ruling regarding the legality or illegality of the detention of the person for suspicion of committing a crime.

(4) Such ruling of the investigation judge for the legality or illegality of an individual's detention for suspicion of committing a crime may be appealed to a higher, appeals court.

(5) In each case that detention of a suspect should be deemed illegal, an investigation judge shall be entitled to carry out a prejudication, by which he or she shall direct attention of the supervising prosecutor to the established facts of violation for the case calling for measures to be taken. No later than a monthly time period for a prejudication of an investigation judge, measures must be undertaken and results reported to him or her.

(6) Ruling of an investigation judge entering into legal force regarding the illegality of detention shall be the basis for proceedings envisaged by chapter 46 of this Code.

Article 142. Procedure for the examination of a motion to select a measure of restraint in the form of detaining an individual under custody, placing them under house arrest, or setting bail along with other measures of ensuring criminal procedure, extending the time period of a person's detention under custody, and house arrest

(1) Measures of restraint and other measures of ensuring criminal procedure envisaged by the norms of this Code and are correspondingly selected and applied by an investigation judge by motion of an investigator or prosecutor in an open court session with the participation of an

accused, prosecutor, investigator, or defendant at the location of the pre-trial procedure or the detention facility where a suspect (accused) is located in the course of two hours after the moment that materials are presented to court. Legal representative of an accused minor shall also have a right to participate in the court session. Failure by the parties who have been duly notified ahead of time of the time and place of the court session to appear, with the exception of an accused, his defense attorney, and prosecutor shall not impede the examination of the motion. In case a defense attorney fails to appear, a suspect shall be entitled to replace him or her with another. In case of absence of a defense attorney, an investigator shall provide for one free of charge.

(2) After a ruling to undertake a motion, the motives and grounds shall be established, due to which the necessity to select this measure of restraint has arisen or the exercise of this measure as procedural compulsion. Materials shall be attached to a ruling confirming the grounds for a motion.

(3) (6) In the beginning of a session, a judge shall announce which motion shall be subject to examination and shall explain to the persons appearing at the court session their rights and obligations. Then, an investigator, prosecutor shall base his or her motion, after which the other persons attending the court session will be heard.

(4) After examining a motion, an investigation judge shall carry out a ruling to select measures of restraint or exercise another measure of procedural compulsion or to refuse to approve the motion.

(5) A ruling on undertaking of a motion to extend the time period of an individual's detention under custody or house arrest must be presented to court at the location of the pre-trial procedure no later than five days before the expiration of the individual's time period under custody or house arrest. Such ruling must depict the reasons why it is necessary to extend the time period as well as the circumstances, which must be investigated and the basis of the necessity to maintain these measures of restraint. A motion shall be examined by an investigation judge in the manner established by this article to select a measure of restraint.

(6) An investigation judge shall make a decision on whether to extend the time period of an accused's detention under custody, house arrest, or refuse to approve a motion and release the accused from custody no later than three days after a motion is received.

(7) A ruling of an investigation judge to select measures of restraint, apply other measures of procedural compulsion, extend the time period of detention under custody or house arrest, or refuse to approve a motion shall go into legal effect immediately and shall be subject to obligatory execution.

(8) An appeal in a cassation court of the ruling of an investigation judge shall not suspend its execution.

Article 143. Judicial procedure for receiving permission to conduct investigations or special investigative actions

(1) Special investigative actions shall be permitted only for the purposes of collecting information on persons preparing or endeavoring to commit or are committing especially grave crimes only by permission of an investigation judge by the substantiated ruling of an investigator with the consent of a prosecutor.

(2) A motion shall be subject to examination by an investigation judge with the participation of a prosecutor or investigator at a court session at the location of special investigative actions or the place where the body that is motioning for them to be held is located no later than 24 hours from the moment the motion is received.

(3) Based on the results of the examination of the motion, an investigation judge shall carry out a ruling of whether to allow special investigative actions or not indicating the reasons for such refusal.

(4) The time period for the validity of the rulings carried out by an investigation judge for special investigative actions to be undertaken shall begin at the day that it is carried out and may not exceed two months. Should it be necessary to extend the time period for the validity of a ruling, an investigation judge shall carry out a ruling on the basis of newly introduced materials.

(5) A ruling of an investigation judge to refuse the conduct of special investigative actions may be appealed in an appeals court.

Article 144. The judicial procedure for the verification of legality and reasonability to conduct investigation or special investigative actions

(1) In cases which may not be postponed and may lead to severe consequences, special investigative actions may be conducted on the basis of a substantiated ruling of an investigator without receiving a court decision.

(2) In each case where proceedings of the corresponding special investigative actions occur without receiving a court decision, an investigator shall, in the course of 24 hours after the moment special investigation actions begin, notify an investigation judge of its conduct. Copies of a ruling to conduct special investigative actions shall be attached to a notice.

(3) In case an investigation judge recognizes special investigative actions as illegal, all evidence received in the course of such special investigative actions shall be recognized as inadmissible in accordance with article 81 of this Code. In this case, the court shall be entitled to carry out a prejudication, by which it shall direct the attention of the corresponding prosecutor to the established facts of violation of the law for the case calling for measures to be taken. No later than a monthly time period for a prejudication of an investigation judge, measures must be taken and results reported to court.

(4) Ruling of an investigation judge for the legality or illegality of conducting special investigative actions may be appealed to a higher, appeals court.

Chapter 19.

Judicial procedure for making appeals

Article 145. Judicial procedure for making appeals to the actions and decisions of a preliminary investigation agency, investigator, and prosecutor

Actions and decisions of preliminary investigation agencies, an investigator, and a prosecutor shall be examined by an investigation judge in the manner established by article 136 of this Code.

Article 146. Timetable for submitting and examining appeals

(1) Appeals to the actions (inactions) and decisions of a preliminary investigation agency, investigator, and prosecutor may be submitted by an individual in the course of 10 days after the moment the decision is made and actions (inactions) are taken. If the decision of a preliminary investigation agency, investigator, or prosecutor is expounded as a ruling, the time period for submitting an appeal shall begin the day that the person receives a copy of it.

(2) An investigation judge shall examine an appeal within the established time period envisaged by article 136 of this Code.

Article 147. Return of an appeal by an investigation judge

An investigation judge shall return an appeal to the decisions and actions (inactions) of a preliminary investigation agency, investigator, or prosecutor if:

- 1) the appeal is submitted by a person that is not entitled to submit such appeal;
- 2) the appeal is not subject to examination in the court;

3)the appeal is presented outside of the time period allowed as envisaged by the corresponding article of this Code and the person that submitted it does not request that this time period be renewed or the investigation judge by request of this person does not see the grounds for it to be restored.

Article 148. Appeals sent by a suspect, accused, or detainee under custody

Administration of a detention facility shall immediately send to court appeals of a suspect or accused who is detained under custody to the actions and decisions of a preliminary investigation agency, investigator, or prosecutor, which are subject to examination by an investigation judge in the course of two days.

SECTION 7. OTHER PROVISIONS

Chapter 20. Civil lawsuit in a criminal case

Article 149. Civil lawsuits examined in a criminal process

(1) A person to whom property or emotional losses have been incurred due to a crime or other publicly dangerous actions shall have a right during the criminal procedure before the beginning of a court examination to present a civil lawsuit to a suspect, accused, defendant, individual, or legal entity who bears legal responsibility for the damage caused by the actions of a suspect, accused, defendant, or insane person who has undertaken a publicly dangerous action.

(2) For the protection of the interests of minors and other persons recognized by established law as legally incompetent or marginally competent, a civil lawsuit may be presented by their legal representatives.

(3) A civil lawsuit in the interests of the government shall be presented by a prosecutor. A civil lawsuit may be submitted by a prosecutor in cases established by law as well as in the interests of citizens legally incompetent to independently protect their rights.

(4) Form and contents of a statement for a lawsuit must correspond to the requirements established for lawsuits duly presented during civil procedure.

(5) A civil lawsuit in a criminal procedure shall be examined by a court in accordance with this Code. In case procedural relations have arisen due to a civil lawsuit that are not regulated by this Code, then the norms of the Civil Procedural Code of the Kyrgyz Republic shall be applied.

(6) A person who has not presented a civil lawsuit in a criminal proceeding as well as a person, the civil lawsuit of whom has been disregarded without examination shall be entitled to present it in the fashion established for civil procedure.

(7) When it is necessary to apply criminal legal measures with respect of legal entities envisaged by the Criminal Code of the Kyrgyz Republic, a civil lawsuit shall be presented by a prosecutor before the end of the pre-trial procedure.

Article 150. Presenting a civil lawsuit

(1) A person who has experienced losses as a result of a crime or an act by an insane person envisaged by the Criminal Code of the Kyrgyz Republic or his or her representative shall have a right to present a civil lawsuit at any time during pre-trial procedure, but before the beginning of the court examination.

(2) A civil lawsuit shall be presented in written form. In a lawsuit statement it shall be indicated for which criminal case, by whom, to whom, on what basis, and in what amount a civil

lawsuit is made as well as a request shall be depicted concerning reimbursement of a certain fee or property to compensate for losses caused.

(3) Should there be a necessity to specify the grounds for a civil lawsuit and its amount, a person shall be entitled to present an additional lawsuit.

(4) If a person subject to be brought in as an accused is not established in case a crime has been committed on behalf of or by a legal entity, whether or not an individual person is called for criminal responsibility it shall not impede the presentation of a civil lawsuit in a criminal case.

(5) A person who has not presented a civil lawsuit in a criminal process and equally a person whose lawsuit is disregarded by a court without examination shall be entitled to duly present it in a civil procedure.

(6) A civil lawsuit may be duly presented in a civil court proceeding for persons not subject to being brought in as accused due to immunity from criminal prosecution.

(7) In cases envisaged by this Code, a prosecutor shall be entitled to present a civil lawsuit in a criminal case.

Article 151. Recognition of an individual as a civil plaintiff

(1) If it appears in the materials of a criminal case that by a crime or action of an insane person prohibited by the Criminal Code of the Kyrgyz Republic, losses have been incurred to a citizen or legal entity, an investigator, judge, or court shall explain to them or their representatives their right to present a civil lawsuit.

(2) An individual or legal entity who is presenting a lawsuit shall be recognized as a civil plaintiff. A person presenting a lawsuit and his or he representative shall be announced a ruling (writ) of whether a person or entity is a civil plaintiff and the rights shall be explained as envisaged by article... of this Code.

Article 152. Refusal to recognize an individual or entity as a civil plaintiff

Should there be no basis envisaged by articles ... of this code for presenting a civil lawsuit a citizen or legal entity announcing such lawsuit may be refused recognition as a civil plaintiff, for which a substantiated ruling shall be carried out or a writ and the right of such person or entity to appeal shall be explained.

Article 153. Bringing in a civil defendant to a case

(1) In case a civil lawsuit is presented in a criminal case, a preliminary investigation agency functionary, investigator or court having established a person bearing responsibility for damage caused by a crime or an act of an insane person prohibited by the Criminal Code of the Kyrgyz Republic shall bring this person into case as a civil defendant in the manner established by article ... of this Code. A civil defendant or his or her representative shall be announced a ruling (writ) to bring him or her in as a civil defendant and his or he rights shall be explained envisaged by article ... of this Code.

(2) In case a lawsuit is presented by a prosecutor according to the seventh part of article 151 of this Code, the representative of a legal entity is announced a ruling to bring a legal entity in as a civil defendant.

Article 154. Waiver of a civil lawsuit

(1) A citizen or legal entity shall be entitled to waive of a civil lawsuit presented by them.

(2) A statement of a plaintiff to waive of a lawsuit shall be entered into the record of investigative actions or a court session. If the waiver of a lawsuit is expressed in written form, then it shall be added to the case.

(3) Waiver of lawsuit shall be undertaken by an investigator at any time during the investigation for the criminal case. Waiver of a lawsuit shall be undertaken by a court by carrying out a ruling or writ at any moment of a court examination, but before seclusion of a court to the special room for sentencing.

(4) An undertaking of the waiver of a lawsuit shall entail termination of proceedings for it.

(5) Until such waiver of a lawsuit is undertaken by an investigator, a court shall be obliged to explain to a plaintiff the consequences of waiver established in the fourth part of this article.

(6) An investigator or court shall not undertake waiver of a lawsuit if such actions contradict the law or violate some ones rights and interests protected by law, on which a substantiated ruling or writ is to be carried out.

Article 155. Decisions for civil lawsuits

(1) When ruling for a conviction or writ for the application of compulsory measures for medical treatment, a court shall approve a civil lawsuit fully or partially or turn it down.

(2) In cases a lawsuit is approved fully or partially, a court shall establish and indicate in a sentence time period for voluntary execution of a sentence for a civil lawsuit. Compulsory execution shall be effected in the manner established by law for executive proceedings.

(3) Should it be impossible to produce a detailed analysis of a civil lawsuit without postponing a trial for a criminal case, the court may recognize the right to approve a lawsuit for a civil plaintiff and transfer the issue of its amount for a civil procedure.

(4) Should there be a judgement of acquittal and equally a writ and a ruling to terminate the case by applying compulsory measures for medical treatment, the court shall:

1) refuse to approve a civil lawsuit if the event of the crime has not been established or it has not been proven that a defendant has participated in an act prohibited by the Criminal Code of the Kyrgyz Republic or the person with respect of whom the issue of application of compulsory measures for medical treatment has been applied in committing a crime or an act prohibited by the Criminal Code of the Kyrgyz Republic;

2) disregard a lawsuit without examination in case of defendant's acquittance in the absence of bases for application of compulsory measures for medical treatment for a person who, according to the nature of the act he or she has committed, does not represent danger for society and does not need compulsory treatment.

(5) In terminating a case based on the grounds indicated in articles 30 and 31 of this Code, a court shall disregard a civil lawsuit without examination.

(6) If based on the grounds envisaged by article 30 of this Code, a criminal case should terminate at the stage of pre-trial procedure, an individual or legal entity or their representatives shall be entitled to duly present a lawsuit in a civil procedure.

(7) Should a conviction be carried out for a criminal case, for which a legal entity has been brought in as a civil defendant for the application of measures envisaged in the Criminal Code of the Kyrgyz Republic, the court shall carry out a decision on whether to apply criminal legal measures to the given legal entity.

Article 156. Obligation to ensure a civil lawsuit and confiscation of property as envisaged by law

(1) Should there be sufficient data that a crime has caused property damage, a preliminary investigation agency, investigator, prosecutor, and court shall be obliged to undertake measures to ensure the presented or possible future civil lawsuit.

(2) In cases for which criminal law envisages confiscation of property, an investigator or preliminary investigation agency shall be obliged to undertake the necessary measures to ensure execution of the sentence, including possible confiscation of property that might be announced in the ruling.

(3) Civil lawsuit ascertainment as well as possible confiscation of property shall be effected by means of implementing property arrest according to the corresponding description for investments, valuables, and other property of an accused, defendant, or persons bearing

material responsibility by law for the actions of the accused or defendant along with extraction of property subject to arrest.

(4) In case a civil lawsuit is approved, a court shall be entitled before the sentence enters into legal force to make a ruling regarding a measure to provide for the lawsuit if such measures have not been undertaken earlier.

Article 157. Execution of a sentence and writ of a civil lawsuit by court

Should the court approve a civil lawsuit, a sentence, and also a writ to duly apply compulsory measures of medical treatment as a civil lawsuit shall be carried out as envisaged by laws on execution proceedings.

Chapter 21. Procedural timetables and expenses

Article 158. Calculation of time limits

(1) Procedural time limits envisaged by this Code shall be counted in hours, days, months, and years.

(2) Calculation of time limits is counted in observance of the following rules:

1) a day in calculating time limits shall be considered 24 hours. When calculating time limits in days, it shall expire at the twenty-fourth hour of the last day;

2) when calculating time limits in days, the day as of which time limits begin shall not count;

3) when calculating time limits in months, the hour and day shall not be taken into account, by which the course of time limits is selected, with the exception of cases envisaged by this Code. The month and year shall be calculated by calendar and when calculating time limits in months and years, it shall expire at the corresponding date of the last month and year. If the end of time limits calculated in months shall end up being a month without the corresponding day, then the time period shall end on the last day of the month;

4) if the end of time limits shall come during the weekend, then the last day of the time limits shall be the first weekday following the weekend or holiday, except for cases of calculating time limits while a person is detained, held under custody, placed under house arrest, or located in a medical institution.

5) when a person is detained, time limits shall be calculated as of the moment (hour) that such a measure has been applied.

(3) Time limits shall not be considered as skipped if an appeal, motion, or other document is submitted to post before the end of the time period, transferred, or announced to the person authorized to accept them and for persons held in custody or located in a medical institution if such appeal or other document is submitted to the administration of the detention facility or medical institution before the end of the time limit.

Article 159. Extension and restoration of missed time

(1) Procedural time limits may be extended only in cases and in the manner envisaged by this Code.

(2) Time missed for due to sufficient reasons must be restored by ruling of an investigator or judge within the proceedings of which is the case. Whereas time limits shall be established for the person that he or she missed, but not for other persons unless otherwise provided by the corresponding decision of the body conducting criminal process. Refusal to restore time limits may be appealed in the manner established by law.

(3) By motion of the interested person, execution of decision appealed with omission of the time limit may be suspended until the issue regarding the missing time is resolved.

Article 160. Procedural expenses

(1) Procedural expenses are expenditures connected with the proceedings of a criminal

case, which shall be reimbursed at the expense of the funds of the state budget or the funds of the criminal procedure participants.

(2) The following are included as procedural expenses:

1) Amounts of money to be paid to a victim, witness, their legal representatives, an expert, specialist, translator, other attesting witnesses, as well as a lawyer participating in a criminal case, to cover costs connected with the appearance at the location of procedural actions execution and returning, expenses for transportation, renting residences, and additional expenditures connected with residing outside their permanent residence locations (daily)

2) amounts of money payable to witnesses, victims, and their representatives without a current occupation and also money to extract them from their daily occupation;

3) amounts of money payable to witnesses, victims, and their legal representatives working and having a stable income to reimburse for the time during which they did not received payment as they visited an investigator or court;

4) compensation payable to experts, translators, and specialists for fulfillment of obligations at the investigation or in court other than cases when their obligations have been fulfilled by an assignment letter;

5) amounts of money payable for legal assistance of a defense attorney in the case that a suspect, accused, or defendant is freed from payment or for the participation of a lawyer during investigation or in court by appointment without concluding an agreement;

6) amounts of money spent on storing and sending material evidence;

7) amounts of money spent on the search of a suspect, defendant, or accused hiding from investigation or court;

8) amounts of money spent on expertise in expert institutions;

9) other expenses born during the proceedings for a criminal case.

(3) The amounts of money indicated in items 1-5 and 8 of the second part of this article shall be paid by ruling of an investigator or judge or by a court writ.

Article 161. Collection of procedural expenses

(1) Procedural expenses are collected from condemned persons or are paid for by the government.

(2) Court shall be have a right to collect procedural expenses from a condemned other than amounts of money that are paid to a translator and a defense attorney in case envisaged by the fourth and fifth part of this article. Procedural expenses may be imposed also on a condemned person released from punishment as well as on a condemned person without designation for punishment.

(3) Procedural expenses connected with the participation of a translator in a case shall be paid for by the government. If a translator carries out his or her functions by assignment letter, payment for his or her work shall be reimbursed by the government to the organization where such translator works.

(4) If a suspect, accused, or defendant announces refusal from a defense attorney, but it is not approved and a defense attorney participates in a case by appointment, the expenses for the lawyer will be assumed by the government.

(5) In case a defendant is acquitted or his or her case is terminated in accordance with items 1 and 2 of the first part of article 28 and item 2 of the first part of article 225 and article 316 of this Code, procedural expenses shall be paid for by the government. Should a defendant be only partially acquitted, court shall be obliged to pay for the procedural expenses connected with charge for which he or she has been found guilty.

(6) Procedural expenses shall be paid for by the government in case a person by whom they are supposed to be paid is bankrupt. Court shall be entitled to fully or partially release a condemned from obligation to pay for procedural expenses if it might substantially affect the material status of persons dependent on the condemned.

(7) Should numerous defendants be found guilty by a court, procedural expenses shall be

taken from each of them. Whereas court shall take into account the nature of guilt, the degree of responsibility for the crime, and property possessions of those condemned.

(8) For cases regarding crimes by minors, court may impose procedural expenses for the parents of a minor or those appearing for them.

(9) When acquitting a defendant for a case of private accusation, a court shall be entitled to collect full and partial procedural expenses from persons by the appeal of whom the proceeding began. When terminating a case by a deal between the parties, procedural expenses shall be collected from one or both of the parties.

Chapter 22.

Joinder and separation of criminal cases

Article 162. Joinder of criminal cases

(1) Cases entailing accusation of several persons who acted together combined into one proceeding regarding one or numerous crimes committed and cases regarding accusation of one person on commission of several crimes as well as cases entailing accusation of a previously unpledged concealment of the same crimes on the pre-trial procedure stage.

(2) Joinder of cases shall be implemented by ruling of an investigator or prosecutor within the proceedings of which is one of the cases.

(3) Time period for case proceedings, into which several cases have been combined shall be calculated from the day that the first case is established.

Article 163. Separating criminal cases

1) An investigator, judge, or court shall be entitled to divide a criminal case into a separate proceeding with respect of an accused or defendant, the location of whom is unknown or who is suffering from a serious disease.

(2) A criminal case is subject to division into a separate proceeding about a crime, which has become known during the course of an investigation committed by another person not connected with the actions incriminating the accused for the case under investigation. In such cases, materials may be extracted from a criminal case that are necessary for additional verification as well as commencement and proceedings for an investigation of a criminal case about a known crime.

(3) A criminal case shall be subject to division into a separate proceeding with respect of one or numerous persons accused if one or multiple accused persons refuse to participate in a court with a jury. Should it be impossible to separate a criminal case into a separate proceeding, the criminal case will be examined as a whole by the court with the participation of jurors.

(4) If a minor has participated in committing a crime along with adults, the case for him or her shall be separated into a separate proceeding in the stage of investigation.

(5) A criminal case shall be subject to division into a separate case with respect of a legal entity called in as a civil defendant for a court to exercise criminal legal measures envisaged by the Criminal Code of the Kyrgyz Republic if the criminal case is suspended with respect of an individual.

(6) Separation of the materials of a criminal case shall be effected by ruling of an investigator, judge, or court writ. A list of materials to be separated as originals or copies must be added to a ruling.

(7) Separation of a case shall be allowed in case that it does not reflect the comprehensiveness and objectivity of an investigation and court examination.

(8) For a criminal case that has been separated into a separate proceeding due to an investigator's failure to establish an accomplice in a crime, a court shall issue and order for such accomplice search to the preliminary investigation agency.

SPECIAL PART

SECTION VII PRE-TRIAL PROCEEDINGS

Chapter 20

Start and order of procedure of pre-trial proceedings

Article [152]. Pre-trial proceedings in criminal cases and cases of misconduct

The pre-trial procedure in criminal cases shall be conducted in the form of an investigation, while that of misconduct, in the form of inquiry, in the manner prescribed herein.

Article [153]. Beginning of pre-trial proceedings

1. The investigator, prosecutor or the authorized officer of the agency of inquiry shall be obliged, without delay and within 24 hours of the receipt of the application, or a report of the committed crime or misconduct, or else the direct discovery of circumstances that indicate a committed crime or misconduct, and also upon the receipt of pre-trial procedure materials from a foreign state, to make relevant entries in the Uniform Register of Crimes and Acts of Misconduct, and start the investigation or the inquiry.

2. The pre-trial procedure begins as of the time when the evidence is entered in the Uniform Register of Crimes and Acts of Misconduct.

3. Before evidence of a crime committed or planned and/or an act of misconduct has been entered, only a view of the scene of crime can be conducted.

4. The beginning of the pre-trial procedure shall be reported to the prosecutor without delay and no later than within 24 hours.

5. Upon starting the investigation, the investigator shall issue a ruling instituting proceedings in the case, and the authorized officer of the agency of inquiry shall issue a ruling for acts of misconduct.

6. The applicant shall be warned of the liability for making a deliberately false report, which shall be recorded in the application or the protocol, acknowledged by the applicant with his signature.

Article [154]. Uniform Register

1. The provisions for the Uniform Register shall be approved by the Government of the Kyrgyz Republic.

2. The Uniform Register shall maintain records of:

1) the time of the receipt and registration of the application or another report of the crime and/or misconduct that served as the grounds for instituting pre-trial proceedings;

2) a brief account of the circumstances of the crime and/or act of misconduct;

3) a preliminary legal qualification of the crime, indicating the relevant article (paragraph of the article) of the Kyrgyz Criminal Code, or that of the misconduct, indicating the relevant article (paragraph of the article) of the Kyrgyz Code of Misconduct.

3. The Uniform Register of crimes and acts of misconduct automatically records the date of the entry and assigns the pre-trial procedure number.

Article [155]. The duty to accept and examine applications and reports of crime and/or misconduct

1. The agency of inquiry, investigator and prosecutor shall be obliged to accept, get registered and examine an application or report of any crime committed or planned, and/or committed misconduct. The applicant shall be issued with a document of registration of the filed application or report of the crime and/or misconduct, bearing the name of the officer with whom

the application or report has been filed, the time of registration in the Uniform Register of Crimes and Acts of Misconduct and the pre-trial procedure registration number.

2. The refusal to accept or register the allegation of a crime shall not be allowed, and shall incur liability as prescribed by law.

Chapter 21

General terms and conditions of pre-trial proceedings

Article [156]. Agencies conducting pre-trial proceedings

1. The investigation shall be conducted in accordance with the investigative jurisdiction established herein, by investigators of the respective bodies of prosecution, police, national security, drugs control, penitentiary system, state service for the fight against economic crimes, and the customs.

2. The inquiry into acts of misconduct shall be conducted by the authorized officer of the relevant inquiry agency.

Article [157]. Mandatory nature of pre-trial proceedings

The pre-trial procedure shall be mandatory for all criminal cases and cases of misconduct, with the exception of cases of private prosecution.

Article [158]. Investigative jurisdiction

1. In cases of crime against life (Articles 131-139 of the Kyrgyz Criminal Code), crime against health (Articles 140-144, Art. 146-147 of the Kyrgyz Criminal Code), crime that put life and health of a person at risk (Articles 148-153 of the Kyrgyz Criminal Code), crime in the area of medical and pharmaceutical services to individuals (Articles 154-162 of the Kyrgyz Criminal Code), crime against sexual immunity and sexual freedom (Articles 163-165 of the Kyrgyz Criminal Code), crime of spiritual and ethical individual integrity (Articles 166-171 of the Kyrgyz Criminal Code), crime against individual human liberty (Articles 172-175, part two of Article 176 of the Kyrgyz Criminal Code), crime against interest of minors and the ways of family relations (Articles 177-180, 182-184 of the Kyrgyz Criminal Code), crimes against political and other human rights (Article 192, Articles 194-196 of the Kyrgyz Criminal Code), crime against property (Article 198-208 of the Kyrgyz Criminal Code), crime against public security (Articles 249-253 of the Kyrgyz Criminal Code), crime against safety in industry, construction or ultra-hazardous activity (Articles 254-259 of the Kyrgyz Criminal Code), crime against public order (Articles 261, 262 of the Kyrgyz Criminal Code), crime against environmental safety and natural environment (Articles 279-291 of the Kyrgyz Criminal Code), crime against traffic safety and maintenance of transport vehicles and trunk pipelines (Articles 292-299 of the Kyrgyz Criminal Code), crime against enforcement of judgments (Article 350 of the Kyrgyz Criminal Code) and crime against governance order (Articles 351-352 of the Kyrgyz Criminal Code), the pre-trial procedure shall be conducted by investigators of the police.

2. In cases of crime against public security (Articles 235-241, 247-248 of the Kyrgyz Criminal Code), crime against public order (Article 260 of the Kyrgyz Criminal Code), crime against information security (Articles 300-302 of the Kyrgyz Criminal Code), crime against the constitutional order and security of the state (Articles 303-314 of the Kyrgyz Criminal Code), crime against the order of governance (Article 353 of the Kyrgyz Criminal Code), crime against peace and security of humankind (Articles 375-382 of the Kyrgyz Criminal Code), the pre-trial investigation shall be conducted by investigators of the bodies of national security.

3. In cases of crime against health (Article 145 of the Kyrgyz Criminal Code), crime against political and other human rights (parts 2, 3 and 4 of Article 187, Article 197 of the Kyrgyz Criminal Code), corruption offenses and other crime against the interests of public and municipal services (Articles 315-326 of the Kyrgyz Criminal Code), crime against the judicial power (Articles 327-331 of the Kyrgyz Criminal Code), crime against the procedural rules of evidence (Articles 332-338, 342 of the Kyrgyz Criminal Code), crime against the order of governance

(Article 357 of the Kyrgyz Criminal Code), and crime committed by public officers, the pre-trial procedure shall be conducted by investigators of the offices of prosecution.

4. In cases of crime committed by conscripts, reserve servicemen and persons liable for military service (Articles 358 of the Kyrgyz Criminal Code), crime against subordination and service honor (Articles 359-369 of the Kyrgyz Criminal Code), crime against the rules of storage or use of army materiel (Articles 370-374 of the Kyrgyz Criminal Code), war crimes and other violations of law and customs of war (Articles 383-389 of the Kyrgyz Criminal Code), and crime committed by servicemen or drafted reservists, the pre-trial procedure shall be conducted by investigators of military prosecution offices.

5. In cases of crime against rules of economic activity (Articles 209-218 of the Kyrgyz Criminal Code), crime in monetary or foreign exchange area (Articles 220-222 of the Kyrgyz Criminal Code), crime in tax area (Articles 223-225, 227-228 of the Kyrgyz Criminal Code), crime against interests of service in commercial and other organizations (Articles 229-234 of the Kyrgyz Criminal Code) and crime against the order of governance (Articles 354-356 of the Kyrgyz Criminal Code), the pre-trial procedure shall be conducted by investigators of the agencies fighting economic crime.

6. In cases of crime against rules of economic activity (Article 219 of the Kyrgyz Criminal Code) and crime in tax area (Article 226 of the Kyrgyz Criminal Code), the pre-trial procedure shall be conducted by investigators of the agencies fighting economic crime or the police, and the customs.

7. In cases of crime relating to trafficking of narcotic drugs, psychotropic substances, their analogues or precursors (Articles 263-272 of the Kyrgyz Criminal Code) and crime against public health (Article 273-278 of the Kyrgyz Criminal Code), the pre-trial procedure shall be conducted by investigators of the Kyrgyz drug control agency, offices of the police, customs and national security.

8. In cases of crime against public security (Articles 242-246 of the Kyrgyz Criminal Code) the pre-trial procedure shall be conducted by investigators of offices of the police and national security.

9. In cases of crime against the interests of minors and the ways of family relations (Article 181 of the Kyrgyz Criminal Code) and crime against the procedural evidence rules (Articles 339-341, 343 of the Kyrgyz Criminal Code), the pre-trial production shall be conducted by investigators of the offices of prosecution, police, national security, of the agency fighting economic crime, customs, drug control, and the penitentiary system.

10. In cases of crime against enforcement of judgments (Articles 344-349 of the Kyrgyz Criminal Code), the pre-trial procedure shall be conducted by investigators of the offices of the police and the penitentiary system.

11. In cases of any offence committed inside a penitentiary institution, the pre-trial investigation shall be conducted by investigators of the offices of the penitentiary system.

12. In a combination of offences, qualified herein, that belong to different investigative jurisdictions, the jurisdiction is defined by the more grievous crime.

13. A criminal case which belongs in the jurisdiction of different authorities shall be referred to the agency that has initiated the pre-trial procedure.

14. No investigation in criminal cases outside jurisdiction shall be allowed, except in circumstances provided for in subpara 3, paragraph two, of Article 32 herein.

Article [159]. Place of the pre-trial procedure

1. The pre-trial procedure shall be conducted in the same district where the crime and/or misconduct has been committed. To ensure the highest promptness, objectivity and accuracy, the pre-trial procedure may be conducted at the location where the crime and/or misconduct has been discovered as well as at the location of the suspect, accused or most of the witnesses.

2. Having established the immediate jurisdiction of the case, the investigator must carry out the most urgent investigative actions, following which the case shall be handed over to the prosecutor who will refer it in accordance with its investigative jurisdiction.

3. In the event that investigative actions should be conducted in a different district, the investigator may perform them himself or entrust them to such district's investigator or the agency of inquiry. The investigator may delegate some of the investigative or detective actions to the agency of inquiry at the place of investigation or at the place where they are supposed to be conducted. The investigator's instructions should be executed within ten days.

Article [160]. Duration of the pre-trial procedure

1. The investigation in all cases of crime must be completed within two months of the notification of a person about suspicions of the committed crime.

2. The time allowed for the defense attorney and the accused to familiarize themselves with the criminal case file in circumstances set out in paragraphs four and five below, or by paragraphs two and three of Article 116 herein, shall be included in the total run of the investigation.

3. The duration of the investigation shall not include the time during which the investigation was suspended on the grounds provided for in this Code.

4. The duration of investigation specified in paragraph one above may be extended by the prosecutor of the region, prosecutor of the city of Bishkek or the city of Osh by up to six months.

In the event that the court should refer the case back to have investigative gaps rectified, or the case suspended or dismissed should be reopened, the duration of investigation shall be limited by the prosecutor responsible for overseeing investigations, by up to one month from the time when the case was referred to him. Any further prolongation of the investigation shall be subject to general rules.

5. In the cases where the investigation may be particularly complex, the duration can be extended to up to nine months by the deputy Prosecutor General of the Kyrgyz Republic, and in exceptional circumstances, such prolongation shall be granted by the Prosecutor General of the Kyrgyz Republic, but for no more than one year.

6. Should there be a need to extend the duration of the investigation, the investigator is to compile a reasoned ruling on the matter, and present it to the relevant prosecutor within seven days prior to the expiration of the period of investigation.

7. The period of inquiry into cases of misconduct may not exceed twenty days from the date of notification of a person about suspicions of the alleged misconduct.

Article [161]. Investigation by an investigative team

1. Whenever criminal investigation is complex or large-scale, it may be assigned to a group of investigators (an investigative team), and a separate ruling is then made. The ruling must list all investigators assigned to the investigation, including the lead investigator who shall be responsible for the investigation and guide the work of the other investigators.

2. The victim, civil claimant, civil defendant, suspect, accused and their representatives must be familiarized with the ruling assigning the investigation to an investigative team, and they should be made aware of their right to challenge any of the investigators in the team.

Article [162.] Authority of the lead investigator

1. The lead investigator shall accept the criminal case for investigation, and ensure personal guidance over the investigation, relying on his authority as an investigator, organize the work of the investigative team, and make decisions on the criminal case.

2. The decision to join or divide cases; issue motions to have the investigation period extended, allow restrictive measures of custody, home arrest or bail; issue motions requesting extension of custody or home arrest, suspend or resume the procedure, shall only be made by the lead investigator.

3. The rulings of indictment and committal of the case to trial shall be drafted by the lead investigator.

Article [163.] General rules for conducting investigative actions

1. Proceeding to the performance of investigative actions as envisaged by the law, the investigator, or the authorized officer of the agency of inquiry, shall establish the identity of the participants in investigative actions, inform them of their rights and duties, and the relevant procedure for such actions.

2. No investigative actions can be allowed at night time, except in most pressing circumstances.

3. During investigative actions, technical devices and scientifically proven methods of detection, registration and collection of traces of crime and exhibits can be used.

4. During the investigative actions, it is prohibited to resort to violence, threats or other illegal means or else endanger life or the health of those who participate in them.

Article 164. The duty to explain and safeguard the rights of participants in criminal proceedings

The investigator, or the authorized officer of the agency of inquiry, must explain to the suspect, accused, victim, civil claimant, civil defendant and their representatives, as well as to other persons participating in investigative actions, their rights and ensure the exercise of such rights in the pre-trial procedure. At the same time he must explain the duties that they have, and consequences of the failure to perform them. The explanation of rights and duties to persons listed above shall be acknowledged with their relevant signatures.

Article 165. Non-disclosure of the investigation's information

1. Data obtained during the criminal investigation may not be disclosed.

2. The investigator shall warn the witness, victim, defense attorney, civil claimant, civil defendant and their representatives, forensic expert, specialist, interpreter, attesting witnesses and other persons present during investigative actions about the non-disclosure of investigation data, and may require that they make a signed acknowledgement of the warning of liability.

3. In cases related to state secrets, the lawyer for the defense shall be warned about non-disclosure of data that constitute state secrets, which he shall acknowledge with his signature. Data that constitute state secrets must be clearly identified and isolated from non-secret ones.

Article 166. Participation of a specialist

1. The investigator, or the agency of inquiry, may summon to an investigative action a specialist with no interest in the outcome of the case. The summons by the above officers shall be compulsory for the head of the institution where such specialist is employed.

2. Before the investigative action begins, the authorized officer of the agency of inquiry shall confirm the identity and qualifications of the specialist, clarify such specialist's relation to the suspect, accused or victim, if any. The investigator shall inform the specialist of his rights and duties as specified by Article 58 herein, and warn him about liability for refusing or avoiding his duties, which is duly recorded in the investigative action protocol, countersigned by the specialist.

Article 167. Participation of an interpreter

1. In circumstances provided for herein, the authorized officer of the agency of inquiry must retain an interpreter for interviews or other investigative actions.

2. Before the investigative action can begin, the authorized officer of the agency of inquiry shall inform the interpreter of his rights and duties provided for by Article 59 herein, and warn him of the liability established by this article for avoiding his duties and about the criminal

liability for a deliberately incorrect translation, which is duly recorded in the investigative action protocol, countersigned by the interpreter.

Article 168. Participation of attesting witnesses

Investigative actions, in circumstances provided for by this Code, shall be conducted in the presence of at least two attesting witnesses who shall be summoned to certify the fact of such investigative actions, their course and outcome.

Before the investigative action can begin, the investigator, or the authorized officer of the agency of inquiry, shall inform the attesting witnesses of their rights and duties provided for in Article 60 herein.

Chapter 22. The investigative action protocol

Article 169. General requirements to the investigative action protocol

1. The investigative action protocol shall be drawn up in the course of such investigative action or immediately after its completion.

2. The protocol can be drawn by hand, or typed on a type-writer, or produced with a computer. To ensure completeness of the protocol, shorthand, filming, photographing, audio and video recording can be used. The verbatim report, photographs, audio and video records shall be kept with the case file.

3. The protocol shall indicate: location and date of the investigative action, the beginning and end time, the position and name of the officer who has compiled the protocol, the full name of each person who assisted the investigative action, and their addresses, if necessary. The protocol will describe the procedural actions in the exact order of sequence, the important facts of the case identified during the procedure, and any statements by the persons who participated in the investigative action.

4. Should the investigative actions be accompanied by photographing, filming, video and audio recording, or casts or prints of traces made, or drawings, diagrams and plans drafted, the protocol should, in addition, list the technical devices used to produce the relevant investigative action, the conditions and manner of their application, items to which such devices were applied, and the results obtained. Besides, the protocol must indicate whether, prior to using such technical devices, the persons involved in the investigative actions have been duly informed about them.

5. The protocol shall be made available for familiarization to all persons who were involved in the investigative action. They shall be made aware of their right to offer comments which must be entered in the protocol. All comments entered in the protocol, as well as additions and corrections, must be discussed and certified by the relevant signatures of such persons.

6. In the event that the defense attorney should be recalled during the investigative action procedure, a relevant entry shall be made in the protocol of the said investigative action.

7. The protocol shall be signed by the investigator, the authorized officer of the agency of inquiry, the interviewee, the interpreter, the specialist, the attesting witnesses, the defense attorney and the other persons involved in the investigative action procedure. In the event of a refusal to sign or the impossibility of having the investigative action protocol signed, that fact is recorded in compliance with Article 170 herein.

8. The protocol should have attached to it photographic negatives and photographic prints, films, transparencies and audio records of the interrogation, video cassettes, drawings, plans and diagrams, and casts and prints of traces produced during the investigative action.

9. In the event that in the course of the investigative action procedure the specialist should produce an official document based on the results of the examination done, it shall be attached to the protocol, with a relevant entry therein.

10. Should there be reasons to believe that it might be necessary to ensure the safety of the victim, his representative, witness and their families, the investigator shall have the right not to

list details of their identities in the protocol of the investigative action in which the said victim, his representative or the witness are involved. Should that be the case, the investigator must issue a ruling detailing the reasons for his decision to keep in confidence personal details of the participants in the investigative action, indicating a pseudonym and a specimen of the signature, which will be used in the protocol of investigative actions involving such person. The ruling shall be placed in a sealed envelope, and its contents shall be made known, apart from the investigator, only to the supervisory prosecutor and the judge.

Article 170. Certifying the fact of refusal to sign or impossibility of having the investigative action protocol signed

1. Should the suspect, accused, witness or another person refuse to sign the investigative action protocol, a relevant entry shall be made in the protocol, countersigned by the person who has conducted the investigative action.

2. The person who refuses to sign the protocol should be given an opportunity to explain the reasons for his refusal, which are recorded in the protocol.

3. In the event that the suspect, accused, victim or the witness, for reasons of their physical disability or health condition, should be unable to sign the interrogation protocol, it may be signed at his request by his defense attorney or representative, or else the investigator should call in an outside person who, with the consent of the person interrogated, shall certify the accuracy of the record with his signature. Such protocol is also to be signed by the investigator, or the authorized officer of the agency of inquiry, who conducted the interrogation. Should, for any of the above reasons, one of the persons listed above be unable to sign the investigative action protocol, a relevant entry is made in the protocol, countersigned by the investigator.

Chapter 23. View

Article 171. Grounds for and general rules of the view procedure

1. For purposes of immediate location, detection and recording of various material items and traces thereon, as well as elucidating the setting of the scene and establishing other circumstances relevant to the criminal case, the investigator, or the authorized officer of the agency of inquiry, shall conduct the view of the scene, locality, dwelling or other premises, items, documents, postal and telegraphic correspondence, living persons, dead bodies, and animals.

2. If necessary, the victim, suspect, defendant, witness and the defense attorney may be asked to attend the view. To get assistance on issues that require special knowledge, the investigator may call in specialists from various areas of knowledge to take part in the view.

3. Inquiry officers must render assistance to the view and, at the instruction of the investigator or the authorized officer of the agency of inquiry, take necessary steps to secure the scene, identify eye witnesses, detect and apprehend persons who committed the crime or act of misconduct, or to arrange for hot pursuit of the suspects, evacuate the victims, carry away the bodies, disrupt the continuing crime or prevent any repeated crime, and manage other consequences of the incident.

4. Should it be impossible for the investigator to arrive promptly to the scene, the view, in accordance with his instructions, may be conducted by an officer of the agency of inquiry that was the source of the complaint or report.

5. The view of the dwelling and other premises, privately owned or subject to other rights, can only be conducted with the consent of the dwellers or subject to a court ruling. Should such dwellers be underage or have known mental or other grave illnesses, or else object to the view, the investigator shall issue a ruling on performing a compulsory view subject to a court order. Should the permission be refused, no view can be conducted.

6. If such dwellings or other premises, privately owned or subject to other rights, are the scene of an incident, and their view should be conducted promptly, it may be done so subject to

the ruling by the investigator, or the authorized officer of the agency of inquiry, without a relevant court order. Should that be the case, the investigator, or the authorized officer of the agency of inquiry, shall, in accordance with the established procedure, within 24 hours of the start of the view, inform the judge, the prosecutor and the respective head of the investigative authority, or the agency of inquiry, about the investigative action thus conducted. The notification shall enclose copies of the investigative action ruling and the investigative action protocols, enabling to validate the lawfulness of the decision to conduct the investigative action. Having received the notification, the judge shall, within 24 hours and following the procedure stipulated in Article 143 herein, validate the lawfulness of the investigative action thus conducted, and issue his finding of the lawfulness or lack thereof. Should the judge find the investigative action as conducted unlawful, any evidence obtained in the course of such investigative action shall be deemed inadmissible pursuant to Article 82 herein.

7. During the view of the dwelling, the presence of an adult dweller must be ensured. Should it be impossible to ensure such presence, representatives of the local executive authority shall be called in.

8. Premises of an organization shall be viewed in the presence of a representative of the respective organization's administration. Should it be impossible to ensure such presence, a relevant record is made in the protocol.

9. Any view of the dwellings occupied by diplomatic missions, or else dwellings where members of diplomatic missions and their families reside, may only be conducted at the request, or with the consent, of the head of the diplomatic mission, or his alternate, and in his presence. The consent of the diplomatic representative shall be sought through the Ministry of Foreign Affairs of the Kyrgyz Republic. It is mandatory that the view is conducted in the presence of the prosecutor and a representative from the Ministry of Foreign Affairs of the Kyrgyz Republic.

10. Traces of crime and other items detected shall be viewed at the scene of the investigative action, and in the event that such action requires longer time, or the view in situ is complicated, the items shall be seized, packed, sealed, certified with the signatures of the investigator, or the authorized officer of the agency of inquiry, and the attesting witnesses at the scene of the view, and taken to another place suitable for viewing. Only those items may be seized that have any relevance to the criminal case. Should that be the case, the protocol of the view shall detail, if possible, individual properties and distinguishing features of the items thus seized.

11. Everything detected and seized must be shown to the attesting witnesses and other participants in the view, and a relevant entry made in the protocol.

12. Persons assisting in the view may draw the attention of the investigator, or the authorized officer of the agency of inquiry, to anything that, in their opinion, may facilitate in clarifying the circumstances of the case, and they should also have the right to make statements which should be recorded in the protocol of the view.

13 The investigator, or the authorized officer of the agency of inquiry, may prohibit anyone from leaving the scene of the view before it is finished, or make any other actions interfering with the view.

Non-compliance with these requirements shall be prosecuted under the law.

14. During the repeat as well as the initial view, the items shall be thoroughly inspected, complete with all traces detected thereon.

A repeat view of the same item may be conducted in the following circumstances:

1) whenever the prosecutor, or the head of the investigative agency, has issued a written, mandatory instruction to the investigator to conduct the view. The investigator's failure to agree with such instruction shall not suspend the required performance under it;

2) whenever the conditions during the initial view were unsatisfactory for an effective perception of the item;

3) whenever new evidence has been obtained after the initial view;

4) if the initial view has not been conducted properly;

5) if the criminal case has been transferred from one investigator to another.

15. If, for any reason, certain parts of the scene, traces or material evidence have been left unexamined during the initial view, or have not been examined sufficiently enough, however the initial view on the whole has been conducted properly, an additional view shall be conducted.

Article 172. View of material evidence

1. Items detected during the view of the scene, locality or premises, seized during the search, seizure, crime re-enactment or other investigative actions, or else surrendered at the request of the investigator or the authorized officer of the agency of inquiry by organizations or individuals, shall be subject to the view pursuant to provisions of Article 171 above.

2. Following the view, pursuant to the provisions herein, the above items may be ruled as material evidence.

The fact that an item is deemed material evidence and deposited with the case file shall be recorded by the investigator, or the authorized officer of the agency of inquiry, in a relevant ruling, which must also address the issue whether such exhibit shall remain deposited or handed over for keeping to its owner or to other persons or organizations.

3. The procedure for the seizure, recording, safe-keeping and transfer of criminal exhibits shall be laid down by the investigator, or the authorized officer of the agency of inquiry, pursuant to Article 88 above.

Article 173. View of a dead human body

1. The investigator shall perform the view of the dead human body at the scene of its discovery, pursuant to the general rules of the view and assisted by the forensic medical expert, or, in the event that his presence cannot be arranged, by another doctor. Should it be necessary, other specialists may be called in to perform the view of the dead human body.

2. The visual inspection of a dead human body may not substitute for or exclude any subsequent request for and performance of a forensic medical examination.

3. Unidentified corpses must be photographed, finger-printed, and specimens of their tissues collected, for a subsequent forensic study.

4. Should there be a need for additional or repeat view of a dead human body, the presence of a forensic doctor shall be mandatory.

5. Any statements made by individuals identifying the dead body during the view of the corpse, shall be entered in the protocol of this investigative action, to be followed up with an interrogation of such individual as a witness, which shall not rule out any subsequent production of the body to other persons for identification.

Article 174. Examination

1. For purposes of detecting any distinguishing marks, traces of crime or bodily injuries on the human body, or establishing the degree of intoxication, or other properties or features relevant to the criminal investigation, unless it requires a forensic examination, the suspect, defendant, victim and also the witness may be subjected to examination with their consent, except when such examination is required to establish the truth of their statements.

2. For such examination to be conducted, the investigator, or the authorized officer of the agency of inquiry, shall issue a ruling which shall be compulsory for the person being examined. Such ruling shall detail the grounds for conducting such investigative action, its purpose and the identity of the individual who will be subjected to examination.

3. In the event that the person should refuse to comply with the examination, a compulsory appearance and compulsory examination may be enforced. However, no actions endangering such person or demeaning his dignity should be allowed.

4. The examination shall be conducted by the investigator or the authorized officer of the agency of inquiry. Whenever needed, the investigator, or the authorized officer of the agency of inquiry, shall invite a doctor or another specialist to assist in the examination.

5. During the examination of a person of the opposite sex, should it require for such

individual to be exposed, the investigator, or the authorized officer of the agency of inquiry, shall not be present. Should that be the case, the examination shall be conducted by a doctor.

6. Any photographing, video-recording or filming in circumstances detailed in paragraph five above, shall be conducted with the consent of the individual being examined. Images, demonstration of which may be deemed as insulting for the person examined, shall be kept sealed and may only be produced to the court during the trial.

7. The investigator, or the authorized officer of the agency of inquiry, shall record the procedure of the examination in the protocol complying with the requirements herein and in Article 169 of this Code.

8. The protocol shall describe all actions performed by the investigator, or the authorized officer of the agency of inquiry, as well as any properties or features discovered during the examination of the person in the exact sequence in which the view and examination were conducted and in the exact state in which things discovered were observed at the time of the view and examination.

Chapter 24. Exhumation

Article 175. Grounds for exhumation

1. The recovery of a human body from the place of its burial (exhumation) shall be conducted when it is needed to:

- 1) conduct an examination (also an additional or repeat examination) of the buried body;
- 2) produce the human body for identification;
- 3) obtain specimens of tissues, or organs, or parts of the corpse needed for the forensic study, including additional and repeat study;
- 4) establish other circumstances materially relevant to the criminal case.

2. The exhumation shall be conducted subject to a reasoned ruling by the investigator, or by a court order.

Article 176. Procedure for exhumation

1. Whenever it is needed to recover the corpse from the place of its burial, the investigator shall issue an exhumation order and notify the close relatives or relatives of the dead person. The ruling shall be compulsory for the administration at the respective place of burial. In the event that the close relatives or relatives of the dead should object to the exhumation, the permission to hold it shall be issued by the court and shall not be subject to appeal.

2. The motion to grant permission for exhumation is examined, as a rule, by a single examining magistrate, without the participation of the parties, within the time limit set by the law and counted from the time when the case materials have been filed with the court. Should it be required to examine the circumstances relevant to a lawful and reasonable ruling, the examining magistrate shall call a hearing with the participation of relevant persons and the prosecutor.

3. Having considered the motion and the submissions, the examining magistrate shall issue a ruling either authorizing or refusing exhumation, which shall be handed over to the prosecutor or the investigator who has issued the exhumation order, to follow.

4. The exhumation shall be conducted by the administration of the place of burial in the presence of a forensic medical specialist and, if required, other specialist.

5. The identification and examination of the human remains and collection of tissue specimens may be conducted at the site of exhumation, or they may also be transferred to a medical institution for other studies.

6. The course and outcome of the exhumation shall be recorded in the protocol which shall be drawn up pursuant to the requirements in Article 169 herein.

The protocol shall include:

- 1) date, time and place of the investigative action conducted;
- 2) the full name of the investigator conducting the exhumation;
- 3) the position and the full name of the forensic medical specialist who assisted in the exhumation;

4) the full name, year, month, day and place of birth, and the residential addresses of the close relatives or legal representatives of the dead who were present;

5) details of other persons present during the exhumation;

6) an entry noting photographing, the use of audio or video recording or filming equipment or other technical recording devices, if any;

7) the full name of the buried person, the date of death, and everything discovered during the exhumation in the exact sequence of discovery;

8) comments by the persons participating in the investigative action;

9) the name of the institution to which the exhumed human body and any other items relevant to the case discovered during this investigative action have been transferred.

7. The exhumation protocol shall be signed by all participants in the investigative action. In the event that the protocol should consist of several pages, the participants in the investigative action shall sign each page.

Should photographing, video-recoding or filming be used or other technical recording devices utilized, photographic images, films or other media shall be attached to the protocol.

8. In the event that the identification or inspection of the body or collection of specimens should be conducted elsewhere, a separate protocol shall be drawn up.

9. After the exhumation and subsequent procedures, the body shall be buried by the administration of the place of burial in the presence of the person who has ordered the exhumation to take place. The burial of the human body shall be recorded in a protocol.

10. The costs of exhumation and subsequent reburial of the body shall be paid for by the relative of the dead pursuant to the provisions of Article 125 above.

Chapter 25. Forensic inquiry

Article 177. Grounds for a forensic inquiry

1. A forensic inquiry shall be appointed in cases where circumstances relevant to the case may be established through the examination of the materials by a forensic expert based on specialist scientific knowledge. Similar knowledge available to other persons participating in the criminal procedure shall not excuse the investigator or the authorized officer of the agency of inquiry from the need to order, in relevant circumstances, a forensic inquiry.

No forensic inquiries to elucidate any legal aspects of the case shall be allowed.

2. The forensic inquiry must be requested and conducted whenever in the criminal case in question it is required to establish:

1) the cause of death;

2) the nature and degree of the injury to health;

3) mental or physical state of the suspect or accused should there be doubts as to his sanity or capacity to safeguard his own rights and legitimate interests in the criminal process;

4) mental or physical state of the victim or witness should there be doubts as to his ability to perceive correctly the circumstances relevant to the criminal case and give testimony;

5) the age of the suspect, accused or victim, if it is relevant to the criminal case, but the documents certifying age are missing or suspicious;

6) should there be doubts as to the mental state of the persons suspected in or accused of a criminal offence for which the Criminal Code of the Kyrgyz Republic establishes the maximum length of custodial sentence;

7) other circumstances which cannot be reliably established with other evidence.

3. The compulsory appearance for purposes of forensic medical or psychiatric examination shall be conducted on the basis of the examining magistrate's order.

4. Whenever required, pursuant to paragraph seven of Article 101 and paragraph 13 of Article 117 herein, a forensic medical examination of the suspect or the accused may be conducted, subject to the investigator's ruling or the order of the examining magistrate, by forensic experts of both public and non-public forensic institutions.

Article 178. Procedure for appointing a forensic inquiry

1. Having found the need to appoint a forensic inquiry, the investigator, or the authorized officer of the agency of inquiry, shall issue a relevant ruling, or, in the cases stipulated in this Code, make a motion to the court indicating:

- 1) the name of the authority that appointed the forensic inquiry;
- 2) type of forensic inquiry;
- 3) grounds for appointing the forensic inquiry;

4) items to be submitted to the forensic inquiry with the information about their provenance, together with the permission to have such items fully or partially destroyed or their appearance or basic properties corrupted during the forensic study;

5) the full name of the forensic expert or the name of the forensic institution which is to handle such forensic inquiry;

6) questions posed to the forensic expert.

2. The ruling by the investigator, or the authorized officer of the agency of inquiry, appointing the forensic inquiry shall be compulsory for compliance by the authorities or persons to whom it is addressed and in whose jurisdiction it falls.

3. The forensic inquiry shall be conducted by public forensic experts, forensic experts out of the number of persons with specialist knowledge or belonging to private forensic institutions.

4. Forensic inquiry can be entrusted to:

1) employees of a public forensic institution or specialized units of law enforcement bodies authorized to carry out relevant forensic inquiries;

2) persons engaged in forensic activities and with relevant qualifications;

3) on a one time only basis, subject to the order of the investigator or the court, in the manner and subject to such terms and conditions as provided for by law;

4) a person with special competences, out of the number of such persons suggested by the parties to the process, including those who are not nationals of the Kyrgyz Republic.

5. The summons by the investigator, or the authorized officer of the agency of inquiry, of the person who is to be charged with the forensic inquiry, shall be compulsory for the head of the institution that employs such person.

6. The investigator, or the authorized officer of the agency of inquiry, shall acquaint the suspect or accused and his defense attorney with the order requiring a forensic inquiry, and explain their rights under Article 180 herein. It shall be recorded in a protocol signed by the investigator and the persons who have been acquainted with the ruling.

7. Forensic inquiries with respect to the victim, except in cases stipulated in Article 177 herein, and with respect to the witness shall be conducted with their consent or consent of their legal representatives, which such persons shall give in writing.

8. A forensic inquiry may be requested at the motion of the parties to the process defending their own rights and interests or those of their charges. Parties to the process that are defending their own rights and interests, or those of their charges, shall submit to the investigator in writing the questions which, as they believe, should be addressed by the forensic expert; the list the items to be examined, and name the person (persons) who could be invited to serve as a forensic expert. In such a case, the investigator may not refuse a forensic inquiry, except when questions submitted to him seeking his permission, have no relevance to the criminal case or the scope of the forensic inquiry.

(9) The party to the process that has made a motion to have a forensic inquiry held may submit any items or documents to be targeted by the forensic examination.

The investigator shall have the right to exclude them from the scope with a reasoned ruling.

10. Having considered the questions posed, the investigator, or the authorized officer of the agency of inquiry, shall decline those that have no relevance to the criminal case or misconduct, or the scope of the forensic inquiry; establish whether there are grounds to challenge the forensic expert, and then makes a ruling appointing the forensic inquiry pursuant to the requirements listed in paragraph one above.

11. The investigator, or the authorized officer of the agency of inquiry, shall make sure that the suspect, accused, victim or the witness are brought to the forensic expert, should their presence at the time of the forensic inquiry be deemed necessary.

12. In the event of statements alleging injuries and/or violence, that is torture and cruelty, the forensic inquiry should be conducted within 24 hours, with photographing or video-recording to ensure availability of relevant exhibits in the case.

13. Subject to a motion by the defense requiring a forensic expert opinion, on the basis of a contract and at the expense of the petitioning party, the forensic inquiry shall be conducted provided only that there should no need to requisition the items to be examined from the pre-trial authority responsible for the criminal case in question. Should that be the case, the defense attorney shall make a motion to the examining magistrate in compliance with the provisions of Article 181 herein.

14. The fact that the defense attorney made a motion requesting forensic inquiry subject to paragraph 13 above shall be communicated at the same time to the investigator who is responsible for the pre-trial procedure, who, if necessary, may pose additional questions to the forensic expert. The reported prepared by the forensic expert, based on the examining magistrate's ruling on the motion of the defense, shall be drawn in two duplicates, one of which is made available to the investigator who is conducting the pre-trial procedure in the case.

15. In the event that forensic studies should require a large volume of raw data about the circumstances of the incident or the identity of the person studied forensically, the investigator, or the authorized officer of the agency of inquiry, may make available to the forensic experts such materials of the criminal case, or the act of misconduct, that are relevant to the scope of the forensic inquiry.

Article 179. The presence of the investigator during the forensic inquiry

1. The investigator may be present during the forensic inquiry, except for forensic studies of live humans, and obtain clarifications from the forensic expert about his actions.

2. The investigator may not be present when the expert is drawing up the report, as well as at the stage of forensic experts' meetings and discussion of conclusions, whenever the forensic inquiry is conducted by a team of experts.

3. The fact of the investigator's presence during the forensic inquiry shall be reflected in the introductory part of the forensic expert opinion.

Article 180. Rights of the suspect, victim, witness, defense attorney and the victim's representative with respect to the appointment and performance of a forensic inquiry.

1. During the appointment and performance of the forensic inquiry the suspect, accused, defense attorney, victim and his representative shall have the right to:

1) familiarize themselves with the ruling on forensic inquiry;

2) challenge the forensic expert or petition to recuse the forensic institution from the forensic inquiry, should circumstances come to fore that put in doubt the lack of interest in the outcome of the forensic inquiry on the part of the forensic institution where the knowledgeable person is employed;

3) file a motion requesting to appoint, as forensic experts, the individuals as listed or specialists of specific forensic institutions, and to have the forensic inquiry conducted by a panel of experts;

4) file a motion requesting to incorporate, in the forensic inquiry ruling, some additional questions for the forensic experts or clarify the ones already included;

5) be present, with the permission of the investigator, during the forensic inquiry and provide explanations to the forensic expert;

6) be acquainted with the forensic expert's report or with the communication stating impossibility to draw a conclusion, and with the protocol of interrogation of the forensic expert.

2. The witnesses subjected to the forensic inquiry shall have the right to familiarize themselves with the forensic expert's report.

3. The forensic evaluation of the victims and witnesses as well as the person who suffered from the crime shall be conducted only with their consent in writing. In the event that they may not be of age or have been ruled incompetent by the court, the written consent to have the evaluation conducted shall be issued by their legal representatives. This rule shall not apply to the forensic inquiry conducted in cases stipulated by Article 177 herein.

4. Parties to the process present at the forensic inquiry may not interfere with the course of examinations, but may offer explanations pertaining to the scope of the forensic inquiry. Should any of the party to the process present at the forensic inquiry be interfering with the work of the forensic expert, the latter may suspend the examination and file a motion with the investigator asking him to withdraw the permission given to such party to the process to be present at the forensic inquiry.

5. Forensic psychiatric and forensic psycho-psychiatric evaluation shall be conducted on conditions of confidentiality.

6. During the forensic examination of a person when his body is to be exposed, only persons of the same sex can be present. This restriction does not apply to doctors or other medical workers present during such examinations.

7. When the expert is drawing up the opinion, as well as at the stage of forensic experts' meetings and discussion of conclusions, should the forensic inquiry be conducted by a team of experts, the parties to the process may not be present.

8. Should the motion submitted by persons indicated in paragraphs one and two above be granted, the investigator shall modify or amplify accordingly his forensic inquiry ruling. If the motion is not granted, he shall issue a reasoned ruling which is read to the petitioning person, with his signed acknowledgement.

Article 181. Consideration by the examining magistrate of the motion to appoint a forensic expert for the forensic inquiry

1. In the event that the investigator should refuse to grant the motion by the defense to appoint a forensic expert for a forensic inquiry, the applicant may make the relevant motion requesting the forensic expert to the examining magistrate.

2. Such motion shall state:

1) the circumstances of the criminal case to which the motion pertains;

2) the qualification of the crimes (listing paragraphs of the article) of the Kyrgyz Criminal Code;

3) the list of circumstances that are used to substantiate the arguments of the motion;

4) the name of the forensic expert to be invited, or the forensic institution which should be charged with the forensic inquiry;

5) the type of forensic examination required, and the list of questions to be posed to the forensic expert;

6) the motion should have attached to it: 1) copies of the materials substantiating the arguments in the motion; 2) copies of documents proving that the defense is in fact unable to retain a forensic expert of its own.

3. The motion shall be considered by the examining magistrate with the territorial jurisdiction over the investigation, within three days of the submission. The petitioning party shall be informed of the place and time of the hearing, however, its failure to attend shall not prevent this motion from being heard, except when the assistance of such person is deemed necessary by the examining magistrate.

4. Should the examining magistrate find that the motion has been submitted in violation of paragraph two above, the motion shall be returned to the applicant, with the respective ruling issued.

5. During his review of the motion, the examining magistrate shall have the right, at the

petition of the parties to the hearing or at his own discretion, to hear from any of the witnesses or examine any materials that may be relevant to the hearing of the motion.

6. During his review of the motion, the examining magistrate shall have the right to entrust, with his ruling, the forensic inquiry to a forensic institution, forensic expert or private forensic expert, provided the petitioning person has proved that:

1) a forensic expert is required to resolve issues that may be materially relevant to the criminal case, but such person is not in a position to retain a forensic expert on his own due to lack of funds or for any other good reason;

2) the questions posed to the forensic experts by the prosecution do not allow for a complete and proper conclusion on issues which the forensic inquiry is to elucidate;

3) there are sufficient reasons to believe that the forensic expert retained by the prosecution, due to his lack of knowledge, bias or for other reasons, will offer or has offered an incomplete or wrong conclusion.

7. The ruling made by the examining magistrate appointing a forensic inquiry shall list the questions posed to the forensic expert by the person who has made a respective motion. The examining magistrate may exclude questions which are not relevant to the criminal process or the answers which are not relevant to the trial, having reasoned his decision in the ruling.

8. Should it be deemed necessary, when granting the motion to retain a forensic expert, the examining magistrate may address the issue of obtaining specimens for the forensic examination subject to the provisions of Article 190 herein.

9. The report by the forensic expert retained by the examining magistrate shall be made available to the person who asked to have him retained.

10. Reviewing a motion by the defense attorney asking to appoint the forensic inquiry to be conducted at the his request, subject to a contract and at the expense of the parties concerned, the examining magistrate shall issue a ruling which will entrust forensic inquiry to the forensic experts as indicated in the motion by the defense.

11. The motion by the defense attorney shall detail: the circumstances of the criminal case to which the motion pertains; qualification of the crime; the name of the expert (including a private forensic expert) who must be retained, or a forensic institution; the type of the forensic inquiry needed, and the list of questions to be posed to the forensic expert.

12. In the case of allegation of torture or other inhuman treatment, the examining magistrate shall, within 24 hours, order an official forensic medical examination of the victim, and the examination shall be conducted by a qualified doctor. Should it be the case, the suspect, victim or witness must be ensured access to an independent and non-public forensic medical examination by a person or persons of his choice.

Article 182. Safeguards to rights and legitimate interests of persons subjected to forensic inquiry

1. During the forensic inquiry of living persons it is forbidden to:

1) deprive or restrict their rights guaranteed by law (including through deception, violence, threats or other unlawful actions) with the aim of getting information from them;

2) use such persons as targets for clinical tests of medical technologies, pharmaceutical and medicinal substances; and

3) apply any methods of examination that require surgical intervention.

2. The person subjected to a forensic inquiry must be made aware, in a comprehensible form, by the authority that ordered the forensic examination, of the forensic method to be used, including alternative ones, as well as of any possible painful feelings or side effects. This information shall be provided also to the legal representative of the person subjected to the forensic inquiry, at his request.

3. Medical assistance to the person subjected to a forensic inquiry may be provided only on the grounds and in the manner provided for by the law.

4. The person placed at the medical institution shall be given an opportunity to lodge

complaints or applications. Complaints and applications submitted in the manner provided for herein shall be forwarded by the administration of such medical institution to the addressee within twenty four hours, and may not be censured.

5. The forensic inquiry conducted in relation to the person with his consent may be terminated at any stage at the request of such person.

Article 183. Forensic inquiry conducted at a forensic institution

1. For purposes of a forensic inquiry conducted at the forensic organization the investigator, or the authorized officer of the agency of inquiry, shall submit to the head of such forensic institution the forensic inquiry ruling and the materials required for it.

2. In the event that the forensic inquiry should be appointed with the order of the examining magistrate, materials and items required therefor shall be provided by the investigator charged with the pre-trial criminal investigation, or the authorized officer of the agency of inquiry, to the head of the relevant forensic body.

3. When the forensic inquiry is conducted subject to the motion and at the request of the defense attorney on the base of a contract, the materials shall be provided by the parties.

4. Having received the ruling, the head of the forensic institution shall give instructions to conduct such forensic inquiry to a specific forensic expert or a team of forensic experts employed by such institution as listed in the ruling. If no specific forensic expert is named in the ruling, the choice of such forensic expert is made by the head of the forensic institution, of which the person who has requested the forensic examination shall be informed within three days. The head of the forensic institution shall also explain to the forensic expert his rights and responsibilities under Article 57 herein.

5. The head of the forensic institution shall have the right to do as follows:

1) having stated the reasons, return to the authority that requested the forensic inquiry, the unfulfilled forensic inquiry ruling and the items submitted for the examination, in the following cases: where the forensic institution does not have a forensic expert with the necessary specialist scientific knowledge; the equipment and conditions at such forensic institution do not allow the specific forensic tasks to be addressed; the questions posed to the forensic expert are beyond his competence; or the materials for the forensic inquiry have been submitted in violation of the requirements of this Code.

2) apply to the authority that requested the forensic inquiry for permission to incorporate in the forensic panel persons who are not employed by the relevant institution, provided their specialist scientific knowledge is needed for the forensic opinion. The head of the forensic institution shall also enjoy other rights stipulated by law.

6. The head of the forensic institution may not:

- 1) request on his own any items for the forensic inquiry;
- 2) involve in the process, without consent of the authority requesting the forensic inquiry, any persons who are not employed by the relevant forensic institution;
- 3) give the forensic expert any instructions that preempt his conclusions in the specific forensic inquiry.

7. The head of the forensic institution must:

1) upon receiving the forensic inquiry ruling and the forensic items, entrust the procedure to a specific forensic expert or a panel of forensic experts from the relevant forensic institution pursuant to provisions of Chapter 25 herein;

2) at the instruction of the person requesting the forensic inquiry, warn the forensic expert about the criminal liability for a deliberately false report or refusal to provide one, require from him a relevant signed acknowledgement and enclose it with such forensic expert's report.

3) without prejudice to the principle of independence of forensic experts, ensure proper control over the time allowed for the forensic inquiry, accuracy of the examination conducted, preservation of forensic items; keep in confidence any information that he came to know in the conduct of the forensic inquiry; and arrange for the conditions necessary for the studies.

Article 184. Forensic inquiry conducted outside a forensic institution

1. In the event that the forensic inquiry is to be conducted outside a forensic institution, the investigator, or the authorized officer of the agency of inquiry, prior to issuing the forensic inquiry ruling should satisfy himself about the identity of the forensic expert, whether he has got a “certification of competence” or the experience and qualifications in the area, establish his relationship with the accused, suspect, victims or the person who is subjected to the forensic examination, as well as find out if there are any grounds for challenging the forensic expert.

2. Having found out the information required, the investigator, or the authorized officer of the agency of inquiry, shall make a forensic inquiry ruling, hand it to the forensic expert, explain him his rights and duties under Article 57 herein and warn about the criminal liability for deliberately falsifying the report. The investigator, or the authorized officer of the agency of inquiry, shall make a relevant entry about his actions in the forensic inquiry ruling, which is acknowledged with the forensic expert’s signature.

3. The expert’s statements and motions shall be included in the forensic inquiry ruling. The person authorizing the forensic inquiry shall issue a reasoned ruling if any of expert’s motions are refused.

4. The expert’s (experts’) pleas requesting a possibility to get himself acquainted with the case file materials relevant to the scope of the forensic inquiry; any additional materials he may need to make his report; permission to be present during the interrogations and other investigative actions; and to pose to persons interrogated questions relating to the scope of his inquiry as important for accurate investigation and disposition of the case, must be granted.

5. The expert shall be entitled to return the ruling without compliance provided the materials as provided were not sufficient for a forensic inquiry to be completed, or if he believes that he is lacking the requisite knowledge to conduct it.

6. Whenever the forensic inquiry is to be conducted at the request of the parties, it shall be conducted pursuant to the requirements stipulated by paragraphs thirteen and fourteen of Article 178 herein.

Article 185. Committing persons to a medical institution for purposes of forensic inquiry

1. Whenever, for the authorization or completion of the forensic medical or forensic psychiatric examination, there is a need for an in-patient examination of the suspect or the accused, the person may be placed in a medical or psychiatric in-patient facility.

2. The suspect or the accused who is not in custody shall be committed to the medical or psychiatric in-patient department for the forensic medical or forensic psychiatric examination subject to a court order granted in the manner prescribed by this Code.

3. The stay at the medical or psychiatric in-patient facility that belongs to the health care system shall be treated as incarceration and hence counted towards the length of the court’s sentence, if any, which provides for deprivation of liberty.

4. The motion by the forensic expert or a team of experts requesting extension of the person’s stay at the medical in-patient facility must be filed with the court at the location of the in-patient facility no later than 3 days before the 30-day length of stay has expired. The judge must make his ruling and inform the expert, or the team of experts, thereof within 3 days from the day when their motion was received. Should the judge refuse to grant the extension of the stay of such person at the medical in-patient facility, the suspect or the accused must be discharged from it. The head of the medical facility has the duty to provide the notification of the motion made and the ruling issued by the judge to the person committed to the in-patient facility, his defense attorney, legal representative and the investigator that authorized the forensic inquiry.

5. The victim or the witness may only be committed to the medical facility with their written consent, except in cases stipulated in Article 177 herein. Should the person in question be

underage or else deemed by the court as incompetent, the written consent shall be granted by the legal representative. In the event of a refusal, or legal representative not being available, the written consent may be granted by bodies of trusteeship and guardianship.

7. The investigator or the court that authorized the forensic inquiry and committed the person to the medical in-patient facility in the compulsory manner must, within 24 hours, inform members of their families, relatives or other persons as instructed, or, in their absence, inform the local police authority at the place of residence.

Article 186. Panel inquiry

1. The panel inquiry shall be authorized in the event of the need to conduct sophisticated forensic examinations, and it shall be conducted by at least two experts of the same specialty.

2. The forensic psychiatric examination of the person's sanity shall be conducted by at least three experts.

3. The ruling by the investigator, or the authorized officer of the agency of inquiry, to have a panel forensic inquiry shall be compulsory for the head of the forensic institution. The head of the forensic institution may make his own decision to hold a panel forensic inquiry, based on the files provided, and to arrange for it to take place.

4. During the panel forensic inquiry, each of the forensic experts shall independently and separately conduct the entire forensic examination, based on the need to address the questions posed by it. The panel shall jointly analyze the data obtained and, having arrived at a common opinion, sign their report, or else a note stating that it has not been possible to form an opinion.

5. In case of a disagreement between the experts, each of them shall form his separate opinion, or else the expert, whose opinion runs counter to that of the rest of the panel, shall set out his dissenting opinion in the report.

Article 187. Comprehensive forensic inquiry

1. A comprehensive forensic inquiry shall be authorized whenever the circumstance relevant to the case can be established through studies based on disparate areas of knowledge and conducted by experts coming from different specialties within the limits of their competence.

2. The report of the comprehensive inquiry must indicate what study, and to what extent, each expert has conducted in his inquiries and what conclusions he has drawn. Each expert shall sign the relevant part of the report that sums up such studies.

3. Based on the outcome of the studies conducted by each of the experts, they will formulate a common conclusion (conclusions) on the circumstances which the forensic inquiry has been authorized to establish. The common conclusion (conclusions) shall be formulated and signed only by those experts who are competent to give an assessment of the results obtained. If the final conclusion by the panel, or part thereof, is substantiated by the facts established by one or more of the experts, it should be recorded in the report.

4. In cases of disagreement between the experts, each of them, or the expert who disagrees, shall form a separate opinion indicating which part of the study has been conducted by him personally, what facts he has established, and what conclusion he has reached and on what basis.

5. The comprehensive forensic inquiry requested from a forensic institution shall be arranged for by the head of such institution. The head of the forensic institutions has the right also to make his own decision, based on the materials submitted with the investigator's ruling, to hold a comprehensive forensic inquiry and arrange for it to take place.

Article 188. Additional and repeat forensic inquiry

1. The additional inquiry shall be authorized if there is a lack of clarity, or the conclusions to the report on the initial forensic inquiry are incomplete, or if the need arises to address new additional questions unrelated to the previous inquiry.

2. The additional forensic inquiry may be entrusted to the same or a different forensic expert.

3. The repeat forensic inquiry shall be authorized to study the same items and address the same questions whenever the previous report by the forensic experts has not been sufficiently substantiated, or its conclusions run counter to the actual circumstances and raise doubts as to their truth, if new data emerged which may affect the expert's conclusions, or else procedural rules, pertaining to the way the forensic inquiry has been authorized and conducted, have been violated significantly.

4. The ruling authorizing the repeat forensic inquiry must explain the rationale behind the disagreement with the outcome of the previous forensic inquiry.

5. The repeat forensic inquiry shall be entrusted to another expert or to a panel of experts. The experts (expert) who have conducted the previous forensic inquiry may be present at the repeat inquiry and offer explanations; however, they will not participate in the forensic examination or drafting of the report.

6. During the additional and repeat forensic inquiry the expert (experts) must be given access to the previous forensic reports.

7. In the event that the second and any subsequent inquiries should be based on several grounds, some of which pertain to the additional inquiry and others to the repeat forensic inquiry, such inquiry shall be conducted according to the rules of the repeat forensic inquiry.

8. During the additional or repeat inquiry, the exhibits and documents, with the permission of the institution and the person authoring the forensic inquiry, may be damaged or used up only to the extent to which it is required for purposes of the study and reporting. Such decisions must be recorded in the ruling or in the court order authorizing such forensic inquiry, or else in the relevant letter to the forensic expert.

Article 189. Targets of forensic inquiry

1. The forensic inquiry may be targeted at exhibits, documents, the body and the mental state of a human being; corpses, animals, specimens or any evidence of the criminal case relevant to the scope of the forensic inquiry.

2. The authenticity and admissibility of targets of the forensic inquiry shall be guaranteed by the agency that authorized the forensic inquiry.

3. Should their size and properties allow, targets of the forensic inquiry shall be handed over to the forensic experts packed and sealed. In all other cases, the person who has authorized the forensic inquiry must arrange for the transportation of the forensic expert to the location of the study targets, ensure his unhindered access to them and conditions necessary for the examination.

4. The rules of handling pertaining to forensic items shall be prescribed by the legislation of the Kyrgyz Republic.

Article 190. Grounds and procedure for the collection of specimens for a comparative examination

1. The investigator, or the authorized officer of the agency of inquiry, may obtain specimens reflecting properties of the living person, dead body, animal, plant, item, material or substance, if their forensic study is needed for the forensic expert to address the question posed to him.

2. Specimens shall be collected subject to a reasoned ruling indicating: the person who will be obtaining the specimens; the person (organization) from whom the specimens must be obtained; what specimens specifically and in which number should be obtained; when and where the person should come to have specimens collected from him; when and who should get the specimens after they have been collected.

3. Specimens can be obtained from the suspect, victim or from the person who is subject to an ongoing procedure for the compulsory measures of a medical nature. The ruling ordering collection of specimens shall be compulsory for the applicant and/or the victim. Specimens from the suspect, in case of a refusal, may be obtained in a compulsory procedure based on the court order.

4. Specimens from the witness may be obtained only with his permission, except when the

suspect insists on such action to validate some incriminating evidence, or if there is a need to obtain specimens to diagnose sexually transmitted or other infectious diseases, should such diagnosis be relevant to the investigation.

5. The compulsory collection of specimens from the applicant and/or victim, as well as the witness, in circumstances listed in paragraph four above, shall only be allowed with the sanction of the prosecutor or by court order.

6. The living human can provide specimens that reflect his distinct properties:

1) Biologicals: blood, hair, saliva, discharges; psychophysical: handwriting; anatomical: finger prints, cast dental models; voice patterns;

2) Physical specimens may be also obtained for studies during the examination of the dead body.

7. If there is enough evidence suggesting that traces at the scene of the incident or on exhibits could have been left by another person, specimens can be obtained from such person but only after he has been interrogated as a witness (victim) about the circumstances under which such traces could have appeared.

8. The investigator, or the authorized officer of the agency of inquiry, shall summon the person or arrive at the place where he can be found, acquaint him, against his signed acknowledgement, with the ruling or the court order received by him and requiring collection of specimens, inform this person or the specialist of his rights and duties, and address the issue of challenges, if any. Then, the investigator shall take the necessary steps and obtain the specimens for the forensic examination.

9. The investigator, or the authorized officer of the agency of inquiry, personally or, if needed, together with the doctor or other specialist, shall be entitled to obtain the specimens unless it requires the person of the opposite sex yielding the specimens to be exposed; and provided it does not require specific professional skills.

10. Whenever collection of specimens is part of the forensic examination, it may be done by the forensic expert.

11. The specimens may be obtained by the doctor or specialist, and for that purpose, the investigator shall refer the relevant person to them, together with the ruling ordering collection of specimens from such person. The issue of challenges, if any, against the doctor or another specialist shall be addressed by the investigator who has issued the ruling.

12. The doctor or another specialist shall conduct the necessary steps and obtain the specimens for the forensic examination, for which they may utilize scientific and technical means that do not inflict pain or pose danger to the human life or health. The specimens shall be packed, attested by the signature of whoever has collected these specimens, and delivered to the investigator charged with the case.

13. Specimens from a corpse shall be obtained during the examination and exhumation, respectively.

14. Specimens to be collected may include samples of raw materials, products or other materials that convey generic or individual physical or chemical properties of the substance.

15. In the process of examination, the forensic expert may manufacture experimental samples, and the fact shall be recorded in the report. The investigator may be present during the production of such samples, with the fact recorded in the resulting protocol. After the examination, the forensic expert shall enclose the samples with the report, packed and sealed.

16. Should there be a need to obtain specimens for study from animals, the investigator shall issue the relevant ruling to a veterinary doctor or another specialist.

17. Methods or scientific and technical means for the collection of specimens must be safe for the life and health of a human being. Sophisticated medical procedures or methods causing strong feelings of pain may be allowed only with the written consent of the person who is to yield the specimens, and if such person is underage or suffers from a mental disorder, it can only be done with the consent of his legal representatives.

18. The specimens obtained shall be packed and sealed, following which the investigator

shall send them, together with the protocol describing the collection of the specimens, to the relevant forensic expert, acknowledged with the signature of the person who has collected the specimens.

Whenever the specimens were collected by a court order, the investigator enforcing such order shall deliver the specimens to the court together with the relevant protocol. The court and the parties shall examine the specimens, ascertain their authenticity and integrity, following which the specimens, together with the respective ruling and protocol, shall be handed over to the relevant forensic expert.

Article 191. Protocol of collection of specimens

1. Having obtained the specimens, the investigator, or the authorized officer of the agency of inquiry, shall draw up a protocol indicating: the circumstances that prompted the need for the collection of specimens and the circumstances which require the examination; description of all steps taken to obtain the specimens in the sequence in which they were followed; any scientific research or other methods and procedures used, and the specimens themselves.

2. Whenever the specimens have been obtained through the instruction of the investigator, or the authorized officer of the agency of inquiry, by a doctor or another specialist, the relevant protocol drafted by him shall be signed by all those who participated in this procedure, and submitted to the investigator who is in charge of the case, to be included in the case file following the procedure set out by this Code. The protocol shall enclose the specimens obtained, packed and sealed.

Article 192. The contents of the forensic expert's report and the communication of the impossibility to form an opinion

1. Following the completion of necessary examinations, and based on their outcome, the expert (experts) shall compile, in his own name, a written report, certify it with his signature and personal stamp, and send it to the body that has authorized the forensic inquiry. Whenever the forensic inquiry is conducted by a forensic institution, the signature of the forensic experts (experts) shall be certified by such institution's stamp.

2. The forensic report shall indicate:

- 1) the day, time and place of the forensic examination;
- 2) the grounds for the performance of the forensic inquiry;
- 3) the officer who has authorized the forensic inquiry;
- 4) details of the forensic institution as well as the forensic expert or experts who have been charged with the forensic inquiry (the full name, specialty, length of service, scientific degree and title, and the position occupied);
- 5) the statement, acknowledged by the expert with his signature, warning him of the criminal liability for deliberately false report;
- 6) the questions posed to the expert or panel of experts;
- 7) the items for study (their condition, packaging, seal applied, and signatures of the attesting witnesses), and the experimental samples submitted for the forensic inquiry;
- 8) details of the persons present during the forensic inquiry;
- 9) substance and outcome of the examinations, listing the techniques used;
- 10) which of the questions posed, according to the expert, falls outside the limits of his specialist knowledge;
- 11) any circumstances established by the forensic expert which have not been covered by the questions posed;
- 12) conclusions drawn based on the questions posed to the expert, complete with the reasoning.

3. In the event that during the forensic inquiry the expert should find circumstances relevant to the case about which no question has been posed to him, he may explore them and offer an assessment in his report.

4. In the event of an additional forensic inquiry, the report should indicate: who, when, and in response to which questions, conducted the initial inquiry, and what was unclear or incomplete.

5. During the repeat inquiry, the introductory part of the report shall indicate the grounds (reasons) for its authorization, who conducted it, and the conclusions relating to questions that were formulated for the forensic experts for the second time. If the conclusions of the repeat forensic inquiry fail to support the previous conclusions by the experts, the report must indicate the outcome of the studies explaining the reasons for the difference in the experts' conclusions.

6. In the event that the forensic expert should find that the questions posed go beyond his specialist knowledge, or the materials made available to him are not fitting or insufficient for conclusions to be reached or may not be used, or else if the state of the art and forensic practices do not allow him to address the questions posed, he shall draw up a reasoned communication stating the impossibility of arriving at a conclusion, which he shall file with the authority or the person that authorized the forensic inquiry.

7. The materials illustrating the forensic report (photo-tables, diagrams, tables and other materials) authenticated in the manner stipulated by paragraph one above, shall be enclosed with the report and deemed a constituent part thereof. The items left after the examination, including the specimens, should also be enclosed with the report.

Article 193. Interrogation of the expert and specialist

1. The investigator, or the authorized officer of the inquiry agency, may, at his own discretion or at the request of the persons stipulated by this Code, interrogate the expert or the specialist, should there be a need to:

- 1) get clarifications as to the specialist terminology or expressions incorporated in the report;
- 2) remove discrepancies between the examining part and the conclusions;
- 3) describe, in accessible terms, the study methods used;
- 4) provide a detailed reasoning of the disagreement between the forensic experts;
- 5) address the issues relating to the report of the forensic expert of specialist and relevant to the case that do not require additional study;
- 6) get information about other facts and circumstances that do not form a constituent part of the report but are related to the participation of the forensic expert or specialist in the pre-trial process; and
- 7) clarify the professional qualifications of the expert or specialist and their expertise in the respective area.

2. Neither the expert nor the specialist may be interrogated before they have filed their report.

3. The forensic expert may make statements for the record on any incorrect interpretation of his report by any participants in the process.

4. The expert may not be interrogated about any information that has become known to him in connection with the forensic inquiry, if it has no relevance to the scope of the inquiry at hand.

5. The protocol of the interrogation of the expert and the specialist shall be drawn up pursuant to the requirements of Article 198 herein.

Article 194. Making the forensic report available to the suspect, accused, victim or witness

1. The expert's report or his communication about the impossibility of drawing a conclusion, as well as the protocol of the interrogation of the expert prior to the completion of the investigation, or the inquiry into misconduct, shall be made available to the suspect, accused, victim or the witness subjected to the forensic inquiry who may offer their explanations and state objections to the forensic report. Should such motions be either granted or refused, the investigator shall make a respective ruling which shall be acknowledged with the signature by

the person who has filed the motion.

2. The production of the forensic report and the protocol of the interrogation of the forensic expert shall be recorded in the protocol, which shall reflect statements or objections, if any.

3. The rules herein shall also apply when the forensic inquiry is conducted before the person is indicted or recognized as a suspect or victim.

Chapter 26. Interrogation. Confrontation

Article 195. Interrogation summoning procedure

1. The witness, authorized officer of the inquiry agency, victim and the suspect or accused who is not in custody shall be summoned to interrogation with a writ. Such writ should indicate: who, in what status, to whom, and at which address is summoned; the time of appearance (day and hour), the right to call a lawyer, and also the consequences of non-appearance without good reason.

2. The writ shall be handed over to the person summoned against his signed acknowledgement. In the absence of the person summoned, the writ, to be forwarded to him, shall be handed, against the signed acknowledgement, to any adult members of the family, or failing that, filed with the housing management organization or the body of local self-government at the place of residence, or to the administration at the workplace, which are to forward the writ to the person summoned to interrogation.

3. The person summoned to interrogation must arrive at the time appointed or inform the investigator in advance about the reason for non-appearance. In the event of non-appearance without good reason, the person summoned to interrogation may be subjected to compulsory appearance, or else suffer other measures of procedural enforcement provided for by this Code.

4. The persons in custody shall be summoned to interrogation through the administration of the place of detention.

5. A person younger than sixteen years of age can be summoned as a witness or victim through his or her parents or other legal representatives. Any other order of procedure may be allowed only if necessitated by the circumstances of the case.

6. Servicemen on active duty shall always be summoned for interrogation through their commanding officer. With respect to other servicemen, the general interrogation procedure shall apply.

Article 196. Place and time of interrogation

1. The interrogation shall be conducted at the place of investigation. The investigator or the authorized officer of the agency of inquiry may, if deemed necessary, conduct the interrogation at the location of the person to be interrogated.

2. The interrogation may not last more than four hours without a break. The interrogation may be resumed after a break of at least one hour for rest and meals, and the overall duration of interrogation during one day may not exceed eight hours.

3. In case of any medical condition, the length of interrogation shall be defined by the doctor.

Article 197. General rules of interrogation

1. Prior to interrogating, the investigator, or the authorized officer of the agency of inquiry, must establish the identity of the person to be interrogated. Should there be any doubts as to such person's proficiency in the language of the process, it is necessary to clarify which will be the preferred language of the statements.

2. The person summoned to interrogation shall be made aware of his rights and duties under this Code, which is recorded in the protocol. Persons summoned to interrogation as witnesses or victims, shall be warned of the criminal liability for refusing or avoiding to give statements, or likewise for giving deliberately false statements.

3. A dumb or deaf witness, victim, suspect or accused shall be interrogated with the

assistance of someone who knows sign language. The involvement of such persons in the interrogation shall be recorded in the protocol. Should the person interrogated have mental or any other serious condition, he shall be interrogated subject to the consent of the doctor and in his presence.

4. The interrogation starts with the suggestion that the circumstances of the case be relayed as they are known to the person to be interrogated. Should the person interrogated describe circumstances that are clearly not relevant to the case, this fact must be pointed out to him.

5. After the unguided narration, the person interrogated may be asked questions meant to clarify or amplify his statement. Also, after the unguided narrative, the person interrogated may draw up his statement on his own. Following his statement and its signing by the person interrogated, the investigator may pose questions necessary to amplify or clarify the statement. Leading questions shall not be allowed.

6. Any questions asked must be in compliance with the requirements of the law and investigative ethics. Questions must be precise, clear and brief, they should not contain any statements or judgements by the investigator. It is inadmissible to obtain statements by violence, torture, threats or other unlawful actions.

7. If the statements are related to digital data or other evidence which is difficult to memorize, the person interrogated may refer to documents and records which, subject to the request by or with consent of the person being interrogated, may be entered in the protocol.

8. If during the interrogation the person interrogated is shown some exhibits or documents, or protocols of investigative actions are read out or materials of audio and/or video recording, filming and other investigative actions are produced, a relevant entry shall be made in the protocol of interrogation. Should that be the case, the protocol shall reflect the statements made by the interrogated person based on the evidence produced to him, protocols read, audio and/or video records and films of investigative actions demonstrated.

9. During the interrogation, it shall not be allowed to produce evidence obtained in violation of the law.

10. The person shall be entitled not to respond to any questions pertaining to those circumstances the presentation of which is direct prohibited by law (seal of confession, doctor-patient confidentiality, professional lawyer's secrecy, confidentiality of the deliberations room and similar) or which may give grounds for suspicions of or accusations of crime by such, his close relatives or family members, or else pertaining to officials conducting secret investigative actions or persons who cooperate confidentially with the pre-trial investigation authorities.

11. Other persons summoned for the same criminal case shall be interrogated separately, and the investigator shall take steps to make sure that they cannot communicate with each other before each of them has been interrogated.

12. Persons with the right to diplomatic immunity may only be interrogated at their request or with their consent.

13. If needed, the investigator may collect from the person interrogated a signed pledge of non-disclosure of his own statements which shall be data belonging to the investigation.

14. If needed, an additional or repeat interrogation of the person may be held, in the event that:

1) the length of the interrogation has proved insufficient for the person under interrogation to make statements about all the circumstances of the case known to him;

2) the person interrogated should wish to amplify or change his earlier statements;

3) there should be a need to refine or supplement his earlier statements about the circumstances of the case investigated;

4) new questions for the person interrogated earlier, material to the case, have arisen; and

5) at the request of the accused (suspect) himself, who refused to make any statements during the initial interrogation.

15. If the interrogation was suspended, the protocol shall record the reason for the break, attested with the signatures of the person under interrogation, persons present there, and the

investigator.

Article 198. The protocol of interrogation

1. The course and outcome of the interrogation shall be recorded in the protocol drawn up in compliance with the requirements of Articles 169 and 170 of this Code. The statements shall be recorded in the first person and as close to verbatim as possible. The questions and answers to them shall be recorded in the exact sequence that took place during the interrogation. The protocol shall also reflect those questions from any persons participating in the interrogation that have been challenged by the investigator, or the authorized officer of the agency of inquiry, or to which the person under interrogation has refused to respond, together with the reasons for the challenge or refusal.

2. The protocol of the initial interrogation shall indicate details of the identity of the person under interrogation, including: the full name, date and place of birth, nationality, ethnicity, education, family status and composition of his family, place of work, occupation or position, place of residence and any other evidence that may prove necessary given the circumstances of the case pursuant to the rules of Article 169 herein. During any subsequent interrogation, the details of the person interrogated, unless they have changed, may be shortened to the reference of his full name. The protocol of interrogation shall record the presence or absence of previous convictions.

3. The person interrogated may produce schematic drawings, drawings, pictures or diagrams which shall be attached to the protocol, with a respective record made in it.

4. At the end of the interrogation, the protocol shall be given to the person interrogated for reading, or read out loud to him at his request. The request by the person interrogated to put any amplification or refinements on record must be granted.

5. The familiarization with the statements and the accuracy of their record shall be acknowledged by the person interrogated with his signature at the end of the protocol. The person interrogated shall also sign each page of the protocol. Should the person interrogated refuse to sign the protocol, the investigator shall establish the reasons for it and enter them in the protocol, attesting the protocol with his own signature.

6. Should the protocol be drafted in the language in which the accused, suspect, witness or the victim is not proficient, it shall be translated orally, with a relevant entry at the end of the protocol, and an entry is made in the language of the process and in the language which is familiar to the person interrogated, stating that he confirms the correspondence between the oral translation and his statements. Should there be any amendments or amplifications made in the protocol of interrogation, the accuracy of the translation from the language which is familiar to the person interrogated to the language of the process shall be certified with the signature of the translator.

7. Should the interrogation involve a person familiar with sign language, he shall sign each page and the protocol as a whole.

Article 199. Use of audio and video recording during the interrogation

1. Subject to the decision of the investigator, or the authorized officer of the agency of inquiry, audio or video recording can be used during the interrogation of the suspect, accused, victim or witness. Audio and video recording may be also used at the request of the suspect, accused, victim or witness.

2. Utilization of audio and video recording (technical recording devices) during the interrogation shall be mandatory only for the interrogation:

1) of minors (younger than 14) whose distinctive speech is difficult to record precisely in the protocol of the interrogation;

2) of the blind, illiterate or semiliterate who are unable to read the record of their statements in the protocol of interrogation;

3) of persons interrogated through an interpreter;

4) of persons who, as far as it is known, will not be able to be present during the trial;

- 5) of persons accused of a highly grievous offence;
- 6) of persons in need of an assessment by forensic psychiatrists;
- 7) of persons with respect to whom there is a well-grounded assumption that they will, in future, withdraw their statements, referring, inter alia, to unlawful interrogation methods;
- 8) of persons with a life-threatening condition; and
- 9) during the confession by suspects or accused of the crime they have committed.

3. The investigator shall decide whether to apply audio and video recording and make it known to the person interrogated at the start of the interrogation.

4. The audio and video record should reflect evidence covered by the rules of this Code, and the entire course of the interrogation. The audio and video record of a part of the interrogation or repetition of statements specifically for the recording during one and the same interrogation shall not be permitted.

5. At the end of the interrogation, the audio and video record shall be reproduced for the person interrogated in full. After watching or listening, the person under interrogation shall be asked if he has any additions to the statements and whether he acknowledges the accuracy of the record. Additions to the audio or video record of the statements made by the person under interrogation shall also be added to the audio and video record. The audio and video record shall be completed with a statement by the person under interrogation certifying its accuracy.

6. Statements obtained during the interrogation with audio and video recording shall be recorded in the protocol of interrogation pursuant to the rules of this Code. The protocol of interrogation shall also contain: an entry referring to the use of the audio and video recording and the fact that the person under interrogation has been informed about it; details of the technical devices and the conditions of the audio and video recording; statements by the person under interrogation relating to the use of audio and video recording; certification of the accuracy of audio and video record by the person under interrogation and by the investigator. Audio and video records shall be sealed and stored with the case file.

Article 200. Interrogating with the use of technical means of video communication (remote interrogation)

1. The interrogation of the victim or witness may be conducted with the help of such technical means as a video conference (remote interrogation), whereby they are summoned to an agency of pre-trial investigation or the district or region where they may be found or reside. During the remote interrogation the participants in the procedure shall directly follow the testimony of the person under interrogation in a live broadcast.

The remote interrogation may take place:

- 1) when it is impossible for the person to arrive directly to the agency conducting the criminal procedure at the location of criminal investigation (trial) for reasons of health or other good reason;
- 2) whenever there is a need to ensure such person's safety;
- 3) to conduct an interrogation of a juvenile or underage witness or victim;
- 4) whenever there is a need to enforce such measures to comply with the deadlines of investigation or trial; and
- 5) for other reasons that give grounds to believe that the interrogation may be impeded or associated with excessive costs.

2. The decision to conduct a remote interrogation shall be taken by the investigator with the jurisdiction over the case, at his own initiative or at the request of the party or other participants in the criminal procedure, or else at the instruction of the prosecutor, with a relevant order submitted as required by this Code. Should parties to the criminal procedure be opposed to a remote interrogation, the investigator, prosecutor or examining magistrate may decide to hold it only with a reasoned ruling (order) where the decision shall be substantiated.

3. The technical devices and technologies applied during the remote interrogation must ensure proper quality of image and sound as well as security of information. Participants in the

interrogation should be given an opportunity to ask questions and get answers from persons participating remotely in the investigative action.

4. The course and outcome of the investigative action held as a video conference shall be reflected in the protocol drafted by the inquiry agency exercising the instructions of the investigator, or the authorized officer of the inquiry agency, pursuant to requirements in Article 169 herein. The remote interrogation protocol shall have an entry about the technical means of video recording used to conduct the investigative action. Any demand by the person under interrogation to put amplifications or clarifications on record must be granted. The signed protocol shall be handed over to the investigator conducting the criminal case in question.

5. To ensure his safety, the person, at his request, may be interrogated at a video conference, with his appearance and voice changed as to exclude identification.

Article 201. Interrogating the witness and the victim

1. Witnesses and victims summoned in one and the same criminal case shall be interrogated separately and without other witnesses or victims present. The investigator, or the authorized officer of the inquiry agency, shall take steps to ensure that witnesses and victims in the same case cannot communicate with each other.

2. Prior to the interrogation, the investigator, or the authorized officer of the inquiry agency, shall confirm the identity of the witness or victim, establish their relationship, if any, to the suspect or accused, explain to them their procedural rights and duties, warn about the criminal liability for refusing or avoiding giving a statement or for giving deliberately false statements. At the same time, the investigator must explain that the witness or victim has the right to refuse to give evidence incriminating themselves or their close relatives. Any witness or victim, who has waived this right, shall be warned about the criminal liability for giving deliberately false evidence. The fact that the rights and duties have been explained to the witness or victim, and that they have been warned about the criminal liability for refusing or avoiding giving statements, or for giving deliberately false statements, shall be recorded in the protocol, acknowledged by the person under interrogation with his signature.

3. Should the witness come for interrogation with the lawyer retained for legal assistance, the lawyer shall be entitled to the rights provided for by Article 51 herein. After the interrogation, the lawyer shall have the right to make comments or statements about any violations of the rights and legitimate interests of the witness, which shall be put on record in the protocol of interrogation.

4. The interrogation of the witness or the victim shall be conducted following the rules stipulated in Article 197 herein.

Article 202. Specifics of interrogating an underage witness or victim

1. During the interrogation of a witness or victim of fourteen years and younger, or, at the discretion of the investigator, during the interrogation of a witness or victim aged fourteen or younger to sixteen, a teacher shall be called. In the case of arrested development of the minor, the involvement of a teacher during the interrogation shall be mandatory for ages between sixteen or younger and eighteen.

2. Witnesses and victims aged sixteen or younger shall not be warned about liability for refusal to give statements or for giving deliberately false statements. When informing such witnesses and victims about the procedural rights and duties, they should be informed of the requirement to tell only the truth. An underage witness or victim shall be informed of the right to refuse give statements incriminating themselves or their close relatives in crime. The fact that rights and duties have been explained shall be recorded in the protocol and acknowledged with the signature of the witness or victim.

3. The persons specified in paragraphs one and two above, who are present during the interrogation, shall be informed of the right to make comments alleging any violation of the rights and legitimate interests of persons under interrogation, which are to be entered in the

protocol, and also, with the permission of the investigator, to pose questions to the person interrogated. The investigator may challenge the question, but shall be obliged to put it on record and explain the reason for challenging it.

4. If the minor has no parents or legal representatives, an officer of the public authority for the protection of children may be invited to act as such representative.

Article 203. Confrontation

1. The investigator, or the authorized officer of the inquiry agency, may conduct a confrontation between two earlier interrogated persons whose statements contain significant contradictions.

2. The confrontation may be attended, in cases stipulated by this Code, by a forensic expert, defense lawyer, teacher, doctor, interpreter and the legal representative of the person under interrogation.

3. Any confrontation where at least one of the persons under interrogation is underage shall be attended by his legal representative and the teacher.

4. Before the confrontation starts, the investigator, or the authorized officer of the inquiry agency, shall explain to its participants their rights and duties, and the order of procedure for this investigative action. In the event that the confrontation is attended by a witness or a victim, they shall be warned of the liability for refusing or avoiding giving evidence and for giving deliberately false evidence, which is recorded in the protocol.

5. The investigator, or the authorized officer of the inquiry agency, shall find out from the confronted persons whether they know each other and what is the relationship, if any, between them. It should be suggested to the participants summoned to the confrontation, in turn, to give statements about the circumstances of the case which this confrontation is meant to elucidate. The sequence of the interrogation shall be defined by the investigator. After the statements, the investigator may pose questions to each of the persons under interrogation. The persons being confronted may, with the permission of the investigator, ask each other questions, which shall be recorded in the protocol.

6. During the confrontation, the investigator, or the authorized officer of the inquiry agency, may produce exhibits or documents entered in the case file.

7. The statements by the participants in the confrontation recorded in the protocols of previous interrogations, or audio and video recordings of such statements, may only be reproduced after their statements at the confrontation have been given and recorded in the protocol.

8. Should the accused or suspect make an attempt to undermine the confrontation through threats or intimidation addressed to the other party, or through other unlawful actions, the investigator, or the authorized officer of the inquiry agency, must interrupt this investigative action, having recorded this in the protocol.

9. The protocol of the confrontation shall record statements by the persons interrogated in the sequence in which they have been made. Each participant in the confrontation shall sign separately his statements and also each of the protocols.

Chapter 27. Deposition of statements

Article 204. Grounds for the deposition of statements by the victim or witness

1. At the request of the defense attorney and the parties for the defense, during the pre-trial procedure the examining magistrate shall interrogate the victim or witness about the circumstances of the criminal case known to them. The defense attorney and parties for the defense shall file a motion requesting deposition directly with the court.

2. In exceptional circumstances, should there be reasons to believe that any later interrogation of the victim or witness during the pre-trial or trial procedure may become impossible for objective reasons that have to do with the risk to life or health, or a serious illness of the victim or witness, their forthcoming departure for permanent residence outside the Kyrgyz

Republic, such victim or witness may be interrogated by the examining magistrate at the investigator's motion and with the consent of the prosecutor.

Article 205. Procedure for the hearing of the investigator's motion requesting deposition of statements by the victim or witness

1. The investigator may ask the prosecutor to file a motion with the examining magistrate requesting deposition of statements. The investigator shall enclose with the motion materials of the criminal case supporting the need to have statements by the victim or witness deposited. Having considered the submission, the prosecutor shall, within one day, address the issue of submitting the motion requesting deposition of statements to the examining magistrate.

2. The examining magistrate shall consider the motion within three days from the receipt and issue, as a result, a reasoned ruling granting the motion or refusing it. Should the motion be granted, the examining magistrate shall appoint the time for the earliest possible interrogation, informing the prosecutor, the suspect and his defense attorney.

3. The examining magistrate shall look into the investigator's motion requesting deposition of the statements by the victim or witness within three days from its filing in a court hearing at the location of the pre-trial procedure with the participation of the parties to the criminal process.

4. At the start of the hearing, the examining magistrate shall announce the motion to be heard, and inform the parties attending the court hearing of their rights and duties. Then, the investigator shall argue the need to have the statements by the victim or witness deposited.

5. Based on the hearing of the motion, the examining magistrate shall make a reasoned ruling granting the motion for the deposition of the statements by the victim or the witness, or refusing it.

6. If the motion is granted, the examining magistrate shall appoint the time and place for the interrogation of the victim or witness.

7. The ruling by the examining magistrate refusing the motion for the deposition of statements by the victim or witness may be appealed to a higher court in the cassation procedure.

8. The refusal by the examining magistrate to grant the motion shall not bar a repeated request by the investigator should there emerge circumstances suggesting good reasons for filing a motion requesting deposition of statements with the court.

Article 206. The order of procedure for hearing the motion requesting deposition of statements by an underage victim or witness

1. The examining magistrate shall consider the motion for the deposition of statements by an underage victim or witness pursuant to the procedure stipulated by Article 218 herein.

2. To exclude any psychologically traumatic impact on underage victims or witnesses as a result of their repeat examination in court during the trial procedure, the underage victim or witness may be interrogated by the examining magistrate at the request of their legal representative, defense attorney or the prosecutor.

Article 207. The order of procedure for considering the motion by defense attorney and parties for the defense requesting deposition of statements by a witness

1. The examining magistrate shall consider the motion by the defense attorney or parties for defense requesting deposition of statements by the witness within three days from the filing alone, without any court hearing, and appoint the time and place for the interrogation of the witness, informing the defense attorney and a parties for the defense, as well as the prosecutor and parties for the prosecution.

2. The motion by the defense attorney and parties for the defense requesting deposition of statements by the witness shall be considered by the examining magistrate pursuant to the procedure stipulated by paragraphs four and eight of Article 205 above.

Article 208. The order of procedure for interrogating the victim or witness by the

examining magistrate

1. The victim or witness shall be interrogated by the examining magistrate in a court hearing at the location of the pre-trial procedure or at the location of the gravely ill victim or witness, in the presence of those persons who requested deposition of statements, in compliance with the rules for the interrogation of victims or witnesses at the trial as stipulated by Articles 348 and 349 below.

2. The interrogation of the victim or witness by the examining magistrate shall be conducted in the presence of those persons who requested deposition of his statements. The suspect shall not be summoned to interrogation if the presence of the suspect threatens the safety of the victim or witness. The summons of the parties for the deposition of statements shall be arranged for by the examining magistrate. The defense attorney for the suspect may ask the examining magistrate for assistance to summon a person to ensure appearance of such person for interrogation.

3. The interrogation of the victim or witness may be postponed pursuant to the rules herein in the absence of the party for the defense, should, at the time of the interrogation, no one have been detained as a suspect or charged with the crime under the criminal case in question.

4. The non-appearance of the suspect served with a summons shall not bar the interrogation. The interrogation shall not take place, should the summoned prosecutor or defense attorney have failed to appear with good reason, having informed the court in advance. In the event that the party to the process requesting the interrogation should fail to appear at the interrogation or ensure appearance before the examining magistrate of the person whose interrogation such party was requesting, the interrogation shall not take place.

5. To interrogate a gravely ill victim or witness, a visiting court session may be held.

6. After the interrogation is over, the examining magistrate shall forward the protocol of the court hearing on the deposition of statements by the victim or witness to the prosecutor, to be entered in the criminal case file.

Article 209. Consequences of deposition of statements

During the criminal trial procedure the court may examine the witness or victim who has been interrogated during the procedure stipulated in Article 208 above in the event that such interrogation has been conducted in the absence of the party for the defense, or should there be a need to specify statements, or a need for statements on circumstances that have not been elucidated during the interrogation by the examining magistrate at the pre-trial procedure.

Chapter 28. Identification

Article 210. Submission for identification

1. The submission for identification shall establish the distinction or identity between the item submitted and its mental image printed onto the memory of the identifying person earlier. The identifiers may include witnesses, victims or the accused. The object of identification may be people, a corpse or parts thereof, things, animals, premises or localities.

2. No identification shall be conducted if:

1) the identifier has physical impairments that inhibit identification;

2) the object of identification has no properties that allow its identification;

3) the identifier has participated in the procedural actions (confrontation, visual examination, etc.) during which he has already perceived the respective object;

4) the identifier has already recognized the object of identification even before the proceedings or during the investigation;

5) the identifier used to know well the object of identification, and lists clearly the distinctive features without any doubts as to the individuality of such object; or

6) there is evidence about the object that establishes with certainty its identity.

3. A repeated identification of a person or item may not be conducted by the same identifier and or based on the one and the same features, except as below:

1) if, due to the absence or poor condition of the identifier or the absence of the item, the identification was conducted by a photograph, and now there is an opportunity to submit the object of identification directly;

2) if it has been shown that the previous identification was conducted at the time when the identifier was in a state of temporary impairment of his mental capacities, sight or hearing or, distracted by pain, as a result of which he could not properly perceive the situation; or

3) when the previous identification was conducted without the necessary preparation, and as a result the conditions for perception were worse than during the original observation by the identifier of the person or item. Should that be the case, the investigator shall decide whether it shall make sense to submit the object for identification.

4. The object shall be submitted for identification by its photograph in the following cases:

1) if the object in kind does no longer exist;

2) the appearance of the object has changed, and its reconstruction is either impossible or does not make sense; or

3) the object and the identifier are situated far from each other, and their transportation to the same place does not make sense or is impossible.

5. The identifier shall be first asked about the circumstances under which he has observed the respective person or item; whether he had perceived that object before; whether the identifier has any defects of senses or mind which may reflect on the nature and accuracy of his perception of the object; and about the marks and peculiarities based on which the identification can be made.

6. It shall not be allowed to submit several persons being identified for the identification by one identifier simultaneously, or submit a person for identification simultaneously to several identifiers.

7. Persons or items may be identified in a video conference broadcast from different premises.

Article 211. Order of procedure for submission for identification

1. Before a person is submitted for identification, the investigator shall ask the identifier about the appearance and marks of such person, which shall be recorded in the protocol. Should the identifier announce that he is unable to list the marks which may help him recognize the person, but he may identify him based on a set of other attributed, it shall be recorded in the protocol based on which set of attributes such person may recognize the person identified. It shall be forbidden to produce the person to be identified in advance or disclose other information about such person's marks to the identifier.

2. The submission for identification must be conducted in conditions which allow the identifier a possibility for focused examination of the persons identified, namely: give the identifier enough time for close examination of the persons identified; putting the persons identified in certain positions as requested by the identifier; and ensure similarity of the conditions and the setting with those that existed at the time when the person identified was perceived.

3. Involving in the investigative action other persons to be included among those who are in a line-up with the person identified may only be with their voluntary consent and provided the identifier is not familiar with them. The invited persons, with the one to be identified among them, shall be informed about the purpose and the order of procedure of the investigative action, and their rights and duties.

4. The person identified shall be submitted to the identifier together with other persons of the same sex who should be at least three and no more than seven, with no distinct difference in age, appearance or clothing. Before the person is submitted for identification he shall be asked, in the absence of the identifier, to take any place in the line-up of persons submitted.

5. If the identifier is a witness or victim, he shall be warned before the identification about the criminal liability for refusing or avoiding giving evidence, or for giving deliberately false

evidence; he shall be explained the right not to incriminate himself, his spouse or close relative, and if a priest, also those who have trusted him with their confession.

6. It should be suggested to the identifier that he should look at the persons submitted and tell whether he identified someone and if so, explain by which attributes he has identified him.

7. To ensure safety of the person identified, the identification may be set up under conditions whereby the person identified may not see or hear the identifier, that is, outside any visual or audio observation.

8. If needed, the identification may be conducted on photographs or video recordings pursuant to the requirements herein. Identification based on photographs or video recordings does not rule out any further possibility for submitting such person for identification but only in circumstances stipulated in the provisions of this Code.

9. The photograph of the person identified shall be submitted to the identifier together with at least three and no more than seven other photographs, they should not differ sharply in qualitative properties or other distinct features affecting materially the perception of the image. Persons in other photographs must be of the same age with no distinct differences in age, appearance and clothes with the person identified. The same requirements shall apply to video recordings with the image of the person identified, which may only be submitted if showing images of at least three persons who must be of the same sex with no distinct differences in age, appearance and clothes with the person identified.

10. During the submission of a person for identification, specialists can be retained to record the identification with technical means, as well as psychologists, teachers and other specialists.

11. During the identification by voice or speech the person may be submitted for identification in conditions excluding visual observation of the person identified by the identifier.

12. A dead body is submitted, as a rule, alone. In the investigation of disasters or other cases with significant number of casualties, the dead body may be submitted for identification together with other dead persons. Whenever necessary, at the instruction of the investigator and before the dead body is shown to the identified, the specialist shall make up ("dress up") the corpse. The instruction of the investigator to ensure preservation of the corpse at the place of its location shall be mandatory for the period of time needed to submit it for identification.

13. An item shall be submitted in a group of uniform items numbering at least three, which should correspond not only in the name or purpose, but on the whole in size, shape, model and color. When identifying an item for which it is impossible or difficult to find identical items, the identification shall be conducted for the sole item submitted. Should the identifier point to one of the items shown, he shall be asked to explain which attributes or particulars pointed him to this item.

14. Before any documents which are exhibits can be submitted, the identifier shall be interrogated about the color of the ink, positioning of document details, blots, corrections, if any, distinct graphic shapes of certain letters or numerals. The document shall be identified by appearance, graphics and overall visual image of the text. Features of the writing and handwriting (general and particular) may not serve as the basis for the identification of the document. The document may be submitted to the identifier in the only copy.

Article 212. Protocol of the submission for identification

1. The submission for identification shall be recorded in the protocol pursuant to the requirements of this Code, thoroughly detailing the features which helped the identifier to recognize the person, item or dead body, or else note based on the set of which attributes the person has recognized the person, item or dead body identified.

2. Identification of animals is identical in the tactics to submitting items for identification. Their identification shall be based on such features as breed, color, age, things found on animals, distinctions of shoeing, brand, physical particulars or defects and peculiarities of training.

3. If the submission for identification is done pursuant to the rules specified in this chapter, the protocol should note, apart from evidence listed herein, that the submission for identification

has been conducted in conditions where the person submitted for identification could not see or hear the identifier; and list all the circumstances and conditions of such submission for identification; the outcome of identification shall be made known to the person identified. In this case, personal data of the identifier shall not be recorded in the protocol and shall be kept separately.

4. The course of the investigative action shall be recorded with the help of technical means, and the protocol should have attached to it photographs of persons, items or the dead body that were submitted for identification, and the video recording materials. If the submission for identification was conducted in conditions where the person submitted could not see or hear the identifier, all photographs and video recordings which may help identify the identifying person shall be kept separately from the materials of the criminal case in question.

Chapter 29. Search. Seizure

Article 213. Grounds and the order of procedure for search and seizure

1. The grounds for conducting a search shall be the data sufficient to believe that within the premises or at another place or else with a person there may be instruments of crime, items, documents or valuables which may be relevant to the criminal case, including property subject to impounding. In addition, a search may be conducted for the purpose of discovering any wanted persons or dead bodies.

2. Should it be necessary to impound certain items or documents relevant to the criminal case, and provided it is definitely known where and with whom they may be, or for the purpose of confiscation of property, such items shall be seized.

3. The search and seizure shall be conducted on the basis of the court order issued by the examining magistrate.

4 The examining magistrate shall refuse to grant the search warrant unless the investigator proves sufficient grounds to believe that:

- 1) a criminal offence has been committed;
- 2) the wanted items or documents are relevant to the criminal case;
- 3) the evidence to be found with the items or documents searched for may become evidence in the trial;
- 4) the wanted items, documents or persons are in fact inside the person's dwelling or other property as indicated in the motion.

5. The search may be conducted at any moment during the investigation, immediately after the grounds therefor have arisen, and at any location where, according to the investigator's assumptions, the required items, documents, valuables, etc. may be situated.

6. The search and seizure, as well as the search and seizure inside the person's dwelling or any other property in his ownership or subject to his other right, shall be conducted in the presence of attesting witnesses or, whenever required, with the participation of the specialist and interpreter, if any.

7. The victims, accused or suspects may be involved in the search when the wanted items have to be identified.

8. In exceptional cases, when there is a realistic risk that the item, wanted and subject to seizure, may be lost if its discovery is delayed, or the wanted person may escape, the search and seizure may be conducted without the court order but subject to the condition that a written notification about the search thus conducted is to be submitted to the court within twenty four hours. Having received the submission, the court shall validate the lawfulness of the search and seizure conducted, and issue a ruling as to its lawfulness or unlawfulness. If it rules that the search already conducted was unlawful, this action may not be admissible as evidence in court.

9. Prior to the search, the investigator must show the search warrant, and ask the person to produce, voluntarily, the items and documents to be seized that may be relevant to the case. Should such items be produced voluntarily and there are no grounds to be concerned about the concealment of items or documents subject to seizure, the investigator may discontinue any

further search.

10. During the search any locked rooms or storage facilities which the owner refuses to open voluntarily may be opened. Should that be the case, no damage, unless necessary, should be inflicted on door locks or other things.

11. Prior to the seizure the investigator must show the seizure warrant and ask the person to produce voluntarily the items and/or documents subject to seizure. In case of a voluntary surrender, the items shall be seized, and that will be the end of the seizure. In case of a refusal, a compulsory seizure shall be conducted.

12. The search or seizure inside a dwelling against the will of the occupier, or at any other property in his ownership or subject to his other right shall be conducted subject to a court ruling by the examining magistrate in accordance with the rules of this Code.

13. The search and seizure of the dwelling against the will of its occupiers, or other property in ownership or subject to their other rights, or at the premises of organizations shall be conducted in the presence of persons listed in paragraphs seven and eight of Article 171 herein. The defense attorney and the lawyer of the person in whose premises the search is being conducted, shall have the right to attend.

14. The search and seizure at premises occupied by diplomatic missions or at premises where members of diplomatic missions and their families reside shall be conducted in compliance with the requirements stipulated in paragraph nine of Article 171 above.

15. The investigator must take steps to ensure that no circumstances of private life of the occupant of the premises in question or other persons that have become known during the search and seizure shall be disclosed.

16. The investigator may disallow the persons inside the premises or other property, where the search and seizure are being conducted, or persons entering such premises or property, to leave it or communicate with each other or other persons until the search and seizure are over.

17. During search and seizure the investigator must limit it to impounding the items and documents that may have relevance to the case, except when there are reasons to believe that any items detected could become exhibits in another criminal case. Forbidden items or documents shall be subject to impounding irrespective of their relevance to the case.

18. During search and seizure of electronic information media, those shall be impounded with the involvement of a specialist. At the request of the lawful owner of the electronic information media being impounded or the owner of the information therein, the specialist assisting in the search, in the presence of the attesting witnesses, shall copy the information from the electronic information media seized. The information shall be copied to other electronic information media provided by the lawful owner of the electronic information media being impounded or the owner of the information therein. No copying of information shall be allowed during the search if it can obstruct the investigation of crime, or, at the application of the specialist, lead to the loss of or change in the information. Electronic information media containing the copied information shall be handed over to the lawful owner of the electronic information media being impounded or the owner of the information therein. The copying of information and transfer of electronic information media with the copied information to the lawful owner of the electronic information media being impounded, or to the owner of the information therein, shall be recorded in the protocol.

19. Things that have no relevance to the case shall be returned to the respective persons, however they may be impounded in aid of execution under a civil law claim.

20. All items and documents seized shall be shown to the attesting witnesses and other persons present during the search and seizure, packed and sealed at the place of search and seizure, and acknowledged with the signatures of the above persons.

Article 214. Bodily search

1. Where there are grounds, and pursuant to the procedure stipulated in Article 213 herein, a bodily search of the suspect or accused shall be conducted for the purpose of discovering and

seizing any items or documents which may be relevant to the criminal case.

2. The bodily search may be conducted without the respective warrant, during the apprehension of the person or his incarceration, and also should there be sufficient reasons to believe that the person inside the searched premises or another property may be concealing on himself any items or documents which may be relevant to the criminal case.

3. The bodily search shall be conducted only by a person of the same sex and in the presence of the same-sex attesting witnesses, if they are involved in this investigative action. During the bodily search, health and safety of the person searched must be ensured, and nothing shall be done to demean his personal dignity.

Article 215. Search and seizure protocol

1. The search or seizure conducted shall be recorded in a protocol in compliance with the requirements of Article 169 above.

2. The protocol must indicate where and under what circumstances items or documents have been discovered, in what state they have been, how they have been stored, whether they have been surrendered voluntarily or impounded forcefully. All items to be seized must be listed in the protocol with an exact indication of their number, size, weight, individual attributes and, possibly, value. When impounding during the search a large number of items, a special inventory of these items shall be drawn up, the fact recorded in the protocol, and the inventory shall be its integral part and have evidential value.

3. In the event that during the search any items or documents were shown for identification, this should be put on record in the protocol.

4. If during the search or seizure any attempts have been made to destroy or hide any items or documents subject to seizure, it must be recorded in the protocol together with the steps taken.

5. A copy of the search and seizure protocol shall be handed over against the signed acknowledgement to the person at whose place they have been conducted, or to an adult member of his family, or, failing that, a representative of the housing management organization or bodies of the local self-government. If the search and seizure have been conducted at an organization, a copy of the protocol is handed over to its representatives against their signed acknowledgement.

Chapter 30. On-site verification and refinement of statements and the relevant order of procedure

Article 216. On-site verification and refinement of statements

1. Verification and refinement of the statements by the victim, witness, suspect or accused at the site related to the events investigated shall be conducted for the purpose of:

1) rectifying the gaps and elucidating the reasons for contradictions, if any, in the statements made by the persons interrogated earlier, by comparing them with the setting in which the events took place;

2) verifying and refining the earlier established facts;

3) detecting new pieces of evidence;

4) specifying the mechanism of the commission of a crime, including by demonstrating one's actions or those of other persons.

2. On-site verification and refinement of evidence shall involve the earlier interrogated person who shall reproduce on site the setting and circumstances of the investigated event; search for and point to items, documents or traces relevant to the case; demonstrate certain actions; show which role these or other items played in the investigated event; point out the changes in the environment at the scene; and specify and refine his previous statements. No outside intervention in these actions or leading questions shall be allowed.

3. Simultaneous on-site verification and refinement of statements by several persons shall not be allowed.

4. On-site verification and refinement of statements by the suspect or accused shall be conducted with his respective voluntary consent. The witness or victim may not refuse to

participate in it, and, whenever necessary, they must repeat their statements for verification or refinement, irrespective of the place where they were interrogated last.

5. When necessary, the investigator, or the authorized officer of the agency of inquiry, shall involve in the on-site verification of statements an interpreter, specialist or forensic expert; also attending can be the defense attorney for the accused or suspect, a representative of the victim or the lawyer retained to give him legal assistance.

Article 217. The order of procedure for on-site verification and refinement of statements

1. The on-site verification of statements shall follow a thorough interrogation of the suspect, accused, witness or victim whose statements are to be verified, and the protocol of their interrogation must be drawn up.

2. Before the on-site verification and refinement of statements, the investigator, or the authorized officer of the agency of inquiry, shall explain to the participants their rights and duties, and the purpose and the order of procedure of the investigative action.

3. The person whose statements are being verified shall be given a possibility to choose freely the direction of movement towards the site about which he talked previously during the interrogation and where the verification and refinement of his statements will be held, and determine the spots and items about which he will be making statements.

4. Throughout the entire verification he must accompany his narrative of the facts of interest to the investigation with the demonstration of the items and the setting, and with the demonstration of his actions at the site as they have really taken place.

5. The investigator, or the authorized officer of the agency of inquiry, must not dictate the way of behavior and ask leading questions, or express doubt about the correct route. He may stop the movement only for the purpose of recording things demonstrated, to ask specifying questions and, whenever necessary, to examine the scene of the demonstration to detect any new material traces of the crime. Other participants in the investigative actions under way may only ask questions with the permission of the investigator, or the authorized officer of the agency of inquiry, and only after the narration of the statements and demonstration of actions by the person whose statements are being verified and refined.

6. The items and documents found during the on-site verification and refinement of statements, which may have evidential value for the case, shall be recovered, packed and sealed; the fact of their seizure shall be recorded in the protocol.

7. Actions conducted should not be demeaning for the dignity or honor of persons participating and attending.

8. Statements from several accused or witnesses shall be verified on site with each of them separately.

9. During the on-site verification and refinement of statements, measurements and photographs shall be taken, audio and video recording or filming made, and plans and diagrams drawn. Audio and video recording means shall be used during the on-site verification and refinement of statements in compliance with the rules set out in Article 199 above.

10. The on-site verification and refinement of statements shall be recorded in the protocol pursuant to the requirements in Article 169 above.

The protocol shall reflect the following data:

- the date and place of drafting;
- the duty, special rank and name of the person conducting the investigation;
- the list of all other participants in the verification;
- indication of the specific purpose of the on-site verification and refinement of statements, the voluntary nature of participation by the persons whose statements are being verified;
- the time of the start and the end of the on-site verification and refinement of statements;
- the initial point of movement by the participants in the verification;

- description of the mode of travel and the route of movement, and the statements by the witness or accused about such route;
- description of the final point of movement; statements relating to that point; description of actions at this point; description of everything discovered at this point as a result of its examination;
- indication as to photo and video recording, plans and diagrams;
- any statements made by the participants in the verification;
- indication as to where the items discovered and seized have been sent;
- signatures of all participants in the investigative action.

Chapter 31. Crime re-enactment and its order of procedure

Article 218. Crime re-enactment

1. Crime re-enactment shall consist of special experiments for the purpose of verifying evidence accumulated in the case, collecting new evidence, verifying and assessing investigative leads concerning the possibility or impossibility of certain phenomena or facts of relevance to the case. Crime re-enactment may be used to verify, in particular, the possibility for perceiving certain facts, committing certain actions under specific conditions, and having certain events happening, and also for establishing the sequence of the incident and the mechanism by which traces have been generated.

2. Crime re-enactment opens up a possibility of checking factual data obtained as a result of interrogation of the suspects, accused, victims and witnesses, submission for identification, and examination of the scene.

3. The crime can be re-enacted multiple times. Each time it should be recorded in a protocol, describing the conditions in which the re-enactment took place.

4. Whenever necessary, at the discretion of the investigator, crime re-enactment can involve, given their consent, the suspect, victim, witness, specialist, forensic expert and persons conducting the experimental actions.

5. Crime re-enactment may be attended by the defense attorney, and his participation shall be mandatory if such crime re-enactment is conducted at his own request or that of the defendant, after the latter has familiarized himself with all the materials of the case.

6. The interpreter's presence shall be mandatory if a participant in the re-enactment whose statements are being verified, does not speak the language of the proceedings; it shall also be mandatory to involve the legal representative and the teacher acting as a specialist, if the re-enactment is to verify statements by the witness or victim aged younger than 14.

7. Crime re-enactment shall be allowed provided it excludes any danger to life or health of the participating persons, does not demean their honor and dignity, and causes no material damage to them.

8. Crime re-enactment shall be conducted under conditions closest to those under which the re-enacted events and actions, whose possibility is being verified, took place.

9. Crime re-enactment shall be conducted with mandatory application of technical means of recording of its course and outcome. During crime re-enactment, photographing, audio and video recording and filming shall be made, other scientific technical means applied, and plans and diagrams drawn up.

Article 219. Crime re-enactment procedure

1. Before crime re-enactment, the investigator, or the authorized officer of the agency of inquiry, shall:

- 1) establish the place and time as well as the sequence of re-enactment, and get himself acquainted beforehand with the setting at the place of re-enactment;
- 2) establish whether there have been any changes in the setting over the time since the commission of crime or the preliminary simulation;

3) conduct, if deemed necessary, a new simulation of the setting taking into account the state in which it was at the time of the crime, or some of its elements, and shall make a selection of objects and items;

4) compare the conditions of the re-enactment with those of the event verified; if deemed necessary, conditions of the environment should be simulated, if they can significantly affect the course of the re-enactment and define the objectivity of the results.

2. The investigator, or the authorized officer of the agency of inquiry, shall explain the rights and duties to the participants in the re-enactment and instruct them about the procedure of this investigative action.

3. Whenever necessary, the investigator, or the authorized officer of the agency of inquiry, shall warn the participants of non-disclosure of the results of the crime re-enactment.

4. The crime-re-enactment conducted shall be recorded in the protocol pursuant to requirements in Article 169 herein, indicating also:

- where, when, for what purpose and who conducted the crime re-enactment;
- whether the setting was simulated;
- conditions of crime re-enactment;
- who participated in the re-enactment;
- what items were used during the re-enactment;
- the sequence of the re-enactment procedure;
- the substance of each re-enactment and its outcome.

5. The investigator, or the authorized officer of the agency of inquiry, shall verify the availability and readiness of props and technical forensic means, as well as means of communication and signaling between the re-enactment participants.

6. Whenever necessary, the site of crime re-enactment shall be secured and steps taken to ensure safety of the re-enactment participants.

Chapter 32. Special investigative actions

Article 220. Grounds and conditions for special investigative actions

1. Special investigative actions, as provided for herein, shall be conducted if, to elucidate the circumstances to be proven during the criminal trial, it is necessary to obtain information about certain facts without informing the persons involved in the criminal trial, whose interests are affected, and whenever it is not possible to do so with open investigative actions.

2. The decision about conducting special investigative actions shall be made, in cases stipulated in this code, by the examining magistrate at the request of the investigator. The motion by the investigator or the prosecutor requesting special investigative actions shall be considered and granted subject to the procedure stipulated by Section VIII and Chapter 32 herein.

3. Special investigating actions shall be conducted exclusively:

- 1) in criminal cases, pertaining to the category of grave and particularly grave crimes,
- 2) for offences planned and committed by an organized group or a criminal organization.

4. Based on statements by certain persons, and also should there be reason to believe that the victim, witness or other parties to the process, or their close relatives, may be exposed to violence or other forceful or unlawful actions, with their written consent, special investigative actions may be conducted subject to paragraphs 2, 5 and 6 of Article 221 herein.

5. In situations of urgency which may lead to the commission of an act of terrorism and should there be sufficient reason to believe that the person's dwelling could contain instruments of crime, items or documents which may be relevant to the case, the investigator, based on a reasoned ruling and having notified the prosecutor, may instruct the relevant authorized bodies to examine such premises without a court order. The lawfulness and reasonableness of such actions shall be assessed by the court.

6. In order to detect, disrupt and solve less grave crimes, only those special investigative actions may be conducted that are stipulated by paragraphs 9-12 of Article 221 herein.

7. In exceptional cases, should there be reason (evidence) to believe that a third party is getting and transmitting some information of relevance to the case, the special investigative action may also be conducted against this third party but in compliance with paragraphs two and eight of this Article.

8. Special investigative actions shall be conducted by the investigator who is conducting the pre-trial procedure in the criminal case in question, or, at his instructions, by the unit, specially authorized by law, of a competent public agency. An officer, authorized to conduct special investigative actions, may involve specialists with special scientific expertise, and also persons who have displayed willingness to cooperate confidentially.

9. During special investigative actions it shall be forbidden to involve in confidential cooperation any lawyers, notaries, medics, priests, or reporters, if such cooperation leads to disclosure of confidential information of a professional nature.

10. Special investigative actions shall rely on information systems, video and audio recording devices, photographing and other technical means. The list of special technical means shall be defined by the government of the Kyrgyz Republic, and their use by individuals or legal entities, unless authorized by a special law, shall be forbidden.

11. It shall be forbidden to conduct special investigative actions against lawyers engaged in professional assistance, except when there are reasons to believe that they may be planning to commit or have committed a grave or particularly grave crime.

12. It shall be disallowed to conduct special investigative actions, or use the information obtained as a result, to achieve any purpose or objective not provided for in this Code.

Article 221. Types of special investigative actions

The following special investigative actions shall be conducted for the purpose of solving and investigating crimes:

- 1) impounding, examining and/or seizing any postal or telegraphic communications,
- 2) voice tapping;
- 3) obtaining data about connections between users and user terminals;
- 4) retrieving information from computers, servers and other devices;
- 5) audio and video monitoring of a person or place;
- 6) surveillance of a person or place;
- 7) entering and examining non-residential premises or another property of a person;
- 8) obtaining specimens for special comparative tests. The forensic report;
- 9) special re-enactment;
- 10) infiltrating the criminal environment and/or simulating criminal activity;
- 11) controlled delivery;
- 12) controlled buy.

Article 222. Hearing the motion requesting a special investigative action

1. The decision granting special investigative actions shall be made by the examining magistrate pursuant to the requirements in Chapter 39 herein that establish the procedure for the judiciary review in the pre-trial proceedings.

2. The motion shall be considered with the examining magistrate together with the investigator within twenty four hours of the motion date.

3. The motion must contain:

- 1) the reference number of the criminal case for which special investigative actions are requested;
- 2) a brief narration of the crime in connection with the investigation for which the motion is filed;
- 3) the legal qualification of the offence, with the relevant article (paragraph of the article) of the Kyrgyz Criminal Code;

4) reasoning of the need for special investigative actions and the impossibility of obtaining evidence about the crime or the perpetrator by any other means;

5) information about the person, place or item with regard to which the special investigative action is planned;

6) type (types) of special investigative actions required, the purpose and the substantiation of its (their) deadline;

7) details of the authority which is to be instructed to conduct such special investigative action;

8) place and date of the motion,

9) position, family name and initials and the signature of the person making the motion before the examining magistrate;

10) position, family name and initials and the signature of the authorized prosecutor whose consent to special investigative actions have been obtained;

11) the motion must enclose materials substantiating the reasoning in the motion.

4. Whenever it is needed to rule out the disclosure of the object with regards to which the special investigative action is being conducted, to comply with the confidentiality requirements, the motion may indicate a pseudonym instead of the real biography details of such person.

5. The examining magistrate shall grant the special investigative action, should the prosecutor and the investigator have shown sufficient information to believe that:

1) crimes, listed in paragraph three, have been committed and that there are reasons stipulated in paragraphs four – seven of Article 220 herein;

2) as a result of the special investigative actions, evidence may be obtained which on its own or together with other evidence (information) already available may have substantial significance for elucidating the circumstances of the criminal case or identifying the perpetrators.

6. The decision of the examining magistrate granting the special investigative action must comply with the general requirements to its drafting as stipulated in this Code, and also contain the following information:

1) details of the investigator and the prosecutor who gave his consent to make the motion to the court;

2) a brief narration of the circumstances of the crime with regards to whose pre-trial investigation this decision is made;

3) details of the person (persons), place or item with regards to which the special investigative action is requested;

4) type (types) of special investigative actions requested;

5) the effective period of this decision.

7. Should the motion lodged prove unsubstantiated, the examining magistrate shall make a relevant ruling refusing the special investigative actions, indicating reasons for the refusal.

8. Should there be a need for additional materials, the consideration of the motion may take longer than the established period but not more than 72 hours.

9. The refusal by the examining magistrate to grant the request for special investigative actions shall not bar any repeated pleas with a new motion requesting such permission.

Article 223. Effective period of the special investigative actions

1. The ruling on the special investigative action shall indicate the time during which it shall be conducted. Special investigative actions shall be conducted for no longer than two months.

2. In exceptional cases, at the request of the investigator, the period may be extended by the examining magistrate to six months. Then, the total period of the special investigative action may not exceed the maximum allowed period of the pre-trial proceedings.

3. Special investigative actions may be conducted at any time of the day or night and continuously throughout their effective period.

4. The investigator must make a decision to discontinue the special investigative action if there is no longer any need for it.

Article 224. Conducting special investigative actions in situations of urgency

1. On the basis of exigent circumstances the special investigative action may be started without the examining magistrate's order, followed by a subsequent submission of the relevant materials of the criminal case to the examining magistrate for his ruling on the lawfulness or unlawfulness of such action pursuant to Articles 222 and 275 herein.

2. Any acts involved in the special investigative actions must be ceased immediately should the examining magistrate refuse to grant permission for such action. Any information obtained through such action must be destroyed under the prosecutor's control.

Article 225. Steps to protect information obtained as a result of special investigative actions

1. Evidence of the fact of the special investigative action and information obtained as its result, until the end of the pre-trial procedure, shall remain confidential, and officers or persons involved in such procedure shall be liable for any disclosure under the laws of the Kyrgyz Republic.

2. Information about the methods and techniques of special investigative actions, or persons conducting them, including persons who act on the basis of confidentiality and under cover, shall be deemed a state secret not subject to disclosure.

3. The court, prosecutor and the inquiry agency must use all means stipulated in the law to preclude any dissemination of information obtained as a result of a special investigative action, if it has to do with privacy or bears on any other secret protected by law.

4. Information, things or documents obtained as a result of special investigative actions which have not evidential value in the criminal case shall be destroyed, with a relevant act drawn up after the court's final verdict in the case.

5. There shall be no copies made of the protocols of special investigative actions or annexes thereto.

Article 226. Using the results of special investigative actions for other purposes or disclosure of information

1. The results obtained in the course of special investigative actions shall be used exclusively in the investigation for which the examining magistrate has granted them. Should some facts have become known that point to the commission of another crime or to circumstances to be proved in another criminal case, they may be used in the relevant investigation as evidence only with the consent of the investigator who has had or has the jurisdiction over it, and the head of the investigative unit which supervised the pre-trial procedure in such case.

2. The restrictions listed in paragraph one above shall not apply to the use of mitigating evidence with regards to a person prosecuted under another criminal case.

Article 227. Notification of persons with regards to whom special investigative actions have been conducted

1. Persons whose rights have been restricted as a result of special investigative actions must be notified in writing by the investigator about the restriction that took place.

2. When familiarizing a person with the factual data obtained without his consent, such person shall be informed about the covert actions performed to the extent to which they affect directly such person excluding any disclosure of state or any other protected secrets.

3. The time of notification shall be set with due account to the interests of the pre-trial procedure and within six months of the day when such actions have been stopped but before the criminal case is referred to the court for trial.

Article 228. Familiarization with the materials of the special investigative actions protocols not incorporated in the case file

1. Results of special investigative actions which the pre-trial investigation authority has deemed as having no evidential value in the criminal trial procedure, shall not be incorporated in the materials of the investigation and shall be kept at the authorized unit of a law enforcement or special public agency under conditions which exclude any possibility of outsiders getting to know them, until the court's final verdict in the case, following which they shall be destroyed, with a relevant act drawn up.

Two months prior to the destruction of the results of special investigative actions, which investigative authorities deemed as having no evidential value in the criminal trial procedure, it shall be made known to the relevant examining magistrate who has granted such special investigative actions.

2. The person with respect to whom special investigative actions have been conducted shall have the right to request to be familiarized with the information not incorporated in the materials of the investigation to the extent which excludes disclosure of any state or other protected secrets.

3. The magistrate shall assess the application taking into account the possible significance of such materials for the criminal process or any restrictions to human rights allowed, and the examining magistrate may refuse the request of familiarization with the unfiled materials should it pose significant risk to the life, health or legally protected interests of any party to the criminal process or else should it affect privacy of any third part.

4. After familiarizing himself with the unfiled materials, the person may request to enter such materials on the criminal file. Such motion shall be considered by the examining magistrate.

5. The ruling on the motion made during the trial and requesting familiarization with the unfiled materials of special investigative actions shall be taken by the trial court.

Article 229. Using the results of special investigative actions as evidence

1. Protocols of special investigative actions, video and audio records, photographs and other results recorded with technical means, items and documents seized or copies thereof shall be used as evidence subject to the same grounds as the results of other investigative actions.

2. The persons who conducted or were involved in such actions may be interrogated as witnesses. The interrogation of such persons shall ensure confidentiality of such persons' particulars.

3. If needed, the persons with regard to whom special investigative actions have been conducted may be interrogated. The witness is informed only about investigative actions taken with his regard, and only to the extent to which they affect his rights and lawful interests.

Article 230. Impounding, examining and/or seizing postal and telegraphic communications

1. Should there be enough reason to believe that certain items, for their subsequent examination and/or seizure, documents or information with relevance to the criminal case may be found in letter packets, parcels or other postal and telegraphic correspondence, respectively, or else in cables or radiograms, they may be subjected to impounding. The impounding may be applied to both incoming and outgoing correspondence.

2. Impounding postal and telegraphic communications, examining and seizing them at postal agencies shall be subject to a court order issued by the examining magistrate.

3. The investigator's motion requesting impounding of postal and telegraphic communications, and their examination and seizure shall contain:

5) the full name and address of the person whose postal and telegraphic correspondence shall be intercepted;

- 6) grounds for impounding and subsequent examination and seizure;
- 7) the types of postal and telegraphic correspondence to be impounded;
- 8) the name of the postal agency which shall be charged with the duty to intercept relevant postal and telegraphic communications.

4. Should the examining magistrate grant impounding of postal and telegraphic communications for their examination and seizure, the copy of his ruling shall be sent to the relevant postal agency which is instructed to intercept postal and telegraphic communications and inform the investigator without delay.

5. Examination, seizure and copying of intercepted postal and telegraphic communications shall be done by the investigator at the relevant postal agency, in the presence of attesting witnesses from the employees of such agency, who shall be warned against disclosure of any information they learn during this special investigative action. When needed, the investigator may call a specialist as well as an interpreter to participate in the examination and seizure of the postal and telegraphic communications.

6. Each instance of examination and/or seizure of postal and telegraphic communications shall be recorded in a protocol indicating which postal and telegraphic communications have been examined, seized, copied, forwarded to the addressee or intercepted, and by whom.

7. In the event that after the examination the investigator should decide against seizing the relevant correspondence, then he will either just note in the protocol which correspondence has been examined, or, guided by the need, shall record fully or in part the text of the correspondence examined. A copy then can be made (including a photocopy).

8. The impounding of postal and telegraphic communications shall be revoked by the investigator, with mandatory notification of the respective prosecutor, when there is no longer any need for that, but no later than the completion of investigation into the relevant criminal case.

Article 231. Voice tapping

1. Should there be enough reason to believe that telephone or other conversations by the suspect, accused or other persons may contain information relevant to the criminal case, the investigator, on the basis of the examining magistrate's order, may monitor and record such conversations.

It is forbidden to tap conversations between the defense attorney and his charges (the suspect or accused).

2. The examining magistrate's order to monitor and record telephone or other conversations shall indicate:

- 1) the criminal case for which such action is requested;
- 2) grounds upon which this special investigative action is requested;
- 3) the full name of the person whose telephone or other conversations shall be subject to monitoring and recording;
- 4) the period of time for monitoring and recording;
- 5) the name of the agency which shall be charged with the technical execution of monitoring and recording.

3. The ruling to have telephone and other conversations monitored and recorded shall be submitted to the relevant authority for execution.

4. The period of monitoring and recording of telephone and other conversations may be set for to up to six months. It shall be ceased with the ruling of the investigator, should there be no longer any need in this action, with the notification of the respective prosecutor responsible for the supervision of the pre-trial procedure in the case in question.

5. Throughout the period of monitoring and recording of telephone and other conversations, the investigator may at any time request from the tapping agency its audio records for examination and listening. The audio record shall be made available to the investigator sealed, with an accompanying letter, indicating the date and starting and end time of the record of the

relevant conversations, and a brief description of the technical devices used for the purpose.

6. The results of the examination and listening to the audio record shall be recorded by the investigator, assisted by the specialist as well as the persons whose telephone and other conversations have been recorded, in a protocol which should detail, verbatim, that part of the record which, according to the investigator, may have relevance to the criminal case in question. The persons assisting in the examination of and listening to the audio record may state their comments on the protocol in the same protocol or separately.

7. The entire audio record shall be entered on the criminal case file as an exhibit and shall be kept sealed under such conditions that exclude any possibility for listening to or replicating the audio record by outsiders, and ensure its safe custody and technical fitness for any repeat listening, including during the trial.

Article 232. Getting information about user connections

1. Should there be sufficient reason to believe that the information about the connections between users (user terminals), who are the suspect, accused or otherwise, may offer data of relevance to the criminal case, the investigator, based on the examining magistrate's order, may request such information.

2. The investigator shall present the examining magistrate's order to the authorized unit of the inquiry agency or a specialized public agency for execution, and the employee of such agency must provide the information as requested, recorded on any physical media. The information about user connections may have data on the date, time, length of calls between users, user numbers, and other data making it possible to identify the users, as well as information about the respective number and location of the base transceiver stations. Such information (a report) shall be provided sealed, with an accompanying letter indicating the covered period and user (user terminals) numbers.

3. The investigator shall study the information received, if needed, assisted by the specialist and the officer of the authorized agency of inquiry. The results are recorded in the protocol.

Article 233. Retrieving information from computers, servers and other devices

1. Should there be sufficient reason to believe that information from computers, servers or other devices used to collect, process and store information, may have data of relevance to the criminal case, the investigator, subject to the examining magistrate's order, may instruct the authorized unit of the inquiry agency regarding covert retrieval of such information.

2. The outcome of the covert retrieval of information from computers, servers or other devices shall be recorded on the relevant media, which shall be packed, sealed and attested with the signature of the officer from the authorized unit of the inquiry agency who conducted the special investigative action.

3. The investigator shall study the resulting report and the materials, with the assistance of the specialist and the officer of the authorized unit of the inquiry agency, if needed. The outcome shall be recorded in the protocol.

Article 234. Audio and video monitoring of a person or place

1. The audio and video monitoring of a person or place shall involve covert recording of voice information, such person's behavior or conversations and other sounds and events taking place in the strictly defined place with the help of audio and video devices or other special technical means. The covert audio and video monitoring of a person or place shall be subject to the examining magistrate's order.

2. The investigator shall instruct the authorized unit of the inquiry agency to conduct the covert audio and video monitoring of the person or place. Upon completion of the covert audio and video monitoring of the person or place, the officer of the authorized unit of the inquiry agency shall present to the investigator the audio and video record of relevance to the criminal case, sealed and with the accompanying letter indicating the grounds, the start and end time, and

the length of the record.

3. The investigator shall study the resulting report and the audio and video record, with the assistance of the specialist and the officer of the authorized unit of the inquiry agency, if needed. The outcome shall be recorded in the protocol.

Article 235. Surveillance of a person or place

1. Should there be enough reasons to believe that the person in question has any relevance or has some information with relevance to the criminal case, the investigator, subject to the examining magistrate's order, shall instruct the authorized unit of the inquiry agency to conduct a visual surveillance of such person or place.

2. Based on the results of such surveillance, the officer of the authorized unit of the inquiry agency shall draw up a report, enclosing the obtained photographs and video recordings, and present them to the investigator, sealed and with an accompanying letter.

3. The investigator shall study the information obtained together with the enclosed materials, with the assistance of the specialist and the officer of the authorized unit of the inquiry agency, if needed. The outcome shall be recorded in the protocol.

Article 236. Entering and examining non-residential premises or another property of a person

1. Entering and/or examining any non-residential premises or another property of a person shall be done by an authorized body by way of entering an office, workshop, building, facility, warehouse, transport vehicle or a location in order to have it examined as well as to prepare for and conduct investigative actions.

2. Entering and/or examining the person's residential property shall be by the relevant authorized body in exceptional cases only as stipulated in paragraph 5 of Article 171, in compliance with the requirements of this Code.

3. Should there be sufficient reason to believe that non-residential premises or another property of the relevant person may contain instruments of crime, items, documents or valuables which may be relevant to the criminal case, the investigator, subject to the examining magistrate's order, may instruct the authorized unit of the inquiry agency to conduct a covert examination.

4. During the examination it may be possible to move, photograph, copy or mark things discovered; place chemical traps or set up other conditions for trace generation. It is not allowed to seize or replace items discovered during the covert examination.

5. The outcome of the covert examination of non-residential premises (or a dwelling in exceptional cases) or another property of the person shall be recorded by the officer of the authorized unit of the inquiry agency in his report.

6. The investigator shall study the information obtained, with the assistance of the specialist and the officer of the authorized unit of the inquiry agency, if needed. The outcome shall be recorded in the protocol.

Article 237. Obtaining specimens for special comparative tests. The forensic report.

1. In the event that it should be required to keep secret the fact that specimens were collected for comparative study, the investigator, subject to the examining magistrate's order, may resort to covert techniques for obtaining such specimens, following the appropriate procedure defined by the Kyrgyz laws.

The list of specimens collected for a comparative study may include any necessary items related to human beings (finger or foot prints; hair; voice; blood; handwriting, etc.), microscopic particles, traces of transport vehicles, etc.

2. The covert collection of specimens for a comparative study shall be recorded in a note by the officer of the inquiry agency's authorized unit. It shall have enclosed the obtained specimens, packed, sealed and attested with signatures.

3. The investigator shall study the information obtained, with the assistance of the specialist and the officer of the authorized unit of the inquiry agency, if needed. The outcome shall be recorded in the protocol.

4. If there is a need to have the relevant items studied based on specialist scientific knowledge, the specialist may draw up a written report on the results, which shall be attached to the protocol.

5. Whenever needed, the questions posed by the investigator may be addressed by the specialist in his report in compliance with requirements in paragraph five of Article 237 above.

Article 238. Special re-enactment

1. A special re-enactment shall be conducted subject to the examining magistrate's order in the cases as follows:

1) given information suggesting a crime being planned or committed;

2) in order to disrupt and solve the crime being committed or already committed, within the framework of the started pre-trial procedure in the criminal case, and

3) should there be grounds to believe that such special re-enactment may yield information about the facts that belong to the circumstances to be proved during the trial, and also that, without such special investigative action, the necessary evidence may not be obtained or will be difficult to obtain.

2. During the special re-enactment, a situation or a setting is to be reproduced, typical of the relevant person's daily routine, which may help discover the criminal intent, and the actions of such person are to be recorded.

3. During the special re-enactment it is forbidden to provoke (incite) the person to commit the relevant offence, for the purpose of his subsequent exposure, by helping this person commit the crime, or influencing for this purpose his behavior through violence, threats or blackmail. Any evidence obtained in such way may not be admissible in the criminal proceedings.

4. In the event that such special re-enactment should end in the open recording of the criminal act by such person, it shall be entered in a protocol, drawn up in the presence of the person being tested.

5. The procedure and method of special re-enactment (simulation of the criminal setting) shall be defined by the Kyrgyz legislation.

Article 239. Infiltrating the criminal environment and/or simulating criminal activity

1. Infiltrating the criminal environment and/or simulating criminal activity shall be conducted with the written consent of the person who has infiltrated and/or is simulating criminal activity, for the purpose of obtaining factual data about the crime planned, in the process or already committed.

2. The person who has infiltrated the criminal environment and/or is simulating criminal activity is forbidden to commit any action (inaction) that has anything to do with a threat to human life or health or property, except for cases of justifiable defense, imaginary defense, emergency, physical or mental coercion, apprehension of a perpetrator; enforcement of law, order (instruction), performance of duties in office, justifiable risk, or performance of a special mission, in accordance with the provisions of the Kyrgyz Criminal Code.

3. In coordination with the investigator, the authorized body shall be constantly informed about the course of infiltration in the criminal environment and/or the simulation of criminal activity.

4. Upon completion of this action, the authorized body shall present to the investigator all resulting materials, sealed and with an accompanying letter.

Article 240. Controlled delivery

1. A covert controlled delivery shall be conducted for the purpose of monitoring supplies, buying and selling, or movements of items, substances and products whose free circulation is prohibited or whose circulation is restricted by law, and also which are objects or instruments of a criminal offence.

2. The controlled delivery in the Kyrgyz Republic shall be conducted by the authorized agency independently or in coordination with other public authorities.

3. The controlled delivery over the territories of several states shall be conducted by the authorized agency together with the authorized law enforcement agencies of foreign states.

4. Upon completion, the authorized agency shall present to the investigator all resulting materials in full, sealed and with an accompanying letter.

Article 241. Controlled buy

1. A covert controlled buy shall be conducted for the purpose of obtaining factual data about the crime being committed or already committed by setting up a situation of a fictitious transaction.

In such a case, items or substances which are forbidden to be sold freely or whose circulation is restricted by law, or else which are objects or instruments of criminal offence, shall be purchased for money from the person with regard to whom there is sufficient reason to believe his association with the crime.

2. The issuance of technical and other means for the recording of the course and outcome of the special investigative action, to the officer of the authorized agency or a person who volunteered to participate in the special investigative action, as well as cash for purchasing of items or substances which are forbidden to be sold freely or whose circulation is restricted by law, or else which are objects or instruments of criminal offence, shall be recorded in separate protocols pursuant to Article 169 above.

3. During the planning and execution of any actions involved in the monitoring of the crime being committed, it is forbidden to provoke (incite) the relevant person to commit such crime, so that he could be subsequently exposed, by helping such person to commit the crime, or by influencing for the purpose his behavior by violence, threats or blackmail. Items and documents obtained in such a manner shall not be admissible in the criminal trial.

4. The fact that the officer of the authorize agency, or the person who volunteered to participate in the special investigative action, has handed over the purchased items or substances, as well as the results of their examination shall be entered in the protocol pursuant to the rules in Article 169 above.

Chapter 33. Notification of suspicions

Article 242. Notification of suspicions

1. Should there be enough evidence giving grounds for suspecting the person of committing crime and/or misconduct, the authorized officer of the agency of inquiry, investigator or the prosecutor shall inform the person in writing about such suspicions and explain to the suspect his rights under Article 42 above.

2. Should such grounds emerge, the investigator, prosecutor or the authorized officer of the agency of inquiry shall inform the relevant person about any new suspicion or amend the previously communicated suspicion.

Article 243. Contents of the notification of suspicion

The notification of suspicion shall contain the following information:

- 1) the full name of the notifying person;
- 2) the details of the identity of the person who is notified of the suspicion;

- 3) the name (number) of the pre-trial procedure under which this notification is served;
- 4) the substance of the suspicion;
- 5) the legal qualification of the offence and/or misconduct of which the relevant person is suspected, indicating the article (paragraph of the article) of the Kyrgyz Criminal Code, or of the misconduct, indicating the article (paragraph of the article) of the Kyrgyz Code of Misconduct;
- 6) a brief narration of the actual circumstances of offence and/or misconduct of which the relevant person is suspected, including the time and place of occurrence, and any other material circumstances known at the time of notification of suspicion;
- 7) the rights of the suspect;
- 8) the signatures of the investigator, prosecutor, or the authorized officer of the agency of inquiry who has served the notification; and
- 9) the signature of the person notified of the suspicion.

Article 244. The order of procedure for serving the notification of suspicions

1. The notification of suspicions shall be served by the investigator, prosecutor, or the authorized officer of the agency of inquiry on the day on which it has been drawn.
2. The person apprehended shall be served the notification of suspicions at the time when he is actually apprehended. Should it be impossible, for objective reasons, to serve the notification of suspicions at the moment of actual apprehension, the notification of suspicions shall be served immediately after the suspect has been delivered to the inquiry (investigation) authority. In such cases, the notification of suspicion should detail the objective reasons for which this notification was not served at the moment of actual apprehension of the suspect. Whatever the case, at the time of actual apprehension the suspect must be made aware of suspicions against him, and explained his right not to incriminate himself as well as the right to legal assistance by an attorney.
3. The date and time of notification of suspicion, the legal qualification of the crime and/or misconduct of which the person is suspected, together with the article (paragraph of the article) of the Kyrgyz Criminal Code, or in the event of misconduct, together with the article (paragraph of the article) of the Kyrgyz Code of Misconduct, shall be without delay entered by the investigator, prosecutor or the authorized officer of the agency of inquiry in the Uniform Register of Crimes and Misconduct.

Chapter 34. Indictment. Charging

Article 245. The order of procedure for indictment

1. Should there be sufficient evidence giving grounds for the indictment, the investigator shall issue a relevant ruling.
2. Such ruling should indicate:
 - 1) its date, time and place, who has issued it; the full name of the person charged, his date and place of birth;
 - 2) a description of the alleged crime, together with the time and place of such crime, and any other circumstances to be proved in trial pursuant to Article 83 above; and
 - 3) the criminal law (article, paragraph, subparagraph) that establishes the liability for the relevant offence.
3. Should the person be charged with several offences qualified in different articles of the criminal law, the indictment should indicate which acts specifically are alleged against the defendant for each of the articles of the criminal law.
4. Should there be several persons being prosecuted under the same criminal case as defendants, the charges shall be made against each of them.
5. The ruling must detail the decision to charge the relevant person.
6. The ruling must be made within 48 hours of the actual apprehension of the suspect.

Article 246. Charging

1. The person should be charged within two days of the date of the indictment, in the presence of his defense attorney. Should the defendant or his attorney fail to appear, the charges may be presented after the two-day period.

2. The investigator shall inform the defendant of the day of charging and at the same time inform him of his right to retain a defense lawyer or ask the investigator to have the defense attorney provided for him under Article 48 above, and of his right to legal assistance guaranteed by the state.

3. The defendant in custody shall be informed of the day of charging through the administration of the place of detention.

4. The defendant who is not in custody shall be called to an interrogation with a summons. The summons may also be sent by telegraph.

5. The summons must detail who is being summoned as a defendant and where, the day and hour of appearance, and the consequences of non-appearance.

6. The summons shall be handed over to the defendant against his signed acknowledgement, or in the case of his temporary absence, to an adult member of his family or a representative of administration at his work place or place of study, or to a representative of the body of local self-government, to be forwarded to the defendant.

7. A defendant who is not in custody must make his appearance at the investigator's summons at the date indicated.

8. The following excuses for non-appearance by the defendant at the investigator's summons shall be deemed reasonable:

- 1) illness which makes it impossible for the defendant to make his appearance;
- 2) death of close relatives;
- 3) natural disaster;
- 4) failure to receive the summons; and
- 5) other circumstances that make it impossible for the defendant to appear as summoned.

9. The defendant must inform the investigator about the reason for his failure to appear as summoned.

10. Should the defendant fail to appear without a reasonable excuse, the defendant may be brought by force.

11. Having confirmed the identity of the defendant, the investigator shall read the indictment to him and his defense attorney. With this, the investigator shall also explain the defendant the substance of charges brought, and his rights and duties under Article 45 above, which shall be acknowledged with the signatures of the defendant, his lawyer and the investigator in the prosecution ruling, indicating the date and time when the charges were brought.

12. If the defendant or his attorney fail to appear at the time appointed by the investigator, and also if the location of the defendant is not known, the charges shall be produced on the day of actual appearance of the defendant or on the day when he is brought in by force, provided the investigator has ensured that his defense attorney is present.

13. Should the defendant refuse to sign, the investigator and the defense attorney shall attest in the prosecution ruling that the text of the charges have been made known to him.

14. Copies of the indictment shall be issued to the defendant and his defense attorney, and sent to the prosecutor.

Article 247. Interrogation of the defendant

1. The investigator shall interrogate the defendant pursuant to the requirements in Articles 195-203 above.

2. At the start of the interrogation the investigator shall ask the defendant whether he pleads guilty, whether he is willing to make any statements on the merits of charges against him and in which language. If the defendant refuses to make any statements, the investigator must make a

relevant entry in the protocol of his interrogation.

Article 248. Changing or amending charges. Partial dismissal of charges

1. Should, during the investigation, there arise grounds for amending or amplifying the charges, the investigator shall, in compliance with Article 245 above, make a new ruling indicting the defendant and bring the charges against the defendant following the procedure stipulated by Article 246 above.

2. Should, during the investigation, the charges made fail to be confirmed in some of their part, the investigator shall dismiss by his ruling the relevant criminal charges, informing the defendant, his defense lawyer, the victim and his representative, and the prosecutor.

Chapter 35. Suspending or reopening the pre-trial proceedings

Article 249. Grounds, procedure and period for the suspension of the pre-trial proceedings

1. The pre-trial proceedings shall be suspended on one of the following grounds:

1) the defendant has absconded during the investigation and his whereabouts have not been established;

2) temporary mental or other grave illness of the defendant that precludes his participation in investigative or other procedural actions, as certified by a doctor employed by a public medical institution; and

3) the whereabouts of the defendant are known but there is no realistic possibility for his participation in the criminal procedure pending the decision on the immunity of such defendant or his extradition to a foreign state.

2. The investigator shall issue a ruling suspending the pre-trial proceedings, a copy of which he will send to the prosecutor.

3. Should there be one or more defendants in the case, while the grounds for suspension do not hold equally for all of them, the investigator may divide and suspend charges against some of the defendants or else suspend the entire procedure should it be impossible to continue the investigation without all the defendants involved.

4. In the cases described in subparagraphs 1 and 3 of paragraph one above, the pre-trial proceedings shall be suspended only after the time limit is over; in the cases stipulated in subparagraph 2 of paragraph one above, it may be suspended also before the pre-trial procedure's time limit has expired.

5. Prior to the suspension of the pre-trial proceedings, the investigator must complete all investigative actions which could be conducted in the absence of the defendant, and take all steps to detect and identify the perpetrator.

Article 250. The investigator's actions following suspension of the pre-trial proceedings

1. After the pre-trial proceedings has been suspended on grounds stipulated in subparagraph 1, paragraph one, of Article 249 above, the investigator shall establish the whereabouts of the defendant, and, should he have absconded, take steps to find him.

2. Having suspended the pre-trial proceedings, the investigator shall inform the victim, his representative, the civil claimant, the civil defendant or their representatives, and at the same time explain to them that the ruling can be appealed to the prosecutor or court within five days.

Article 251. Search for the defendant

1. If the whereabouts of the defendant are not known, the investigator shall instruct inquiry agencies to conduct a search. These instructions shall be detailed in the ruling suspending the pre-trial procedure, or in a separate ruling.

2. The search for the defendant may be announced both during the pre-trial procedure and at the same time when it is suspended.

3. Given the grounds stipulated in subpara 1, paragraph one, of Article 249 above, the wanted defendant may be subjected to a pre-trial restraint.

Article 252. Reopening the suspended pre-trial proceedings

1. The suspended pre-trial proceedings shall be reopened with the ruling of the investigator when the grounds for suspension no longer apply.

2. The suspended pre-trial procedure may be reopened by the prosecutor due to the revocation of the investigator's ruling suspending the pre-trial proceedings.

3. The defendant and his defense attorney, the victim and his representatives, the civil claimant, civil defendant or their representatives and the prosecutor shall be made aware of the re-opening of the pre-trial proceedings.

Chapter 36. Termination of the pre-trial proceedings

Article 253. Types of termination of the pre-trial proceedings

The pre-trial procedure shall be terminated with the dismissal of the criminal case or with the submission of the criminal case file to the prosecutor.

Article 254. Grounds for termination of the pre-trial proceedings

1. The criminal investigation shall be ended by the investigator or the prosecutor:

1) on the grounds stipulated in Article 25 above; or

2) in the absence of sufficient evidence pointing to the commission of the crime by the defendant, if all possibilities for acquiring additional evidence have been exhausted, the charges are dismissed for lack of a crime in the acts of the defendant.

2. Should the criminal investigation be discontinued on the grounds specified in this Code, the investigator or the prosecutor shall take steps provided for by the law to rehabilitate such person and compensate any damage to his property caused as a result of unlawful apprehension or detention.

Article 255. The ruling dismissing the criminal case

1. The criminal case shall be dismissed with the ruling of the investigator or prosecutor which shall contain details of the defendant's identity, narrate the circumstances of the case and grounds for its dismissal.

2. The ruling should make reference to the decision taken on the exhibits pursuant to the rules of Article 88 above, and to the revocation of the restrictive measures and equally interim measures to secure civil claims or confiscation of property.

3. The investigator shall send a copy of his ruling of dismissal to the prosecutor and at the same time notify the person who was prosecuted, the victim, the representative of the organization or the person who applied to have the pre-trial proceedings initiated, listing the reasons for the dismissal and explaining the right to appeal.

4. At the request of the civil claimant, civil defendant, the victim or their representatives, the prosecutor shall allow them to familiarize themselves with the dismissed criminal case file.

5. Should the grounds for dismissal not apply to all defendants in the case, the investigator shall issue a ruling dismissing the criminal charges against the specific person. The pre-trial proceedings then will continue.

Article 256. Appealing the ruling dismissing the criminal case

1. The ruling by the investigator or the prosecutor dismissing the criminal case can be appealed by the defendant, his defense attorney, applicant, victim and his representatives, the civil claimant, civil defendant or their representatives, as well as by the person or representative of the organization that applied to institute the pre-trial proceedings, to the supervising prosecutor or to the court.

2. The time limit for appeal shall be 10 days from the receipt of the ruling dismissing the criminal case.

Article 257. Re-opening the dismissed criminal case

1. In the event that the investigator's ruling dismissing the criminal case should be reversed, the pre-trial proceedings in the case shall be re-opened by the prosecutor.

2. The dismissed pre-trial proceedings may be re-opened only provided the period of limitations for the prosecution has not expired.

3. The defendant and his defense attorney, the victim and his representative, the civil claimant, civil defendant or their representatives, as well as the person or the organization that applied to have the proceedings in the case instituted shall be informed of the re-opening of the criminal proceedings.

Article 258. Serving notice of the termination of the pre-trial proceedings to the prosecutor

1. Having deemed that all investigative actions have been conducted and evidence accumulated is sufficient to complete the investigation, the investigator shall notify the defendant and explain his right, provided by Article 260 herein, to be familiarized with all the materials of the criminal case both personally and with the assistance of his attorney or legal representative. The fact that the defendant has been notified of the end of investigation and informed of his rights shall be recorded in a protocol pursuant to the requirements of Article 261 herein.

2. In the event that the defendant's attorney or the representative of the victim, civil claimant or civil defendant should be unable, for good reasons, to appear to be familiarized with the case file at the appointed time, the investigator shall postpone familiarization by up to five days. If the defense attorney or representative fails to appear within this time limit, the investigator shall offer to retain another attorney for the defendant, or representative for the victim, or else appoint the attorney or representative from the Bar.

3. After the defendant, his attorney, victim, civil claimant, civil defendant and their representatives have studied the case file, the investigator shall draw up a ruling completing the pre-trial procedure, indicating that all investigative actions have been conducted, and the evidence collected is sufficient to commit the case for trial.

Article 259. Familiarizing the victim, civil claimant, civil defendant and their representatives with the case materials

1. The investigator shall familiarize the victim or his representative, the civil claimant, civil defendant or their representatives with all the materials on the file or only with that part of it with which they have agreed to be familiarized, following the procedure stipulated in Article 260 herein.

Article 260. Familiarizing the defendant and his attorney with the criminal case materials

1. Having complied with the requirements in Articles 258-259 herein, the investigator shall provide the defendant and his defense attorney with the materials of the criminal case file, with its pages stapled, numbered and inventoried. Also to be made available for familiarization shall be the exhibits and, at the request of the defendant or his defense attorney, photographs, audio and/or video records, films and other attachments to the protocols of investigative actions. At the request of the defendant and his attorney, the investigator shall offer them an opportunity to familiarize themselves with the case file together or separately. Should there be several defendants in the criminal case, the sequence in which they and their defense attorneys get access to the case file materials shall be established by the investigator.

2. In the process of familiarization with the case file, the defendant and his attorney may write out extracts or make copies of the documents. Extracts and copies of the documents from

the case file that contain information classified as state, commercial or other protected secrets, shall be kept with the case file and made available to the defendant and his attorney during the trial, except for information about such persons whose safety must be assured.

3. After the defendant and his attorney have finished familiarizing themselves with the materials of the case file, the investigator must clarify whether they want to make a motion to have the trial by jury, or make other motions, and if so, what kind of motions or other applications.

The investigator shall explain the nature of the trial by jury, inform of the possibility to make this motion to court before the trial is appointed, and also ask the defendant and his attorney whom of the witnesses interrogated and specialists or experts involved in the investigation specifically they want to summon to court for examination and to testify for the defense.

4. The defendant and his attorney may not be limited in the time necessary for them to familiarize themselves with all of the materials in the case file. However, if the defendant and his attorney are clearly delaying the familiarization with the case materials, the investigator may rule to establish a definite period sufficient to study the case file. The time during which the defendant and his attorney familiarized themselves with the criminal case file, for purposes of Articles 116 and 160 herein, shall be counted towards the period of investigation and detention of the defendant in custody.

Article 261. Protocol of familiarization with the materials of the criminal case file

1. After the defendant and his attorney, as well as the victim and his representative, civil claimant, civil defendant or their representatives have completed their familiarization with the criminal case file, protocols shall be drawn up in compliance with the requirements in Articles 169 and 170 herein. Such protocols shall indicate: the start and end date of the familiarization with the criminal case file, which materials have been produced for familiarization, motions and other applications made, if any.

2. In the event that the defendant should refuse to familiarize himself with the case file, it is recorded in the protocol, together with the reasons for the defendant's refusal. The defendant's refusal shall not limit the right of his attorney to familiarize himself with the case file.

Article 262. Granting the motion

1. In the event that a motion made by one of the parties to the criminal process should be granted, the investigator shall supplement the criminal case materials, which shall not preclude further familiarization with the materials of the criminal case file by other parties.

2. After additional investigative actions have been completed, the investigator shall inform the parties listed in this Code, and allow them to study the additional materials in the case file.

3. In the event of full or partial refusal to grant the motion made, the investigator shall make a relevant ruling and inform the applicant.

4. The refusal to grant the motion may be appealed to the prosecutor within three days of the day when the applicant was served with the copy of the refusal. Making a complaint shall suspend the submission of the file to the prosecutor for as long as it is looked into.

Article 263. The ruling completing the investigation and committing the criminal case for trial

1. The investigation shall end with the investigator's ruling referring the case file to court for the trial, or addressing the issue of compulsory measures of a medical nature, or else dismissing the case on the grounds stipulated by this Code.

2. The ruling completing the pre-trial procedure shall indicate who has drafted the ruling, its date and place, information about the identity of the defendant, brief narration of the charges, and the decision of the investigator to refer the case to the prosecutor.

3. The ruling completing the pre-trial procedure shall have enclosed with it the list of victims, witnesses and forensic experts who must be summoned to the trial. The list should have two parts – the list for the prosecution and the list for defense.

4. The ruling completing the pre-trial procedure shall have attached to it notes detailing the period of investigation, the restrictive measures applied, indicating the time spent in custody, the exhibits, civil claims, if any, and interim measures taken to secure the civil claims and possible forfeiture of the property, as well as procedural costs.

5. The list of persons to be summoned to a court hearing shall have details of their place of residence or whereabouts, and make reference to pages in the file where their statements or reports are noted down. In the cases stipulated by this Code, the list must only have pseudonyms for persons to be summoned to the court hearing.

Article 264. Referring the criminal case to the prosecutor

1. After the investigator has signed the ruling completing the investigation, the criminal case shall be referred to the supervisory prosecutor.

2. The criminal case file must enclose copies of the defendant's identity papers.

3. In the event that the defendant, who is a national of the Kyrgyz Republic, should have no identity papers, he must be registered by the authorized agency at the request of the authority in charge of the pre-trial criminal proceedings, until the end of the relevant investigation.

4. In the event that the defendant, who is a foreign national, should have no identity papers, in exceptional cases, the criminal case file may have attached to it a copy of another document certifying his identity.

Chapter 37. Actions and decisions by the prosecutor relating to the case file referred to him with the ruling completing the investigation

Article 265. The issues addressed by the prosecutor with regards to the case file referred to him with the ruling completing the investigation

The prosecutor must, within five days of having the case file referred to him, study the file and verify:

1) whether the act, in which the defendant is incriminated, has in fact occurred, and whether it has any elements of crime;

2) whether the case contains any circumstances in it leading to dismissal;

3) whether the charges are well substantiated and supported by the evidence in the case;

4) whether the charges have been brought with regards to all discovered and proved criminal offences by the defendant;

5) whether all persons against whom there is evidence of crime have been prosecuted as defendants;

6) whether the acts by the defendant have been qualified correctly;

7) whether the restrictive measures have been applied correctly, and whether there may be reasons to amend or cancel them;

8) whether interim measures have been applied to secure the civil law claims or possible forfeiture of property; and

9) whether there have been any material violations of the criminal procedures law.

Article 266. The prosecutor's decision on the criminal case referred to him with the ruling completing the investigation

Having considered the case file referred by the investigator with the ruling completing the investigation, the prosecutor or his deputy may arrive at one of the following decisions:

1) uphold the indictment;

2) exclude, with his own ruling, some of the charges or requalify the defendant's acts, applying the law of the lesser offence, provided the wording of the charges is not changed;

- 3) refer the case file back to the investigator, with his written instructions to dismiss the case or conduct additional investigative actions; or
- 4) dismiss the case.

Article 267. Referring the criminal case for trial

1. Having endorsed the ruling charging the defendant, the prosecutor shall ensure that the defendant has received a copy of the indictment. A copy of the ruling shall be handed over to the victim, if requested. Signed notes by the defendant and the victim acknowledging the receipt of their copy of the ruling shall be entered in the case file.

2. The prosecutor shall refer the case for trial and at the same time notify the defendant, his attorney, victim and his representative, civil claimant, civil defendant and their representatives of that fact.

SECTION VIII. PRE-TRIAL JUDICIAL REVIEW

Chapter 38. The scope of judicial review and powers of the examining magistrate

Article 268. The scope of judicial review

1. The pre-trial judicial review shall be executed by the examining magistrate.
2. Within the framework of his review functions, the examining magistrate shall monitor lawfulness and reasonableness:
 - 1) of the apprehension of the persons suspected of a crime;
 - 2) of the choice of the restrictive measures and application of other interim measures in the criminal procedure;
 - 3) of special investigative actions;
 - 4) of the investigative actions that limit constitutional rights and individual freedoms; and
 - 5) of any actions and decisions by the inquiry agency, investigator or prosecutor that restrict the individuals' rights of access to justice or otherwise limit their constitutional rights.

Article 269. Powers of the examining magistrate

1. As part of the judicial review of lawfulness and reasonableness of the interim measures in the criminal process that limit constitutional rights and freedoms of parties to the process, the examining magistrate shall rule on:

- 1) the lawfulness and reasonableness of detention of the person suspected of a crime;
- 2) applying such restrictive measures as detention in custody, home arrest, extradition arrest, or bail;
- 3) extending the period of custody or home arrest;
- 4) transferring the suspect or defendant who is not in custody to a medical or psychiatric in-patient facility to have relevant forensic examinations conducted;
- 5) impounding property, including cash owned by individuals or legal entities on accounts or deposits or in the custody of banks or other credit institutions, securities and their certificates; and
- 6) temporarily suspending the defendant from office.

2. As part of the judicial review of lawfulness and reasonableness of special investigative actions, the examining magistrate shall grant permission to conduct them pursuant to Chapter 32 herein.

3. As part of the judicial review of lawfulness and reasonableness of the investigative actions that limit constitutional rights and individual freedoms, the examining magistrate shall grant permission to conduct the following investigative actions:

- 1) view of the dwelling and other property in ownership in the absence or consent of their occupants;

- 2) search and seizure;
 - 3) bodily search, except in cases stipulated in Article 100 herein;
 - 4) seizure of items and documents containing information about accounts and deposits in banks and other credit institutions; and
 - 5) exhumation of a corpse when the close relatives or relatives of the dead object to exhumation.
4. The examining magistrate shall validate lawfulness and reasonableness of special investigative actions or the investigative actions specified in subparas 1-3, paragraph three above, carried out without a court judgment in exceptional cases provided for by this Code, when their execution is urgent.
5. As part of the judicial review, the examining magistrate shall look into complaints from the parties to the criminal process against actions or decisions by the inquiry agency, investigator or prosecutor.
6. In cases stipulated by this Code, the examining magistrate shall:
- 1) deposit, during the pre-trial procedure, statements by persons whose appearance before the trial court is deemed impossible for good reasons, or for purposes of excluding the psychologically traumatic impact on them during an examination in court during the trial;
 - 2) impose a fine on persons for the failure to perform their procedural duties during the pre-trial proceedings;
 - 3) resolve the issue of the forfeiture of bail should the defendant commit one of the violations specified in paragraph seven of Article 113 herein;
 - 4) rule to apply measures aimed at protecting safety of witnesses, victims or other parties to the criminal process; and
 - 5) approve plea bargaining.
7. The examining magistrate should not preempt issues that under this Code may become the substance of the main trial, or give instructions guiding the investigation or investigative actions, or else take steps or decisions in lieu of persons conducting the pre-trial proceedings, or the supervising prosecutor, or the trial court.

Chapter 39. Procedural rules of the pre-trial judicial review

Article 270. General conditions for exercising powers by the examining magistrate

1. The examining magistrate shall exercise his powers in compliance with the rules herein and requirements in the relevant articles of this Code.
2. The examining magistrate shall resolve all issues within his jurisdiction sitting alone and in a court hearing.
3. The time limits allowed for addressing the issues within the jurisdiction of the examining magistrate shall be set by the respective articles of this Code.
4. The examining magistrate may familiarize himself with all pre-trial materials, and request, if necessary, any additional materials.
5. Based on his consideration of issues within his jurisdiction, the examining magistrate shall make a ruling.
6. The ruling by the examining magistrate shall take immediate effect and shall be binding. Any appeal against the ruling by the examining magistrate shall not suspend its execution.

Article 271. The judicial review of lawfulness and reasonableness of the apprehension of the suspect

1. Lawfulness and reasonableness of apprehension of the suspect who has been released by the decision of the authorized officer of the agency of inquiry, investigator or prosecutor, shall be reviewed by the examining magistrate assisted by the prosecutor, investigator, the suspect, attorney or the legal representative at the place of apprehension, in open court hearing within two hours of the submission of the materials to the court. Non-appearance of the parties duly notified

of the time and place of court proceedings, except the suspect, his attorney, or the prosecutor, shall not bar consideration of the motion. Should his defense attorney fail to appear, the suspect may replace him with another attorney. In the absence of the defense attorney, the investigator, or the authorized officer of the agency of inquiry, shall provide one pursuant to the legislation of the Kyrgyz Republic.

2. At the start of the session, the examining magistrate shall announce with regards to whom the lawfulness and reasonableness of apprehension on suspicion of a crime is being tested; he shall explain to the parties appearing before court their rights and duties. Then, the prosecutor shall put forward the reasons for his decision to apprehend the person on suspicions of a crime, followed by hearing of other parties to court proceedings.

3. During the court hearing the examining magistrate shall rule on the lawfulness or unlawfulness, reasonableness or lack thereof, of the apprehension of the person on suspicion of a crime.

4. The ruling by the examining magistrate on the lawfulness or unlawfulness, reasonableness or lack thereof, of the apprehension of the person on suspicion of a crime may be appealed in the appellate procedure.

5. In each of his rulings on the lawfulness or unlawfulness of the apprehension of the suspect, the examining magistrate may set out an interlocutory ruling with which he points to the relevant prosecutor supervising the investigation the established breaches of the law that need to be rectified. Within one month of the interlocutory ruling, relevant measures should be taken and reported back to the examining magistrate.

6. The examining magistrate's ruling on the unlawfulness and unreasonableness of apprehension taking effect shall serve as the grounds for the procedure stipulated in Chapter 65 herein.

Article 272. The order of procedure for the consideration of the motion requesting application of such restrictive measures as custody, home arrest or bail, or else requesting extension of the time limit for detention and home arrest.

1. The restrictive measures provided for in this Code, shall be chosen and applied by the examining magistrate at the request of the investigator or prosecutor in a court hearing attended by the defendant, prosecutor and the defense attorney, either at the place of the pre-trial proceedings or at the place of apprehension of the suspect (defendant), within five hours of the submission of materials to the court. The court procedure may be attended also by the legal representative of an underage defendant, and by the investigator.

2. Non-appearance without a reasonable excuse by the parties, duly informed of the time of the court hearing, except for non-appearance of the defendant, shall not bar consideration of the motion. Should the defense attorney fail to appear, the defendant shall have the right to replace him with another attorney.

3. The court's ruling on a custodial restriction in the absence of the defendant may only be passed if the defendant is on a wanted list.

4. The ruling on the motion shall describe the reasons and grounds by virtue of which the need to choose such a restriction arose. The ruling should enclose materials supporting the reasonableness of the motion.

5. At the start of the session, the examining magistrate shall announce the motion to be heard, and explain to the attending parties their rights and duties. Then, the prosecutor, or another person filing an application at this request, shall explain the reasons for the motion, following which other parties appearing before the court are heard.

6. Having heard the motion, the examining magistrate shall make one of the following rulings:

- 1) applying the restrictive measure against the defendant; or
- 2) refusing the motion.

7. Should the motion on applying a restrictive measure of custody against the defendant be refused, the examining magistrate, at his own discretion, may apply, given the grounds provided for in Article --- [*missed in the original – translator*] herein, a restrictive measure in the form of home arrest or bail.

8. The judge's ruling shall be made known to the applicant, prosecutor and defendant and shall be subject to immediate execution.

9. Any repeat motion to the court requesting detention in custody of one and the same person under the same criminal case, following a refusal by the judge to grant the same restrictive measure, may only be possible in case of new circumstances justifying such person's custody.

10. The ruling on the motion requesting extension of detention or home arrest must be submitted to the court at the place of the pre-trial proceedings within seven days before the time of detention or home arrest expires. Within five days of the motion, the judge, following the procedure stipulated herein for the restrictive measures, shall make one of the following decisions:

- 1) extending the time of detention or home arrest; or
- 2) refusing the motion by the investigator and releasing the defendant from custody.

11. The examining magistrate may not hear a motion requesting extension of detention of the defendant in his absence, except when the defendant is an in-patient for the purpose of a forensic psychiatric examination, or given other circumstances that prevent him from being brought to court, which should be supported by the relevant documents. Should that be the case, participation of the defense attorney in the court proceedings should be mandatory.

12. The ruling by the examining magistrate on restrictive measures, extending the time of detention or home arrest, or refusing the motion, may be appealed to a higher court in the appellate procedure within three days of the ruling. Appealing against the examining magistrate's ruling in the appellate procedure shall not suspend its execution.

13. The decision taken by an appellate court on a complaint or protest shall be final.

Article 273. The order of procedure for the consideration of the motion requesting application of other interim measures in the criminal process

1. Other interim measures in the criminal process – temporary suspension from office, property impounding, fines – shall be applied by the examining magistrate at the request of the investigator in a closed court session attended by the defendant, prosecutor, investigator and the defense attorney.

2. The non-appearance of the parties duly informed of the time and place of the court session shall not bar consideration of the motion.

3. The ruling on the motion shall detail the reasons and grounds with regards to which procedural enforcement measures were requested.

4. Based on his consideration of the motion the magistrate shall issue a ruling granting application of other interim measures in the criminal process, or refusing them.

Article 274. Judiciary procedure for applying for permission for investigative actions or special investigative actions

1. Special investigative actions shall be allowed only for acquiring information about persons planning or conspiring to commit grave and particularly grave crimes, being in the process or having committed grave and particularly grave crimes, only with the permission of the examining magistrate based on a reasoned ruling of the investigator and with the consent of the prosecutor.

2. The motion shall be heard by the examining magistrate assisted by the prosecutor and investigator in a court session at the place of special investigative actions or at the location of the agency requesting such actions, within twenty four hours of the receipt of the motion.

3. Based on his consideration of the motion, the examining magistrate shall make a ruling

granting special investigative actions or refusing them, detailing the reasons for the refusal.

4. The time limit of the examining magistrate's ruling on special investigative actions shall be counted in days from the effective date of the ruling and may not exceed two months. If it is deemed necessary to extend the time, the examining magistrate shall issue a ruling based on the newly submitted materials.

5. The examining magistrate's refusal to grant special investigative actions may be appealed in the appellate procedure.

Article 275. Judiciary procedure for validating lawfulness and reasonableness of investigative actions and special investigative actions

1. In situations of urgency which may lead to dire consequences, special investigative actions may be conducted on the basis of a reasoned ruling by the investigator without a court ruling.

2. In each case of such special investigative actions carried out without a court ruling, the investigator, within twenty four hours of the beginning of such special investigative actions, shall notify the examining magistrate. The notification shall enclose copies of the ruling on special investigative actions.

3. Should the examining magistrate deem the completed special investigative action unlawful, all evidence acquired in the course of such special investigative action shall be ruled inadmissible under Article 82 herein. Should that be the case, the court may issue an interlocutory order which points the relevant supervisory prosecutor to the found breaches of law in the case, requiring rectification. Within one month, measures to address the interlocutory order of the examining magistrate should be taken and reported back to the court.

4. The examining magistrate's ruling on lawfulness or unlawfulness of special investigative actions may be appealed to a higher court in the appellate procedure.

Chapter 40. Judiciary appeal procedure

Article 276. Procedure for judiciary appeal against actions or decisions of the agency of inquiry, investigator or prosecutor

Action (inaction) or decision by the inquiry agency, investigator or prosecutor shall be heard by the examining magistrate pursuant to Article 136 above.

Article 277. Time limits for filing and examining the appeal

1. Complaints against actions (inaction) or decisions by the inquiry agency, investigator or prosecutor can be filed by the person within 15 days of the effective date of the decision or action (inaction). If such decision by the inquiry agency, investigator or prosecutor is to be executed in a ruling, the time limit for filing the complaint shall be counted as of the date when the relevant person has received its copy but no later than the end of the pre-trial proceedings.

2. The examining magistrate shall consider the appeals within the time limits provided for in Article 134 herein.

Article 278. Rejection of the complaint by the examining magistrate

The examining magistrate shall reject the appeal against decisions and actions (inaction) by the inquiry agency, investigator or prosecutor provided:

- 1) the complaint has been filed by a person who is not entitled to appeal;
- 2) the complaint is not subject to examination by this court;
- 3) the complaint has been filed after the time limit provided by this Code, and the applicant has not requested the deadline to be reset, or else the examining magistrate, at the application of such person, finds no reasons to have it reset; or
- 4) the complaint has been examined before, with similar reasons or arguments, by the relevant authority.

Article 279. Complaints filed by the suspect or defendant in custody

The administration of the place of detention shall without delay forward to the court all complaints addressed to it by the suspect or defendant kept in custody against actions (inaction) or decisions by the inquiry agency, investigator or prosecutor, which should be considered by the examining magistrate within two days.

**SECTION IX
PLEA BARGAINING**

Chapter 41. Sentencing without trial in connection with the guilty plea by the defendant

Article 280. Grounds for sentencing without trial

1. The defendant may file a motion for sentencing without trial in criminal cases pertaining to less grave and grave offences.

2. The motion of sentencing without trial in connection with the guilty plea can be made by the defendant in the presence of his defense attorney starting from the time of charging and until the beginning of the trial.

3. The court may apply sentencing without trial, if it finds that:

1) the defendant is of age and is aware of the nature and implications of the motion he is filing;

2) the motion was made voluntarily and after consulting the defense attorney; and

3) the prosecutor or the victim does not object to the defendant's motion.

4. Should the court find that the conditions stipulated in paragraphs one, two and three above in which the defendant has filed his motion, have not been met, it shall rule on holding the trial following the general procedure.

5. The judge shall order sentencing without trial in a ruling.

Article 281. The order of procedure for holding a court hearing and sentencing

1. The court hearing of the defendant's motion for sentencing without trial in connection with the guilty plea shall be conducted with the mandatory participation of the defendant and his attorney.

2. The court hearing shall start with the prosecutor narrating the charges against the defendant. The judge shall ask the defendant whether he understands the charges, accepts them and confirms his motion of sentencing without trial, whether this motion has been filed voluntarily and after consulting his attorney, and whether he is aware of the consequences of sentencing without trial. Should the victim be present in the courtroom, the judge shall explain to him the procedure and consequences of sentencing without trial, and inquire about his attitude towards the defendant's plea.

3. The judge will not conduct the general procedure of examination and assessment of evidence in the criminal case. However, what may be examined are the circumstances describing the character of the accused and any mitigating or aggravating circumstances.

4. In the case of objection by the defendant, prosecutor or the victim against sentencing without trial, or at his own discretion, the judge shall rule to terminate the court hearing and hold the trial in accordance with the general procedure.

5. Should the judge find that the charges which the defendant has accepted are reasonable, supported by the evidence collected in the criminal case, he will deliver a judgment of conviction and a sentence, which may not exceed two thirds of the maximum length or amount of the most severe sanction applicable to the crime committed, or release from penalty under probationary supervision.

6. The narrative and the reasoning of the judgment of conviction must have a description of the criminal offence for which the defendant pleads guilty, and the court's conclusions whether

the conditions of sentencing without trial have been satisfied. Analysis of the evidence or its assessment by the judge shall not be reflected in the judgment.

7. After reading the judgment, the judge shall explain to the parties their rights and procedure for appeal, inter alia, that the judgment may not be appealed on the grounds of lack of examination of evidence or discord between the court's conclusions and the actual circumstances of the criminal case.

8. Sentencing without trial at the defendant's plea shall not exempt him from liability with respect to the victim under the civil law.

9. The defendant shall not be awarded procedural costs.

Chapter 42. Cooperation plea bargaining

Article 282. Procedure for filing a motion for cooperation plea bargaining

1. The suspect and the defendant may file with the prosecutor a motion of cooperation plea bargaining starting from the beginning of the criminal prosecution until the announcement of the completion of the pre-trial proceedings.

2. The motion shall be filed with the prosecutor through the investigator in writing and shall be signed by the suspect or defendant and his attorney. If the defense attorney has not been invited by the suspect or the defendant himself, his presence shall be arranged for by the investigator.

3. The suspect or the defendant shall indicate in the motion of cooperation plea bargaining which actions he pledges to perform for the purpose of assisting the pre-trial process in solving and investigating the crime, exposing and prosecuting other accomplices in the crime, or detecting the proceeds of crime.

4. The cooperation plea bargaining may not be executed with minors or persons who have committed a criminal offence in a state of insanity or have become mentally ill after the commission of the crime.

5. The cooperation plea bargain shall not be deemed as sufficient grounds for exempting the suspect or the defendant from his liability with respect to the victim under the civil law.

Article 283. The order of procedure for examining the motion of cooperation plea bargaining

1. The prosecutor shall examine the motion for cooperation plea bargaining, assisted by the investigator, suspect or defendant and his attorney. Based on the outcome of his examination, the prosecutor may:

1) refuse the motion for cooperation plea bargaining, which shall be detailed in the reasoned ruling; or

2) grant the motion for cooperation plea bargaining.

2. The prosecutor's decision to refuse the motion for cooperation plea bargaining may be appealed by the suspect or defendant and his defense attorney to the superior prosecutor.

3. The prosecutor shall draw up a plea bargain indicating:

1) its date and place;

2) the officer of the prosecution and investigation authority who enters into the plea bargaining for the prosecution;

3) the full name of the suspect or defendant who enters into the plea bargaining for the defense, the date and place of his birth;

4) a description of the offence, indicating its date and place and other circumstances subject to proving;

5) the subpara, paragraph and article of the Criminal Code qualifying this offence;

6) actions that the suspect or the defendant pledges to perform to honor his commitments as detailed by the plea bargain;

7) mitigating circumstances and applicable provisions of the criminal law which may apply

to the suspect or the defendant, provided the latter complies with the conditions and obligations detailed in the plea bargain.

4. The cooperation plea bargain shall be signed by the prosecutor, investigator, suspect or defendant and his attorney.

Article 284. The order of procedure of the pre-trial proceedings with respect to the suspect or defendant who has entered into a plea bargain

1. The pre-trial proceedings for the criminal case with respect to the suspect or defendant who has entered into a plea bargain, which has been put into separate proceedings, shall be conducted in accordance with the general procedure, taking into account the specific features stipulated in this article below.

2. The motion by the suspect or defendant for the cooperation plea bargaining and the plea bargain shall be entered on the criminal case file.

3. In the event of a threat to safety of the suspect or defendant who has entered into a plea bargain, or that of his close relatives, relatives and connected persons, the investigator shall issue an order to keep the documents in a sealed envelope.

4. After the pre-trial proceedings is completed, the criminal case file shall be referred to the prosecutor for him to endorse the indictment and make a statement with regards to the defendant's compliance with the conditions and obligations provided in the plea bargain he entered.

Article 285. The prosecutor's report on the criminal case with regards to the defendant who has entered into a cooperation plea bargain

1. The prosecutor shall examine the criminal case file referred to him by the investigator with regards to the defendant who has entered into a plea bargain, together with the materials supporting such defendant's compliance with the conditions and obligations under such plea bargain, and make a report indicating:

1) the nature and limits of assistance that the defendant rendered to the investigation to solve and investigate the crime, expose and prosecute criminally other accomplices in the crime, and locate the proceeds of the crime;

2) the importance of cooperation with the defendant to solve and investigate the crime, expose and prosecute criminally other accomplices in the crime, and locate the proceeds of the crime;

3) the crimes detected or criminal prosecutions started as a result of cooperation with the defendant; and

4) the degree of risk to personal safety to which the defendant was exposed as a result of his cooperation with the prosecution, as well as that of his close relatives, relatives and connected persons.

2. In his report, the prosecutor shall also attest to the accuracy and truthfulness of information communicated by the defendant as part of his obligations under the plea bargain.

3. The prosecutor must familiarize the defendant and his attorney with his report and issue them with a copy. The defendant and his attorney may offer their comments to the report, which the prosecutor shall take into account should there be a good reason for so doing.

Article 286. Court hearing and sentencing based on the plea bargain

1. The summary court hearing and sentencing based on the plea bargain shall apply, should the court find that:

1) the public prosecutor has confirmed the active assistance of the defendant to the investigation in solving and investigating crimes, exposing and prosecuting criminally other accomplices in the crime, and locating the proceeds of the crime; and

2) the cooperation plea bargain has been executed voluntarily and with the participation of the defense attorney.

2. Should the court find that conditions detailed in paragraph one above have not been complied with, the court shall decide to hold a trial in accordance with the general procedure.

3. Provisions of this chapter shall not apply if the cooperation of the suspect or defendant has been limited merely to communicating evidence of his own role in the criminal activity.

4. The court hearing and sentencing with respect to the defendant who has entered into a cooperation plea bargain, shall be conducted in accordance with the procedure stipulated in Article 281 above, with reference to this article.

5. The court hearing shall be with the mandatory presence of the defendant and his attorney.

6. The court hearing shall begin with the public prosecutor narrating charges brought against the defendant, following which the public prosecutor confirms the defendant's assistance to the investigation and explains to the court its exact nature.

7. The court should examine:

1) the nature and limits of assistance that the defendant rendered to the investigation to solve and investigate the crime, expose and prosecute criminally other accomplices in the crime, and locate the proceeds of the crime;

2) the importance of cooperation by the defendant to solve and investigate the crime, expose and prosecute criminally other accomplices in the crime, and locate the proceeds of the crime;

3) the crimes detected or criminal prosecutions started as a result of cooperation with the defendant;

4) the degree of risk to personal safety to which the defendant was exposed as a result of his cooperation with the prosecution, as well as that of his close relatives, relatives and connected persons; and

5) the circumstances describing the defendant's character, and circumstances mitigating or aggravating the sanctions.

8. Having found that the defendant has observed all the conditions and complied with all the obligations under his plea bargain, the judge shall declare the judgment of conviction and [the sentence?] based on provisions in Articles 74 and 75 of the Kyrgyz Criminal Code, or release from penalty, subject to probationary supervision. [*there seems to be part of the sentence missing in the original here – translator*]

9. The narrative and the reasoning of the judgment of conviction must have a description of the criminal offence with which the defendant is charged, and the court's conclusions whether the conditions and obligations under the plea bargain have been met. Analysis of the evidence or its assessment by the judge shall not be reflected in the judgment.

10. After reading the judgment, the judge shall explain to the parties their rights and procedure for appeal, inter alia, that the judgment may not be appealed in the appellate procedure on the grounds of lack of examination of evidence or discord between the court's conclusions and the actual circumstances of the criminal case.

Article 287. Reviewing the judgment made with respect to the defendant who has entered into a plea bargain

Should it become known after the judgment of conviction under the provisions of this chapter, that [the defendant] has deliberately offered false evidence or intentionally concealed from the investigation any material evidence, the judgment shall be subject to review in accordance with the procedure stipulated in Chapter 60 herein.

Article 288. Ensuring security of the suspect or defendant who has entered into a plea bargain

1. Should there be a need to ensure security of the suspect or defendant who has entered into a plea bargain, or that of his close relatives, relatives and connected persons, the safety measures shall be applied as specified in Chapter 80 herein.

2. The suspect or the defendant who has entered into a plea bargain shall be subject to all measures of state protection offered to victims, witnesses or other parties to the criminal process

as provided for by the legislation of the Kyrgyz Republic.

Chapter 43. Procedural agreement of conciliation between parties

Article 289. Motion of conciliation

1. A motion of conciliation may be filed by the victim, suspect or defendant. Agreements of conciliation may be achieved by the victim or his representative and the suspect or defendant independently or with the help of a mediator.

2. The conciliation agreement between the victim and the suspect or defendant may be reached during the proceedings in cases of misconduct or less grave crimes.

3. The motion of conciliation may be filed from the start of the criminal prosecution until the court retires to deliver judgment.

4. If no agreement is reached following a motion of conciliation, the fact of the filing may not be considered as a waiver of prosecution or as a guilty plea.

5. The investigator, court and the authorized officer of the agency of inquiry must explain to the victim and the suspect or defendant their right to conciliate, and clarify the mechanism of its enforcement, and they shall not prevent them from achieving a conciliation agreement.

6. In the event that the criminal case or a case of misconduct shall attach to several persons, suspected or accused of committing one or more offences, and the consent to have a conciliation agreement has not been achieved with all suspects or defendants, such agreement may be executed with one (several) of the suspects or defendants. The criminal case or the case of misconduct with respect to the person (persons) with whom a conciliation agreement has been reached, shall be put into separate proceedings.

7. In the event that there should be several victims in a criminal case or a case of misconduct who have suffered from the same crime, the conciliation agreement may be reached and enforced only with all of the victims.

8. In the event that there should be several victims in a criminal case or a case of misconduct who have suffered from different offences, and the consent to have a conciliation agreement has not been obtained from all of the victims, such agreement may be executed with one (several) victims. The criminal case or the case of misconduct with respect to the persons (persons) who have reached conciliation shall be made subject to a separate proceeding.

Article 290. Contents of the conciliation agreement

1. Having considered the motion of conciliation, the investigator, court and the authorized officer of the agency of inquiry shall draw up the conciliation agreement, which shall indicate:

1) the date and place of the agreement;

2) the full names of the parties entering into the agreement, and that of the mediator who assisted conciliation;

3) a description of the crime indicating its date and place, and other circumstances to be proved;

4) the subpara, paragraph and article of the Criminal Code (Code of Misconduct) stipulating the liability for such offence;

5) the amount of damage inflicted by the offence (misconduct), the deadline for its repayment or the list of actions unrelated to repayment of damages that the suspect or defendant has pledged to undertake for the benefit of the victim, and the respective deadlines; and

6) the consequences of non-performance under the agreement.

The conciliation agreement shall be signed by the victim, suspect or defendant and his attorney, and the mediator, provided one was involved in the mediation, and by the officer administering the proceeding in the case.

3. Copies of the agreement shall be issued to the parties who have signed it.

Article 291. Case dismissal subject to the conciliation agreement

1. Under the rules stipulated by Article 39 of the Kyrgyz Code of Misconduct or Article – [missing in the original – translator] of the Kyrgyz Criminal Code, the court and the authorized officer of the agency of inquiry, with the consent of the head of the inquiry agency and based on the conciliation agreement, shall dismiss the criminal case or the case of misconduct, which shall be recorded in a reasoned ruling.

2. Dismissal of the case subject to the agreement may be appealed in the procedure provided for herein.

Article 292. Consequences of non-performance under the conciliation agreement

1. In the event of non-performance under the conciliation agreement, the victim may make a petition requesting annulment of such agreement to the investigator, prosecutor, or the court that issued the ruling. The motion to annul the conciliation agreement may be filed within the period of limitations under criminal prosecution.

2. The investigator, court or the authorized officer of the agency of inquiry shall hear the motion requesting annulment of the conciliation agreement with the mandatory presence of the parties and the mediator. Should it be found during the examination that the conditions of the agreement have not been observed, the investigator, court or the authorized officer of the agency of inquiry shall issue a resolution repealing their ruling of dismissal of the case.

3. The pre-trial proceedings and trial in the criminal case or the case of misconduct, for which the conciliation agreement has been annulled, shall be conducted in accordance with the general procedure.

SECTION X

PROCEEDINGS IN THE COURT OF FIRST INSTANCE

Chapter 44. Judicial jurisdiction in criminal cases and cases of misconduct

Article 293. Judicial jurisdiction in criminal cases and cases of misconduct

1. The district (municipal) court shall have jurisdiction over criminal cases of all types of offences, except the cases cited in paragraphs two and five below.

2. The military garrison courts shall have jurisdiction over criminal cases of all types of offences committed by servicemen or army reservists called up for training.

3. In the event that one person or a group of persons should have been accused of committing several offences, if at least one of such offences is within the jurisdiction of the military court, while others fall within the jurisdiction of a district (municipal) court, the case of all such offences shall be disposed of by the military court.

4. In the event that a group of persons should be accused of committing one or more offences, if at least one of such persons is subject to the jurisdiction of the military court, while the others shall be within the jurisdiction of the district (municipal) court, the case with respect to all of the accused shall be disposed of by the military court, should it prove impossible to put the case with respect to the serviceman into a separate proceeding.

5. Inter-district courts shall act as first instance courts for the offences qualified in Articles 132, 377, 378, 379, 380 and 385 of the Kyrgyz Criminal Code whenever the case is to be subject to trial by jury.

6. In the event that a group of persons should be accused of committing one or more offences, if the case with respect to at least one of such persons shall fall within the jurisdiction of the inter-district court, while the others shall be within the jurisdiction of the district (municipal) court or the military garrison court, the case with respect to all of the accused shall be tried by the inter-district court.

7. In the event that one person or a group of persons should be accused of committing several offences, if the case with respect to at least one such offence falls within the jurisdiction of the inter-district court, while the others are within the jurisdiction of another court, the case

with respect to all offences shall be tried by the inter-district court.

8. In the event that the accused (defendant) should refuse to be tried by jury, the criminal case shall be referred to the district (municipal) court or the military garrison court, unless there are circumstances listed in paragraphs six and seven above.

9. The judicial jurisdiction over a civil law claim arising from the criminal case shall be based on the jurisdiction of the criminal case within which the claim has been filed.

Article 294. Territorial jurisdiction over criminal cases and cases of misconduct

1. A criminal case or a case of misconduct shall be tried in the court at the place of the crime or misconduct, except when otherwise provided for by Article 296 herein.

2. If the crime or misconduct started within the venue of one court and completed within the venue of another, such case shall fall within the jurisdiction of the venue where the pre-trial proceedings have been completed.

3. Should it prove impossible to determine the venue of the crime or misconduct, or should the offences or misconduct be committed across different venues, the case shall be tried at the venue where the pre-trial procedure has been completed.

Article 295. Referral of the criminal case or case of misconduct in accordance with the applicable judicial jurisdiction

1. The judge, when appointing the case for trial and finding that the referred case is outside the jurisdiction of his court, shall refer it with his resolution in accordance with the applicable judicial jurisdiction.

2. The court, having found that the case administered by it falls within the jurisdiction of another court, may, with the consent of the defendant retain this case in its proceedings but only provided it has already started the trial.

3. Should, before the case has been committed for trial, the court receive a petition from the defendant, accused of crimes subject to the trial by jury, requesting a trial by jury, the judge shall refer the criminal case to the relevant court in accordance with the applicable jurisdiction.

Article 296. Amending territorial jurisdiction of the criminal case or the case of misconduct

1. The territorial jurisdiction may be amended:

1) by petition of the party, in the event that its challenge disqualifying the bench under Article 68 herein should be granted; or

2) by petition of the party or by decision of the presiding judge in the court to which the criminal case has been referred, whenever:

a) all judges of such court have been previously involved in the proceedings over the criminal case to be tried, which shall be good grounds for their disqualification under Article 66 herein; or

b) not all of the parties to the process reside within the venue of this court, and all defendants agree to amending the territorial jurisdiction over their case.

2. The territorial jurisdiction may only be amended prior to the beginning of the trial.

3. The issue of amending the venue over the case subject to the grounds cited in paragraph one above, shall be disposed of by the chairman of the higher court or his deputy.

4. In the presence of circumstances stipulated in Articles 64-66 herein, the Chairman of the Supreme Court of the Kyrgyz Republic or his deputy may, with his resolution, move the case from one court to another. On the same grounds, the chairman of the regional court or the Bishkek municipal court may transfer the case from one district (municipal) court to another, and the chairman of the Military Court of the Kyrgyz Republic may transfer the case from one military garrison court to another, with a relevant resolution.

5. Overturning the decisions by a lower court, the higher court may refer the case for re-trial by another court, in the presence of circumstances specified in Articles 64-66 herein.

Article 297. Inadmissibility of disputes over judicial jurisdiction

There shall be no disputes over jurisdiction between courts. Any case transferred from one court to another following the procedure established in Articles 295 and 296 above shall be subject to unconditional acceptance by the court to which the case was referred.

Chapter 45. Preparation for trial

Article 298. Powers of the judge with respect to the case referred to his court

1. Prior to the trial, the judge shall pass one of the following resolutions on the case filed:
 - 1) referring the case in accordance with the applicable jurisdiction;
 - 2) setting up the preliminary hearing;
 - 3) committing the case for trial;
 - 4) instructing the probation authority to produce a pre-trial report.
2. The judge shall pass his decision on the case in the form of a resolution indicating:
 - 1) its date and place;
 - 2) the name of the court, the full name of the judge who has issued the resolution; and
 - 3) the grounds for and substance of decisions made.
3. The decision must be passed within fourteen days of the filing of the criminal case with the court, or, in cases of misconduct, within five days.

Article 299. Issues to be examined for the case filed with the court

1. Addressing the issue whether the trial can be appointed, the judge must clarify the following, with respect to each of the defendants:
 - 1) whether the case falls within the jurisdiction of this court;
 - 2) whether a copy of the indictment has been handed in time;
 - 3) whether the applicable measure of pre-trial restriction is to be modified or abolished;
 - 4) whether interim measures, securing compensation for damages inflicted by the crime or misconduct, or possible confiscation of property, have been enforced;
 - 5) whether there are any petitions and motions to be granted; and
 - 6) whether there are reasons for holding a pre-trial hearing under paragraph two of Article 300 herein.
2. Examining any petitions or motions, the judge may summon the petitioning individual or a representative of the organizations for explanations.

Article 300. Grounds for holding a preliminary hearing

1. At the application of the party or by its own decision, given grounds as provided for in paragraph two herein, the court shall hold a preliminary hearing in accordance with the procedure set out in Chapter 46 herein.
2. The preliminary hearing shall be held:
 - 1) given a motion by a party on inadmissibility of evidence;
 - 2) whether there are grounds to refer the case back to the prosecutor in cases specified in Article 308 herein;
 - 3) whether there are grounds to suspend or dismiss the criminal case;
 - 4) given a motion by the party requesting trial following the procedure set out in paragraph five of Article 317 herein;
 - 5) on cases of particularly grave offences;
 - 6) to resolve the issue of trial by jury.
3. A motion requesting a preliminary hearing may be filed by the party after it has familiarized itself with the materials of the criminal case or after the criminal case has been referred to the court within three days of the receipt by the defendant of a copy of the indictment.
4. The summons to the hearing shall be sent out to the parties no later than three days prior

to the day of the preliminary hearing.

Article 301. Appointing the trial

1. In the absence of reasons to make decisions as specified in subpara 1 and 2 of paragraph one, Article 298 above, the court shall rule to appoint the trial without any preliminary hearings.

2. Apart from issues provided for in paragraph two of Article 298 therein, the ruling should address the following issues:

- 1) the place, date and time of the trial;
- 2) whether the criminal case is to be tried by a single judge or a panel;
- 3) appointing the defense attorney in cases where retaining an attorney is compulsory;
- 4) serving summons on persons from the lists submitted by the parties;
- 5) whether the case is to be tried in closed session as specified by Article 312 herein; and
- 6) restrictive measures, if any, except home arrest or detention in custody.

3. The ruling must also refer to the decision committing the case for trial and listing the full names of each of the defendants and the qualification of their alleged offences.

4. The parties must be notified of the date and time of the court session at least five days prior to its start.

5. With the trial appointed, the defendant may not file motions requesting:

- 1) to be tried by jury; and
- 2) to have a preliminary hearing.

Article 302. Ensuring the opportunity for the parties to familiarize themselves with the materials of the case

After the trial has been set, the judge shall make sure that the parties can have the opportunity to familiarize themselves with all of the materials in the case file, make copies or extracts of data required.

Article 303. Summons to the trial

1. The judge shall rule that the persons in the lists submitted by the parties in the trial be issued with summons to appear, and also to take other such necessary steps to prepare for the trial.

2. The appearance of persons before the court shall be secured by the parties for the prosecution and defense. In the event that such persons fail to appear without a reasonable excuse, their compulsory appearance shall be enforced by the police.

3. In the event that persons from the list submitted by the prosecution fail to appear before the court, and it shall be impossible to deliver a judgment because of their non-appearance during the trial, the case shall be referred back to the prosecutor to enforce appearance.

Article 304. Time limit of the trial

1. The judge (court) must start the criminal trial within 14 days of the ruling which committed the case for trial, or, for criminal cases tried by jury, within 30 days.

2. A criminal case of a less grave offence shall be tried by the judge (court) within one month, and in the case of a grave or particularly grave offence, within two months; and criminal cases tried by jury, within three months of the day when the case was filed with the court.

3. The period of the trial shall not include the time allowed to the parties to get familiarized with all the materials of the case in compliance with Article 302 herein, or the time for which the trial has been suspended subject to Article 323 herein.

4. Cases of misconduct shall be disposed on the merits by the judge within fifteen days of the day when the case was filed with the court.

Chapter 46. Preliminary hearing

Article 305. Order of procedure of preliminary hearing

1. The preliminary hearing shall be held by a single judge in closed session with the parties.
2. The judge shall announce the composition of the court and explain the rights to the parties, including the right to challenge.
3. The judge shall inform the defendant of his right to be tried by jury, and if the defendant expresses his will to be tried by jury, the preliminary hearing shall follow the procedure stipulated in Article 390 herein.
4. The preliminary hearing may be held in the absence of the defendant at his own request or, should there be grounds for holding the trial in accordance with the procedure stipulated in paragraphs five and six of Article 317 herein, at the petition of one of the parties.
5. Non-appearance of other, duly informed parties to the criminal process shall not bar the preliminary hearing.
6. Should the party file a motion of inadmissibility, the judge shall find out from the other party whether it objects to this motion. In the absence of objections, the judge shall grant the motion and make a ruling committing the case for trial, unless there are other grounds for holding a preliminary hearing.
7. Any motion by the defense attorney requesting additional evidence or exhibits shall be granted provided such evidence or exhibits be of significance for the criminal case in hand.
8. In the course of the preliminary hearing, minutes shall be kept.

Article 306. Motion of inadmissibility

1. The parties may file a motion excluding any evidence from the list of evidence to be shown in court. In case the motion is filed, its copy shall be handed over to the other party on the day of the motion.
2. The motion of inadmissibility must show:
 - 1) the evidence which the party seeks to exclude;
 - 2) grounds for ruling the evidence inadmissible as provided for by this Code;
 - 3) circumstances that substantiate the motion.
3. The judge shall have the right to question the witness and allow the document referred to in the motion to be entered in the case file. In the event that one of the parties should object to the exclusion of evidence, the judge may read out protocols of investigative actions or other documents in the case and/or submitted by the parties.
4. When hearing the motion of inadmissibility filed by the party for defense alleging that the evidence has been obtained in violation of this Code, the burden of proof rejecting the allegations of the defense shall be with the prosecutor. In all other cases, the burden of proof shall with the petitioning party.
5. If the court resolves in favor of excluding the evidence, such evidence shall no longer be legally valid and may not be used as a basis for the judgment or any other judicial ruling, or be examined and applied in the course of the trial.
6. Should the criminal case be tried by jury, the parties or other participants in the trial may not make the jurors aware of the evidence that was ruled by the court as inadmissible.
7. During the trial, the court may, at the request by the parties, look again into the issue of admitting the evidence that has been excluded.

Article 307. Types of decisions passed by the judge at the preliminary hearing

1. Based on the outcome of the preliminary hearing the judge shall make one of the following decisions:
 - 1) referring the criminal case under the relevant judicial jurisdiction;
 - 2) referring the criminal case back to the prosecutor;
 - 3) suspending the criminal proceedings in the case;
 - 4) dismissing the criminal case;
 - 5) appointing the trial; or

6) separating or declaring non-severable the criminal case pursuant to subpara 5, paragraph two, of Article 300 herein, and committing the case for trial.

2. The judge's decision shall be recorded in a resolution.

3. The resolution must reflect the outcome of the hearings of motions and complaints filed.

4. Should the judge grant the motion of inadmissibility and appoint the trial, the resolution must detail which evidence is to be excluded and which materials in the case file substantiating inadmissibility may not be examined or made public during the trial or used as proof.

5. The judicial resolution on pre-trial restrictions, referral under judicial jurisdiction, suspension of proceedings in the case, or dismissal of the case (fully or in part), and referral of the criminal case back to the prosecutor, as approved during the preliminary hearing, can be appealed in the appellate procedure within three days.

6. Any other decisions made as a result of the preliminary hearing shall not be subject to appeal.

Article 308. Referring the criminal case back to the prosecutor

1. At the request of one of the parties or by his own decision, the judge shall refer the criminal case back to the prosecutor to address any impediments to the trial provided:

1) the indictment has been executed in violation of provisions herein, making it impossible for the court to deliver a judgment or make any other resolution from such indictment;

2) the identity of the defendant has not been established;

3) a copy of the indictment has not been handed over to the defendant;

4) there is a need to pass an indictment in the case which was referred to the court together with the ruling on applying compulsory measures of a medical nature;

5) there are grounds for joining criminal actions as provided by Article 149;

6) during the defendant's familiarization with the materials of the criminal case he has not been informed of the right to ask to be tried by jury; or about the trial's special procedure; or about preliminary hearings in circumstances stipulated by the Code;

7) there have been violations of the criminal or criminal procedure laws barring the trial and legal sentencing;

8) there have been substantial violations of the rights and legitimate interests of the defendant and victim; and

9) the violations by the investigative authorities may not be remedied directly by the court during the trial.

2. Referring the criminal case back to the prosecutor, the judge must address the issue of the restrictive measures applied to the defendant. When needed, the judge may extend the period of defendant's custody for investigative and other procedural actions, in compliance with time limits set by Article 116 herein.

Article 309. Suspension of proceedings in the case

1. The judge shall suspend the proceedings in the case under the following circumstances:

1) whenever the defendant has absconded and his whereabouts are not known;

2) the defendant's illness, certified by a medical opinion, which bars his participation in the trial;

3) the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic has accepted for examination a complaint against the violation of rights and individual freedoms as a result of the criminal law applied or applicable in this criminal case, or the Constitution of the Kyrgyz Republic;

4) the court has applied to the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic asking it to validate the constitutionality of the law applied or applicable in this criminal case;

5) when the defendant's whereabouts are known, but there is no realistic possibility for him to take part in the trial;

6) a forensic examination has been requested; or

- 7) the court has found the charges to be graver than originally brought.
2. Should the proceedings in the case be suspended, the judge shall pass a resolution.
3. For cases under subpara 1, paragraph one, above, the judge shall suspend the proceedings in the criminal cases, and, provided the defendant has absconded from the detention, he will refer the case back to the prosecutor and instruct him to ensure the search for the defendant or, if the defendant has absconded who was not in detention, the judge shall apply the measure of custodial restriction to him, and instruct the prosecutor to ensure the search for the defendant.
4. Subparas 1 and 5 of paragraph one above shall not apply if any of the parties has applied to conduct the trial following the procedure set out in paragraph five of Article 317 herein.

Article 310. Dismissing the criminal case

1. The judge shall pass a resolution dismissing the case on the grounds listed in Article 25 above. Having resolved to have the case dismissed, the judge shall repeal the restrictive measure, or interim measures securing the civil law claims or confiscation of property, and address the issue of exhibits. A copy of the decision by the judge dismissing the case shall be delivered to the prosecutor and also issued to the person prosecuted in the criminal case and to the victim.
2. The issue of dismissal shall be addressed by the judge (court) in a court hearing attended by the prosecutor, victim, defendant, defense attorney, legal representative, civil claimant and civil defendant. The failure to attend by any of the parties shall not bar the hearing. The case dismissal on grounds set out in subparas 10, 11 and 12, paragraph one, of Article 25 herein, may only be allowed with the consent of the defendant. The court shall not address the evidence of proof of the defendant's guilt, nor shall the evidence be examined.
3. The presiding judge shall inform the parties of the purpose of the court hearing. The judge (court) shall hear each of the parties and retire. The judge (court) shall make a resolution (ruling) subject to the requirements in Article 326 herein.
4. The court session shall be recorded in the minutes by the court's secretary.

Chapter 47. General conditions of the trial

Article 311. Immediacy and oral nature of trial proceeding

1. During the trial, all evidence must be subject to immediate examination. The court shall hear the testimony of the defendant, victim, witnesses, and the forensic expert's report, view the exhibits, read out the protocols and other documents, and conduct other judicial actions to examine the evidence.
2. The verdict of the court may be based only on those pieces of evidence that have been examined during the trial.

Article 312. The oral nature of trial proceedings

1. The court must ensure an open judicial session, except when it may lead to the disclosure of a protected state, military or commercial secret.
2. A closed court session may be allowed subject to the reasoned resolution of the court (ruling by the judge) in cases of indecent or sexual assault or some other offences; for the purpose of non-disclosure of information about the intimate life of the parties or any demeaning evidence; in disposing of criminal cases of offence committed by individuals under the age of 16; and also whenever it is required in the interests of safety of the parties to the process and witnesses, their families or close relatives.
3. The trial in the case shall be held in a closed session in compliance with all of the rules of judicial proceedings. The court's resolution (ruling by the judge) to hold the trial in a closed session may be made for the entire trial or its respective part.
4. To protect the privacy of correspondence and telegraphic communications, personal correspondence and personal telegraphic communications by individuals may be read out in the open court session only with the consent of the individuals between whom such correspondence

and telegraphic communications have occurred. Failing that, such correspondence and telegraphic communications shall be read out and examined in a closed court session. The above rules shall apply also to the examination of photographs, audio and/or video recordings or films of private nature.

5. Those present in the open session may conduct audio recording or make written notes. Any photographing, video recording and/or filming may only be allowed with the permission of the judge presiding over the trial.

6. An individual who is under the age of 16, unless such individual is a party to the criminal trial, shall be allowed in the court room with the permission of the presiding judge.

7. In all cases, the court's judgment shall be announced in public.

8. Should the criminal case be tried in a closed session, or whenever the trial concerns crime in the sphere of economic activity, subject to the ruling or resolution by the court, the court may announce only the title of the judgment and its judicial disposition.

Article 313. The judge presiding over the trial

1. The presiding judge shall direct the trial, and take all steps provided for herein to ensure compliance with the adversarial nature and equality of the parties.

2. The presiding judge shall ensure compliance with the session procedures, and explain to all parties in the trial their rights and duties, and procedures for their enforcement.

3. The presiding judge's orders on the organization of the process and maintenance of proper order during the trial shall be binding on all parties to the trial and those present in the courtroom.

4. Should anyone participating the trial object to the actions by the presiding judge, such objections shall be recorded in the minutes of the court session.

Article 314. Equality of parties in the trial

The prosecutor, defendant, defense attorney and also the victim, civil claimant, civil defendant and their representatives shall enjoy equal rights to filing challenges and petitions, showing evidence, participating in their examination, addressing the court during the judicial pleadings and to participating in the discussion of all issues that arise during the trial.

Article 315. Court session secretary

1. The court session secretary shall maintain the minutes of the court session. He must reflect in the minutes accurately and truthfully all actions and decisions by the court or those of the parties to the trial as they occur during the session.

2. The court session secretary shall check the presence of those who must take part in the trial, and, upon the instruction of the presiding judge, perform other actions in line with this Code.

Article 316. The prosecutor's participation in the trial

1. The prosecutor shall conduct the prosecution on behalf of the government in all criminal cases, except those of private prosecution; present evidence of the defendant's guilt, participate in its examination, detail his arguments on the application of the criminal law and on sentencing.

2. The prosecutor's participation in the trial shall be mandatory.

3. In criminal cases of private prosecution, the side for the prosecution in the trial shall be the victim.

4. Public prosecution may be conducted by more than one prosecutor. Should it transpire during the trial that the prosecutor may no longer continue to participate, he may be replaced. Any replacement of the prosecutor shall not require repetition of those procedures that by that time have already been completed in the course of the trial. At the request of the prosecutor, the court may repeat the examination of witnesses, victims or forensic experts, or other judicial actions.

5. The prosecutor shall present or prosecute the civil law claim from the victim, should this be required to protect individual rights or public and state interests.

6. The prosecutor may mitigate charges or else withdraw charges fully or partially. Should the public prosecutor withdraw charges fully or in part during the trial, the criminal case shall be dismissed fully or in its relevant part.

7. Should the court find during the trial that the offence is graver than charged, the trial shall be suspended, and the criminal case referred back to the prosecutor for the pre-trial proceedings.

8. In the event that the trial should find some circumstance pointing to the commission of a crime by persons not prosecuted under the criminal law, the prosecutor shall take steps to initiate the pre-trial proceedings against such persons. Should it be impossible to try the case separately, it shall revert back to the prosecutor.

9. Any dismissal of the criminal case caused by the withdrawal of charges by the public prosecutor, or else any modification of charges by him, shall not bar any subsequent civil action and trial in accordance with civil procedure.

Article 317. The defendant's participation in the trial

1. The trial by the court of first instance shall be with the participation of the defendant whose appearance before the court is mandatory.

2. The trial in absence of the defendant shall be allowed in the instances when:

1) the defendant is outside the Kyrgyz Republic and avoids appearing before court;

2) after a repeat summons, the defendant fails to appear before court and notifies the court about the reasons for his non-appearance;

3. When the defendant fails to appear, the trial should be postponed. In this case, the judge or court shall demand that the prosecutor ensures the defendant's appearance.

4. The court may enforce the compulsory appearance by the defendant who has failed to appear without reasonable excuse, or else enforce or amend the restrictions applicable to him.

5. In exceptional cases, the trial of criminal cases of grave and particularly grave offences may be held in the absence of the defendant who is outside the Kyrgyz Republic and avoids appearing before court, provided such person has not been prosecuted under the same criminal case in a foreign state.

6. The participation by the defense attorney in a trial held pursuant to paragraph five above shall be mandatory.

7. In the event that the circumstances, specified in paragraph five above, should be removed, the judgment or the ruling by the court issued in absentia, at the request of the convicted offender or his attorney, shall be repealed following the cassation procedure. The trial in such case shall be held following the general procedure.

Article 318. The defense attorney's participation in the trial

1. The defense attorney shall present evidence and participate in the examination of evidence, present to the court his opinion on the substance of charges and evidence of proof, as well as on mitigating or exonerating circumstances, on sentencing and on other issues that arise during the trial.

2. In the event of non-appearance or the impossibility of replacing the defense attorney, the trial shall be postponed. The defense attorney shall be replaced pursuant to the rules set out in Article 48 herein.

3. The newly instructed defense attorney shall be given the time necessary to prepare for the trial. At the request of the defense attorney, the court may repeat the examination of witnesses, victims or forensic experts, or other judicial actions.

Article 319. The victim's participation in the trial

1. The trial shall be held with the participation of the victim and his representative.

2. In the event of non-appearance, the court shall address the issue of holding the trial or

postponing it, depending on whether full examination of all circumstances of the case can be made possible in the absence of the victim, as well as having his rights and legitimate interests protected. Should the trial be attended by the representative of the victim, the court shall dispose of that issue taking into account the opinion of such representative.

3. At the request of the victim, the court may excuse him from being present during the trial, having obliged him to appear at a certain time for giving testimony.

4. In private prosecution cases, the non-appearance of the victim before the court, without a reasonable excuse, shall lead to dismissal of the action.

Article 320. The participation of civil claimant or civil defendant in the trial

1. The trial shall be attended by the civil claimant, civil defendant and/or their representatives.

2. The court may hear the civil claim in the absence of the civil claimant provided:

1) it has been requested by the civil claimant or his representative;

2) the civil claim is prosecuted by the prosecutor; or

3) the defendant has accepted the civil claim entirely.

3. In all other instances, with the civil claimant or his representatives failing to appear, the court may set the civil claim aside without a hearing. In this case, the civil claimant shall retain the right to sue under the civil procedure.

Article 321. The participation by the forensic expert or specialist in the trial

The forensic expert or specialist shall attend the trial following the procedure set out in Articles 57 and 58 herein, respectively.

Article 322. Scope of the trial

1. The trial shall be held only with respect to the defendant and only on those charges that have been brought against him.

2. The charges may be amended during the trial unless it impairs the situation of the defendant or his right to defense.

Article 323. Postponement of trial and suspension of the criminal case

1. Should it prove impossible to try the case as a result of non-appearance before court of any of the persons summoned, or because of the need to have to request new evidence at the motion by the parties, the court with its resolution (or judge with his ruling) shall postpone the trial. At the same time, the court shall oblige the parties to take steps to ensure appearance of those who have failed to appear, and provide the requested evidence.

2. In the event of the defendant's illness precluding his appearance before court, the court shall suspend the proceedings against such defendant till his recovery, and shall continue the trial of other defendants. Should a separate trial prove impossible, the case shall be suspended as a whole.

3. In cases where there are several defendants prosecuted under the case, and one of them has absconded, the court should put the materials with respect to such defendant subject to a separate proceeding, and continue the trial with respect to the other defendants. Should separate proceedings impede fair justice, the case shall revert to the prosecutor.

4. In case of an application to the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic concerning the constitutionality of the applicable law, the court shall suspend the proceedings in the case until such time when the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic passes its decision.

5. In the event that a forensic examination should be requested, the court shall suspend the proceedings in the case until the forensic report has been submitted to the court.

6. After the resumption of the trial, the court shall continue hearing as of the moment when it was suspended.

7. Given the grounds set out in paragraph five of Article 317 herein, at the request of the parties, the trial shall be held in the absence of the defendant. The court shall make a ruling or resolution on trying the defendant in absentia.

Article 324. Dismissing the case during the judicial session

The case shall be dismissed during the judicial session provided the trial has established the circumstances specified in subpara 3-13, paragraph one, of Article 25 herein.

Article 325. Disposing of the issue of restrictive measures. Period of custody in detention or home arrest, and procedures for the extension thereof.

1. As of the moment when the case was accepted for proceedings till enforcement of the judgment (resolution or the ruling), the judge (court) may select, amend or repeal the restrictive measure against the defendant (accused, acquitted).

2. The restrictive measure in the form of detention of the defendant (accused) in custody or home arrest may apply throughout the period of the trial. This period shall be counted from the day when the case was referred to the court, provided the restriction, which is in the form of custody or home arrest and applied by the investigator or prosecutor, was upheld by the judge.

3. In exceptional cases, based on a reasoned resolution by the judge, when it proves impossible to complete the trial and where there are no grounds for amending or repealing the restrictions, the period of detention of the defendant in custody or under home arrest may be extended until the end of the trial.

4. In the event of the defendant's repeated incarceration in custody or under home arrest under the same criminal case, or under a joined or separated criminal case, the time already spent in custody or under home arrest shall be counted towards the total period of detention in custody or under home arrest.

5. The court shall issue the resolution, and the judge the ruling, extending the period of detention of the defendant in custody or under home arrest, no later than seven days prior to the end of the period. Such decisions should be reasoned.

Article 326. Order of procedure for issuing resolutions and rulings during the trial

1. On issues disposed of by the court during the trial, the judge shall make rulings, and the court shall pass resolutions to be announced during the court session.

2. The resolution or the ruling which is referring the criminal case back to the prosecutor; dismissing the criminal case; applying, amending or repealing restrictions with respect to the defendant; on judicial proceedings under circumstances stipulated by paragraph five of Article 317 herein; on challenges; and on forensic examination requested, if the case is tried by a panel of judges, shall be made in a retiring room and executed in separate procedural documents signed by the judge or judges.

3. All other rulings by the judge, or resolutions by the court, shall be issued at the discretion of the court in the trial courtroom, and recorded in the minutes of the court session.

Article 327. Order of the court session

1. The court session shall be held under conditions that allow for the normal operations by the court and security of the parties to the process.

2. When the judge enters, all those present in the courtroom shall stand.

3. All parties to the judicial process shall address the court and make their statements and applications standing. This rule may be waived with the permission of the presiding judge.

4. Parties to the trial and other persons present in the courtroom shall address the court with the words "distinguished court".

5. All parties to the trial and all those present in the courtroom must obey the instructions of the presiding judge to maintain order in the courtroom. Persons under the influence of alcoholic drinks or in a state caused by narcotic or toxic substances shall not be allowed inside the

courtroom.

Article 328. Court bailiff

The court bailiff shall ensure order in the courtroom, follow the instructions of the presiding judge, and execute other powers that he has under law. Orders issued by the court bailiff shall be mandatory for all present in the courtroom.

Article 329. Sanctions for breaking order in the courtroom

1. Should the order in the courtroom be broken by a party to the process, or a party fails to obey the instructions of the presiding judge, such party shall be warned that for any repeated breach of order such person will be removed from the courtroom or fined a multiple of up to 20 times the calculated rate. Any party, except the prosecutor or the defense attorney, may be removed from the courtroom, but no fine can be levied on the prosecutor, defense attorney or the defendant.

2. If the prosecutor or defense attorney fails to obey the instructions of the presiding judge, the hearing may be postponed by the resolution or ruling of the court, unless it is possible, without any prejudice to the case, to replace the person in question. The court shall also inform the superior prosecutor or the Ministry of Justice of the Kyrgyz Republic, respectively.

3. Should it be the defendant who has been removed from the courtroom, the sentence shall be announced in his presence, or made known to him immediately after delivery.

4. The judge shall make a ruling on having a party to the process removed from the courtroom and fined.

5. Those present in the courtroom but who are not parties to the process shall be removed from the courtroom if they break the order, at the instruction of the presiding judge. Additionally, the court may impose a fine in the amount of up to five multiples of the calculated rate.

Article 330. Minutes of the court session

1. The course of the court session shall be recorded in the minutes.

2. The minutes may be written by hand or typed on a typewriter or produced with the help of a computer. In order to make the minutes as complete as possible, steno-typing and technical means can be used.

3. The minutes of the court session must have the following mandatory information: the date and place of the session; the start and end time; the name of the court; full name of the presiding judge, secretary, interpreter, prosecutor, defense attorney, defendant and the victim, civil claimant; civil defendant and their representatives; other persons summoned by the court; the case in hand; details of the defendant and the restrictive measures applied; the court's actions in the sequence they occurred; applications, objections and motions by the parties; ruling by the judge made without retiring; references to resolutions passed after retiring; explanations to the parties of their rights and duties, detailed description of their statements, questions asked and answers given; the outcome of visual inspections during the trial or other actions in examining the evidence; reference to the fact that the parties asked to be entered on record; the gist of the statements made by the parties during their pleadings and the last plea of the defendant; reference to the delivery of the judgment and explanations as to the procedure and time limits for appeal. In addition, the minutes should also make reference to the instances suggesting disrespect to court, if any, the identity of the offender and sanctions imposed on such offender by the court.

4. In the event of photographing, audio and/or video recording or filming of examination during the trial, the fact is recorded in the minutes of the court session. In this case, the materials produced during photographing, audio and/video recording or filming shall be enclosed in the criminal case file.

5. The minutes must be produced and signed by the presiding judge and the secretary within

five days of the end of the court session.

6. The motion requesting access to the minutes of the court session shall be filed by the parties in writing within three days of the end of the court session. This time limit may be set back if the failure to make a motion was for good reason. The petitions shall not be granted if the case has already been referred to the appellate or cassation court or is in the process of being executed.

7. The presiding judge shall ensure the parties get access to and, at their request, copies of the minutes of the court session within three days of the petition.

Article 331. Comments on the minutes of the court session and their examination

1. Within three days of having familiarized with the minutes of the court session, the parties may offer their comments on it.

2. Comments on the minutes of the court session shall be considered by the presiding judge immediately. When necessary, the presiding judge may call in the persons who served the comments, to clarify them.

3. As a result of his consideration, the presiding judge shall make a ruling accepting the verity of such comments or overruling them. Comments on the minutes and the ruling of the presiding judge shall be included with the minutes.

Chapter 48. Trial

Article 332. Declaring the court session open

At the appointed time, the presiding judge shall open the court session and announce the case to be heard.

Article 333. Making certain of the presence

1. The secretary shall report on the appearance of the persons who are expected to participate in the session, and inform about the reasons for non-appearance of those absent.

2. The secretary of the court session shall make certain of the appearance before court and reasons for non-appearance of those absent before the opening of the session.

Article 334. Explaining to the interpreter his rights and duties

1. The presiding judge shall explain to the interpreter his rights and duties under Article 59 of this Code.

2. The interpreter shall be warned by the presiding judge about the criminal liability for deliberately false interpretation, which he will acknowledge with a signed receipt, to be enclosed with the minutes of the court session. The interpreter shall also be warned that should he avoid his duties he may be fined following the procedure set out in paragraph five of Article 59 herein.

Article 335. Removing witnesses from the courtroom

1. The witnesses who have come for the trial shall be removed from the courtroom before their examination.

2. The court bailiff shall take steps to make sure that the witnesses that have not been examined do not communicate with those examined or other persons in the courtroom.

Article 336. Certifying the identity of the defendant and timeliness of delivering him a copy of the indictment

1. The presiding judge shall establish the identity of the defendant, clarify his full name, age, year, month, day and place of birth, find out whether he speaks the language of the criminal proceedings; his place of residence, place of work, occupation, education, family status and other details of his identity.

2. The presiding judge shall clarify whether the defendant has received and when the copy

of indictment.

3. In the event of non-delivery of the copy of the indictment the trial should be postponed while the prosecutor shall take steps to ensure immediate delivery to the defendant of the copy of the said ruling. In this case, the trial cannot start before three days after the service of that document.

4. In the event a criminal trial in accordance with the procedure set out by paragraph five of Article 317 herein, the presiding judge shall clarify whether the defendant's attorney has received and when a copy of the ruling of prosecution. The trial of this criminal case may not then start before three days after the day when the defense attorney has received the copy of the ruling of prosecution.

Article 337. Announcing the presiding judge and other parties, and explaining the right to challenge

1. The presiding judge shall announce the composition of the court; explain who the prosecutor, defense attorney, victim and his representative, civil claimant or civil defendant and his representative are, as well as the secretary of the court session, forensic expert, specialist and interpreter. The presiding judge shall explain to the parties their right to challenge, under the rules set out in Chapter 8 herein, the presiding judge or any other party listed in this article.

2. The challenges made shall be disposed of by the court following the procedure set out in Articles 69 herein.

Article 338. Explaining rights and duties to the defendant

The presiding judge shall explain to the defendant and his legitimate representative their rights and duties during the trial as provided for in Article 45 herein.

Article 339. Explaining rights and duties to the victim, civil claimant, civil defendant and their representatives

The presiding judge shall explain to the victim, civil claimant, civil defendant and their representatives their rights and duties during the trial under Articles 38, 40, 41, 53 and 55 herein, respectively. The victim shall be informed, in addition, of his right to conciliate with the defendant in situations stipulated in this Code.

Article 340. Explaining rights and duties to the forensic expert

The presiding judge shall explain to the forensic expert his rights and duties under Article 60 herein and warn him of the criminal liability for deliberately false reports, which shall be acknowledged by the forensic expert in a signed note, enclosed with the minutes of the court session.

Article 341. Explaining rights and duties to the specialist

The presiding judge shall explain to the specialist his rights and duties under Article 58 herein and warn him of the criminal liability for refusing or avoiding performing his duties.

Article 342. Filing and disposing of motions

1. The presiding judge shall ask the parties whether they have any motions summoning new witnesses, forensic experts or specialists and allowing new exhibits and documents. The petitioning party must indicate which circumstances exactly the additional evidence is sought to show.

2. Having heard the opinions of the other parties to the process, the court must hear each filed motion and either grant it or rule to refuse granting the motion.

3. The person whose motion was refused by the court may file it again in the course of further trial.

Article 343. Disposing of the issue of holding a trial in the absence of any of the parties thereto

1. In the event of non-appearance of any of the parties to the process, or equally any witness, forensic expert or specialist, the court shall listen to the opinions of the parties on holding the trial in his absence, and shall issue a resolution or ruling to continue the trial or postpone it, and also to summon or ensure compulsory appearance of the missing participant.

2. Until the issue of the trial postponement is resolved, the court may examine the appearing witnesses, forensic expert or specialist, victim, civil claimant, civil defendant and their representatives, and then issue the ruling postponing the trial. Should this case be tried by the same judge afterwards, the repeated summonses of those already examined shall be conducted only if necessary.

Article 344. Start of the trial

1. The trial shall be opened by the public prosecutor who will state the indictment, or, in cases of public prosecution, by the person filing the application or his representative.

2. The presiding judge shall ask the defendant whether he understands the charges brought against him, his plea and attitude to the charges.

Article 345. Procedure for the examination of evidence

1. Having complied with the requirements of Article 344 herein, the presiding judge, after listening to the opinions of the parties, shall set out the procedure for the examination of evidence.

2. The defendant may make statements at any moment during the trial, with the permission of the presiding judge.

Article 346. Examination of the defendant

1. Prior to the examination of the defendant, the presiding judge shall explain to him his right to testify or not testify with respect to the charges brought or other circumstance of the case, and that everything he says may be used against him. Given the consent of the defendant to testify, he is first examined by the defense attorney and the parties for the defense, followed by the public prosecutor and parties for the prosecution. The presiding judge shall overrule leading questions or questions which have no reference to the criminal case in hand.

2. The defendant may refer to written notes which shall be shown to the court at its demand.

3. The court shall ask questions of the defendant after his examination by the parties, however, clarifying questions can be asked at any moment of his examination.

4. Should the defendant plead guilty and willing to give testimony on the charges brought against him in the form of a free narrative, the court shall listen to him without interruption, except when his testimony bears no relevance to the case.

5. Examination of the defendant in the absence of another defendant may be allowed by the court or at the request of the parties, according to the judge's ruling. In this case, after the defendant is returned to the courtroom, the presiding judge shall inform him of the testimony given in his absence, and allow him to pose questions to the defendant examined in his absence.

Article 347. Reading out statements by the defendant

1. Statements by the defendant made during the pre-trial proceedings, and also audio records of his statements, video recordings or films, enclosed with the protocol of interrogation, can be made public at the petition of the parties in the cases as follows:

1) in the presence of significant differences between statements made by the defendant during the pre-trial proceedings, and testimony given in court;

2) should the defendant refuse to testify in court; and

3) if the case is tried in the absence of the defendant.

2. The rules established in paragraph one above shall apply also to cases of making public

the testimonies given by the defendant earlier in court.

3. It is forbidden to play back, without prior consent, audio or video recordings or films of statements contained in the relevant protocols of interrogation or minutes of the court session. Any play-back of audio and video recordings or films shall be recorded in the minutes of the court session.

Article 348. Examination of the victim

1. The victim shall be examined following the rules for the examination of witnesses as set out in paragraphs two to eight of Article 349 herein.

2. With the permission of the presiding judge, the victim may testify at any moment during the trial.

3. The victim may be examined with the use of technical means in a video-conference (remote examination) following the procedure set out in Article 200 herein.

Article 349. Examination of witnesses

1. Witnesses shall be examined separately and without witnesses, not yet examined, present.

2. Prior to the examination, the presiding judge shall certify the identity of the witness, clarify his relation to the defendant and the victim, inform him of his civil duty and obligation to give truthful statements in the case and of the liability for refusing to testify and for making deliberately false statements. Persons exempt from the duty to testify under law shall be informed only of the liability for making deliberately false statements. The witness shall acknowledge in a signed note that he has had his duties and liabilities explained. The signed note shall be enclosed with the minutes of the court session.

3. The witness shall be examined by the prosecutor, victim, civil claimant, civil defendant and their representatives, the defendant and his attorney. The first to examine shall be the party that asked to have this witness summoned to trial.

4. The presiding judge shall overrule leading questions or questions not relevant to the case, and clarify the testimony of the witness after his examinations by the parties. Then the presiding judge may ask questions of the witness.

5. The examined witnesses may leave the courtroom before the end of the trial with the permission of the presiding judge, who shall take into account the opinions of the parties.

6. Should it be necessary to ensure the safety of the witness, his close relatives and relatives, the court, without disclosing the genuine identity of the witness, may conduct his examination in conditions precluding visual observation of such witness by other parties in trial, which shall be set out in the resolution or ruling.

7. If parties file a reasoned petition to disclose the genuine identity of the testifying person, in view of the need to ensure the protection of the defendant or find some circumstances significant for the criminal trial, the court may allow the parties to get access to such information.

8. Witnesses may refer to written notes. Such notes must be shown to the court at its demand.

3. The witness may be examined with the use of technical means in a video conference (remote examination) following the procedure set out in Article 200 herein.

Article 350. Examining an underage victim or witness

1. During the examination of a victim or witness aged younger than fourteen, or, at the discretion of the court, during the examination of such persons aged from fourteen or sixteen, legal representatives and the teacher shall be called. These persons can ask questions to the victim or witness with the permission of the presiding judge.

2. Prior to the examination of the victim or witness aged younger than sixteen, the presiding judge shall inform them of the meaning of accurate and truthful testimony for the case. Such persons shall not be warned of the liability for refusing to testify or give deliberately false

testimony, or sign a written acknowledgment.

3. At the request of the parties or at the discretion of the court, the examination of underage victims or witnesses may be held in the absence of the defendant, which shall be ordered by the court in a ruling. After the defendant is returned in the courtroom, he must be read testimonies of such persons and given an opportunity to ask them questions.

4. The victim or witness aged younger than sixteen shall be removed from the courtroom at the end of their examination, except when the court deems their presence necessary.

Article 351. Reading out statements by the victim or witness

1. Statements by the victim or witness made during the pre-trial proceedings, and also audio recordings of his statements, video recordings or films, enclosed with the protocol of interrogation, can be made public at the petition of the parties in the absence of the victim or witness from the courtroom for reasons precluding their appearance before court, provided their statements have been deposited pursuant to this Code.

2. The rules established in paragraph one above shall apply also to cases of making public the testimonies given by the victim or witness earlier in court.

3. The court may also hear statements by the victim or witness examined by the court pursuant to paragraph two of Article 343 herein.

4. Audio recordings of the statements by the victim or witness, or video recordings or films of their interrogation may be made public following the rules set out in paragraph three of Article 347 herein.

Article 352. Performance of a forensic investigation in court

1. At the request of the parties or at its own discretion, the court may request a forensic investigation.

2. A forensic investigation in court shall follow the rules set out in Chapter 25 herein.

3. Having read out the ruling requesting forensic investigation, the presiding judge shall inform the parties of the right to challenge the forensic expert; petition to include among forensic experts another person suggested by the party; have the forensic investigation conducted by representatives of another forensic institution; and having the forensic investigation conducted in the presence of the parties.

4. During the hearing, the forensic expert may ask questions of the persons examined, get acquainted with written evidence, protocols of investigative actions, reports by other forensic experts, participate in visual examinations, simulations and other judiciary actions relating to the object of forensic investigation.

5. Should it be necessary to provide the forensic experts with specimens for a comparative study, rules of Articles 190 and 191 shall apply.

6. Having examined all the circumstances relevant to the forensic report, the presiding judge shall offer the parties the opportunity to put their questions to the forensic expert in writing. The questions posed must be read out, and the opinion of the parties about such questions should be heard. The court shall examine these questions, and with its ruling overrule those of them that have no relevance to the case or the forensic expert's competence, and also formulate new questions, following which the forensic expert shall start his investigation and draft the report.

7. The report shall be provided by the forensic expert in writing, read out by him during the court hearing and, together with the questions, enclosed with the case file. The forensic expert in his report may cover conclusions that bear on the circumstances of the case which are within his competence and which have not been covered in the questions.

8. Should the court summon the forensic expert that offered a report during the pre-trial proceedings, after the report has been read out, provided that the parties raise no objections, the court may decide against requesting the forensic investigation and limit itself to the examination of such forensic expert.

9. At the request of the parties or at its own discretion, the court may request a repeat or

additional forensic examination, should there be contradictions between the forensic reports which cannot be overcome during the trial by examining the forensic experts.

Article 353. Examination of the forensic expert

1. At the request of the parties or at its own discretion, the court may summon for examination the forensic expert who produced the report during the investigation, for him to clarify or amplify his report.

2. The parties may pose questions to the forensic expert, and the first to ask shall be the party that requested the forensic investigation. The presiding judge may pose questions to the forensic expert at any time during the examination.

Article 354. Examination of exhibits

1. Exhibits admitted during the pre-trial procedure or newly discovered, must be examined by the court and shown to the parties.

2. Exhibits may be examined at any time during the trial both at the request of parties or at the discretion of the presiding judge. Exhibits may be produced for examination by witnesses, the forensic expert or specialist. Persons shown the exhibits may point out circumstances relating to the examination. The results of the examination shall be reflected in the minutes of the court session.

3. Exhibits may be examined by the court at the place of their location pursuant to the rules set out in paragraph one above.

Article 355. Reading out protocols of investigative actions and documents

1. Protocols of investigative actions ascertaining circumstances and facts found during the view, examination, seizure, search, impounding of the property, apprehension, submission for identification, crime re-enactment, wire-tapping of telephone and other conversations by the defendant or other persons implicated in the crime, or documents entered in the case file or submitted to the court, provided they describe or ascertain circumstances relevant to the case, shall be read out in full or in part.

2. Documents submitted to the court by the parties or requested by the court, subject to the ruling or resolution of the court, may be examined and entered in the case file.

Article 356. View of the location or premises

1. Having ruled it necessary to have a view of some location or premises, the court shall conduct the viewing, assisted by the parties. If necessary, the viewing may be conducted with the participation of witnesses, forensic expert and specialist, which shall be decreed by the court in its ruling.

2. Upon arrival at the scene of the view, the presiding judge shall announce the court session resumed, and the court should proceed to viewing, whereupon, in connection with the viewing, the defendant, victim, witnesses, forensic expert and specialist may be asked questions.

3. The outcome of the viewing shall be recorded in the minutes of the court session.

Article 357. Re-enactment

1. Should, in order to have some data in the case file verified or clarified, it be deemed necessary to re-enact the actions, setting or other circumstances of certain event, and perform experimental actions, the court may conduct a re-enactment.

2. The re-enactment shall be conducted by the court assisted by the parties. If necessary, the witness and the specialist may be involved in the re-enactment.

3. The court shall conduct its re-enactment pursuant to the rules set out in Chapter 31 herein.

Article 358. Submission for identification

Should it be necessary to submit in court some person or item for identification, it shall be

done pursuant to the rules set out in Chapter 28 herein.

Article 359. Examination

1. Any examination during the court session shall be conducted subject to the ruling or resolution by the court in cases stipulated by paragraph one of Article 174 herein.

2. Any examination where the body is exposed shall be conducted in a separate room by a doctor or another specialist who, upon completing such examination, shall draw up and sign an examination act. Following this, the above persons shall return to the courtroom where, in the presence of the parties and the person examined, they shall report back to the court about traces or marks, if any, on the body of the examined individual, and answer any questions posed by the parties or the presiding judge. The act of examination shall be included in the case file.

Article 360. Completion of examination in court

1. Having examined all evidence, the presiding judge shall ask the parties whether they want to amplify the examination in court and with what. Should there be motions to have the examination amplified in court, the court should look into such motions and dispose of them.

2. During the session the presiding judge shall read out the pre-trial report, except for information barred by the laws of the Kyrgyz Republic, if any.

3. Having disposed of the motions and performed all necessary judiciary actions, the presiding judge shall announce the examination in court completed.

Article 361. Contents of and order of procedure for pleadings by the parties

1. Following the completion of the examination in court, the court shall proceed to the pleadings, which shall consist of the statements by the prosecutor; victim or his representative; civil claimant, civil defendant or their representatives; and defendant and his attorney. The sequence of statements to be made by the parties during the pleadings shall be set out by the court, in accordance with such parties' suggestions, but in any case the first to be heard shall be the public or private prosecutor, who, based on the outcome of the examination in court, must present arguments in favor of the conclusions about the defendant's guilt, the qualification of his act, and present his opinion on the sentence that should be delivered, or else he may withdraw the charges.

2. The parties during the pleadings may not refer to any evidence that has not been examined in court, and should they need to discover new evidence, they may petition to have the examination in court resumed.

3. The court may not limit the length of the pleadings to any definite time; however, the presiding judge may stop the persons pleading should they touch on circumstances not relevant to the case in hand.

4. After all parties have made their statements, they may have one more opportunity each with comments (replies) with regards to the things stated by the representatives of the parties. The right of the last comment shall be that of the defendant or his attorney.

5. Each of the pleading parties may propose to the court in writing their phrasing of the disposition on issues listed in subparas 1-6, paragraph one, of Article 368 herein. The proposed wording shall not be binding on the court.

Article 362. The last plea by the defendant

1. After the end of the pleadings the presiding judge offers to the defendant his last plea. Questions to the defendant during his last plea shall not be allowed.

2. The court may not limit the length of the defendant's last plea, but the presiding judge may stop the defendant whenever his plea touched on circumstances that have no relevance to the case in hand.

Article 363. Resuming examination in court

In the event that parties in pleadings or the defendant during his last plea communicate any new circumstances of relevance to the case, or refer to evidence not examined earlier but relevant, at the request of the parties or at its own discretion the court shall resume examination in court. At the end of the resumed examination in court the court shall open up pleadings again and offer the last plea to the defendant.

Article 364. Retiring for delivering the judgment

Having heard the defendant's last plea, the presiding judge (panel of judges) shall immediately retire to deliver the judgment, having made such announcement to those in the courtroom.

Chapter 49. Sentencing

Article 365. Sentencing in the name of the Kyrgyz Republic

The court shall pass the sentence in the name of the Kyrgyz Republic.

Article 366. Lawfulness, reasonableness and fairness of the sentence

1. The court's sentence must be lawful, reasonable and fair.
2. The judgment shall be deemed lawful, reasonable and fair if it has been passed in conformity with the provisions of this Code and based on proper application of the criminal law.

Article 367. Sentencing

1. The sentence shall be passed by the court in the retiring room. During the sentencing, only the court disposing of the case in question may be present in the room. No other persons may be present.
2. With the advent of night time, and if needed, during the day time, the court may take a break for rest, and leave the retiring room. The sentencing shall also be discontinued for days off and holidays.
3. The time when the sentence is to be delivered should be announced to the parties to the process.

Article 368. Questions to be resolved by the judge while sentencing

1. During sentencing the court shall dispose of the following questions:
 - 1) whether the act for which the defendant is being incriminated has taken place;
 - 2) whether it has been proved that the act was committed by the defendant;
 - 3) whether this act is a crime or an act of misconduct, and which article of the criminal law or the Kyrgyz Code of Misconduct it is qualified under;
 - 4) whether the defendant is guilty of committing this crime or act of misconduct, and whether there are any mitigating or aggravating circumstances;
 - 5) whether the defendant should be punished for the crime or misconduct he has committed;
 - 6) which penalty should be imposed on the defendant;
 - 7) whether there are grounds for sentencing without imposing a penalty or relieving the defendant from it;
 - 8) whether a civil claim should be awarded, to whom and in which amount, and also whether the property damaged is subject to compensation if no civil action has been started;
 - 9) whether the legal entity should be prosecuted under the civil action started against it demanding application of criminal enforcement measures as provided for by the Criminal Code of the Kyrgyz Republic;
 - 10) whether it has been proved that the property subject to forfeiture has been found to be the proceeds of the crime or revenues generated from such property or else has been used as an instrument of crime or for the funding of terrorism, an organized group, illegal armed units, or a

criminal society (criminal organization);

11) what should be done with the property impounded as security for any civil claims or possible forfeiture;

12) what should be done with the material evidence;

13) who and in what amount should bear procedural costs;

14) whether the court, in cases stipulated in Article 64 of the Kyrgyz Criminal Code, should strip the convicted offender of any special or army ranks, honorary degrees or public service ranks, or take away government awards;

15) whether to impose compulsory measures of a medical nature in circumstances specified in Chapter 19 of the Kyrgyz Criminal Code; and

16) restrictive measures with respect to the person convicted (acquitted).

2. If the defendant is accused of committing several offenses, the court shall dispose of questions indicated in subparagraphs 1-6, paragraph one, above for each crime or act of misconduct separately.

3. In the event that there are several defendants accused of the crime, the court shall dispose of these questions with respect to each of the defendants separately, defining the role and degree of his involvement in the commission of the crime.

4. When sentencing the court shall take into account the recommendations of the pre-trial report.

Article 369. Disposing of the issue of sanity of the defendant

1. During the sentencing, the court must address the issue of the defendant's sanity.

2. Having recognized that the defendant was in a state of insanity at the time when the crime was committed or became mentally ill after having committed it, making it impossible for him to be aware of the actual significance of his actions or their harm, or else to guide his actions, the court shall rule to dismiss the criminal case and commit the defendant to compulsory measures of a medical nature.

Article 370. Types of sentences

1. The court's sentence can be conviction or acquittal.

2. A conviction can be delivered:

1) imposing a penalty to be served by the person convicted;

2) imposing a penalty and relieving from serving it;

3) without imposing a penalty.

Article 371. Grounds for delivering a conviction

1. A judgment of conviction shall be delivered only provided that in the course of the trial the defendant's guilt for committing the crime or misconduct has been proved with the entirety of evidence examined, and may not be based on assumptions.

2. Delivering a judgment of conviction with a penalty imposed to be served by the person convicted, the court must define specifically such penalty's type, term and the beginning of the service of term.

3. The court shall deliver a conviction imposing a penalty and relieving the convicted offender from serving it, provided, by the time of sentencing:

1) an act of amnesty has been adopted, releasing the convicted offender from the penalty imposed by the sentence in question;

2) the length of the sentence imposed by the court is to be offset by the period of the defendant's detention in custody under the case in question, pursuant to the custody offsetting rules set out in Article 81 of the Kyrgyz Criminal Code.

4. The court shall pass a conviction without imposing a penalty if by the time of sentencing:

1) the person has become gravely ill precluding him from serving the sentence;

2) the period of limitations has expired for prosecuting this crime or liability for misconduct.

Article 372. Grounds for delivering an acquittal

1. An acquittal shall be passed if:
 - 1) there is no event of crime;
 - 2) the act of the defendant has no elements of crime or misconduct;
 - 3) the defendant's complicity in the commission of the crime has not been proved;
 - 4) the act that inflicted harm was lawful by virtue of the criminal law (justifiable defense; imaginary defense; extreme necessity; physical or mental coercion; inflicting harm during apprehension of a perpetrator; obeying orders or other instructions, or else an official duty; justifiable risk; performing a special operation inside an organized crime group or criminal organization); or
 - 5) the jury has returned a not-guilty verdict for the defendant.
2. An acquittal on any of the aforementioned grounds shall mean that the defendant is not guilty, and shall lead to his complete rehabilitation.
3. In the event that at the time when the judgment of acquittal was passed for lack of evidence proving the defendant's complicity in the crime or misconduct the perpetrator was not identified, with the entry of the judgment into legal force, the court shall refer the case to the prosecutor for him to take steps to identify the perpetrator.

Article 373. Drawing up the sentence

1. Having disposed of the issues listed in Article 368 above, the judge shall proceed to drawing up the sentence. The sentence shall be drafted in the language of the process and shall comprise the introductory, narrative and reasoning, and resolute parts.
2. The sentence must be written by the judge by hand or produced with the help of technical means, and be signed. The sentence shall be signed by all judges, including those dissenting.
3. If the sentence is to be corrected, corrections must be specified and certified with the signature of the judge before the sentence is delivered.

Article 374. The introductory part of the sentence

The introductory part of the sentence shall indicate:

- 1) sentencing in the name of the Kyrgyz Republic;
- 2) the sentence's date and place;
- 3) the name of the court entering the sentence; full names of the presiding judge, secretary of the court session, prosecutor, defense attorney, victim, legal representative, civil claimant, civil defendant;
- 4) the full name of the defendant; year, month, day and place of his birth; place of work, occupation, education, family status and other details of the defendant's identity of relevance to the case; and
- 5) subpara, paragraph and article of the criminal law or the Kyrgyz Code of Misconduct criminalizing the offence or qualifying the liability for the misconduct with which the defendant has been charged.

Article 375. The narrative and reasoning part of the conviction

1. The narrative and reasoning part of the conviction must contain:
 - 1) a description of the act that the court ruled to be proved, indicating its place, time, mode, form of guilt, motives, objectives and consequences of the crime or misconduct;
 - 2) the evidence on which the conclusions of the court with respect to the defendant are based, and the motives for which the court dismissed other evidence;
 - 3) the mitigating and aggravating circumstances, and, should some of the charges be ruled as unsubstantiated, or should the crime or misconduct be deemed improperly qualified, the grounds and motives for changing the charges; and
 - 4) the evidence on which the court based its conclusions that the property subject to forfeiture was the proceeds of the crime or misconduct or is revenues generated by such

property, or was used or intended to be used as instruments of crime or to fund terrorism, an organized group, illegal armed unit, or a criminal society (criminal organization).

2. The court must also refer to the motives for disposing of all of the issues pertaining to imposing a criminal penalty, releasing the defendant from it or from having it actually served, or imposing other sanctions.

3. The narrative and reasoning part must include the substantiation of all decisions taken with respect to the issues listed in Article 368 above.

Article 376. The resolute part of the conviction

1. The resolute part of the conviction must indicate:

- 1) the full name of the defendant;
- 2) the resolution pronouncing the defendant guilty of committing the crime and/or misconduct;
- 3) the subpara, paragraph and article of the criminal law and/or the Kyrgyz Code of Misconduct under which the defendant has been deemed guilty;
- 4) the type and term of penalty imposed on the defendant for each of the crime or misconduct of which he was deemed guilty;
- 5) the definitive punishment to be served subject to the articles of the Kyrgyz Criminal Code and/or Kyrgyz Code of Misconduct;
- 6) the length of probationary supervision if released from serving the punishment on conditions of probation, and monitoring requirements and probation obligations imposed on the convicted offender;
- 7) the decision to take away special or army ranks, honorary degrees or public service ranks, or to recall government awards;
- 8) the decision to set off the sentence against the time spent in preliminary detention in custody whenever the defendant was in custody prior to sentencing or was subject to custodial restrictions or else committed to a psychiatric institution; and
- 9) the decision on the restrictive measures against the defendant, if any, until the sentence becomes effective.

2. If the defendant is charged under several articles of the criminal law and/or the Kyrgyz Code of Misconduct, the resolution part of the sentence must state clearly under which of them the defendant has been acquitted and under which, convicted.

3. If the defendant is released from serving the punishment, or no punishment is imposed under the sentence, it should be stated so in the resolute part of the sentence.

Article 377. The narrative and reasoning part of the acquittal

1. The narrative and reasoning part of the acquittal shall detail:

- 1) the substance of the charges brought;
- 2) the circumstances of the case found by the court;
- 3) the evidence that served grounds for acquittal;
- 4) the motives guided by which the court deemed the evidence of the prosecution unreliable or insufficient; and
- 5) the reasoning for the decision with regards to the civil action.

2. The acquittal may not include any wording that puts into doubt the innocence of the person acquitted.

Article 378. The resolute part of the acquittal

The resolute part of the acquittal must contain:

- 1) the full name of the defendant;
- 2) the decision to acquit the defendant and the grounds for it;
- 3) the decision to repeal the restrictive measures, if any;
- 4) the decision to repeal interim measures securing the forfeiture of property or

compensation for damage inflicted, if any such measures have been applied; and

5) details of the procedures for the compensation for damage relating to criminal prosecution.

Article 379. Other issues to be addressed in the resolute part of the sentence

Apart of the issues listed in Articles 376 and 378 herein, respectively, the resolute part of both the conviction and the acquittal must contain:

- 1) the resolution on the civil claims made;
- 2) the decision pertaining to the issue of exhibits;
- 3) the decision pertaining to the allocation of procedural costs; and
- 4) details of the procedures and time limits for appealing against the sentence.

Article 380. Delivering the sentence

1. Having signed the judgment, the court shall return to the courtroom, and the presiding judge shall deliver the sentence. All those present in the courtroom, including the panel of judges, shall hear out the sentence standing.

2. If the sentence is drafted in a language which the defendant does not know, after the sentence is delivered, or simultaneously, it must be translated orally by the interpreter into the defendant's native language or the language he speaks.

3. The presiding judge shall explain to the defendant and other parties to the process its substance, and the procedure and time limits for appeal.

4. Should the defendant be convicted for life, he will also be explained his right to plead for mercy.

5. If only the introductory and resolute parts are delivered, the court shall inform the parties to the trial about the procedure for familiarizing themselves with the full text.

6. The failure on the part of any of the parties to be present in the courtroom by the time when the sentence is to be delivered shall not bar delivery of the sentence.

Article 381. Setting the defendant free from custody

In cases of acquittal, and also when the conviction is entered without imposing a penalty, or it releases the convicted offender from serving the sentence subject to probation supervision, or when the sentence is entered with a non-custodial penalty, or when the proceedings in the criminal case are dismissed, the defendant who has been detained in custody shall be set free immediately in the courtroom.

Article 382. Serving a copy of sentence

Within five days of the delivery of sentence, its copy must be served on the person convicted or acquitted, the defense attorney and the prosecutor. Within the same time, a copy of the sentence should also be made available to the victim, civil claimant, civil defendant and their representatives, provided the court has received their request.

Article 383. Issues to be disposed of by the court at the same time as sentencing

1. In the event that the convicted person sentenced to deprivation of liberty has underage children, elderly parents or other dependents left without care, the court shall address the issue and pass a resolution transferring such persons into care or under guardianship of their relatives or other persons or organizations, and in the event that the convicted offender has any property and a dwelling that will be left without care, taking steps to ensure their security.

2. In the event that the defense attorney has been appointed to the case, the court shall, together with the sentencing, pass a ruling on the amount of remuneration due to the Bar.

3. All the procedural decisions set out above may be adopted by the petition of parties concerned and after the delivery of the sentence.

Article 384. Granting visits to the convicted offender

Before the sentence is enforced, the presiding judge or chairman of the court may grant the request by the close relatives to visit the convicted offender in custody.

Chapter 50. Proceedings in cases of private prosecution

Article 385. Starting private prosecution

1. A case of private prosecution shall be initiated by a person by making an application to court to institute criminal proceedings against another person.

2. The application must indicate the name of the court where the application has been filed; a description of the event of crime, complete with its place and date, and evidence; the request to the court to allow the case in its jurisdiction; details of the person to be prosecuted; and the list of witnesses who need to be summoned to the court. The application shall be signed by the applicant.

3. The application shall be filed with the court with the requisite number of copies to those who shall be held criminally liable by private prosecution.

4. As soon as the court accepts the application for its proceedings, the applicant shall become a private prosecutor, and he must be informed of his rights under Article 39 herein.

Article 386. Powers of the judge in the case of private prosecution prior to the trial

1. In the event that the application filed should fail to comply with the requirements of paragraphs two and three of Article 385 herein, the judge shall suggest to the applicant that he should provide evidence and remedy deficiencies, setting a time limit for that. Failing that, the judge with his ruling shall refuse to accept the application for the proceedings and inform the applicant accordingly.

2. At the petition of the private prosecutor, the judge must offer assistance in collecting evidence.

3. Should there be reasons to hold a court hearing, the judge, within seven days of the date of application, shall summon the person against whom the application has been filed, acquaint him with the case file, provide him with a copy of the application filed and inform him of the rights of the defendant during trial under Article 45 herein, and find out who, according to that person, should be summoned to court as witnesses for the defense.

4. The judge must inform the parties about the possibility for conciliation. Should they apply for conciliation, all proceedings in this case shall be terminated by the judge pursuant to Article 25 herein.

5. Failing conciliation between the parties, having complied with requirements of paragraphs three and four above, the judge shall appoint a hearing into the case in compliance with Article 301 herein.

Article 387. Hearing the case in court

1. The hearing of the application in a private prosecution case may be joined in one proceeding with the hearing on the counter application. The joinder can be allowed by the judge's resolution before the court hearing.

2. With the applications joined in one proceeding, the applicants shall participate in the process at the same time as the private prosecutor and the defendant.

3. To be prepared for the defense in connection with the counter claim and the joinder of the proceedings at the request of the party against which the counter claim has been made, the trial may be postponed for no more than three days.

4. The examination of such persons about the circumstances that they have detailed in their applications shall be conducted pursuant to the rules of the examination of a victim, and about the circumstances detailed in counter applications, pursuant to the rules of examination of the defendant.

5. During the court hearing on private prosecution cases, the charges shall be pressed by the private prosecutor or his representative.

6. The court hearing on private prosecution cases shall start with the presentation of the application by the applicant or his representative.

7. Failure by the private prosecutor or his representative to appear before court without a reasonable excuse shall be deemed as a refusal to uphold the application filed, and lead to the dismissal of the proceedings in the case.

Chapter 51. Specifics of trial by jury

Article 388. Procedure for the trial by jury

Procedure for the trial by jury shall be defined by the general rules set out by this Code taking into account the specific features provided for in this chapter.

Article 389. Limiting contacts with the jurors

The public prosecutor, victim, defendant and his attorney as well as other parties to the process throughout the entire trial by jury shall be forbidden to come in contact, except as provided for by the Code, with the jurors involved in this trial.

Article 390. Specifics of preliminary hearings

1. The preliminary hearing shall be held by the single judge in session with the participation of the parties.

The parties shall be informed of the day of the preliminary hearing at least three days before the date.

Non-appearance at the hearings by the victim and his attorney duly notified shall not bar the holding of the preliminary hearing.

2. Opening the preliminary hearing, the judge shall announce the case to be tried, introduce himself to those present, present the public prosecutor, defense attorney and the secretary, find out the identity of the defendant and dispose of the challenges filed. The public prosecutor shall read out the resolute part of the indictment. The judge shall establish whether the defendant understands the substance of the charges and ask whether he confirms his petition to have trial by jury.

3. Provided the defendant has confirmed his petition to have trial by jury, the judge shall declare the petition granted and proceed to examining the motions by the public prosecutor, victim, defendant and their attorneys, or any other motions filed earlier. The judge shall dispose of the motions after listening to the parties. Motions by the parties for the prosecution and for the defense must be heard by the judge.

4. If needed, the preliminary hearings may have any documents entered in the case file or other evidence presented to be tested for admissibility.

5. In the event that the defendant should not uphold his petition to trial by jury, the judge shall declare the preliminary hearing closed, and shall refer the case to the respective court of first instance to be tried pursuant to the rules set out in Chapter 48 herein.

Article 391. Types of rulings following preliminary hearings

1. Based on the outcome of the preliminary hearing, the judge shall pass one of the following rulings:

1) appointing the criminal trial by jury; and

2) referring the criminal case to the relevant court of first instance for the subsequent trial pursuant to the rules of Chapter 48 herein.

2. In his ruling appointing the criminal trial by jury the judge shall:

1) determine the number of potential jurors to be summoned to court for the selection of the jury, of which there must be at least fifty;

2) appoint the date of the court session for the jury selection.

3. Simultaneously with committing the case for the trial by jury, the judge, taking into account the opinion of the parties following the preliminary hearing, shall address the issue of having any facts excluded from the trial as inadmissible under Article 82 herein.

4. The judge's ruling on appointing trial by jury shall be final. Subsequently, this ruling may not be repealed because of the defendant's refusal to be tried by jury.

Article 392. Order of procedure for setting up a pool of potential jurors

1. On the day when the ruling is passed to appoint trial by jury, the court's administrator, following the instructions by the presiding judge, through random selection and in the presence of the public prosecutor and the defendant's attorney, shall set up a pool of at least fifty potential jurors.

2. After completing the selection of the pool of potential jurors to be involved in the criminal trial, the list shall be drawn up of the preliminary pool of potential jurors with their full names, which shall be signed by the court's administrator and the parties. Names of the potential jurors shall be entered in the list in the sequence of the random sampling.

The preliminary jury shall be selected by the automated information system out of the annual final list of potential jurors.

3. It shall be enough to have thirty five potential jurors making their appearance in court to begin the jury selection.

4. Those potential jurors who are on the list of the pool of potential jurors, at least seven days prior to the beginning of the jury selection shall be served summons with the date and time of their appearance in court.

Article 393. Order of procedure for the court session selecting the jury for the trial

1. The presiding judge shall open the court session, introduce himself and other participants in the process, verify the appearance of the parties, inform the parties about their rights under this Code, including their right to challenge the judge, prosecutor, secretary of the court session, potential jurors, and the consequences of their failure to exercise this right, and shall give the floor to the court's administrator who shall report on the appearance of the citizens from the list of the pool of potential jurors.

The presiding judge shall address the potential jurors with a brief statement in which he shall:

1) announce the case to be tried;

2) explain the work of the jurors and conditions for participation in this trial;

3) explain the ground on which the jurors may be excused from their duty under the Law of the Kyrgyz Republic "On jurors in courts of the Kyrgyz Republic".

2. Selecting the jury from the pool of potential jurors shall be by:

1) the presiding judge excluding potential jurors from the trial on the grounds provided for by the Law of the Kyrgyz Republic "On jurors in courts of the Kyrgyz Republic" and on other grounds;

2) disposing of challenges; and

3) granting peremptory challenges to parties.

3. The jury shall be selected in a closed court session.

4. The lists of potential jurors who are in the courtroom shall be given to the parties. Together with the full names, the list shall indicate the age, occupation and education.

5. The jury shall consist of nine regular and alternate jurors.

6. One and the same person may not serve as a juror more than once during a year.

7. To address objectively the issue of excusing potential jurors from participation in the trial, the parties, in turns determined by the presiding judge, may pose questions to potential jurors during the jury selection.

With the permission of the presiding judge, all or some of the questions addressed to the

potential jurors may be formulated by the parties in writing. The potential jurors shall be asked to fill in the questionnaire with the questions by the parties after it is approved by the presiding juror.

8. The potential juror must truthfully respond to the questions by the presiding judge, parties for the prosecution and for the defense that are asked during the jury selection for the trial, and also disclose at the request of the presiding judge other necessary information about himself and his relationship with other persons participating in the case. Questions relating to their protected rights and interests shall be overruled by the presiding judge.

9. All issues relating to excusing potential jurors from the trial and also challenges to potential jurors shall be disposed of by the presiding judge alone without retiring.

10. Should it be the case that while disposing of the issue of challenges or during the selection there have been any breaches affecting proper jury empanelling, the presiding judge shall declare empanelling of the jury void, and shall select potential jurors again, fully or partially.

11. Before the jurors are sworn, the parties may declare that due to the type of the criminal case to be tried the newly empaneled jury as a whole may prove unable to return an unbiased verdict. In this case, at the request by the parties the presiding judge may disband the jury due to its biased nature.

12. If the number of potential jurors showing up in court is less than thirty five, the presiding judge shall order to enlist the necessary number of potential jurors.

The number of the potential jurors summoned additionally and the time allowed for it shall be announced by the presiding judge. The presiding judge shall announce the court adjournment.

Article 394. Addressing excusing potential jurors

1. The presiding judge shall clarify the legal reasons for excusing any of the potential jurors from the trial and rule on the merits. Each of the appearing potential jurors may refer to the grounds provided for by the Law of the Kyrgyz Republic "On jurors in courts of the Kyrgyz Republic", and also other reasonable excuses that rule out the possibility for the potential juror to participate in the trial. The decision to excuse the potential jurors from the trial shall be made by the presiding judge without retiring.

2. The excused potential jurors shall be excluded from the preliminary list and removed from the courtroom.

Article 395. Addressing issues of challenging potential jurors

1. Any potential juror from the preliminary composition of the jury shall be challenged following the procedure set out in Article 64 herein and also provided:

1) that the potential juror is a victim, civil claimant, civil defendant in the case under trial, or has been or may be summoned as a witness;

2) that the potential juror has participated in the proceedings in the case in hand as a forensic expert, specialist, interpreter, attesting witness, secretary of the court session, inquiring officer, investigator, defense attorney, defendant, representative of the victim, civil claimant or civil defendant;

3) that the potential juror is a relative of the victim, civil claimant, civil defendant or their representative, defendant or its legal representative, prosecutor, defense attorney, investigator or inquiring officer; or

4) that there are other circumstances that give reasons to believe that the potential juror may have personal, direct or indirect, interest in the outcome of this trial, and also may prove to be biased for any other reason.

2. The parties shall submit to the presiding judge their reasoned motions of challenge, without announcing them. If granted, the motions shall lead to the exclusion of the potential juror from the preliminary composition of the jury. The presiding judge shall make his decision known to the parties.

Article 396. Peremptory challenge of potential jurors

1. If the number of potential jurors is eighteen or more, after the challenges made under Article 395 herein have been disposed of, the presiding judge shall offer the parties the opportunity to make their peremptory challenges.

2. A peremptory challenge is made with the parties submitting their lists of potential jurors subject to peremptory challenge. The lists shall be signed by the prosecutor and/or victim, defendant and/or his attorney, respectively.

The prosecutor shall be the first to make his peremptory challenge to potential jurors, whereby his list is submitted to the presiding judge and the party for the defense.

Each party shall be allowed the same number of peremptory challenges but no more than two each. The peremptory challenges shall be agreed upon by the prosecutor and the victim, and the defendant and his attorney, respectively. The defendant may instruct his attorney to carry out peremptory challenges.

3. Whenever there are several defendants and they have not agreed on the allocation of peremptory challenges, their number shall be allocated among the defendants with a draw, with one ballot per each defendant in the ballot box, and when all ballots have been drawn, the procedure shall be repeated. The defendant may challenge as many potential jurors as the number of times when a ballot with his name has been drawn from the ballot box by the presiding judge.

4. The prosecutor, and the defendant and his attorney may ask through the presiding judge any of the potential jurors to introduce themselves.

5. The waiver by any of the defendants of the peremptory challenge shall not limit the right of the other defendants to a certain number of juror challenges.

6. Whenever the number of unchallenged jurors exceeds the number of the jurors as set by the presiding judge, the minutes of the court session as instructed by the presiding judge shall list the jurors, in the number as set by the presiding judge, starting from the top of the list of potential jurors.

7. Lists of peremptory challenges shall be entered in the criminal case file.

Article 397. Procedure for putting additional potential jurors in the preliminary list of the jury

1. Whenever the number of potential jurors, following all the challenges under Article 395, fall below eighteen, the presiding judge shall announce an additional selection of the requisite number of potential jurors in the preliminary list of the jury, following the procedure set out in paragraph one of Article 392 herein.

2. The potential jurors enlisted as a result of the additional selection shall be subjected to the procedures set out in Articles 394 and 395 herein.

3. The number of potential jurors to be invited for additional selection shall be determined by the presiding judge.

4. In the event of the additional selection to the preliminary list of jury, the court session shall be adjourned until the procedures set out in Article 392 herein have been completed.

Article 398. Actions of the presiding judge following the selection of the jury

1. After the jury selection the presiding judge shall announce the results of the selection without quoting the reasons for excluding some of the potential jurors, and thank the rest of the potential jurors.

2. The presiding judge shall announce the full names of the jurors recorded in the minutes of the court session, where the first ten names shall form the jury, and the rest participate in the trial as alternate jurors.

Article 399. Jury foreman

1. After the end of the jury empanelling, the presiding judge shall suggest that the regular jury retire to the jury room to elect their foreman. The foreman shall be elected by an open majority vote out of the number of regular jurors.

2. After the jury returns to the courtroom, the foreman shall inform the presiding judge and the parties of his election by the members of the jury.

3. The jury foreman shall guide the jury conference, approach the presiding judge at the instruction of the jurors with questions and requests, announce the questions posed by the court, note down answers to them, sum up the outcome of the voting, draw up the verdict and, at the instruction of the presiding judge, announce it during the trial.

4. After the jury foreman has been elected, the presiding judge shall ask the jury to take their places in the jury box.

Article 400. Swearing in the jury

1. The presiding judge shall ask the jury to take the oath, and shall read the following text: "Upon assuming the duties of a member of the jury, I swear to perform my duties honestly, fairly and without bias, take into account all evidence, arguments and circumstances of the case examined during the trial, incriminating as well as exonerating the defendant, and dispose of the case in accordance with my true conviction and conscience, neither acquitting the guilty, nor convicting the innocent."

2. Having read the text of the oath, the presiding judge shall call the names of the jurors, including alternate jurors, each of whom shall respond: "I swear".

3. The swearing in of the jurors shall be recorded in the minutes of the court session.

4. Having sworn in the jury, the presiding judge shall inform the jurors about their rights and duties under Article 31 herein, and proceed with the trial.

Article 401. General terms for the participation of the jury in the trial

1. The jury box shall be separated from the rest of the courtroom and located, as a rule, across from the defendant's dock. Alternate jurors shall take the seats assigned to them by the presiding judge in the jury box.

2. Before the verdict is returned, the alternate jurors may be incorporated in the regular jury should any of the jurors be unable to stay in the trial. Substituting alternate jurors for the regular shall be carried out following the sequence of names in the list used for the jury selection for this trial. In the event that all possibilities to substitute alternate jurors have been exhausted, the presiding shall declare the trial held so far void, and set the criminal trial proceedings back to the stage of the preliminary selection of potential jurors under Article 392 herein.

3. In the event that during the trial the jury foreman should have to leave, he is to be replaced by another election following the procedure set out in paragraph one of Article 397 herein.

Article 402. Duties of the presiding judge and the jury

1. In the course of a criminal trial, all issues, except the ones listed in paragraph two below, shall be disposed of by a single judge in line with the requirements stipulated by this Code.

2. During the trial the jury shall dispose of issues specified in subpara 1, 2 and 4, paragraph one, of Article 368 herein, and the questions formulated in the questionnaire. If the defendant is found guilty, the jury may indicate whether such defendant deserves leniency.

3. In the absence of the jury, the presiding judge must address the issue petitioned by the parties to exclude from the examination any facts which are inadmissible pursuant to Article 82 herein.

4. The parties shall have no right to mention during the jury trial the existence of evidence excluded from the trial, or make reference to it to argue their points.

5. The presiding judge may not brief the jurors on any inadmissible evidence.

Jurors' familiarization with the evidence ruled as inadmissible prior to its examination in the

presence of the jury or subsequently, shall not be deemed a material violation of the criminal procedure law, unless the presiding judge has failed to inform the jurors that they must not take into account the information thus obtained.

Article 403. Specific features of the judicial examination in a jury trial

1. The judicial examination during the trial by jury shall be held following the procedure set out in Articles 344-360 and 363 of this Code, taking into account the requirements below.

2. The presiding judge may not pose questions to defendants, the victim or other participants of the trial or express his opinion on the evidence examined. All evidence in the case shall be examined in the course of the trial immediately and orally. Statements by the participants in the process made at the stage of the investigation may only be read in the event of death or grave illness of such person, or his departure from the Kyrgyz Republic, or in view of other circumstances that rule out a possibility of a testimony in the courtroom. Examination of the forensic expert during the trial shall be mandatory, should the report of such forensic expert be contested.

3. Examination of the defendant, victim and other participants in the trial shall be done by the parties for the prosecution and defense.

During a trial by jury only those facts of the criminal case shall be examined which the jury needs to test as proven pursuant to their powers stipulated by Article 402 herein.

4. During his presentation of the resolute part of the charging document, the public prosecutor may not refer to previous convictions of the defendant, if any.

5. The jurors may ask questions, through the presiding judge, of the defendant, victim witnesses, forensic experts and specialists after these persons have been examined by the parties. Such questions shall be stated by the jury in writing and passed to the presiding judge via the jury foreman. The presiding judge may decline those questions he may deem irrelevant to the case or equally those of a leading or offensive nature.

6. Not to be examined in the presence of the jury shall be any circumstances that have to do with the defendant's previous convictions, him being a certified chronic alcoholic or drug addict, or any other circumstances which may lead to prejudice towards the defendant among the jurors.

7. A criminal case to be tried by the jury may not be returned to have gaps in the investigation eliminated, save when the case is to be returned following a petition by the party for the defense.

Article 404. Pleadings

1. After the end of the judicial examination, the trial by jury shall proceed to the pleadings.

2. Pleadings in a jury trial shall consist of two parts.

3. The first part of the pleadings shall include the statements made by the prosecutor, victim, defense attorney and the defendant who shall detail their arguments regarding the proof or lack thereof of the defendant's guilt, without referring to his previous convictions, if any. The parties may not invoke any circumstances inadmissible in a jury trial, or refer to evidence that has not been examined in the court. The presiding judge shall stop such statements and explain to the jury that they must not take such circumstances into account while reaching the verdict.

4. The second part of the pleadings shall consist of the statements by the prosecutor and the victim, civil claimant and defendant or their representatives, those of the defense attorney and the defendant where they shall state their position regarding the qualification of defendant's acts, penalty and the civil action. The second part of the pleadings shall take place after the return of the verdict and without the jury.

Article 405. Replies and the defendant's last plea during the jury trial

1. After making their statements, all participants in the pleadings shall have a right of reply. The defense attorney and the defendant shall have the right of the last reply.

2. Under Article 362 herein, the defendant shall have the right to the last plea.

Article 406. Statement of questions to be addressed by the jury

1. After the defendant's last plea the jury shall leave the courtroom for the time necessary to state the questions to be submitted to the jury for resolution.

2. Taking into account the outcome of the judicial examination and the pleadings, the presiding judge shall put forth in writing the questions that the jury shall have to address, announce them and hand them over to the parties.

3. The parties may offer their comments on the substance and phrasing of the questions and make suggestions.

4. Based on the comments and suggestions by the parties, the presiding judge shall finalize the questions to be addressed by the jury, put them in the questionnaire form and sign it.

5. The contents of the list of questions shall be read out in the presence of the jury, and the list of questions shall be handed over to the jury foreman.

6. Before retiring to the deliberations room the jury may receive from the presiding judge any clarifications on ambiguities arising in connection with the questions posed, without going into the substance of possible answers or their legal aspect.

Article 407. Contents of the questions to be addressed by the jury

1. On each of the counts of the charges against the defendant, there shall be three questions to address:

- 1) whether it has been proved that the act took place;
- 2) whether it has been proved that the act was committed by the defendant; and
- 3) whether the defendant is guilty of the act.

2. It shall be possible to join the three main questions in the list, as in paragraph one above, into a single question.

3. The questionnaire may also pose further questions to aid jurors in finding the defendant guilty of a lesser crime, provided it does not cause any deterioration in the defendant's situation or violate his right to a defense. Further questions shall also be allowed in the interests of the prosecution.

4. Should the defendant be found guilty of the crime, the jurors are asked to respond whether he deserves leniency.

5. The wording of the questions must not, in any of the answers thereto, cause the defendant to be found guilty of an offence that the public prosecutor, with the consent of the victim, has not charged him with or held liable for, by the time when the questions have been stated.

6. In criminal cases where several defendants are charged, the questions to be addressed by the jury shall be put forth for each defendant separately.

7. The questions shall be put in wording that is clear to the jurors.

Article 408. Instructions by the presiding judge

1. Before the jury retires to the deliberations room to reach a verdict, the presiding judge shall address the jurors with his instructions.

2. In his instructions the presiding judge shall be forbidden to express in any way his opinion regarding the questions put to the jury.

3. In his instructions, the presiding judge shall:

- 1) sum up the contents of the indictment;
- 2) inform the jury of the criminal law that qualified the offences of which the defendant is accused, and of the punishment due if the person is convicted;

- 3) remind the jury of the evidence examined in court both exposing and exonerating the defendant, without expressing his own attitude towards such evidence or drawing any conclusions;

- 4) state the arguments of the public prosecution and of the defense;

- 5) explain to the jurors the main rules for the assessment of the proof in aggregate; the

substance of the principle of presumption of innocence; the rule whereby any doubts shall be interpreted in favor of the defendant; the rule that the jury's verdict may only be based on such evidence that has been directly examined in court and that no proof shall have for them any predetermined effect; and their conclusions may not be drawn from suppositions or the evidence that the court has found inadmissible;

6) direct the attention of the jury to the fact that the defendant's refusal to testify or his silence in court has no legal significance and may not be interpreted as evidence of the defendant's guilt;

7) explain the procedure of the jury's deliberations, preparing answers to the questions posed, voting on answers and reaching the verdict; and

8) remind the jurors about their oath.

4. Having heard the instructions of the presiding judge and studied the questions posed to them, the jury may ask further clarifications from him. A copy of the instructions shall be made available to the parties and the jurors immediately after they have been read to the jury.

5. The parties may present in the court their objections to the contents of the instructions for reasons of them breaking the principle of impartiality, which shall be recorded in the minutes of the court session.

6. The presiding judge may announce an adjournment to draw up his instructions for the jury.

Article 409. Secrecy of the jury's conference

1. Following the instructions by the presiding judge, the jury shall retire to the deliberations room to reach the verdict.

2. No other persons shall be allowed in the deliberations room apart from the jurors.

3. Means of communications shall be forbidden to be present or used in the deliberations room.

4. The jurors may not disclose the views taken during their discussions and in reaching a verdict.

5. The jurors may use in the deliberations room the notes they kept during the trial to prepare their answers to the questions put to the jury.

6. At night and also, with the permission of the presiding judge, after working hours, the jurors may adjourn their deliberations to rest. During such rest times the jurors shall be forbidden from taking the notes stipulated in paragraph five above out of the deliberations room.

7. Whilst the jurors are in the deliberations room it should be secured by the court bailiff.

Article 410. Procedure for the deliberations and voting in the deliberations room

1. The jury's deliberations shall be managed by the foreman who will put forward, in sequence, the questions to be resolved, conduct the voting thereon and count the votes.

2. The voting shall be open. The jurors may not abstain from voting. The jurors shall vote in the sequence in which their names come in the list of jurors.

3. The foreman shall be the last to vote.

Article 411. Reaching the verdict

1. During their consideration of the questions posed to them the jurors must strive to achieve a unanimous decision. In the event that the jurors should fail to achieve unanimity after three hours, the decision shall be made by holding a vote.

2. The jury's verdict may be either guilty or not guilty.

3. The not-guilty verdict shall be returned when at least six jurors have voted for a negative answer to at least one of the three questions indicated in paragraph one of Article 407 herein.

4. The guilty verdict shall be returned when at least six jurors have voted for a positive answer to each of the three questions indicated in paragraph one of Article 407 herein.

5. In the event that neither a not-guilty, nor a guilty verdict is returned, the verdict is deemed

not reached, and the jury shall be disbanded.

Within one month the prosecutor must file with the court a petition for retrial with a new jury, or for the dismissal of the criminal case.

Should the prosecutor file a petition for retrial, the court shall proceed to select a new jury in accordance with the requirements set out in this Chapter.

6. Answers to the questions posed to the jury must be a positive or negative statement together with a mandatory explanatory word or phrase which discloses or specifies the meaning of the answer (“Yes, guilty”, “No, not guilty”, or similar). If the answer to the preceding question makes it unnecessary to respond to the next one, the foreman shall put in writing the phrase “not applicable”.

In case of a positive answer to the question concerning the defendant’s guilt or proof of his act, the jurors may make a reservation excluding a certain phrase from their answer.

7. The foreman shall write down the answers to the questions immediately after each of the respective questions directly in the list of questions.

8. In the list of questions, the foreman shall indicate the vote count next to the answer. The list of questions, with the written answers to the questions as posed, shall be signed by the foreman.

Article 412. Resumption of the judicial examination

1. Following the request by the jury made through the foreman, having listened to the opinions of the parties, the presiding judge shall address the need to resume the judicial examination in the event that:

1) the jurors in the deliberations room should agree on the need to obtain additional clarifications on the questions posed in the list; or

2) the jurors during the deliberations should entertain some doubt about any of the facts of the criminal case which are significant for their answers to the questions posed and require further examination.

2. Following the resumption of the judicial examination, the presiding judge, in the presence of the parties, shall offer clarifications on the questions posed and, should it be necessary, additional examination of the circumstances shall take place.

3. Following the end of the resumed judicial examination, the presiding judge may amend the questions posed to the jury in the list of questions. The parties may petition the judge to include additional questions in the list or amend the earlier questions.

4. Having listened to the statements and replies by the parties on additional clarifications and/or newly examined circumstances, the defendant’s last plea and brief instructions by the presiding judge, the jurors shall retire again to the deliberations room to reach their verdict.

Article 413. Announcing the verdict

1. After the foreman has signed the list of questions with the written answers to the questions posed, the jury shall return to the courtroom.

2. The jury foreman shall hand to the presiding judge the list with the written answers. Unless he has any comments, the presiding judge shall return the list of questions to the jury foreman for the announcement.

3. If he finds the verdict unclear or inconsistent, the presiding judge shall point out any lack of clarity or inconsistency to the jury and suggest that they should return to the deliberations room to make amendments or remove inconsistencies in the list.

4. Having heard the brief instructions by the presiding judge about the need to make amendments in the list, the jury shall return to the deliberations room to take the majority vote on the need to revise or affirm the original verdict.

5. The jury foreman shall announce the verdict reading from the list the questions posed and the jury’s answers to them.

6. All those present in the courtroom shall stand to listen to the verdict.

7. The announced verdict shall be handed over to the presiding judge to be entered in the case file.

Article 414. Actions by the presiding judge following the return of the verdict

1. Should the jury return a not-guilty verdict, the presiding judge shall declare the defendant's acquitted. The defendant who is in custody shall be set free immediately in the courtroom.

2. After the verdict has been announced, the presiding judge shall thank the jurors and declare their participation in the trial over.

3. The implications of the verdict shall be discussed in the absence of the jury. The jurors may stay in the courtroom until the end of the trial in the seats reserved for the general public.

Article 415. Discussing implications of the verdict

1. The discussion of the implications of the verdict shall be continued with the participation of the parties.

2. In the event that the jury returns a not-guilty verdict, only those issues shall be examined and discussed that have to do with the settlement of the civil claim, allocation of the procedural costs and with the exhibits.

The jury's not-guilty verdict, whatever the grounds for it, shall not bar the victim from defending his rights in the civil law process.

3. In the event of a guilty verdict, the circumstances to do with the qualification of the defendant's acts, his sentencing, settlement of the civil action, and other issues shall be discussed.

4. After the above circumstances have been examined, the parties shall enter into pleadings during which the defense attorney and the defendant shall be the last to make their statements.

5. The parties in their statements may touch on any issues of law to be resolved when the court enters a conviction. The parties shall be forbidden from casting doubt on the correctness of the verdict by the jury.

6. At the end of the pleadings, the defendant shall be allowed his last plea, following which the presiding judge shall retire to deliver his judgment on the criminal case.

Article 416. The binding verdict

1. The jury verdict shall be binding upon the presiding judge and lead to him passing either an acquittal or a conviction.

2. In the event of the guilty verdict by the jury, the presiding judge shall qualify the defendant's act pursuant to the verdict and to the circumstances found during the trial which are not subject to examination by the jury on reaching the verdict and which require a legal assessment.

3. In the event that the jury should find that the defendant deserves leniency, the presiding judge may not impose a sanction which is more than two thirds of the maximum sentence allowed by the relevant article of the Kyrgyz Criminal Code.

4. Should the presiding judge deem that a guilty verdict has been returned against an innocent person and there are sufficient reason to acquit, since the act for which the defendant has been found guilty has no elements of crime, he shall pass a ruling to disband the jury and refer the criminal case for retrial by a new jury starting at the pre-trial stage. This ruling is not subject to appeal.

Article 417. Types of decisions made by the presiding judge

A criminal trial by jury shall conclude with the presiding judge making one of the following decisions:

- 1) a ruling dismissing the criminal case, as stipulated by Article 253 herein;
- 2) an acquittal, whenever jurors have given a negative answer to at least one of the main questions listed in paragraph one of Article 407 above, pursuant to Article 372 herein; or

3) a conviction pursuant to Article 371 herein.

Article 418. Sentencing

The sentence shall be based on the requirements of Articles 373-380 above, with the following specific features:

- the introductory part shall not list the jurors' names;
- the narrative and reasoning part of the acquittal shall describe the substance of the charges and a reference to the not-guilty verdict returned or the refusal by the public prosecution to press charges, if any. Proof should be cited only to the extent to which it does not follow from the jury verdict;
- the narrative and reasoning part of the conviction must contain the description of the offence which the jury trial found has been committed, the qualification of the offence, motives for sentencing and the justification of the court's award in the civil action or compensation for the damage inflicted by the offence;
- the resolute part of the conviction must contain explanations as to the procedure for and time limits of appeal against the sentence in the cassation instance following the procedure stipulated in this Code.

Article 419. Terminating the jury trial of the criminal case in connection with the certified insanity of the defendant

1. In the event that during the jury trial circumstances were found that give reasons to believe that because of his mental state the defendant may not be criminally prosecuted, or has developed a mental illness which makes it impossible for him to be sentenced or serve the sentence, which is supported by the relevant report of the forensic psychiatric report, the judge shall enter a ruling terminating the jury trial of this criminal case and make a decision following the procedure stipulated in Chapter 62 herein.

2. The ruling by the presiding judge terminating the jury trial of the case shall be final and not subject to appeal.

Article 420. Keeping the minutes of the court session

1. The minutes of the court session shall be kept pursuant to the requirements of Article 330 herein with the exemptions stipulated below.

2. The minutes should list the potential jurors summoned to court and describe the course of the jury selection.

3. The instructions by the presiding judge shall be noted down in the minutes of the court session or its text incorporated in the criminal case file, with a relevant entry in the minutes.

4. The minutes of the court session must record the entire course of the trial, making it possible to be satisfied with its correctness.

During the jury trial, parties to the process or other persons may not conduct video recording or take photographs in the courtroom.

Article 421. Reasons for overturning or changing the sentence entered by the court based on the jury verdict

1. The grounds for overturning or changing an acquittal based on the jury verdict shall be served by material violations of the rules specified in paragraph two of Article 445 herein.

2. The conviction may be quashed or changed on the grounds and following the procedure set out in Section XIII of this Code.

3. The court's sentence which is based on the jury verdict and inconsistent with it shall be overturned, and a new trial held at the same court. Should that be the case, a retrial shall start as of the moment next to the jury verdict.

4. The sentence entered based on the jury verdict may not be overturned for reasons of material violation of the rights of the person convicted or acquitted if such person objects to it

being overturned.

SECTION XI. PROCEEDINGS AT THE COURT OF THE APPELLATE INSTANCE

Chapter 52. Appealing judgments that have not yet become effective in law

Article 422. Right to appeal

1. Under the requirements of this chapter, court judgments that have not yet come into legal force may be appealed by the parties following the appeal procedure.

2. The right to appeal against court judgments shall be that of the convicted or acquitted person who has been or is exposed to restrictive procedures of a medical nature; their defense attorneys and legal representatives; public prosecutor or a superior prosecutor; and the victim and his representative.

3. The civil claimant, civil defendant or their representatives may appeal against the court judgment to the extent to which it deals with the civil action.

Article 423. Acts by the court subject to appeal

1. Appeals against and notices to judgements not yet final, or rulings made by the court of first instance and the inter-district military court shall be subject to appeal.

2. Appeals against and notices to the rulings that have become fully effective and have been issued by the examining magistrate by way of the judicial review shall be subject to appeal.

Article 424. Order of procedure for filing appeals and notices

1. The appeal or notice, enclosing copies to be handed to the parties, shall be filed through the court that entered the sentence or issued another decision being appealed.

2. Appeals or notices filed directly to the superior court shall be referred to the court of first instance respectively, to ensure compliance with the requirements of Article 427 and paragraph two of Article 428 below.

Article 425. Time limits for appeal against sentences

1. Appeals against and notices to the sentence or another decision by the court of first instance may be filed within one month of the date of the sentence or another decision by the court, and if by the defendant who is in custody, within the same time limit starting on the day on which he was issued with a copy of the sentence, judgment or ruling.

2. The case may not be withdrawn from court within the time limit set for the appeal against a judiciary decision.

3. Appeals or notices filed after the deadline shall not be considered.

Article 426. Procedure for resetting the appeal or notice time limit

1. Should the appeal or notice deadline be missed for good reason, the persons entitled to appeal may petition the court that entered the sentence to reset the missed deadline. The petition to have the time limit reset shall be examined by the judge who was presiding over the trial, and he shall be allowed to summon the petitioning party for clarification.

2. The petition to reset the time limit for an appeal or notice may be lodged within three months of the day of the court's decision.

3. The court must reset the appeal deadline missed in the event of any violation of law that restricted the party's ability to protect the rights and legitimate interests (late production of the record of the trial, issuing a copy of the act by the court to a participant in the case who does not know the languages of the proceedings without a translation; unclear indication of the appeal time limit in the resolute part of the act by the court) or given other circumstances that barred him objectively from the timely filing of the appeal or notice.

3. The judge's refusal to reset the deadline missed may be appealed to the higher court

which shall have the right to reset such deadline and consider the case of the appeal or notice on merits or refer it back to the court that entered the decision being appealed, to ensure compliance with the requirements set out in Article 430 below.

Article 427. Notification of appeals or notices filed

1. The court that entered a sentence or issued a decision subject to appeal, shall issue a notification of the appeal or notice filed, and make its copies available, to the person convicted or acquitted; the person who has been exposed or is being exposed to restrictive measures of a medical nature, their defense attorneys, the prosecutor, the victim and his representative, and also to the civil claimant, civil defendant or their representatives, provided the appeal or notice affects their interests, and shall explain that they are entitled to familiarize themselves with the appeal or notice and submit, in writing, their counterarguments to such appeal or notice.

2. The counter arguments to the appeal or notice submitted shall be incorporated in the case file.

3. The parties, to affirm their arguments in the appeal or notice or counter arguments to the appeal or notice by the other party, may submit to the court new materials or petition to have them provided and examined, or request the court to issue summons to the victims, witnesses, forensic experts or specialists indicated by them, for examination.

Article 428. Implications of an appeal or notice

1. Filing of an appeal or notice shall lead to a stay in the sentence coming into effect and being executed.

2. After the appeal's time limit has expired, the court that entered the sentence or issued another decision subject to appeal shall refer the criminal case together with the appeal, notice and counterarguments to the appeal court, with the parties notified.

3. The person who has filed an appeal or notice shall have the right to recall it before the sitting of the appeal court. Should this be the case, the appeal proceedings in this appeal or notice shall be ceased. Should the appeal or notice be recalled prior to the decision to hear the criminal case in the appeal court, the judge shall revert back the said appeal or notice.

4. The prosecutor's notice may be recalled by the superior prosecutor. The defense attorney may recall the appeal with the defendant's consent. The defendant may recall an appeal filed by his attorney or legal representative.

5. The person appealing the sentence may change his appeal or notice or amplify it with new arguments. The prosecutor, in his additional notice or his application to amend his notice, or equally the defendant, private prosecutor or their representatives, in their additional appeals, if filed outside the appeal time limit, may not seek to worsen the conditions of the convicted person, unless such demand has been made in the original appeal or notice. The defense attorney that was instructed in the case after the expiration of the deadline for appealing against any act of the court, may offer additional arguments in support of the reasoning in the appeal filed by the previous attorney, but he may not change the appeal or amplify the appeal with new reasons.

Article 429. Appealing against the rulings of the court of first instance

1. The rulings of the court of first instance, with the exceptions indicated in paragraph two below, may be subject to a procedural appeal or procedural notice by persons listed in paragraph two of Article 422 herein.

2. Rulings or resolutions on the evidence procedure, granting or rejecting motions by the participant in the trial, on maintaining order in the courtroom or other decisions of the court made during the trial shall be appealed at the same time when appealing against the final judgment in the case, with the exception of the court's decisions listed in paragraph three below.

3. Before the final judgment is entered, subject to appeal shall be the rulings of the district judge returning the application back to the applicant, or rejecting an application in cases of private prosecution; resolutions of the court enforcing restrictive measures or extending their

time limit; committing the person to a medical or psychiatric in-patient facility for forensic examination; on the case's suspension, on referring the case to another judiciary jurisdiction or changing its judicial jurisdiction, or referring the case back to the prosecutor.

4. A procedural appeal or procedural notice to the resolutions by the court of first instance shall be filed in the higher court within ten days of the decision being appealed, and shall be examined following the rules set out in Article 436 herein. Based on the outcome of such examination, either the appeal or notice shall be refused or the decision appealed shall be cancelled or amended.

5. In the event of a procedural appeal or procedural notice to a resolution passed during the trial that ended with sentencing, the case shall be referred to a superior instance of court only upon the expiration of the time allowed to appeal against the sentence.

Chapter 53. Appeal proceedings on judgments that have not yet come into full effect

Article 430. Appeals against and notices to a sentence, judgment or ruling

1. The appeal or notice must indicate:

- 1) the name of the appeal court to which such appeal or notice is addressed;
- 2) the details about the applicant, indicating his procedural status, place of residence or location;
- 3) the reference to the sentence or another judicial ruling, and the name of the court that has delivered it;
- 4) the reasoning of the applicant and evidence supporting the applications;
- 5) the list of materials attached with the appeal or notice; and
- 6) the signature of the applicant.

2. In the event that the appeal or notice filed should fail to comply with these requirements, thus impeding the criminal trial, the appeal or notice shall be returned by the judge, who will appoint the time for its re-filing. Should, within the time indicated, no appeal or notice have been filed with the court, such appeal or notice shall be deemed unfiled. Should it be the case, the appeal proceedings in the case shall cease. The sentence shall be deemed to have full effect in compliance with paragraph one of Article 452 below.

Article 431. Scope of the appeal proceedings

With respect to appeals or notices, the appeal court shall validate lawfulness, reasonableness and fairness of the sentence, as well as lawfulness and reasonableness of any other judgment by the court of first instance.

Article 432. Limits to consideration by the appeal court

1. The appeal court shall validate lawfulness, reasonableness and fairness of the sentence or other judgment only to the extent to which it has been appealed and only with respect to those convicted persons to whom the appeal or notice refers.

2. In the event that, during the consideration, the court should find violations of rights and legitimate interests of other defendants that resulted in an unlawful sentence (ruling), pursuant to the rules stipulated by this Code, the court shall have the right to overturn or amend it also to the extent which has not been appealed and with respect to persons for whom no appeals or notices have been filed. Should that be the case, their conditions may not be worsened.

Article 433. Composition of the appeal court and time limits for the consideration of appeals or notices

1. The case of appeal or notice shall be examined by a panel of three judges.

2. The appeal court must consider the case of the appeal or notice as filed within two months of the day of filing.

3. Should the court deem it necessary to have new materials or evidence examined and a new judgment entered, the appeal must be considered within three months of the day of filing.

4. The above time limits, with good reasons, may be extended by a month by a decision of the appeal court that is looking into the case.

Article 434. Appointing the session of the appeal court

1. With the filing of the case of appeal or notice, the appeal court shall set the date and place of the court session, of which the parties shall be notified.

2. In dealing with issues pertaining to their decision to commit the case to the appeal proceedings, the appeal court shall be guided by the general rules specified in this Code.

3. The reporting judge shall make a resolution committing the case to trial within fourteen days of the day on which the case was filed with the appeal instance.

4. Should it be found while examining the criminal case, that the court of first instance has failed to comply with requirements of Articles 427 and 430 herein, the judge shall refer the case back to this court to remedy the circumstance that bar this case from the appeal trial.

Article 435. Appeal proceedings

1. The appeal proceedings shall follow the rules for the proceedings at the court of first instance, with the exceptions provided for in this Chapter.

2. The court session must be attended by:

1) the prosecutor;

2) the person acquitted or convicted, or the person whose charges have been dismissed, whenever such person seeks to participate in the session, or the court finds such person's participation in the court session necessary;

3) the private prosecutor or his legal representative, or representative, whenever they have filed an appeal; and

4) the defense attorney, in cases listed in Article 49 herein.

3. The appeal trial of the case in the absence of the defendant may only be allowed in circumstances stipulated in paragraph five of Article 317 herein.

4. Non-appearance of persons who have been duly notified of the place, date and time of the appeal court's session, except for persons whose participation in the trial is compulsory, shall not bar the trial.

5. In the event of non-appearance, without good reason, by the private prosecutor, his legal representative or the representative, who has filed the appeal, the appeal court shall dismiss the appeal proceedings in his appeal.

6. The parties who made their appearance in the appeal court, shall be allowed to participate in the court sitting during the trial without exception.

7. The appeal court shall try the case in an open court sitting, except as otherwise provided for by Article 312 herein.

Article 436. Judicial examination by the appeal court

1. The judge shall open the court session and announce the case to be examined and by whose appeal and/or notice.

2. The judicial examination shall start with a brief narration by the presiding judge or reporting judge of the sentence and of the substance of appeals or notices and counter arguments filed.

3. Following the report by the presiding judge of the reporting judge, the court shall listen to the statements of the party reasoning its arguments stated in the appeal or notice or counterarguments thereto. In the event of non-appearance of the party to the session of the appeal court, the appeal or notice filed by it, and written counter argument thereto, shall be read out.

4. After the pleadings by the parties, the court shall proceed to the validation of the evidence. Witnesses examined by the court of first instance shall be examined by the appeal court should the court deem it necessary to summon them.

5. The parties may petition to have new witnesses examined, exhibits or documents discovered or forensic examinations held. The petitions shall be resolved following the rules of Article 342 herein, and the appeal court may not reject the petition on the grounds that it has not been granted by the court of first instance.

6. In its judgment the appeal court, by way of reasoning its decision, may refer to the testimonies given in court and made by persons who were not summoned to the appeal session of the court, but were examined by the court of first instance.

7. With the parties' consent, the appeal court may consider an appeal or notice without validating the evidence that had been examined by the court of first instance.

Article 437. Pleadings. Last plea of the defendant

1. Having completed the examination of the evidence, the presiding judge shall ask if the parties wish to make any motions to amplify the judicial examination. The court shall resolve such motions, if any, and proceed to pleadings.

2. The pleadings shall following rules set out in Article 361 herein, and the first to make the statement shall be the applicant.

3. After the pleadings, the presiding judge shall allow the defendant the last plea, following which the court shall retire in the deliberations room to make a decision.

4. In the event that during their deliberations the court should deem it necessary to examine any new circumstances of relevance to the case, or to validate again the existing or new evidence, it shall resume the trial, which shall be reasoned in its resolution, to be recorded in the minutes of the court session.

Article 438. Powers of the appeal court

1. When considering a case referred to it with the appeal or notice, at the motion of the parties or at its own discretion for purposes of validating the lawfulness of the sentence and correct resolution of the case, the court shall have the right to:

1) request any documents pertaining to the state of health, family status or information about previous convictions of the convicted person, the victim or other persons participating in the case, and at the petition of the parties, request any other documents;

2) order a forensic examination;

3) summon to court and examine additional witnesses, forensic experts, specialists, or request written material or other evidence submitted by the parties or demanded at their request by the court;

4) rule the materials examined by the court of first instance as inadmissible and exclude them from evidence;

5) rule to admit as evidence any materials excluded by the court of first instance as inadmissible, and examine them;

6) examine the circumstances pertaining to the civil action, and make an award in a civil law case; and

7) complete any other actions necessary for the truth in the case to be established.

2. In the event of a procedural or mediated agreement, the appeal court shall validate the circumstance under which it has been reached.

Chapter 54. Decisions made by appeal courts

Article 439. Decision by the appeal court

1. Decisions by the appeal court shall comprise an appellate judgment and an appellate decree. An appellate decision shall become final immediately.

2. The appellate judgment shall be entered in the name of the Kyrgyz Republic following the procedure set out in Chapter 49 herein, taking into account the requirements of this Article.

3. The appellate judgment or decree shall refer to the grounds upon which the judgment is

deemed lawful, reasonable and fair, or, for a decision of the court of first instance, whether it was lawful and reasonable, or, for an appeal or notice, whether it is not to be granted; or else the grounds for full or partial reversal or change of the appealed decision of the court.

4. The appellate judgment shall be delivered and appellate decrees issued in the retiring room and shall be signed by the entire panel of judges.

5. Any issues arising during the consideration of the criminal case by the panel of judges shall be resolved by them by a majority vote. Judges may not abstain from voting. The presiding judge shall be the last to vote.

6. Any appeal judge who does not agree with the majority of the judges, must sign the decision by the court without any reservations but may put his dissenting opinion in writing in the retiring room, which shall be handed to the presiding judge and included in the case file in a sealed envelope, marked "dissenting opinion", and shall not be read in the courtroom. The right to be acquainted with the dissenting opinion shall be that of the cassation court during its review of the case.

7. The introductory as well as the resolute part of the decision by the appeal court shall be read after the court returns from the retiring room. Reaching a reasoned decision may be postponed by no more than 3 days as of the day on which the trial has ended, of which the presiding judge shall inform the parties. The resolute part of the decision of the court should be signed by all judges and filed with the case.

8. Within 7 days of the day on which they have been issued, the appellate judgment or decree shall be referred, together with the case, for execution to the court that passed the sentence.

9. A copy of the appellate judgment or decree, or an extract from their resolute part whereby the convicted person shall be subject to immediate release from custody or from serving the sentence, shall be filed immediately with the administration of the place of custody or the place of service of sentence, respectively. Should the convicted person be participating in a session of the appeal court, the appellate judgment or decree where it concerns the release of such convicted offender from custody or from serving the sentence, shall be executed immediately.

Article 440. Consideration of civil claim in the criminal proceedings by the appeal court

1. The appeal court considering a case shall also validate the lawfulness, reasonableness and fairness of the judgment where it concerns the civil action, should it be requested in the appeal of the parties or the prosecutor's notice, and shall make its decision pursuant to the requirements set out in Article 140 herein.

2. The appeal court may overturn the judgment to the extent to which it concerns the civil claim.

3. Making a decision on the civil action which shall worsen the situation of the convicted person may only be allowed given relevant arguments presented in the appeal by the party for the prosecution or in the prosecutor's notice.

Article 441. Types of decisions made by the appeal court

1. Based on the outcome of the consideration of the case, the appeal court shall make one of the following decisions:

1) a judgment whereby the sentence passed by the court of first instance is upheld and the appeal or notice not granted;

2) a judgment overturning the conviction passed by the court of first instance and handing down an acquittal, or a decree of dismissal;

3) a judgment amending the sentence passed by the court of first instance;

4) a decree reversing the acquittal by the court of first instance and passing a conviction;

5) a decree repealing the ruling dismissing the criminal case and referring the case to the

appeal court, guided by Articles 436-438 herein.

2. Based on the outcome of the hearing on procedural appeals or procedural notices, the appeal court shall issue a decree.

Article 442. Grounds for overturning or amending the sentence passed by the court of first instance

There shall be the following grounds for overturning or amending the sentence entered by the court of first instance, and for passing a new sentence:

- 1) the inconsistency between the conclusions of the court stated in the sentence and the facts of the case found by the appeal court;
- 2) the incorrect application of the criminal law of the Kyrgyz Code of Misconduct;
- 3) the material violation of the criminal procedure law; and
- 4) the inconsistency between the penalty imposed and the gravity of the committed offence or misconduct, or the character of the convicted person.

Article 443. Inconsistency between conclusions of the court and the facts of the case

1. The sentence shall be ruled inconsistent with the facts of the case found by the court of first instance provided:

- 1) the conclusions of the court are not supported by the evidence examined during the trial;
- 2) the court failed to take into account the circumstances that could have influenced considerably the conclusions made by the court;
- 3) in the cases of contradictory evidence of material relevance for the conclusions by the court, the sentence fails to point out on which ground the court accepted some and dismissed other evidence; and
- 4) the conclusions of the court as stated in the sentence show considerable inconsistencies which have or might have influenced the outcome of the trial, including the way the court has resolved the issue of the guilt or innocence of the convicted or acquitted person; the correct application of the criminal law or the Kyrgyz Code of Misconduct, or the choice of punishment.

2. Having found that the conclusions stated in the sentence rendered by the court of first instance and bearing on the fact of the case are inconsistent with the evidence examined, the appeal court shall overturn the sentence fully or in part, and pass a new sentence compliant with the outcome of its trial.

3. Taking into consideration the evidence examined, the appeal court may find proved such facts that have not been found according to the sentence by the court of the first instance, or have been dismissed by it.

Article 444. Incorrect application of the criminal law of the Kyrgyz Code of Misconduct

1. The criminal law or the Kyrgyz Code of Misconduct shall be deemed applied incorrectly if the court failed to apply the applicable law; or applied a non-applicable law, or gave a law incorrect interpretation contradicting its exact meaning.

2. Having ruled the legal assessment of the act committed as incorrect, the appeal court may amend the qualifications of the offence and/or misconduct under the article of the Kyrgyz criminal law or Code of Misconduct that provides for liability under less grave offence and/or misconduct.

3. The appeal court may apply a law pertaining to a more grievous offence and/or misconduct, or impose a stricter penalty only provided such grounds have been argued for by the prosecutor's notice, or an appeal by the victim, private prosecutor or their representatives, but within the scope of the charges already brought.

4. Should the court find any circumstances aggravating the charges, the court shall reverse the sentence and refer the case to the court of first instance for a re-trial.

Article 445. Material violation of the criminal procedures law

1. The material violations of the criminal procedures law shall comprise violations of the rules of this Code pertaining to the investigation of the case or the trial, which, by undermining or prejudicing the rights of the participants in the case, safeguarded by the law, by violating the judicial procedure or otherwise, have precluded a comprehensive and unbiased examination of the circumstances of the case, have affected or could have affected the delivery of a legal sentence.

2. Grounds for the reversal of a court judgment under any circumstances shall be served by:

1) the failure by the court to dismiss the case in the presence of the grounds stipulated by Article 25 herein;

2) the sentence entered by an unlawful composition of the court, or a verdict reached by an unlawful composition of the jury;

3) the trial of the case in the absence of the defendant, except as provided for by Article 317 herein;

4) the trial of the case without any participation of the defense attorney when his participation is mandatory pursuant to this Code, or given any other violation of the rights of the defendant to rely on the assistance of a defense attorney;

5) the violation of the defendant's right to use the language he knows and the assistance of an interpreter;

6) the failure to offer the defendant the right to participate in the pleadings;

7) the failure to offer the defendant the last plea;

8) the violation of secrecy of sentencing;

9) the reasoning of the sentence with evidence ruled by the court as inadmissible;

10) the lack of signature by the judge or one of the judges, in the event of the trial by a panel of judges, under the relevant decision of the court; and

11) the lack of the minutes of the court session.

Article 446. Inconsistency between the penalty imposed under the sentence and the gravity of the committed offence or the character of the convicted offender

1. Deemed inconsistent with the gravity of the committed offence and/or misconduct and the character of the convicted offender shall be the punishment which, although within the scope of the sanction provided for by the relevant article of the Kyrgyz Criminal Code of Kyrgyz Code of Misconduct, by its type or amount shall be unfair because of excessive lenience or excessive severity.

2. Having deemed the punishment imposed by the sentence unfair due to its excessive severity, or inconsistent with the gravity of the committed offence and/or misconduct or the character of the convicted offender, the appeal court may lessen punishment.

3. The appeal court may impose a stricter punishment on the convicted offender, should there have been the prosecutor's notice or appeal by the victim, private prosecutor or their representatives filed on these grounds.

4. Any decision worsening the situation of the convicted offender may only be allowed given relevant arguments stated in the appeals by the party for the defense or in the prosecutor's notice, and only within their scope. The law on more grievous offence and/or misconduct may not be applied outside the scope of charges brought against the defendant and pressed by the party for the prosecution in the court of first instance.

Article 447. Overturning or amending an acquittal

1. The appeal court may overturn an acquittal and refer the case for re-trial by the court of first instance solely when there has been a prosecutor's notice or appeal by the victim, private prosecutor or their representatives.

2. An acquittal may be amended in the part which concerns the reasoning of the acquittal, at the request of the person acquitted.

Article 448. Amending the sentence

1. The appeal court may amend the sentence to:

- 1) lessen the punishment imposed by the court;
- 2) apply a law on less grievous offence and/or misconduct and impose a punishment in accordance with the changed qualification;
- 3) increase the punishment, provided such increase is due to remedy arithmetic errors or errors in offsetting the sentence against the time of the preliminary detention in custody; or remedy any incorrect application of the criminal law or the Kyrgyz Code of Misconduct governing cumulative punishment for offenses and/or misconduct or cumulative punishment for multiple sentences;
- 4) impose an additional penalty in the event of properly found circumstances, complete examination and analysis of proof, correct legal qualification of the acts by the convict, and correct selection of the main punishment;
- 5) overturn any release from punishment under probation, and impose a penalty following the rules of the relevant article of the Kyrgyz Criminal Code;
- 6) make amendments in the sentence pertaining to civil action, procedural costs to be paid, or the issue of exhibits;
- 7) apply, pursuant to Chapter 19 of the Kyrgyz Criminal Code, compulsory measures of a medical nature; or
- 10) apply a law on more grievous offense and/or misconduct, impose a stricter punishment or apply an additional penalty, given grounds for granting the appeal or notice by the prosecution arguing the need to apply a law on more grievous offense and/or misconduct or impose a stricter punishment.

2. The appeal court may make a decision which worsens the situation of the convicted offender only if there has been a prosecutor's notice or appeal filed by the private prosecutor, victim or their representatives.

Article 449. Minutes of the session of the appeal court

Minutes of the session of the appeal court shall be kept by the secretary of the court session pursuant to Article 330 herein. The parties may offer their comments on the minutes of the session, which shall be considered by the presiding judge following the procedure in Article 331 herein.

Article 450. Referring the appellate judgment or decree for execution

1. Within five days of their effective date, or, in the circumstances provided for by Article___ [*number missing in the original – translator*] herein, of the date when their full text was drafted, the appellate judgment or decree shall be referred, together with the case, for execution to the court of first instance that entered the sentence.

2. The appellate judgment or decree under which the convicted person is to be set free from custody shall be, to this extent, executed immediately.

Article 451. Repeated consideration of the case by the appeal court

1. The appeal court shall repeat its review of the case under an appeal or notice, provided the appeal by the defendant, his attorney or legal representatives, victim and his legal representative or representative, is filed whenever the case with regards to the same defendant has been already tried under the appeal or notice by another participant in the criminal trial.

2. The court shall inform the participants in the trial of their right to appeal, according to Chapter 57 herein, against a newly delivered judgment or decree should they contradict an earlier judgment by the appeal court.

SECTION XII

EXECUTION OF JUDGMENT

Chapter 55. Referring the sentence, decree or ruling for execution

Article 452. Sentence by the court of first instance becoming final and referred for execution

1. The sentence by the court of first instance shall become final and is subjected to referral for execution upon the expiration of the time limit for appeal, unless it has been appealed.

2. In the event that an appeal or notice should be filed, the sentence shall become final on the day on which the appellate judgment is made, unless the sentence delivered by the court of first instance has been overturned, with the case referred for re-trial in the court of first instance.

3. In the event that the sentence, given more than one convicted persons, should be appealed with respect to one or more convicted persons, for the convicted persons who have not appealed the sentence, it shall become final on the day on which the appellate judgment is made.

4. The sentence shall be referred for execution by the court of first instance within three days of the date on which the judgment becomes final or the case has been returned by the appeal court.

5. The execution of the sentence shall be supervised by the court that passed the sentence or by the court at the place of service of punishment by the convicted offender, and also by the prosecutor.

Article 453. Resolution or ruling by the court of first instance becoming final and referred for execution

1. A ruling by the court of first instance shall become final and referred for execution upon the expiration of the time limit for appeal or provided it has been upheld by the higher court.

2. A ruling by the court which is not subject to appeal shall become final and referred for execution immediately as it made.

3. A ruling of the court dismissing the criminal case, which has been made in the court of the criminal proceedings in the case, shall be subject to immediate execution to the extent to which it bears upon the release of the defendant or the accused from custody.

4. A ruling or judgment by the appeal court shall come into effect upon its delivery, shall be final and may only be reviewed as part of the procedure specified in Section XIII herein.

5. A ruling or judgment by the appeal court shall be referred for execution following the procedure set out in Article 454 below.

Article 454. Procedure for referring judgment, decree or ruling of the court for execution

1. A judgment, decree or ruling of the court which has become final shall be binding on all public authorities, bodies of local government, public associations, public officers, citizens, other individuals or legal entities and shall be subject to strict compliance across the entire territory of the Kyrgyz Republic. Failure to comply with a judgment, decree or ruling of the court shall be prosecuted under criminal law.

2. The duty to refer a judgment, decree or ruling for execution shall be that of the court that tried the case in first instance. The order of execution shall be forwarded, together with the copy of the judgment, to the authority which, under the penal legislation, is charged with the duty to execute the judgment.

3. The appeal court must notify the authority charged with the duty to execute the judgment about the decision made with respect to the person in custody.

4. The executing authorities shall immediately notify the court of first instance that entered the sentence about its execution. The administration of the institution executing the judgment must notify the sentencing court about the place where the convicted offender shall be serving his punishment.

Article 455. Notification of relatives of the convicted offender and the civil claimant about referring the sentence for execution

1. After the judgment, with which the convicted offender who is in custody was sentenced to arrest or deprivation of liberty, has become final, the administration of the place of detention must notify the convict's family where he has been transferred to serve the punishment.

2. The civil claimant, should he be awarded the civil claim, shall be informed about the sentence being referred for execution.

3. Before the sentence is referred for execution, the presiding judge or chairman of the court, at the request of the convict's relatives, shall allow them to visit the convict.

Chapter 56

Proceedings with regards to the consideration and resolution of issues pertaining to execution of sentence

Article 456. Suspended sentence

1. The sentence convicting a person to community service, correctional labor or deprivation of liberty may be suspended on one of the following grounds:

1) the convict's grave illness which prevents him from serving the sentence, - until his recovery;

2) the convicted female's pregnancy or her having small children; the convicted offender being the sole parent of small children, - until the younger of them reaches the age of fourteen, except those convicted to deprivation of liberty for particularly grave offences;

3) when immediate service of punishment may lead to grave consequences for the convicted offender or his family as a result of fire or other natural disasters, grave illness, death of the only able-bodied member of the family or other exceptional circumstances, - for the period defined by the court but no longer than six months.

2. Payment of the fine or other money due from the convicted offender under the sentence of the court may be delayed or made in installments for up to six months provided it is impossible for the convicted offender to effect immediate payment.

3. The issue of suspended sentence shall be resolved by the court at the petition of the convict, his legal representatives, close relatives, defense attorney or by the prosecutor's notice.

Article 457. Releasing from serving the punishment due to grave terminal illness

1. In the event that during his serving of the punishment the convicted offender has become mentally ill or contracted another grave terminal illness which prevents him from serving the sentence, the court, subject to the notice by the authority charged with the execution of sentences, or the administration of the institution executing judgments, and based on the opinion of a medical commission, may discharge the convicted offender from further service of the punishment.

2. Together with discharging the convicted offender with mental disorders from any further service of the sentence, the court may enforce restrictive measures of a medical nature against him, or release him into the care of health authorities or relatives.

3. In resolving the issue of discharging a person with a grave terminal illness which precludes serving of the sentence, except persons with mental disorders, the judge shall take into account the gravity of the committed offence, the character of the convicted offender and other circumstances.

4. Discharging the convicted offender from further service of the sentence, the court may release him from both the main punishment and any additional sanction.

Article 458. Courts dealing with issues pertaining to execution of judgements

1. Any issues of a suspended sentence under Article 456 herein, of discharging from serving

the sentence based on the period of limitations for the conviction, or else any doubts and ambiguities that arise with the execution of judgment shall be resolved by the court that passed the sentence.

2. In the event that the sentence should be executed outside the area of the sentencing court such issues shall be resolved by the court in the area of the execution of the sentence. Should that be the case, a copy of the ruling by the court at the place of execution of judgment shall be forwarded to the sentencing court.

3. Issues pertaining to the discharge of the convicted offender due to grave terminal illness, mitigation of punishment, lifting restrictive measures of a medical nature concomitant to the execution of judgment shall be resolved by the court in the place where the convicted offender is serving his sentence notwithstanding the court that entered the sentence.

4. Issues pertaining to reversing release under probation or revocation of parole shall be resolved by the court in the place of residence of the convicted person.

5. All issues pertaining to the execution of judgment shall be resolved in a court hearing with the participation of the prosecutor.

Article 459. Early release on parole

1. The early release on parole in circumstances, stipulated by Article 88 of the Kyrgyz Criminal Code, shall be applied by the court at the place where the convicted offender serves his sentence, at the personal application by the convicted offender or at the recommendation of the administration of the penal institution. Those serving punishment with the disciplinary units of the army shall be subject to such a measure by personal application of the convicted offender or at the recommendation of the commanding officer of the disciplinary unit.

2. The early release on parole of the persons who committed the crime before the age of eighteen shall be applied by the court at the joint application of the convict's legal representative and the authorized public agency for the protection of children, or at the joint recommendation of the administration of the penal institution and the authorized public agency for the protection of children.

3. If the court has refused early release on parole, any repeat consideration of recommendations in this issue may not take place before three months after the refusal.

4. Should the court apply early release on parole, it shall set for the parolee a probationary period within the unserved portion of his sentence but no longer than three years, and shall order arranging for the supervision of the parolee by the probation authority.

5. Applying the early release on parole, the court may impose on the convicted offender monitoring requirements and probation obligations, as stipulated by Article 84 of the Kyrgyz Criminal Code, conducive to his rehabilitation.

6. The behavior of the parolee shall be monitored by the probation authority or, for servicemen, by the commanding officers of the military units or institutions.

7. In the event that during the period of parole the convicted offender should fail to comply with the prescribed obligations imposed on him for the probationary period, the court, by recommendation of the probation authority or the commanding officers of military units or institutions, may order the convicted offender to serve his sentence.

8. Should the convicted offender commit another offence during the probation period, the court shall impose a punishment on him following the rules set out in Article 80 of the Kyrgyz Criminal Code for cumulative sentencing.

Article 460. Revocation of the relief from punishment under probation supervision

1. If, in the course of the probation period, the convicted offender complies with the probation obligations and does not commit any new offence, the court shall discharge him from the punishment.

2. During probation, at the recommendation of the probation authority the court may revoke, fully or in part, any of the probation obligations imposed on the convicted offender earlier.

3. In the event that the convicted offender should violate the probation obligations imposed on him more than two times during the year and without good reasons, at the recommendation of the probation authority or commanding officers of the military units or institutions, the court may order him to serve his sentence.

4. In the event that the convicted offender should commit another offence during probation, the court shall sanction him following the rules, as set out in Article 80 of the Kyrgyz Criminal Code, for cumulative sentences.

Article 461. Remission of penalty and mitigation of punishment in the event of decriminalization of the act in question and mitigation of the sanction under the law

1. The person convicted for the act qualified under the Kyrgyz Criminal Code and/or Kyrgyz Code of Misconduct, whose criminality has been eliminated with the effective law, shall be immediately relieved by the court from his punishment.

2. The punishment imposed on the convicted offender that shall be in excess of the sanction by the new law shall be reduced by the court to the maximum sentencing limit set by the new law's sanction.

Article 462. Extending, amending or revoking restrictive measures of a medical nature

Any extension, amendment or revocation of the enforced restrictive measures of a medical nature concomitant to the service of punishment, shall be executed by the court at the recommendation of the administration of the medical institution based on the opinion of the panel of clinical psychiatrists.

Article 463. Offsetting sentence term by the time spent at the medical institution

In the event that the person who is serving a custodial sentence should be placed at a medical institution, the time spent in it shall be counted towards the sentence term assuming that one day at the psychiatric in-patient facility equals one day in custody.

Article 464. Execution of sentence given other, unserved sentences

Whenever the convicted offender has more than one unexecuted sentences, the court that entered the last sentence, or the court in the place of execution of judgment, should pass a ruling applying penalties under all of such sentences of the convict.

Article 465. The order of procedure for resolving issues of execution

1. Issues relating to the execution of punishment, enforcement of restrictive measures of a medical nature relieving from punishment shall be resolved by the court with the participation of the prosecutor.

2. The prosecutor and the convicted offender shall be advised of the time of hearing into the issue pertaining to the execution of punishment. The court should resolve the issue pertaining to the summoning of the convicted offender in custody. In the event of the court dealing with the execution of the civil claim of the sentence, the court shall also summon the civil claimant, whose non-appearance shall not bar the hearing.

3. Whenever the court resolves issues of early release on parole, the court shall summon a representative of the administration of the penal institution and a representative of the probation authority.

4. Whenever the court hears the case filed at the joint recommendation of the administration of the penal institution and the authorized public agency for the protection of children, the court shall notify such authorities about the time and place of the hearing.

5. Whenever the court hears the issue of revocation of the relief from punishment under probation, or the issue of amplifying the earlier set of probation obligations, the court shall summon representatives of the probation authority that monitors the convict's behavior.

6. The hearing of the case shall begin with the judge's report, followed by the statement of

those appearing before the court.

7. Based on the outcome of the hearing pertaining to the execution of the sentence, the court shall make a ruling which must be read out in the courtroom. A copy of the ruling shall be made available within three days to the convicted offender, the authority that initiated the hearing, and to the civil claimant, provided the issue pertained to the execution of the civil claim of the sentence.

8. The ruling by the judge may be appealed through an appellate procedure.

SECTION XIII. PROCEEDINGS FOR THE REVIEW OF COURT DECISIONS THAT HAVE COME INTO EFFECT

Chapter 57. Appealing against court decisions that have come into effect

Article 466. Review of the act of the court under the cassation procedure

1. The Kyrgyz Supreme Court shall be the court of cassation, and shall review judiciary acts on the grounds and under the procedure set out in this Code.

2. The cassation court shall validate, subject to a cassation appeal or notice, the lawfulness of the judgment, decree or ruling of the court that have come into effect.

3. Acts of first instance that become final and have not been reviewed under the appellate procedure shall not be subject to cassation review.

4. The scope of the cassation court may include decrees that preceded the final judiciary act provided appealing against such decrees is allowed under this Code. Such ruling or decrees shall be reviewed under the cassation procedure together with the consideration of the cassation appeal or notice against the final judiciary act in the case at hand.

Article 467. Right to appeal to cassation court

1. The judiciary decision which has come into effect may be appealed following the procedure set out in this Chapter to the cassation court by the convicted or acquitted person, their attorney and legal representatives and by other persons to the extent to which the judiciary act being appealed bears on their rights and legitimate interests.

2. The prosecutor may serve a notice requesting the review of the judiciary decision that has become final.

3. The civil claimant, civil defendant or their representatives may appeal against a judiciary act to the extent to which it concerns the civil action.

Article 468. Limits of authority of the cassation court

1. The cassation court shall not be bound by the arguments of the cassation appeal or notice, and shall have the right to inspect the proceedings in the case for material violations of the substantive and procedural law.

2. In the event that there should be more than one convicted offender in the case whereas the cassation appeal or notice has been filed only by or with respect to only one of them, the cassation court shall have the right to review the case with respect to all persons convicted.

3. The cassation court may not worsen the situation of the defendant or the convicted or acquitted person with respect to whom no prosecutor's notice or victim's appeal has been filed.

4. In the event that there should be more than one person convicted or acquitted in the case, the court may not overturn the sentence, decree or ruling for those convicted or acquitted with respect to whom no cassation appeal or notice has been filed, should such reversal of the judgment, decree or ruling worsen their situation.

5. Instructions by the cassation court shall be binding during the retrial by the lower court.

6. Should the judiciary decisions be reversed, the cassation court may not:

1) find or deem proven any facts that have not been found in the judgment or have been dismissed by it;

- 2) preempt any issues pertaining to the proof of the charges or lack thereof, credibility of evidence or lack thereof, or preponderance of any evidence;
- 3) rule on the application by the court of first instance or the appeal court of this or other criminal law or the Kyrgyz Code of Misconduct, or on the penalty; or
- 4) preempt conclusions which may be drawn by the court of first instance or the appeal court during the retrial.

Article 469. Prohibition of *reformatio in peius* during the cassation review

Any review by way of cassation appeal of a judgment, decree or ruling of the court on the grounds that place the convicted or acquitted person, or someone charges against whom have been dismissed, in a worse state shall be allowed for a period no longer than one year of the day when they became final, provided the trial has committed violations that affected its outcome and distorted the essence of justice and the substance of the judicial decision as an act of justice.

Article 470. Procedure for filing cassation notices and appeals

1. The notice or appeal shall be filed with the court of first instance that made the judiciary decision within three months of the date of the judiciary decision made by the appeal court.

2. In the event of the appeal against the judiciary decision by the appeal court that was not passed on the merits, the notice or appeal shall be filed within ten days.

3. The missed procedural deadline for the filing of a cassation appeal or notice may be reset by the cassation court under Article 426 herein. The resetting of the deadline missed shall be recorded in the judiciary act of the relevant judiciary panel of the Supreme Court of the Kyrgyz Republic issued based on the outcome of the consideration of the cassation appeal or notice.

4. In the event of a refusal to reset the missed deadline, the cassation appeal or notice shall be subject to return.

5. The court of first instance shall notify the persons participating in the case of the filing of the appeal and/or notice, and within five days shall refer the case to the Supreme Court of the Kyrgyz Republic.

Article 471. Contents of the cassation appeal or notice

1. The cassation appeal or notice must contain:

- 1) the name of the court of the filing;
- 2) the details of the applicant, indicating his place of residence or location and the procedural status;
- 3) the reference to court that tried the case in first instance and the appeal court and the substance of their decisions;
- 4) the reference to judicial decisions being appealed;
- 5) the reference to the material violations committed by the courts against the rules of the criminal or criminal procedures law or the Kyrgyz Code of Misconduct that have affected the outcome of the trial, complete with the arguments pointing to such violations;
- 6) the request of the applicant;
- 7) the list of documents attached to the appeal or notice; and
- 8) if needed, an application requesting the missed procedural limit for a cassation appeal to be reset.

2. The cassation appeal by a person who did not participate in the trial, must indicate which rights or legitimate interests of such person have been violated by the judicial decisions that have become final.

3. The cassation appeal must be signed by the applicant, and the appeal filed by the defense attorney must have the writ enclosed. The notice must be signed by the prosecutor.

Article 472. Returning cassation appeal or notices without review

1. The cassation appeal or notice shall be left without review provided:

- 1) such cassation appeal or notice does not comply with the requirements set out in Article 471 herein;
 - 2) such cassation appeal or notice has been filed by a person who has not right to appeal to the cassation court;
 - 3) such appeal and/or notice has been filed after the cassation appeal's time limit has expired, and does not make an application to have the missed deadline reset; or
 - 4) this case has not been reviewed by the appeal court.
2. The cassation or notice must be returned within 10 days of the date of filing with the cassation court. The decree to have the cassation appeal or notice shall be passed by the reporting judge and handed or forwarded to the applicant, together with all the documents enclosed with the appeal or notice.
 3. The decree returning the cassation appeal or notice is not subject to appeal.
 4. The prosecutor's cassation notice may be recalled prior to the court session by the prosecutor or the superior prosecutor.
 5. The party may recall his appeal or the appeal filed by his attorney or representative. An underage party may recall the appeal of his legal representative and defense attorney only upon coming of age.
 6. The appeal or notice may be recalled until such time when the judges retire to the retiring room.
 7. The recalling of the cassation appeal or notice shall lead to the termination of the cassation procedure, which shall be noted in the ruling passed by the cassation court.

Chapter 58. The order of review procedure

Article 473. The order of procedure for cassation review

1. In the Supreme Court of the Kyrgyz Republic, the cases shall be reviewed by panels of five judges.
2. The hearing to review a cassation appeal or notice shall require the presence of the prosecutor. The hearing shall be attended also by other parties indicated in paragraph one of Article 467 herein, provided they have requested it.
3. At the appointed time the presiding judge shall open the court session and announce the case to be reviewed, and find out whether participants in the judicial hearing have any challenges or motions.
4. Having resolved the challenges and motions, if any, the case shall be reported by the reporting judge who shall narrate the circumstances of the case, the substance of the judicial decisions made in the case; and the arguments of the cassation appeal or notice that have served grounds for the filing of the cassation appeal or notice, together with the case file, for review by the cassation court. Judges may ask questions of the reporting judge.
5. Should the persons indicated in paragraph two above appear before the court, they shall enjoy the right to make statements on the case. The first to speak shall be the applicant.
6. Following the statements by the parties, the judges shall retire.
7. The decision of the cassation court shall be reached in the retiring room with an open vote. No judge may abstain from voting or not vote. The presiding judge shall be the last to cast his vote. The decision of the cassation court shall be deemed passed if the majority of judges have voted in favor.

Article 474. Time for the review of cassation appeals or notices

The cassation appeal or notice shall be subject to review within two months from the day of filing with the Supreme Court of the Kyrgyz Republic.

Chapter 59. Decisions made by the cassation court

Article 475. Decisions by the cassation court

(1) As a result of its review the cassation court may:

- 1) refuse the cassation appeal or notice;
- 2) overturn the judgment, decree or ruling of the court, and all subsequent judicial decisions, and dismiss the proceedings in the case at hand;
- 3) overturn or amend the decision made by the court of first or appellate instance fully or in part, and make a new decision without a retrial, in the event that a mistake has been made in the application of the substantive law;
- 4) overturn the decision by the court of first instance and/or appeal court and refer the case for re-trial, in the event that a mistake has been made in the application of the procedural law, which led to an incorrect resolution of the case;
- 5) amend the sentence, decree or ruling by the court; or
- 6) suspend the cassation proceedings and make an inquiry of the Kyrgyz Parliament asking for the official construction of the law; or ask the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic to validate the constitutionality of the law.

(2) In case of a re-trial, the cassation court may demand that the case is tried by a different composition of the court.

(3) Decisions by the cassation court shall be passed in the form of a ruling.

(4) The ruling shall be signed by all the judges who participate in the review. In exceptional cases, involving a particularly complex case, the drafting of a reasoned ruling (decree) may be delayed by up to ten days, however, the resolute part of the ruling (decree) shall be drafted in the retiring room and signed by all judges who participated in the review.

(5) The ruling shall be read out by the presiding judge or the reporting judge. All those present in the courtroom shall stand for the reading of the ruling.

Article 476. Dissenting opinion by a judge of the cassation court

The judge of the cassation court who does not agree with the majority decision must sign the decision of the court without any reservations and may put in writing his dissenting opinion in the deliberations room, which shall be handed to the presiding judge and filed with the case in a sealed envelope marked "dissenting opinion". The parties shall not be briefed about the dissenting opinion, and it shall not be read during the hearing.

Article 477. Interlocutory order by the cassation court

1. Together with the ruling, the cassation court, whenever needed, with its interlocutory order shall draw the attention of the heads of ministries, state committees, administrative agencies and also enterprises, institutions or organizations, irrespective of their ownership status, as well as other executive officers to the fact of violation of law, causes and conditions that prompted the commission of the offence.

2. Within one month, the above persons must inform the cassation court of the steps taken to address the interlocutory order.

3. There shall be no interlocutory orders addressed to inferior courts.

Article 478. Grounds for overturning or amending a judicial decision during the cassation review

1. The grounds for overturning or amending the judgment, decree or ruling of the court during the cassation procedure shall be any material violation of the criminal and/or criminal procedure law or the Kyrgyz Code of Misconduct, which have affected the outcome of the trial.

2. Elimination of the circumstances specified in paragraph five of Article 317 herein, given an application by the convicted offender or his defense attorney, shall serve as the grounds for having the judgment, decree or ruling overturned by the review of the cassation court.

3. The judgment, decree or ruling of the court and all subsequent judicial decisions shall be reversed, with the criminal case referred back to the prosecutor, provided that during the

cassation review of such criminal case there should be found the circumstances specified in paragraph one of Article 308 herein.

4. No judicial act can be reversed for formal reasons.

Article 479. Execution of decisions by the cassation court

Judicial acts of the cassation court shall come into force immediately upon disclosure, and shall be final and not subject to appeal, and shall be executed following the procedure provided for by this Code and the Kyrgyz Criminal Penal Code.

SECTION XIV.

REOPENING OF A CASE IN VIEW OF NEW OR NEWLY DISCOVERED FACTS

Chapter 60. Procedure for reopening a case in view of new or newly discovered facts

Article 480. Reasons for reopening proceedings in a case

1. The judgment, decree or ruling that has come into effect may be overturned, and the proceeding in the case reopened, in view of new or newly discovered facts.

2. There shall be the following grounds for reopening proceedings in a criminal case or a case of misconduct in view of new or newly discovered facts:

1) newly discovered facts – stipulated in paragraph three below, which existed at the time when the judgment or another decisions of the court came into effect but were not known to the court; or

2) new facts – stipulated in paragraph four below, which were not known to the court at the time when its judgment was passed, and which remove the criminality and punishability of the act in question.

3. The newly discovered facts shall include:

1) deliberate perjury, found in the judgment of the court that has become final, by the victim or witness, forensic report or else falsified exhibits, protocols of investigative and judicial actions or other documents, or deliberately false translations, which led to an unlawful and unreasonable sentence, decree or ruling;

2) criminal actions, found in the judgment of the court that has become final, by the inquiry agency, investigator or prosecutor which led to an unlawful and unreasonable sentence, decree or ruling; and

3) criminal actions, found in the judgment of the court that has become final, by the judge which he committed while reviewing the case in question.

4. New facts shall include:

1) the law removing criminality of the act or mitigating the punishment coming into effect;

2) the Constitutional Chamber of the Kyrgyz Supreme Court finding that the law applied by the court in the criminal case or the case of misconduct in question is non-compliant with the Constitution of the Kyrgyz Republic;

3) pursuant to the procedure established by the newly effective law and by virtue of international treaties to which the Kyrgyz Republic is a signatory, international agencies finding that the criminal trial held by a court of the Kyrgyz republic in the case has violated human rights and freedoms; and

4) facts previously unknown to the court at the time when the judgment or decree was reached, which, by themselves or in combination of the earlier known facts, point to the innocence of the convicted offender or to a lesser offence or misconduct that he committed than the one for which he was convicted, or to the guilt of an acquitted person or else a person against whom the proceedings were dismissed.

5. The facts listed in this article may be found, apart from by a judgment, by a decree or ruling of the court, or rulings by the prosecutor, investigator or inquiry agency, dismissing the case based on the limitations, as a result of an act of amnesty or mercy, in connection with the

death of the defendant or because of the underage status of the person to whom the criminal liability of liability for misconduct may not attach.

Article 481. Courts reviewing cases reopened in view of new or newly discovered facts

1. The judicial acts that have become final shall be reviewed in view of the new or newly discovered facts by the court that passed this act, including for reasons of having a law coming into effect which removes criminality of the act in question or mitigating the punishment.

2. The court of first instance shall review its own judicial act in the case that has not been reviewed by the appeal or defendant courts.

3. The judicial panel on criminal cases and cases of misconduct of the regional or equivalent court shall review its own judicial act and the act of the court of first instance in the case which has not been reviewed by the Supreme Court of the Kyrgyz Republic.

4. The judicial panel on criminal cases and cases of misconduct of the Supreme Court of the Kyrgyz Republic shall review its own judicial acts and acts of all local courts of the general jurisdiction.

Article 482. Time limits for reopening the proceedings

1. There shall be no time limit established for the review of a conviction in view of new or newly discovered facts.

2. The death of the convicted person shall not preclude any reopening of the proceedings in view of new or newly discovered facts for the purpose of his rehabilitation.

3. The review of an acquitting judgment or decree, or ruling dismissing the case, or else the review of a conviction because of the leniency of the penalty or the need to apply to the convicted offender a law on a graver offence, shall only be allowed within the period of limitations for the prosecution for a criminal offence or misconduct, - no later than within one year of the discovery of new facts.

4. The day of discover of new or newly discovered facts shall be:

1) the day when the judgment, decree or ruling comes into effect against the persons guilty of perjury, submission of falsified evidence, false translation or criminal actions committed during the investigation or trial, in the cases stipulated by paragraph three of Article 480 herein;

2) the day when the decision of the Constitutional Chamber of the Kyrgyz Supreme Court comes into effect ruling on non-compliance of the law applied in the case in question with the Kyrgyz Constitution;

3) the day when the decision of the international body, whose competence has been recognized by the Kyrgyz Republic, comes into effect, implying a violation of the norms of international treaties on human rights;

4) the day when the prosecutor signs his ruling stating the need to reopen the proceedings in view of new facts in cases stipulated by subpara 4, paragraph four, of Article 480 herein; or

5) the day when the court starts the proceeding in view of newly discovered facts pursuant to subpara 1, paragraph four, of Article 480 herein.

Article 483. Commencement of proceedings

1. The right to apply for the reopening of proceedings in view of new or newly discovered facts shall be that of the convicted or acquitted person or their legal representatives, defense attorney, and of the prosecutor. The petition shall be filed with the court that entered the sentence or another judicial decision.

2. The right to commence proceedings on new or newly discovered facts shall be that of the prosecutor or the court where the proceedings are instituted for the new or newly discovered facts for the reason that the law which removes criminality or mitigates the punishment has come into effect.

3. The grounds for commencing proceedings on new or newly discovered facts shall be served by petitions made by citizens, reports by executive officials of various organizations, and

also by the data obtained as a result of the pre-trial proceedings or trials in other cases.

4. In the event that the filed petition or report should make reference to a judgment of the court entered in view of the facts indicated in subparas 1 – 3, paragraph four, of Article 480 herein, the prosecutor shall issue a ruling instituting proceedings into such newly discovered facts, conduct a relevant inspection, request a copy of the judgment and a certificate by the court showing it to have come into effect.

5. In the event that the petition or report point to other facts listed in subpara 4, paragraph four, of Article 480 herein, the prosecutor shall issue a ruling within his jurisdiction to institute proceedings in view of the discovered fact, refer the case to the inquiry agency or investigator to have such facts investigated. The investigation in the case based on the new or newly discovered facts shall proceed in compliance with the rules of this Code.

Article 484. Actions of the prosecutor following the completion of his review

1. With the completion of his review of the new or newly discovered facts, given good reason to re-open proceedings in the case, the prosecutor shall refer the case with his report to the relevant court.

2. In the absence of any reasons for re-opening the proceedings in the case, the prosecutor, in his reasoned ruling, shall refuse to institute proceedings into new or newly discovered facts.

3. The ruling refusing proceedings in the case shall, within three days, be made known to the persons concerned and inform them of their right to appeal against it.

Article 485. Ruling of the court reviewing the prosecutor's report

Having examined the prosecutor's report on the reopening of proceedings in view of new or newly discovered facts, the court shall make one of the following rulings:

1) granting the prosecutor's report and overturning the judgment, decree or ruling of the court, or a ruling by the judge, and referring the case for the pre-trial proceedings or a new trial;

2) granting the prosecutor's report and overturning the judgment, decree or ruling of the court and dismissing the case when no new investigation or new trial is required to enter the final judgment in the case; or

3) refusing the prosecutor's report.

Article 486. Proceedings following the reversal of judicial decisions

The pre-trial or trial proceedings in the case following the reversal of judicial decisions with respect to such case in view of the discovered facts, or else appealing against the newly made judicial decisions shall follow the general procedure.

SECTION XV.

SPECIAL PROCEDURE OF CRIMINAL JUDICIAL PROCEEDINGS

Chapter 61. Proceedings in cases of juvenile crime or misconduct

Article 487. The order of procedure for the proceedings in cases of crime or misconduct with respect to juveniles

1. Provisions of this chapter shall apply to cases with respect to persons who at the time of crime and/or misconduct have not reached the age of eighteen.

2. The proceedings in cases of crime or misconduct by juveniles shall follow the general rules of his Code and articles of this chapter.

Article 488. Facts to be established in cases of juvenile crime and/or misconduct,

1. During the pre-trial proceedings and during the trial into the cases of juvenile crime and/or misconduct, apart from proving facts listed in Article 83 herein, it shall be required to establish:

- 1) the age of the juvenile (day, month and year of birth);
- 2) conditions of life and upbringing of the juvenile;
- 3) degree of intellectual, conative and mental development; character and temperament, needs and interests; and
- 4) presence or absence of any influence on such juvenile by adults and accomplices.

2. Should there be evidence suggesting that such juvenile's arrested intellectual development is unrelated to any mental illnesses, it shall be established whether the juvenile could be fully aware of the implications of his socially dangerous acts, or guide them.

3. Such facts shall be established through interrogation of the juvenile's parents, teachers, educators or other persons capable of providing information needed, or else by requesting necessary documents and conducting other investigative and judicial actions.

4. An officer of the authorized public agency for the protection of children shall develop steps for social, mental, pedagogical or medical rehabilitation of the juvenile, which must be incorporated in the individual plan for the juvenile's protection (or a pre-trial report), and shall present it to the inquiry agency, investigator or court.

Article 489. Putting the criminal case against the juvenile in separate proceedings

Prosecution of a juvenile who participated in a crime and/or misconduct together with an adult shall be put into separate proceedings following the procedure set out in Article 150 herein. Should it be impossible to separate it, the juvenile prosecuted together with an adult shall be subject to the rules of this chapter.

Article 490. Apprehension and enforcement of restrictive measures against a juvenile

1. The juvenile shall be apprehended, or put in custody, following the procedure set out in Articles 98, 99, and 115 herein.

2. The prosecutor verifying the lawfulness of the apprehension of the juvenile, must personally question him.

3. When resolving the issue of enforcement of restrictive measures against the juvenile, in each case such measures should be discussed as putting the juvenile in care following the procedure stipulated in Article 112 herein.

4. Parents of the juvenile or his other legal representatives shall be informed of the apprehension and detention of such juvenile in custody.

Article 491. Committal of juveniles into care and measures to protect property of the detainees

1. The investigator and court must:

1) in the event that the person in detention should have any underage children left without supervision, commit them under care of relevant persons or organizations; and

2) in the event that the person in detention should have any property of dwelling left without supervision, take steps to ensure their safety.

2. The court shall notify the defendant or accused held in custody about steps taken.

Article 492. The order of procedure for summoning a juvenile suspect, defendant, accused

An underage suspect, accused or defendant, who is not in detention, shall be summoned to the inquiry agency, investigator or court through his parents or other legal representatives, and should such juvenile be accommodated in the special children's establishment, through the administration of such establishment.

Article 493. Interrogation of a juvenile suspect or defendant

1. The interrogation of a juvenile suspect or defendant shall be conducted in day time and may not continue for more than two hours without a break, or more than four hours a day in aggregate.

2. The juvenile suspect or defendant shall be interrogated in the presence of the defense attorney, legal representative and, if needed, a psychologist or a teacher. The defense attorney may pose questions to the interrogated juvenile, and at the end of the interrogation, familiarize himself with the protocol and make comments as to the accuracy and exhaustiveness of the record of statements.

Article 494. Participation of the defense attorney

1. Participation of the defense attorney in juvenile cases under Article 49 herein shall be mandatory.

2. In juvenile cases, the defense attorney shall be allowed to be present as of the moment of the first interrogation or, in case of detention, as of the moment of detention. In the event that the juvenile or his legal representatives have not instructed any lawyer, the inquiry agency, investigator, prosecutor or the court must provide him with the legal assistance guaranteed by the state.

Article 495. Participation of the teacher and psychologist

1. During the interrogation of a juvenile suspect, defendant or accused who are younger than sixteen, or else have reached the age of sixteen but are deemed mentally retarded, the presence of the teacher or psychologist shall be mandatory.

2. In cases involving juveniles who have reached the age of sixteen, the teacher or psychologist shall be allowed during the interrogation at the discretion of the inquiry agency, investigator or prosecutor, or at the request of the defense attorney or legal representative.

3. With the permission of the inquiry agency or investigator, the teacher or psychologist may pose questions to the juvenile suspect or defendant, and at the end of the interrogation, familiarize themselves with the protocol of interrogation, and make written comments as to the accuracy and exhaustiveness of the records made. These rights shall be explained by the inquiry agency or investigator to the teacher or psychologists before the interrogation of the juvenile, which shall be recorded in the protocol of interrogation.

4. The participation of the teacher or psychologist in the examination of the juvenile defendant in court shall be defined by the rules herein.

Article 496. Participation of the legal representative of the juvenile suspect or defendant in the pre-trial proceedings

1. The legal representative of the juvenile suspect or defendant shall participate in the pre-trial proceedings and during the trial.

2. The juvenile's legal representative shall be allowed to participate in the case with the ruling by the inquiry agency or investigator as of the moment of such juvenile's first interrogation as a suspect or defendant. The legal representative shall be informed of the rights stipulated in paragraph three herein.

3. The legal representative of the juvenile shall have the right: to know the suspicions or charges against such juvenile; be present at the juvenile's interrogation; be present when the charges are brought; participate in the juvenile's interrogation and in other investigative actions involving the juvenile suspect or defendant and his attorney; familiarize himself with the protocols of investigative actions in which they participated and make written comments as to the accuracy and exhaustiveness of the records; submit petitions and challenges; make complaints against the actions or decisions of the inquiry agency, investigator or prosecutor; give evidence; familiarize himself, at the end of the pre-trial proceedings, with all materials in the case, and make notes of any information and to any extent.

4. The inquiry agency or investigator, at the end of the pre-trial proceedings, may make a ruling excluding the juvenile access to such materials that may affect him negatively, and instead familiarize his legal representative with such materials.

5. The legal representative may be banned from participating in the case, should there be reason to believe that his actions harm the juvenile's interests or are meant to obstruct impartial investigation. The inquiry agency or investigator shall make a relevant reasoned ruling. Should that be the case, another legal representative shall be allowed to participate in the case.

Article 497. Comprehensive psychological and psychiatric forensic examination of the juvenile

1. To resolve the issue whether the juvenile suspect shows some mental illness or impaired development, and as to his capacity to be fully or partially aware of his actions and guide them under specific circumstances, a comprehensive psychological and psychiatric forensic examination shall be mandatory.

2. A psychological forensic examination may be held to establish the level of intellectual, conative and mental development or other socio-psychological traits of the juvenile suspect's personality.

Article 498. Participation of the legal representative of a juvenile defendant in the trial

1. Summoned to court shall be the parents or other legal representatives of a juvenile defendant. They shall have the right to participate in the examination of evidence, provide testimony, give evidence, file petitions and challenges, appeal against the actions or decisions of the court, and participate in the judicial hearing of the case. The above rights must be explained to them at the start of the court hearing. Legal representatives of the juvenile shall be present in the courtroom throughout the trial. With their consent, they may be examined by the court as witnesses.

2. The legal representative of the juvenile may be removed from the participation in the trial with a reasoned order of the court, provided there are reasons to believe that his actions undermine the juvenile defendant's interests or are aimed at obstructing impartial hearing. In this case, another legal representative of the juvenile defendant shall be allowed.

3. In the event that the juvenile defendant's legal representative should be involved in the case as a defense attorney or civil defendant, he shall enjoy the rights and be subject to the duties of the above participants in the process.

4. In the event that prior to the trial at the court of first instance, at the appeal or cassation court, the defendant (accused, convicted or acquitted person), should reach the age of eighteen, the court shall rule (decree) to have the functions of the legal representative terminated.

Article 499. Removing the juvenile defendant from the courtroom

1. At the petition of the party or at its own discretion, the court may decide to have the juvenile defendant removed from the courtroom for the time of examination of facts that may have a negative effect on such defendant.

2. After the juvenile defendant is returned to the courtroom, the presiding judge shall inform him, as necessary, of the facts of the trial in his absence, and shall allow the juvenile defendant an opportunity to pose questions to persons who have been examined in his absence.

Article 500. Issues resolved by the court when sentencing a juvenile defendant

1. When sentencing a juvenile defendant, apart from the issues listed in Article 368 herein, the court must address the possibility of relieving him from punishment under probation, imposing a non-custodial penalty or releasing him from punishment.

2. In the event of relieving him from punishment under probationary supervision, imposing a non-custodial penalty or applying compulsory measures of educational nature, the court shall duly inform the probation authority and/or the authorized state agency for the protection for

children and charge them with the supervision over the convicted offender's behavior.

Article 501. Discharging the juvenile defendant from criminal liability under the compulsory measures of educational nature

1. Should it be found in a case of lesser crime that the offending juvenile can be reformed without having to serve a criminal penalty, the court may discharge the juvenile from criminal liability and apply to him compulsory measures of an educational nature as set out in Chapter 17 of the Kyrgyz Criminal Code. A copy of the respective ruling shall be filed with the authorized state agency for the protection of children.

2. In the event of persistent non-compliance by the juvenile with the requirements set by the educational measures imposed on him, the court, at the recommendation of the authorized state agency for the protection of children shall annul the compulsory measures of educational nature, and the case shall be tried under the rules of this Code.

Article 502. Discharging the juvenile from serving the penalty under care of a special establishment

1. Should it be found in a case of lesser crime that the objective of punishment may be achieved by placing the offending juvenile in a special juvenile educational establishment, the court, having entered a conviction, may discharge the juvenile from serving the sentence and send him to the above establishment until he comes of age.

2. The stay at the special establishment may be terminated before coming of age should the juvenile, due to having reformed, need not be exposed further to the sanction. The extension of stay at the special establishment after reaching the age of eighteen shall be allowed only until he completes his secondary education or vocational training. The issue of termination or extension of the person's stay at the special educational establishment shall be resolved within ten days subject to a joint report by the establishment's administration and the authorized state agency for the protection of children by a single judge of the court that has entered the sentence, or the court at the location of the establishment.

3. Summoned to the court hearing shall be the juvenile offender, his legal representative, defense attorney, prosecutor, a representative of the administration of the establishment, and a representative of the authorized state agency for the protection of children.

4. The court shall examine the joint report by the establishment's administration and the authorized state agency for the protection of children and hear the opinions of the persons participating in the case.

5. Based on the outcome of the hearing, the judge shall issue a ruling that shall be read out in the courtroom.

6. Within five days copies of the ruling shall be forwarded to the legal representative of the juvenile convicted offender, to the authorized state agency for the protection of children and to the court that has entered the sentence.

Chapter 62. Proceedings in cases involving compulsory measures of a medical nature

Article 503. Grounds for the proceedings in cases involving compulsory measures of a medical nature

1. Proceedings in cases involving compulsory measures of a medical nature shall be conducted with respect to persons who have committed any act prohibited under law in a state of insanity or who after having committed the crime and/or misconduct have contracted a mental disorder that makes it impossible to impose a sanction or to have it served.

2. The compulsory measures of a medical nature shall be imposed only when the abnormal mental disorders are connected with a danger to himself or others, or plausible infliction of another serious harm.

3. Proceedings in cases involving measures of medical natures shall be defined by the

general rules of this Code, and by this chapter.

Article 504. Facts to be proved

During the pre-trial proceedings in the case involving compulsory measures of a medical nature the following facts must be found:

- 1) the time, place, mode and other circumstances of the act committed;
- 2) that the act prohibited by the law has been committed by the person in question;
- 3) the nature and amount of damage inflicted by the act in question;
- 4) that the person used to have mental disorders in the past, the degree and nature of such dissociations or mental illnesses at the time of the commission of the publically dangerous act or at the time of the pre-trial proceedings;
- 5) the offender's behavior both before and after the commission of the offence; and
- 6) the danger of such person due to his mental state both to himself and others, and the plausibility of having such person inflicting other considerable harm.

Article 505. Separating the case with respect to a person who has committed an act criminalized under the law in a state of insanity or who has, after committing the criminalized act, contracted any mental disorder

Should it be found during the pre-trial proceedings against several persons that some of the accomplices have committed an act in a state of insanity or contracted a mental disorder after the commission of an offence or act of misconduct, their case shall be put in separate proceedings.

Article 506. Rights of the person with regards to the proceedings involving compulsory measures of a medical nature

1. The person subject to the prosecution involving compulsory measures of a medical nature, provided that, according to the psychiatric forensic report, neither the nature nor the gravity of his disorder is a bar to that, shall have the right to:

- 1) know of which act he is incriminated;
- 2) give testimony;
- 3) give evidence;
- 4) make petitions and challenges;
- 5) talk in his native language or a language he knows;
- 6) use the services of an interpreter;
- 7) have a defense attorney from the moment of actual apprehension and confer with him in private;
- 8) participate in investigative actions conducted at his request or at the petition of his defense attorney;
- 9) familiarize himself with the protocols of such actions and offer his comments on them;
- 10) familiarize himself with the ruling requesting a forensic examination and with the forensic report;
- 11) familiarize himself with all the materials of the case and take notes of all necessary data both at the time of investigation and at the end of it;
- 12) petition the examining magistrate to have evidence deposited;
- 13) file appeals against the actions or decisions of the inquiry agency, investigator, prosecutor or court; and
- 13) get a copy of the ruling committing the case to court to have compulsory measures of a medical nature imposed.

2. During the trial he shall also have the right to:

- 1) participate in the examination of evidence and pleadings of the parties;
- 2) familiarize himself with the minutes of the court session and make comments on them;
- 3) appeal against the decision of the court and have copies of the decisions being appealed;
- 4) learn about the appeals or notices filed in the case and present his counter arguments; and

5) participate in court reviews of appeals or notices submitted.

Article 507. Participation of the legal representative during the pre-trial proceedings and the trial

1. A legal representative of the person with respect to whom the proceedings are conducted to have compulsory measures of a medical nature imposed, shall be his relative or an officer of the respective medical institution who shall be summoned to participate in the case by the ruling of the inquiry agency or investigator or by order (decree) of the court.

2. The legal representative shall have the right to:

1) know which criminalized act the person he represents is charged of;

2) make petitions and challenges;

3) give evidence;

4) participate in investigative actions conducted at his petition or that of the defense attorney;

5) familiarize himself with the protocols of investigative actions in which he participated, and make comments in writing as to the accuracy and exhaustiveness of the records;

6) familiarize himself, at the end of the pre-trial proceedings, with all the materials of the case, make notes of all necessary data;

7) have a copy of the ruling dismissing the case or committing it to the court to have compulsory measures of a medical nature imposed;

8) participate in the trial;

9) file appeals against the actions or decisions of the inquiry agency, investigator, prosecutor or the court;

10) appeal against the ruling or decree of the court and have a copy of decisions being appealed;

11) learn about the appeals or notices filed and present his counter arguments; and

12) participate in court reviews of appeals or notices submitted.

Article 508. Participation of the defense attorney

1. The participation of the defense attorney in the proceedings in the case involving imposition of compulsory measures of a medical nature shall be mandatory as of the moment when the fact of insanity or abnormal mental disorder has been established for the person prosecuted, unless the defense attorney has been instructed in the case earlier on other grounds.

2. As of the time of instruction, the defense attorney shall have the right to visit his client in private, unless his client's state of health prevents that, and shall enjoy all other rights under Article 51 herein.

3. In the event that participation of the defense attorney should be impossible, the inquiry agency, investigator, prosecutor or the court shall provide the person in the case involving compulsory measures of a medical nature with the legal assistance guaranteed by the state.

Article 509. Committing the case to court

1. Upon completion of the pre-trial proceedings, the inquiry agency or investigator shall issue a ruling committing the case to court.

2. An attachment to the ruling committing the case to court shall be drawn up in accordance with Article 263 herein.

3. The inquiry agency or the investigator shall refer the case to the prosecutor who shall make one of the following decisions:

1) approve the ruling by the inquiry agency or investigator and commit the case to court; or

2) return the case to the inquiry agency or the investigator to rectify the gaps of the investigation.

4. A copy of the ruling committing the case to court to have compulsory measures of a medical nature imposed on the person shall be handed to his legal representative.

Article 510. Setting the trial date

The case for compulsory measures of a medical nature, upon reaching the court, shall be appointed for trial by the judge following the rules set out in Chapters 46-48 herein.

Article 511. Trial

1. The case for compulsory measures of a medical nature shall be tried by the court following the general procedure for the judicial examination.

2. The trial shall start with the prosecutor arguing for the need to impose on the person, who has been certified as insane or suffering from mental disorders, compulsory measures of a medical nature. The examination of evidence and pleading shall follow the procedures set out in Chapter 48 herein.

Article 512. Issues to be resolved by the court in judgment

1. In the course of the trial of the case of compulsory measures of a medical nature the following questions shall be examined and resolved:

- 1) whether the act qualified by the criminal law or the Kyrgyz Code of Misconduct has occurred;
- 2) whether the act has been committed by the person prosecuted;
- 3) whether it has been committed by the person in a state of insanity;
- 4) whether such person, having committed the act, has contracted any mental disorders that make it impossible to impose or have the punishment served;
- 5) whether the abnormal mental disorders of such person put him or other persons at risk or may lead to any other serious harm to them; and
- 6) whether the compulsory measures of a medical nature are due and what such measures shall be.

2. The court shall address also the issues stipulated in subpara 9, 12 and 13, paragraph one of Article 368 herein.

Article 513. The ruling of the court imposing compulsory measures of a medical nature

1. Having found that the person in a state of insanity or has contracted a medical disorder after commission, the court shall make an order dismissing the case, and when needed, imposing compulsory measures of a medical nature.

2. Having found that the person has committed a socially dangerous act in sane mind but has contracted a medical disorder after commission, the court shall suspend charges until recovery, and addresses the issue of compulsory measures of a medical nature. Upon recovery, the court, with his order, shall terminate the compulsory treatment and refer the case for further investigation.

3. Should the court find that such person's involvement in the commission of the act has not been proved, or equally in the facts to be proved under Article 25 herein, the court should issue an order dismissing the case on the grounds established by the court irrespective of such person's illness, if any, or its nature.

4. Whenever the case is dismissed on the grounds listed in paragraphs three and four herein, a copy of the court's order, within three days, shall be forwarded to health authorities to address the issue of treatment or committing the person to the psycho-neurological institution for social care for psychiatric patients.

5. Having found that the person in question has no abnormal mental disorders or else that the mental disorders present do not preclude having penalties imposed on such person, the court shall, with its order, return the case to the prosecutor.

7. In its ruling, the court shall address the issues listed in Article 379 herein.

Article 514. Appealing the ruling of the court

The ruling of the court may be appealed following the procedure provided for in Article 422

herein.

Article 515. Terminating, amending or extending application of compulsory measures of a medical nature

1. The court shall terminate, amend or extend the application of compulsory measures of a medical nature for a further six months at the recommendation of the administration of the establishment that renders psychiatric help, based on the opinion of a commission of clinical psychiatrists.

2. Issues pertaining to termination, amendment or extension of the compulsory measures of a medical nature shall be addressed by the court that made the ruling to apply compulsory measures of a medical nature, or the court at the location where such measure is being enforced.

3. The court shall notify the legal representative of the person against whom the compulsory measures of a medical nature are enforced, the administration of the medical institution, the defense attorney and the prosecutor of the case being sent for hearing. The participation of the defense attorney and prosecutor in the court hearing shall be mandatory, and non-appearance of other persons shall not bar the hearing.

4. The court shall examine the recommendations of the medical institution, the opinion of the commission of clinical psychiatrists, and hear the opinions of the persons attending the session. Should the conclusions of the commission of clinical psychiatrists cause doubt, the court may order a forensic psychiatric examination, request additional documents and examine the person for whom the issue of termination, amendment or extension of compulsory measures of a medical nature is being heard, should it be possible given his mental state.

5. The court shall terminate or amend compulsory measures of a medical nature should the mental state of the person be such that there is no longer any need to continue to enforce the measure imposed earlier, or else there is a need to enforce other measures of a medical nature. The court shall extend compulsory measures of a medical nature should there be no grounds for terminating or amending such compulsory measures of a medical nature.

6. The court shall issue a ruling terminating, amending or extending, or else refusing to grant termination, amendment or extension of compulsory measures of a medical nature.

Article 516. Reopening the case with respect to the person against whom compulsory measures of a medical nature are enforced

1. In the event that the person against whom compulsory measures of a medical nature have been enforced, as a consequence of his mental disorders that he contracted following commission of the crime, should be deemed recovered by a commission of clinical psychiatrists, the court, subject to the recommendations of the medical institutions, shall make a ruling following the rules of paragraph three of Article 458 herein to terminate the compulsory measures of a medical nature and to resolve the issue of referring the case under pre-trial proceedings, indicting such persons as a defendant and committing the case to trial under the general procedure.

2. The time spent at the medical institution shall be counted against the term of the sentence.

Chapter 63. Particulars of criminal judicial proceedings against certain categories of persons

Article 517. Categories of persons subject to special proceedings in criminal cases and cases of misconduct

1. Requirements of this chapter shall apply during the pre-trial proceedings with respect to:

1) a member of Kyrgyz Parliament (Zhagorky Kenesh);

2) a judge of the Kyrgyz Supreme Court; a judge of the Constitutional Chamber of the Kyrgyz Supreme Court; a judge of a local court of the Kyrgyz Republic; and a judge of

specialized court established by the law;

3) the President of the Kyrgyz Republic who is no longer in office; and

4) a registered candidate for the post of the President of the Kyrgyz Republic or member of Kyrgyz Parliament.

2. The pre-trial proceedings with respect to the persons listed in paragraph one above, shall be ruled by this Code with the exceptions provided for in this Chapter.

Article 518. Notifications of suspicion of crime or misconduct committed

1. The notification of suspicion against a member of Kyrgyz Parliament shall be made by the Prosecutor General of the Kyrgyz Republic.

2. The notification of suspicion against a judge shall be made by the Prosecutor General of the Kyrgyz Republic.

3. The notification of suspicion against the President of the Kyrgyz Republic who is no longer in office [*the end of the sentence is missing! – translator*]

4. The notification of suspicion against a registered candidate for the office of the President of the Kyrgyz Republic or member of the Kyrgyz Parliament shall be made by a prosecutor.

Article 519. Prosecuting under criminal liability or liability for misconduct

1. The decision to prosecute a member of the Kyrgyz parliament shall be made by the Prosecutor General with the consent of the Kyrgyz Parliament, except for cases of particularly grave crimes. To obtain the consent to have a member of the Kyrgyz Parliament prosecuted, the Prosecutor General of the Kyrgyz Republic or the court hearing the case shall submit to the Kyrgyz Parliament a relevant notice. The decision granting the Prosecutor General of the Kyrgyz Republic the notice shall be deemed passed, if it was supported by a majority vote of the total number of the members of parliament. The Office of the Prosecutor General and the court shall be notified within three days of the adoption of a reasoned resolution by the Kyrgyz Parliament. Should there be any reason, the Kyrgyz Parliament may review its decision. Within three days of the end of the proceedings in the case, the Prosecutor General or the court must inform the Kyrgyz Parliament about the outcome of the investigation or hearing. The refusal of the Kyrgyz Parliament to grant consent to the prosecution of a member of parliament shall be the circumstance barring any proceedings in the case against such member of parliament.

2. The decision to prosecute a judge shall be made by the Prosecutor General of the Kyrgyz Republic with the consent of the Judicial Council. To obtain the consent to prosecute a judge, the Prosecutor General of the Kyrgyz Republic shall submit to the Judicial Council a relevant notice listing the circumstances of the case, the article of the criminal law and/or the law on misconduct under which the judge is charged, and a request for the consent to have him prosecuted. Should, in the course of the investigation, the qualification of the offence or misconduct be changed, leading to a deterioration in the situation of the judge, such judge may be prosecuted following the procedure under paragraph two of this article. The notice requesting consent to have a judge prosecuted shall be considered by the Judicial Council and resolved within one month of the date of the notice. Having found that such prosecution of the judge is caused by the position he occupies in his judicial capacity, the Judicial Council shall refuse its consent to have the judge prosecuted. Should the Judicial Council refuse its consent, the notice requesting consent to prosecute the judge in a judicial procedure may not be submitted again.

3. The decision to prosecute the President shall be made by the Prosecutor General of the Kyrgyz Republic after his resignation from office.

4. A registered candidate for the office of the President of the Kyrgyz Republic or member of the Kyrgyz Parliament may not be prosecuted in a judicial procedure until the day when the election commission officially declares the results of the election in the mass media, unless the Central Election Commission has given its consent. The decision to prosecute shall be made by the prosecution authorities of the Kyrgyz Republic.

Article 520. Apprehension

1. A member of the Kyrgyz Parliament may not be apprehended on the grounds provided by in this Code, except when he commits a particularly grave crime.

2. A judge may not be apprehended except when he is caught in flagrante at the scene of crime or misconduct. The judge apprehended on suspicions of crime or for any other reason, or brought under compulsion to any law enforcement agency, when the identity of such judge could not be known at the time of apprehension, shall be released immediately upon identification.

3. The President of the Kyrgyz Republic who is no longer in officer may not be apprehended except when he is caught in flagrante at the scene of crime or misconduct;

4. A registered candidate for the office of the President of the Kyrgyz Republic or member of the Kyrgyz Parliament may not be apprehended until the day when the election commission officially declares the results of the election in the mass media, unless the Central Election Commission has given its consent, except when he is caught in flagrante at the scene of crime or misconduct.

Chapter 64. Particulars of proceedings against legal entities

Article 521. Proceedings in cases of criminal sanctions against legal entities

1. Provisions of this Chapter shall apply in cases where criminal sanctions are applied against legal entities.

2. The proceedings in cases of criminal sanctions against legal entities shall be based on the general rules of this Code and specific features set out in this Chapter.

3. Criminal sanctions against a legal entity shall be applied with the participation of its representative.

Article 522. Representative of the legal entity subject to criminal sanctions

1. The representative of the legal entity shall be deemed to be its owner, executive officer or other authorized person.

2. Only one representative may represent the interests of a legal person subject to criminal sanctions, which the legal entity may replace in the case of his death, illness, resignation, as a result of a conflict of interest between the legal entity and its representative; non-appearance without good reason, at the authority that conducts the criminal process, and also as a result of self-recusal by the representative.

3. The representative of the legal entity subject to criminal sanctions shall participate in the criminal judicial proceedings from of the time when he is prosecuted as a civil defendant.

Chapter 65. Proceedings in compensation for damages caused through unlawful action by the court or authorities conducting criminal proceedings

Article 523. Grounds for the origin of the right to rehabilitation

1. The right to rehabilitation shall include the right to receive compensation for damaged property, satisfaction for moral damage and be restored in the work, pension, housing and other rights. The damage inflicted on a citizen as a result of criminal prosecution shall be fully compensated for by the state irrespective of the culpability of the inquiry agency, investigator, prosecutor or the court.

2. The right to rehabilitation, including compensation for damage related to criminal prosecution shall be that of:

- 1) the defendant or the convicted person who was acquitted;
- 2) the suspect or the defendant against whom criminal charges have been dismissed on the grounds as set out in subparas 1 and 2, paragraph one, of Article 25 and subpara 2, paragraph one, of Article 253 herein; and
- 3) the person with respect to whom the compulsory measures of a medical nature have been

enforced, whenever an unlawful or unreasonable ruling by the court enforcing such measures has been overturned.

3. In the event of death, the right to rehabilitation shall be transferred, under the procedure established by the law, to such person's heirs, and as to the pensions and allowances that were suspended, to those members of his family who belong within the group of persons who are to be supported by a pension for the loss of a breadwinner.

4. The rules herein shall not apply when interim measures in the criminal process or the conviction passed have been overturned or amended, or the case dismissed, as a result of a promulgation of an act of amnesty; expiration of the period of limitations; conciliation with the victim; refusal by the victim to pursue private or private-public prosecution; being under the age of criminal discretion, or apply to a juvenile, which may have reached the age of discretion, but, by virtue of mental retardation unrelated to any mental disorder could not be fully cognizant of the actual nature or social danger of his action (inaction) or guide them at the time of commission of an act qualified by the law; or adoption of the law decriminalizing the act or mitigating the punishment.

5. The damage shall not be subject to compensation should the citizen, in the course of the pre-trial procedures or during the trial, through false confession, have aided the consequences listed in paragraph one above. However, any false confession which was caused by violence, threats or other unlawful actions inflicted on such person, shall not bar compensation. Should that be the case, the fact of unlawful actions shall be established by the judgment of conviction rendered by the court.

6. The damage shall not be subject to compensation in the event of an acquitting judgment based on the examination of a criminal case in view of new or newly discovered facts.

Article 524. Recognizing the right to rehabilitation

1. The court, in its judgment, decree or ruling, or the inquiry agency or investigator in the ruling shall recognize the right to rehabilitation belonging to a person acquitted or a person against whom the criminal prosecution was dismissed. Concurrently, the person rehabilitated shall be issued with a notification explaining the procedure for compensation for damage arising from his criminal prosecution.

2. In the absence of information about the place of residence of heirs, close relatives or dependents of a dead person subject to rehabilitation, the notification shall be made available to them within 5 days from the day on which they apply to the agencies of inquiry or investigation or to the court.

Article 525. Compensation for pecuniary damage

1. Any compensation for pecuniary damage due to the rehabilitated person shall include compensation for:

- 1) wages, pensions, allowances or other means that he was deprived of as a result of criminal prosecution;
 - 2) property confiscated or forfeited in favor of the state based on the judgment or decision by the court;
 - 3) fines and procedural costs charged to him as part of the execution of the court's sentence;
- and
- 4) any amounts that he paid for legal assistance.

2. Within six months from the receipt of the notification detailing the procedure for the compensation for damage, the person in question may file an application demanding compensation for pecuniary damages with the authority that delivered the judgment, decree or ruling to dismiss the case, or overturn or amend other unlawful decisions. In the event that the case should be dismissed or the judgment overturned by the superior court, the claim of damages shall be submitted to the court that delivered the judgment.

3. The claim for pecuniary damages may be filed by the legal representative of the person

rehabilitated.

4. Within one month of the receipt of the claim for pecuniary damages, the judge shall establish the amount and make a ruling ordering the payment of the compensation. Such payments shall take into account the level of inflation.

5. Any claims for pecuniary damages shall be resolved by the judge following the procedure set out in Article 465 herein for addressing the issues arising out of the execution of judgments.

6. A copy of the ruling shall be handed or forwarded to the person rehabilitated or, in case of his death, to the persons listed in paragraph three of Article 523 herein.

Article 526. Compensation for moral harm

1. Claims for pecuniary compensation for moral harm shall be filed under civil law procedures.

2. In the event that the reports about apprehension of the person being rehabilitated, his incarceration, temporary suspension from office, imposition of compulsory measures of a medical nature against him, his conviction or other unlawful actions against should have been published in the press, disseminated by radio, television or other mass media, at the request of such person being rehabilitated, or, in the event of his death, by his close relatives or relatives, or at the written order by the court, prosecutor or head of the investigative authority, investigator or the inquiry agency, the respective mass media must within 30 days publish the news of his rehabilitation.

3. At the request of the rehabilitated person or, in the event of his death, by his close relatives or relatives, the court, prosecutor, investigator or the inquiry agency must, within 14 days, circulate reports about the decisions, rehabilitating such person, at his place of work, study or residence.

Article 527. Appealing against the decision ordering payments

The judge's ruling to make payments or restitute property may be appealed under the appeal or cassation procedure as provided for in this Code.

Article 528. Restoration of other rights of the rehabilitated person

1. Labor, pension or housing rights of the rehabilitated person shall be restored following the procedure set out in Article 465 herein with respect to issues to be resolved with the execution of judgment. In the event that the court should refuse damages or the rehabilitated person should disagree with the decision of the court, he may apply to court under the civil law procedures.

2. Those persons rehabilitated who have been stripped of special degrees, military ranks or honorary degrees, or service ranks or government awards, shall have such ranks or degrees restored and government awards returned.

Article 529. Time limits for claims

1. Claims of cash payments in compensation for pecuniary damage shall be filed within three years of the day on which the citizen or persons listed in paragraph three of Article 523 herein have received the respective ruling ordering payments.

2. The claim demanding restoration of other rights may be filed by the citizen within six months of the notification explaining the procedure for the restoration of rights.

3. Should the deadline be missed for good reason, at the request of parties concerned, the time limit may be reset by the inquiry agency, investigator, prosecutor or the court.

SECTION XVI. PROCEEDINGS IN CASES OF MISCONDUCT

Chapter 66. Pre-trial procedure in cases of misconduct

Article 530. The order of procedure in cases of misconduct

The order of procedure in cases of misconduct as provided for by the Kyrgyz Code of Misconduct shall be defined by the general rules of this Code with the exceptions set out in this section.

Article 531. Inquiry agencies authorized to conduct a pre-trial procedure in cases of misconduct

1. In cases of misconduct against person (Articles 66 – 83 of the Code of Misconduct), against property (Articles 94 – 100 of the Code of Misconduct), against interests of service in commercial or other organizations (Article 120 of the Code of Misconduct), against safety in industry (Articles 121 – 123 of the Code of Misconduct), against public order (Articles 125 – 128 of the Code of Misconduct), against public health or public morality (Article 131 – 138 of the Code of Misconduct), against traffic safety and safety of the maintenance of transport (Articles 156 – 164 of the Code of Misconduct), against judiciary power and procedural rules of evidence (Articles 168 – 173 of the Code of Misconduct), against governance order (Articles 174 – 181 of the Code of Misconduct), the pre-trial procedure shall be conducted by the authorized officer of the police;

2. In cases of misconduct against political, socioeconomic or labor rights of the individual (Article 84 – 98 of the Code of Misconduct), against the rules of economic activity (Articles 101 – 112 of the Code of Misconduct), in the monetary and foreign exchange sphere (Articles 113 – 115 of the Code of Misconduct), against environmental safety and natural environment (Articles 139 – 153 of the Code of Misconduct), in agriculture (Articles 154 and 155 of the Code of Misconduct), the pre-trial procedure shall be conducted by the authorized officer of the agencies fighting economic crime.

3. In cases of misconduct in trafficking narcotics, psychotropic substances, their analogues or precursors (Articles 129 and 130 of the Code of Misconduct), the pre-trial procedure shall be carried by the authorized officers of the police and the drug control agency.

4. In cases of misconduct against the military service (Articles 182 – 184 of the Code of Misconduct), servicemen (Articles 185 – 192 of the Code of Misconduct), the pre-trial procedure shall be conducted by the authorized officers of army units and detachments or military institutions, or border guard units.

5. In cases of misconduct committed inside penitentiary institutions, the pre-trial procedure shall be conducted by the authorized officers of the penitentiary establishments and remand prisons.

6. In a combination of acts of misconduct falling under this article and belonging to the jurisdiction of different inquiry agencies, the powers in the pre-trial procedure shall be defined based on the more grievous of the acts of misconduct.

Article 532. General provisions of the pre-trial procedure in cases of misconduct

1. In the pre-trial procedure in cases of misconduct, the authorized officer of the inquiry agency shall have the right to conduct all investigative actions provided for herein, except special investigative (operative and detective) actions.

2. In the pre-trial procedure in cases of misconduct, the person suspected of committing misconduct may not be subjected to any restrictive measures.

The person suspected of committing misconduct shall make a signed pledge to appear when summoned in the inquiry agency and in the court, and keep them informed of any change in the place of residence. In the event of non-appearance at the inquiry agency or in the court, the person may be subjected to compulsory appearance.

3. In exceptional cases, given the grounds listed in Article 94 herein, the person suspected of committing misconduct may be detained.

4. The pre-trial proceedings in cases of misconduct must be completed within twenty days of the day when the person in question was notified about the suspicions of misconduct.

Article 533. Investigation procedure

In cases of misconduct, investigation shall be conducted only when one and the same person has committed both an offence and misconduct.

Article 534. Discontinuing proceedings in cases of misconduct

1. Given the grounds stipulated in Article 28 herein, the authorized officer of the inquiry agency, with the consent of the head of the inquiry agency, must dismiss the proceedings.

2. Should there be grounds to relieve the person suspected of committing misconduct of liability qualified by the articles of the Kyrgyz Code of Misconduct, the authorized officer of the inquiry agency, with the consent of the head of the inquiry agency, shall dismiss the proceedings and shall have the right to refer the case file for the review by the court of elders.

3. The authorized officer of the inquiry agency shall issue a ruling dismissing the proceedings.

Article 535. Completing pre-trial proceedings in cases of misconduct

The pre-trial procedure in cases of misconduct shall be completed with the suspect, his attorney and the victim familiarizing themselves with the facts of the case and the charging acts drawn up.

The charging acts must indicate:

- 1) the date and place of the act and who has drawn it up;
- 2) the full name of the suspect; day, month, year and place of his birth;
- 3) a narration of the misconduct, indicating the date and place of commission, and other circumstances to be proved pursuant to Article 83 herein;
- 4) the article, paragraph and subpara of the Kyrgyz Code of Misconduct qualifying the liability;
- 5) the details of the victim, the nature and amount of damage inflicted on him; and
- 6) statements or petitions, if any, made during the familiarization with the materials of the case file.

The charging act shall have attached all the materials and the list of persons to be summoned in the court.

Article 536. Filing a plea of sentencing without a trial

1. Whenever the fact of misconduct is obvious, and the offender is known, and he admits to the misconduct, does not disagree with the evidence, or nature and amount of damage inflicted by his misconduct, the authorized officer of the inquiry agency shall refer in the charging act to the plea of sentencing without a trial.

2. The charging act, together with the plea of sentencing without a trial, shall have enclosed:

- 1) a written plea by the suspect, drawn up in the presence of his attorney, admitting his guilt and his consent to be sentenced without a trial; and
- 2) a written application by the victim consenting to sentencing without a trial.

Article 537. The prosecutor's decisions in cases of misconduct

Having received the case completed following the procedure herein, within three days the prosecutor must validate the materials as received and make one of the following decisions:

- 1) approve the charging act and refer the case to the court;
- 2) refuse to approve the charging act and refer the case to the inquiry agency for additional procedures; or
- 3) dismiss the case on the grounds set out in Article 25 herein.

Chapter 67. Trial procedures in cases of misconduct

Article 538. Order of trial in cases of misconduct

The order of trial in cases of misconduct shall be defined by the general rules of judicial proceedings set out in this Code.

Article 539. Summary court procedure in cases of misconduct

1. With respect to a charging act received by the court, together with the plea to sentence without a trial, the judge shall examine it together with the enclosed materials and pass a sentence within five days.

2. The court hearing into the charging act with the plea to sentence without a trial shall be conducted with mandatory participation by the defendant and his attorney.

3. The judge shall ask the defendant whether the charges are clear to him, whether he does not object to the sentencing without a trial, and whether he is aware of the consequences of sentencing without a trial. Should the victim be present during the hearing, the judge shall ascertain his attitude towards the plea of sentencing without a trial.

4. Should the judge find that the charges as accepted by the defendant are well grounded and supported by evidence in the case, he will pass a conviction and sentence the defendant to a punishment which may not exceed two thirds of the maximum length of service or amount of the highest penalty due for such misconduct.

5. Having announced the sentence, the presiding judge shall explain to the parties the right to and procedure for the appeal, including that the sentence may not be appealed in the appellate procedure alleging non-examination of the materials of the case or inconsistency between the court's conclusions and the facts of the case.

6. There shall be no procedural costs charged to the defendant.

SECTION XVII

KEY PROVISIONS ON PROCEDURE FOR COOPERATION BETWEEN COURTS, PROSECUTORS AND INVESTIGATORS WITH RELEVANT AGENCIES AND PUBLIC OFFICIALS OF FOREIGN STATES

Chapter 68. Cooperation between courts, prosecutors and investigators with relevant agencies and public officials of foreign states within the framework of legal assistance

Article 540. Requesting procedural or judicial action

1. Should there be a need to conduct, in a foreign state, any interrogation, view, seizure, search, forensic examination or other specific investigative or judicial action provided for in this Code, the court, prosecutor or investigator shall request such proceedings from the relevant authorities of the foreign state which is party to an international legal assistance treaty, or on the basis of reciprocity.

2. The principle of reciprocity shall be confirmed by a written pledge of the Office of the Prosecutor General of the Kyrgyz Republic.

3. The request for procedural or judicial actions shall be forwarded through:

1) the Supreme Court of the Kyrgyz Republic, for issues of the judicial competence of the Supreme Court of the Kyrgyz Republic;

2) the Judicial Department of the Kyrgyz Republic, for issues relating to the judicial competence of all court, save for the Supreme Court of the Kyrgyz Republic;

3) the Minister of the Interior of the Kyrgyz Republic, State Committee for National Security of the Kyrgyz Republic, State Drug Control Committee of the Kyrgyz Republic, for criminal cases under their proceedings with respect to procedural actions that do not require a judicial decision or the consent of the prosecutor; and

4) the Office of the Prosecutor General of the Kyrgyz Republic, in all other cases.

4. The request shall be drafted in the state and official languages and translated in the language of the requested state, unless otherwise provided for by the international treaty.

5. Public officials from the competent state authorities of the Kyrgyz Republic may be

present in the foreign state while the request is being addressed.

Article 541. Form and substance of the request for procedural or judicial actions

A request for procedural actions shall be drawn up in writing, signed by the requesting public officer, certified with the official seal of the relevant authority, and must contain:

- 1) the name of the requesting authority;
- 2) the name and location of the authority to which the request is addressed;
- 3) the name of the criminal case and nature of the request;
- 4) the details of the persons with respect to whom the request is made, including the date and place of their birth, nationality, occupation, place of residence or stay, or for legal entities – their name and location;
- 5) a narration of the facts to be established and the list of documents, exhibits or other evidence requested; and
- 6) information about the facts of the committed crime, its qualification, the text of the relevant article of the Kyrgyz Criminal Code and, wherever needed, also information about the amount of damage inflicted by the offence in question.

Article 542. Validity of evidence obtained in a foreign state

Evidence obtained in a foreign state by its public officials complying with the request for legal assistance in criminal matters or forwarded to the Kyrgyz Republic enclosed with the request for criminal prosecution under international treaties of the Kyrgyz Republic, or on the basis of reciprocity, notarized and submitted following a proper procedure, shall have the same legal force as if it had been obtained in the Kyrgyz Republic in full compliance with the requirements of this Code.

Article 543. Summoning and interrogating a witness, victim, civil claimant, civil defendant, their representatives or a forensic expert located outside of the Kyrgyz Republic

1. A witness, victim, civil claimant, civil defendant, their representatives or a forensic expert, if foreign nationals, may be summoned with their consent for the procedural or judicial actions in the Kyrgyz Republic by the relevant public officer who conducts proceedings in the criminal case.

2. The request inviting the summoned person shall be submitted following the procedure set out in Article 540 above.

3. Procedural and judicial actions with the participation of the witness, victim, or other participants in the process listed in paragraph one above, shall be conducted following the rules of this Code.

4. The persons summoned under paragraph one above may not be prosecuted in the Kyrgyz Republic as defendants, detained in custody or subjected to other restrictions to personal freedom for any acts or subject to any judgments that might have occurred before such persons have crossed the national border of the Kyrgyz Republic. The immunity ceases if the summoned person, who had an opportunity to leave the territory of the Kyrgyz Republic within 15 consecutive days after his presence was no longer required by the public officer who had summoned him, continues to stay in that territory, or else returns to the Kyrgyz Republic after his departure.

5. The person who is detained in custody in a foreign state shall be summoned following the procedure stipulated herein, provided such person is to be transferred temporarily to the Kyrgyz Republic by the competent authority or public officer of a foreign state in order to conduct the actions described in the request of summons. Such person shall remain in custody throughout his stay in the Kyrgyz Republic, and the decision of the foreign state's competent authority shall be the basis for his incarceration. The person shall be returned to the territory of the respective foreign state within the time limit indicated in the response to the request. The terms of the transfer or its refusal shall be laid down by the international treaties of the Kyrgyz Republic, or

written obligations on the basis of reciprocity.

Article 544. Complying with a request for procedural or judicial actions

1. The court, prosecutor or investigator shall comply, following the established procedure, with a request from the competent authorities of a foreign state for procedural or judicial actions under the general rules of this Code.

2. Procedural rules of a foreign state may be applied to execute the request, subject to the international treaty with such foreign state, or on the basis of reciprocity, unless it contravenes the law and international obligations of the Kyrgyz Republic.

3. As provided for by the international treaty or written obligation to cooperate on the basis of reciprocity, a representative of the relevant authority of the foreign state may be present during the execution of the request.

4. In the event that the request belongs in the jurisdiction of another authority, it shall be transferred there together with a mandatory notification of the competent authority or public officer of the requesting foreign state.

5. Should it be impossible to execute the request, the document received shall be returned, with a note of the reasons preventing its execution, through the authority that received it, or to the competent authority of the requesting foreign state. The request shall be returned unexecuted if it contravenes the laws of the Kyrgyz Republic, or its execution may inflict damage to its sovereignty or security.

Article 545. Submissions in the case to continue criminal prosecution

Should an offence be committed in the Kyrgyz Republic by a foreign national who left the Kyrgyz Republic, all materials in the opened and investigated case shall be referred to the Office of the Prosecutor General of the Kyrgyz Republic, which shall decide whether such materials should be submitted to the relevant authorities of the foreign state for them to continue criminal prosecution.

Article 546. Executing the request to continue criminal prosecution or institute pre-trial proceedings

1. Any referral by a foreign state of the criminal case for continued prosecution against a national of the Kyrgyz Republic who has committed an offence in the foreign state and returned to the Kyrgyz Republic, shall be considered by the Office of the Prosecutor General of the Kyrgyz Republic. Such cases shall be tried following the procedures of this Code.

2. In the event that an offence should be committed in a foreign state by a person who is a Kyrgyz national and has returned to the Kyrgyz Republic before criminal prosecution can be started at the place of crime, the pre-trial proceedings can be initiated by the competent authorities of the Kyrgyz Republic based on the materials of this offence submitted by the competent authority of the foreign state to the Office of Prosecutor General of the Kyrgyz Republic.

Chapter 69. Rendition for criminal prosecution or execution of judgment

Article 547. Requesting extradition of a national of the Kyrgyz Republic

1. In the event and following the procedure set out by the laws of the Kyrgyz Republic, subject to an international treaty with a foreign state, or the written obligation of the Prosecutor General or his deputy to extradite to such foreign state in future, on the basis of reciprocity, in compliance with the laws of the Kyrgyz Republic, the Office of Prosecutor General shall approach the competent authority of the foreign state with a request to extradite a person who is a national of the Kyrgyz Republic, provided such person has been convicted or indicted.

2. The extradition request on the basis of reciprocity shall be submitted in the event that under the laws of both states, the act with respect to which the extradition request is submitted is

criminalized and is to be punished by imprisonment for at least one year, or is a more grievous crime - for purposes of criminal prosecution, or else the person in question has been sentenced to deprivation of liberty for a term of at least six months - for the purpose of execution of judgments.

3. The extradition request must contain:

1) the full name of the person with respect to whom the request is made, the date and place of his birth, nationality, place of residence of stay, whenever possible, the description of his appearance, photograph, finger prints and other details of his identity;

2) the narration of fact of the committed offence, together with the text of the law that criminalizes it, with the mandatory indication of the sanction;

3) the amount of pecuniary damage inflicted by the crime; and

4) details of the time and place of judgment that has become final, or the indictment, with notarized copies of relevant documents.

4. The request for extradition for criminal prosecution must have enclosed with it a notarized copy of the judge's ruling enforcing a custodial restraint. The request for extradition for execution of judgments shall have enclosed with it a notarized copy of the sentence that has become final and a note indicating the length of the unserved term.

Article 548. Limit of criminal liability of the extradited person

1. The person rendered by a foreign state may not be prosecuted under criminal law, punished or surrendered to a third country for another crime unrelated to the extradition, without the consent of the extraditing state.

2. Rules of paragraph one above shall not apply in cases where the person commits any offence after extradition.

Article 549. Executing request for extradition of a foreign national

1. The request to extradite a foreign national accused of a crime or convicted in a foreign state shall be resolved by the Prosecutor General of the Kyrgyz Republic or his deputies subject to the international treaty or on the basis of reciprocity. Should there be requests from more than one state, the decision to which state such person should be extradited, shall be taken by the Prosecutor General of the Kyrgyz Republic.

2. Extradition may be executed:

1) if the criminal law, as punishment for the acts in question, stipulates deprivation of liberty for at least one year, or it is a more grievous crime, whenever the person is to be extradited for criminal prosecution;

2) if the person requested for extradition has been sentenced to deprivation of liberty for at least six months, or to a harsher punishment;

3) when the requesting foreign state may guarantee that the person requested for extradition will be prosecuted only for the offence indicated in the request, and will be able, after the end of the trial and having served the sentence, freely to leave the territory of such state and will not be extradited, transferred or rendered to a third country without the consent of the Kyrgyz Republic;

4) the decision to extradite a foreign national or a stateless person, staying in the Kyrgyz Republic, who is accused of an offence or has been convicted by a foreign court, shall be taken by the prosecutor General of the Kyrgyz Republic or his deputies in a ruling;

5) the person with respect to whom the extradition decision has been made, shall be issued with a copy of the ruling; and

6) the extradition ruling may be appealed by the person to be extradited or by his defense attorney in court within ten days of the day on which the copy of the ruling has been received.

3. In the event that a foreign national requested for extradition should be serving a sentence in the Kyrgyz Republic for another offence, the extradition may be postponed till after the sentence has been served or the penalty quashed for whatever reason. Should the citizen be prosecuted, his extradition may be postponed until the judgment has been passed, the sentence

served or criminal liability or sanction quashed for whatever reason. In the event that postponed extradition may result in the expiration of the period of limitations or undermine investigation, the person requested for extradition, may be rendered for the time being.

Article 550. Transit passage of extradited persons

1. Under the international treaty or on the basis of reciprocity, the Kyrgyz Republic, at the special request, may allow a foreign state to conduct a transit passage across the Kyrgyz Republic of the person extradited by a third country for criminal prosecution or execution of judgments.

2. The decision on the request for a transit passage of a person across the Kyrgyz Republic shall be taken by the Prosecutor General of the Kyrgyz Republic or his deputies.

3. The grounds for keeping the person in transit passage across the Kyrgyz Republic in custody shall be provided by the permission of the Prosecutor General of the Kyrgyz Republic or his deputies to have a transit passage, and the permission of a judicial or other competent authority of the foreign state to put the extradited person in custody.

4. The permission to have a transit passage across the Kyrgyz Republic may be refused on the grounds set out in Article 552 herein.

5. During a transit passage by air, permission shall be required only in the event of an en-route stop of the aircraft in the Kyrgyz Republic. Should that be the case, the request for a transit passage of such person across the Kyrgyz Republic shall be addressed under the general procedure.

Article 551. Appealing extradition through courts

1. The decision on extradition by the Prosecutor General of the Kyrgyz Republic or his deputies may be appealed in court at the place of location of the person against whom such decision is taken, or his defense attorney, within 10 days of the receipt of the notification.

2. In the event that the person to be extradited is in custody, the administration of the place of custody, upon receiving the appeal addressed to the court, shall immediately forward it to the relevant court and notify the prosecutor about it.

3. Within 10 days the prosecutor shall submit to the court the materials that support the lawfulness and reasonableness of the extradition decision.

4. The lawfulness and reasonableness of the extradition decision shall be validated within one month of the day on which the appeal was filed with the court, by a single judge in an open court hearing with the participation of the prosecutor, the person against whom the extradition decision was taken, and his defense attorney, if the one participates in the criminal case.

5. At the start of the hearing the presiding judge shall announce the appeal to review and informs those present of their rights, duties and liability. Then, the applicant and/or his defense attorney shall substantiate their appeal, following which the prosecutor is allowed to make a statement.

6. During the hearing, the court shall not look into issues of culpability of the applicant, limiting itself to the validation of the extradition decision's compliance with the laws and international treaty of the Kyrgyz Republic.

7. As a result of his review, the judge shall make one of the following decisions:

- 1) ruling the person's extradition unlawful or unreasonable and overturning it; or
- 2) refusing the appeal.

8. In the event that the decision to extradite the person is overturned, the judge shall reverse also the restrictive measure against the applicant, if any.

9. The judge's decision to grant or refuse the appeal may also be appealed to a superior court.

Article 552. Refusing extradition

1. No extradition shall be allowed:

1) if the person, requested by a foreign state to be extradited, is a national of the Kyrgyz Republic;

2) if the person has been granted by the Kyrgyz Republic an asylum in view of the potential persecutions in that state on racial, religious, national, ethnic grounds or because of the affiliation with a certain social group, or because of his political convictions;

3) if the act that prompted the extradition request is not criminalized in the Kyrgyz Republic;

4) if the person in question is subject to a conviction, which has become final, for the same crime, or else the proceedings in his case have been dismissed;

5) if the laws of the Kyrgyz Republic prohibit instituting criminal prosecution or else the judgment may not be executed on the basis of limitations or on other lawful grounds;

6) if there is a decision of a court of the Kyrgyz Republic, which has become final, stating obstacles to having such person extradited pursuant to the legislation and international treaties of the Kyrgyz Republic; or

7) if the person has been granted asylum by the Kyrgyz Republic.

2. Extradition may be refused:

1) if the act in connection with which the extradition request is submitted was committed in the Kyrgyz Republic or against the interests of the Kyrgyz Republic outside its territory;

2) if the person requested to be extradited is subject to criminal prosecution in the Kyrgyz Republic for the same offence;

3) if the person requested to be extradited is subject to private prosecution;

4) if the person to be extradited is prosecuted under criminal law for an offence which is punishable by a penalty of death;

5) if the person is a refugee-seeker pending the final decision about his refugee status; or

6) there are other grounds provided for by the international treaty of the Kyrgyz Republic.

3. If no extradition is to be conducted, the Office of the Prosecutor General shall duly notify the competent authorities of the relative foreign state, indicating the reasons for the refusal.

Article 553. Custody pending extradition

1. Upon receiving a properly executed request from the competent agency of the foreign state, and given lawful grounds for extradition, the person may be detained and put in custody following the procedure set out in Article 115 herein.

2. The competent authority of the foreign state requesting extradition shall be notified immediately about such person's detention in custody, with suggested time and place of rendition.

3. In the event that within thirty days no extradition has taken place then the person in custody shall be released following a prosecutor's ruling. A repeated incarceration may only be allowed after a review of a new extradition request pursuant to paragraph one herein.

Article 554. Transfer of the person extradited

1. The Kyrgyz Republic shall inform the foreign state of the place, date and time of transfer of the extradited person. In the event that such person has not been collected within 15 days from the day appointed for the transfer, the person may be released from custody.

2. In the event that the foreign state, for reasons beyond its control, should not be in a position to receive the person subject to extradition, and should notify the Kyrgyz Republic, the date of the transfer may be delayed. In the same way, the date of transfer may be delayed if the Kyrgyz Republic, for reasons beyond its control, should not be in a position to transfer the person being extradited.

3. Under any circumstances, the person shall be released after 30 days from the day appointed for his transfer.

Article 555. Transfer of items

1. During the extradition of a citizen to the competent authority of the foreign state,

transferred shall be items that are the instruments of the crime, and also items bearing traces of the crime. Such items shall be transferred on the basis of a request and in the event when the person's extradition, because of his death or for other reasons, cannot take place.

2. Items mentioned in paragraph one herein may be detained for the time being, if they are needed for the proceedings under another criminal case.

3. To safeguard legitimate rights of third parties, items mentioned in paragraph one above shall be transferred only against the pledge by the agency of the foreign state to return such items after the proceedings in the case have been completed.

Chapter 70. Transfer of the person sentenced to imprisonment to serve the sentence in the state of which he is a national

Article 556. Grounds for the transfer of a person sentenced to imprisonment to serve the sentence in the state of which he is a national

Transfer of the person sentenced by the court of the Kyrgyz Republic to deprivation of liberty to serve the sentence in the state of which he is a national, or equally a transfer of a national of the Kyrgyz Republic sentenced by a foreign state to deprivation of liberty, to serve the sentence in the Kyrgyz Republic, shall be based on the decision of the court based on its consideration of the recommendations of the penitentiary authority, or application by the convicted offender or his representative, or else by the competent authorities of the foreign state pursuant to the international treaty of the Kyrgyz Republic or the written agreement between the competent authorities of the Kyrgyz Republic and those of the foreign state based on reciprocity.

Article 557. Procedure for a court hearing on issues related to the transfer of the person sentenced to deprivation of liberty

1. The recommendation of the penitentiary authority as well as the application by the convicted offender, his representative, competent authorities of the foreign state with respect to the transfer of the person sentenced to deprivation of liberty, to serve the sentence in the state of which he is a national, shall be heard by the court following the procedure and time limits established by this Code.

2. In the event that the court should be unable to consider the issue of transfer in view of incomplete or missing evidence, the court may postpone the hearing and request the missing evidence, or else without any hearing refer the convicted offender's application to the competent authority of the Kyrgyz Republic for the acquisition of the needed information pursuant to the provisions of the international treaty of the Kyrgyz Republic, and also for the preliminary coordination of the transfer with the competent authority of the foreign state.

Article 558. Conditions and procedure for the transfer of the sentenced offender to serve the sentence in the state of which he is a national

1. The transfer of the person convicted in the Kyrgyz Republic to have him serve his sentence in the state of which he is a national shall be allowed before he has served his term, at the petition of the convicted offender, his legal representative or close relatives, and also at the request of the competent authority of the respective state, with the consent of the offender.

2. The transfer may be performed only after the sentence has become final, with the decision of the Prosecutor General of the Kyrgyz Republic who shall inform the sentencing court about the completed transfer.

Article 559. Refusal to transfer a convicted offender to serve his sentence in a foreign state

The transfer of a convicted offender to serve his sentence in the state of which he is a national, may be refused in the event that:

1) the offence for which such person has been convicted should not be criminalized by the

laws of the state of which such offender is a national;

2) the penalty may not be executed in the foreign state by virtue of the statute of limitations or on other grounds provided for by the laws of such state;

3) no guarantees have been received from the convicted offender or the foreign state that the civil claim of the sentence will be settled;

4) no consent should be given to have the offender transferred under the conditions of the international treaty; and

5) the convicted offender should have a place of permanent residence in the Kyrgyz Republic.

Article 560. Reviewing the motion from a national of the Kyrgyz Republic on service of sentence

1. A national of the Kyrgyz Republic sentenced to deprivation of liberty by a foreign court, his legal representative or close relative, as well as competent authorities of the foreign state with the consent of the offender, may apply to the penitentiary authority of the Kyrgyz Republic with a petition to have the offender serve the sentence in the Kyrgyz Republic.

2. The penitentiary authority shall have the right to request from the competent authorities of the foreign state any documents needed to resolve the issue of the offender's transfer to the Kyrgyz Republic for further service of sentence.

3. The penitentiary authority shall petition the court to take the decision.

4. Should the petition be granted the Prosecutor General of the Kyrgyz Republic or his deputies shall submit to the Supreme Court of the Kyrgyz Republic a report on the execution of a sentence passed by a foreign state.

Article 561. Refusal to transfer a convicted national of the Kyrgyz Republic for service of sentence

The transfer of a national of the Kyrgyz Republic convicted to deprivation of liberty may be refused in the event that:

1) this may inflict damage on the national interests of the Kyrgyz Republic;

2) the convicted offender should suffer from a terminal or grave illness;

3) the convicted offender should have an unpaid civil claim;

4) the penalty may not be executed in the Kyrgyz Republic because of the expiration of limitations or for other reason provided for by the laws of the Kyrgyz Republic; and

5) the person has served the sentence or has been acquitted in the Kyrgyz Republic for the committed offence, or else the case has been dismissed, or else the person has been discharged from penalty by the competent authority of the Kyrgyz Republic.

Article 562. Procedure for the court hearing on issues related to the execution of the sentence rendered by a foreign court

1. The report by the Prosecutor General of the Kyrgyz Republic shall be examined by the Supreme Court of the Kyrgyz Republic in a hearing in the absence of the offender, following the procedure and within the time limits established by this Code for the resolution of issues pertaining to the execution of judgments.

2. The resolution of the Supreme Court of the Kyrgyz Republic on the execution of the sentence rendered by a foreign court should show:

1) the name of the court of a foreign state, the date and place of the sentence;

2) details of the most recent place of residence of the convicted offender in the Kyrgyz Republic, the place of work and occupation prior to his conviction;

3) the qualification of the offence for which the person was convicted and subject to which criminal law;

4) the criminal law of the Kyrgyz Republic criminalizing the offence committed by the convicted offender;

5) type and length of the sentence (principal and additional), the start and the end of the sentence which the offender must serve in the Kyrgyz Republic, the type of the prison, and procedures detailing compensation for damage under the action.

3. In the event that under the law of the Kyrgyz Republic the maximum custodial term for the offence in question is less than under the sentence, the Supreme Court of the Kyrgyz Republic shall set the maximum term of imprisonment for the offence under the laws of the Kyrgyz Republic. In the event that under the law of the Kyrgyz Republic the penalty should not include imprisonment, the Supreme Court of the Kyrgyz Republic shall impose the penalty within the limits set by the laws of the Kyrgyz Republic for such offence and that closest to the sentence rendered by the foreign state.

4. The resolution of the Supreme Court of the Kyrgyz Republic shall become final as of its effective date and shall be submitted to the Office of Prosecutor General of the Kyrgyz Republic to ensure execution.

5. Should the sentence delivered by a foreign court be reversed or amended, or an act of amnesty or mercy be promulgated in the foreign state with respect to the person serving the sentence in the Kyrgyz Republic, issues pertaining to the execution of the reviewed sentence or application of amnesty or mercy shall be resolved following the rules of this article.

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