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## Code of Misdemeanour Procedure

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05.11.2014	RT I, 20.11.2014, 1	01.05.2015
18.02.2015	RT I, 19.03.2015, 1	29.03.2015, partially 06.04.2015 and 01.09.2015
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31.05.2017	RT I, 16.06.2017, 1	01.07.2017
07.06.2017	RT I, 26.06.2017, 17	06.07.2017
14.06.2017	RT I, 26.06.2017, 69	06.07.2017
14.06.2017	RT I, 04.07.2017, 1	01.01.2018
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20.02.2019	RT I, 13.03.2019, 2	15.03.2019
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## Chapter 1 FUNDAMENTAL PROVISIONS

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

This Code provides the rules for out-of-court and court procedure in misdemeanour matters and the rules concerning execution of sentences imposed for misdemeanours.

## **§ 2. Application of provisions on criminal procedure**

Unless otherwise provided for in this Code, the provisions on criminal procedure apply in misdemeanour procedure, without prejudice to rules special to misdemeanour procedure.

## **§ 3. Applicability of the law of misdemeanour procedure by reason of the person concerned**

(1) The law of misdemeanour procedure is applicable to natural and legal persons. The state, local authorities and legal persons in public law are also subject to the written caution procedure.  
[RT I 2008, 54, 304 – entry into force 27.12.2008]

(2) At the request of the relevant foreign state, Estonian law of misdemeanour procedure may be applied to persons who enjoy diplomatic immunity or privileges under an international agreement, without prejudice to any special rules provided by that agreement.  
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

## **§ 3<sup>1</sup>. Principle of mandatory misdemeanour proceedings**

(1) If the elements of a misdemeanour are discovered, the body authorized to conduct out-of-court proceedings is required to commence and conduct misdemeanour proceedings, unless that body considers the corresponding act to be of minor importance or unless circumstances are present which are set out in section 29 of this Code and which would preclude misdemeanour proceedings.

(2) In the case of a misdemeanour of minor importance, the commencement of misdemeanour proceedings is not required and giving an oral caution to the person who committed the act characterized by the elements of the misdemeanour may be deemed sufficient.

(3) In the case of a misdemeanour of minor importance, the commencement of misdemeanour proceedings is not required if identification of the person who committed the misdemeanour is unlikely or if conducting the proceedings would be unreasonably expensive with regard to the circumstances of the misdemeanour.  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(4) A misdemeanour is not of minor importance if damage has been caused by its commission or if the notice concerning the misdemeanour cites any damage caused, except where the person who committed the misdemeanour has voluntarily compensated for or remedied such damage.  
[RT I, 05.12.2017, 1 – entry into force 15.12.2017]

## **§ 4. Presumption of innocence**

No one may be deemed guilty of a misdemeanour before the judgment or determination sanctioning them for that misdemeanour has become final.

## **§ 5. Safeguarding the rights of the party subject to proceedings**

The body that conducts out-of-court proceedings, and the court, are required:

- 1) when performing a procedural act, to explain to the party subject to proceedings the purpose of the procedural acts and the rights and obligations of that party;
- 2) provide the person subject to proceedings with the opportunity to defend themselves independently;
- 3) allow the defence counsel of the person subject to proceedings to participate in the proceedings on the basis and in accordance with the rules provided in subsections 19 (2) and (3) and 22 (1) and (2) of this Code.

## **§ 6. Respect for the dignity of persons**

The body conducting the proceedings must treat the party subject to proceedings such that it does not harm their honour or degrade their dignity.

## **§ 7. Compensation for damage caused by misdemeanour**

Compensation for any damage caused by the commission of a misdemeanour shall be decided on on the basis and in accordance with the rules provided by civil laws.

# **Chapter 2** **BODIES TO CONDUCT PROCEEDINGS, PARTY SUBJECT TO PROCEEDINGS, EXPERTS, INTERPRETERS**

# OR TRANSLATORS AND PARTIES TO COURT PROCEEDINGS UNDER MISDEMEANOUR PROCEDURE

## Division 1

### Bodies to Conduct Proceedings under Misdemeanour Procedure

#### § 8. Body to conduct proceedings

The body to conduct the proceedings is:

- 1) under out-of-court procedure, the body to conduct the out-of-court proceedings;
- 2) under judicial procedure, the court.

#### § 9. Body to conduct out-of-court proceedings

Where this is provided by law, the body to conduct the out-of-court proceedings is:

- 1) the agency vested with relevant executive powers;
- 2) the executive of the relevant rural municipality or city.

(3) [repealed – RT III 2008, 24, 159 – entry into force 16.05.2008]

#### § 10. Officials of the body to conduct out-of-court proceedings

(1) The body to conduct out-of-court proceedings shall participate in those proceedings through its officials.

(2) The body to conduct out-of-court proceedings shall approve a list of positions whose holders are authorized to participate in misdemeanour proceedings in the name of that body. If necessary, positions in the list may be differentiated according to sanctions that position holders are authorized to impose.

[RT I 2005, 40, 311 – entry into force 01.10.2005]

(2<sup>1</sup>) Within the scope of procedural jurisdiction of the body to conduct out-of-court proceedings, the head of that body may issue general directions in order to ensure the legality and efficacy of such proceedings.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(3) The body to conduct out-of-court proceedings shall issue a certificate of authority to its officials. The certificate must set out the title, number and date of the legal act on which the authority of the official is based.

(3<sup>1</sup>) Where the official of the body to conduct out-of-court proceedings is a police officer, their service ID serves as proof of their authority.

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

(4) Officials of the body to conduct out-of-court proceedings are required to present their certificate of authority to the person subject to proceedings, to any other parties subject to proceedings and to the court.

(5) [Repealed – RT III 2008, 24, 159 – entry into force 16.05.2008]

#### § 11. Resolution of jurisdictional disputes between bodies to conduct out-of-court proceedings

(1) If jurisdiction to conduct the misdemeanour case is vested by law in several bodies to conduct out-of-court proceedings, the case is to be dealt with by officials of the body which performed the first procedural act in that case. Jurisdictional disputes between bodies to conduct out-of-court proceedings shall be resolved by agreement.

(2) If the bodies to conduct out-of-court proceedings fail to reach an agreement, the jurisdictional dispute shall be resolved without delay by a ruling of:

- 1) the relevant minister if the bodies are within the area of government of that minister;
- 2) the minister responsible for the area in cases not falling under clause (1) of this subsection.

[RT I, 04.07.2017, 1 – entry into force 01.01.2018]

(3) The body to conduct out-of-court proceedings which, under the ruling provided for in subsection (2) of this section does not have jurisdiction to pursue the proceedings shall send the documentation concerning the misdemeanour together with a cover letter to the body that has such jurisdiction. Before transferring the misdemeanour case to the body that has jurisdiction, only urgent procedural acts shall be performed.

#### § 12. Locality where proceedings are conducted in misdemeanour cases

(1) Under out-of-court procedure, proceedings in misdemeanour cases shall be conducted in the locality where the misdemeanour was committed.

[RT I 2003, 83, 557 – entry into force 01.01.2004]

- (2) At the request of the person subject to proceedings, proceedings in a misdemeanour case may be conducted:
- 1) in the locality where that person has their residence or seat;
  - 2) in the locality of registration, in Estonia, of the relevant motor or rail vehicle or air or water craft.

(3) If, after the commencement of proceedings, the person subject to proceedings changes their residence or seat, proceedings in the case may, at the request of that person, be conducted in the locality of their new residence or seat.

(4) The body to conduct out-of-court proceedings shall resolve the requests provided for in subsections (2) and (3) of this section by making the corresponding order.  
[RT I 2003, 83, 557 – entry into force 01.01.2004]

(5) A unit of the Police and Border Guard Board with jurisdiction to conduct proceedings in the entire national territory may transfer proceedings in a misdemeanour case to a unit that has jurisdiction in the region where the misdemeanour was committed, provided this is expedient and does not damage the interests of the person subject to proceedings. At the request of the person subject to proceedings, their misdemeanour case may be transferred to a body that has jurisdiction to conduct out-of-court proceedings in the region in which the person has their residence or seat or in which the relevant motor or rail vehicle or air or water craft is registered in Estonia.  
[RT I, 29.12.2011, 1 – entry into force 01.01.2012]

### **§ 13. Body to conduct court proceedings**

Under judicial procedure, proceedings are conducted by district courts, courts of appeal and the Supreme Court.  
[RT I 2005, 39, 308 – entry into force 01.01.2006]

### **§ 14. Jurisdiction**

(1) The misdemeanour case or appeal filed against a determination made in a misdemeanour case shall be dealt with by the district court in whose district the misdemeanour was committed. In the cases provided for in subsections 12 (2) and (3) of this Code, the misdemeanour case or appeal filed against a determination made in a misdemeanour case shall be dealt with by the district court in whose district the residence or seat indicated in the request or the locality of registration, in Estonia, of the relevant motor or rail vehicle or air or water craft, falls.

(2) When preparing a misdemeanour case for judicial hearing, the court shall verify whether it has jurisdiction over the case. If the court finds that it does not have jurisdiction, it shall enter an order transferring the misdemeanour case to a court that has jurisdiction. Before the case is transferred to a court that has jurisdiction, only urgent procedural acts may be performed.

(3) If a district court contests jurisdiction over a misdemeanour case received from another court, the issue of jurisdiction shall be resolved, within the circuit served by a court of appeal, by the chairman of the court of appeal or, in other cases, by the Chief Justice of the Supreme Court. If a court of appeal contests jurisdiction over a misdemeanour case received from another court, the issue of jurisdiction shall be resolved by the Chief Justice of the Supreme Court.

(4) If permission of a judge is required for the performance of a procedural act in out-of-court proceedings, such permission is granted by a judge of the district court in whose district the procedural act is to be performed.

(5) The appeals which are provided for in section 78 of this Code and which are filed against the actions of a body to conduct out-of-court proceedings shall be resolved by the district judge in whose district the contested order or procedural act was made or performed.  
[RT I 2005, 39, 308 – entry into force 01.01.2006]

### **§ 15. Court panels to deal with misdemeanour cases**

(1) In district courts, misdemeanour cases and appeals filed against determinations made by bodies to conduct out-of-court proceedings shall be dealt with by a single district judge.

(2) In the courts of appeal, misdemeanour cases shall be dealt with by a panel of three judges. Preliminary procedure in misdemeanour cases shall be conducted by a single appeal judge.

(3) In the Supreme Court, misdemeanour cases shall be considered by a panel of at least three judges.  
[RT I 2005, 39, 308 – entry into force 01.01.2006]

## **Division 2**

# Party Subject to Proceedings and Parties to Court Proceedings under Misdemeanour Procedure

## § 16. Party subject to proceedings

The party subject to proceedings means the person subject to proceedings and their defence counsel.

## § 17. Parties to court proceedings

(1) Under court procedure, the parties to court proceedings are the party subject to proceedings and the body which conducted out-of-court proceedings in the case.

(2) In the Supreme Court, the parties to court proceedings are the defence counsel, who must be an advocate, of the person subject to proceedings or of the offender, and the body which conducted the out-of-court proceedings or its representative, who must be an advocate.

[RT I 2003, 83, 557 – entry into force 01.01.2004]

## § 18. Person subject to proceedings and the offender

(1) The person subject to proceedings is a natural or legal person in whose respect misdemeanour proceedings have been commenced.

[RT I, 31.05.2018, 1 – entry into force 01.01.2019]

(1<sup>1</sup>) The following are not deemed to be persons subject to proceedings:

- 1) the vehicle's owner or authorized user to whom a notice of fine is sent in written caution proceedings;
- 2) persons subjected to abridged procedure.

[RT I, 31.05.2018, 1 – entry into force 01.01.2019]

(2) A person subject to proceedings who has been subjected to a sanction which has been imposed by a determination of the body that conducted out-of-court proceedings or by a judgment of the court and which has become final is an offender.

(3) Where the person subject to proceedings or the offender is a legal person, the statutory representative of that person enjoys all the rights of a principal and may give testimony in the name of the person.

## § 19. Rights and obligations of the person subject to proceedings

(1) The person subject to proceedings has the right to:

- 1) know what misdemeanour case constitutes the subject matter of the proceedings;
- 2) be assisted by a defence counsel in accordance with the rules provided in subsections (2) and (3) of this section;
- 3) be present in court at the hearing of their misdemeanour case;
- 4) give testimony, submit evidence and make requests or applications;
- 5) know the purpose of the procedural act that is being performed;
- 6) peruse the reports of the procedural acts performed as well as any audio or video recordings of those acts and make statements, to be minuted or audio or video recorded, concerning the conditions and course of procedural acts, concerning any results of proceedings, concerning the reports and recordings of procedural acts; [RT I, 06.07.2013, 3 – entry into force 16.07.2013]
- 7) contest any procedural act or decision of the body conducting the out-of-court proceedings or of the court in accordance with the rules provided in this Code.

(1<sup>1</sup>) A person subject to proceedings who is a minor shall have, in misdemeanour proceedings, the rights prescribed in criminal proceedings for a suspect or accused who is a minor:

- 1) if he or she has been detained pursuant to subsection 44 (1) of this Code;
- 2) in court proceedings.

[RT I, 20.12.2019, 1 - entry into force 30.12.2019]

(2) The person subject to proceedings has the right to contact defence counsel from the time of their detention or from the time any other procedural act is performed which is the first in the case. When detaining a person or performing any other procedural act as the first in the case, the body conducting the proceedings must allow the person subject to proceedings to use the means of communication at their disposal in order to contact defence counsel. Defence counsel may participate in the performance of procedural acts concerning the person subject to proceedings, yet non-appearance of the counsel shall not stay the performance of the act.

[RT I 2003, 26, 156 – entry into force 21.03.2003]

(3) The participation of defence counsel is mandatory starting from the commencement of court proceedings if the person subject to proceedings is 14 to 18 years of age or is unable to represent themselves due to a mental disorder.

(4) The person subject to proceedings is required to:

- 1) appear when summoned by the body conducting the proceedings if the summons states that appearance is mandatory;
- 2) comply with lawful directions of the body conducting the proceedings.

## **Division 3**

### **Defence Counsel in Misdemeanour Procedure**

#### **§ 20. Defence counsel**

(1) Persons subject to proceedings and offenders may have a defence counsel who must be an advocate or, with the permission of the body to conduct the proceedings, a person who has been awarded at least an officially recognised Master's degree in legal studies or a qualification that, under subsection 2<sup>2</sup> of § 28 of the Republic of Estonia Education Act, is equivalent to such a degree, or an equivalent foreign qualification.  
[RT I 2008, 29, 189 – entry into force 01.07.2008]

(2) The defence counsel's authority of representation is proved by an authorization document.

(3) A defence counsel may have several principals if the interests of the principals are not in conflict. A person subject to proceedings or an offender may not have more than two counsel.

(4) An offender may file an appeal in cassation or a petition for review only through an advocate.  
[RT I 2005, 71, 549 – entry into force 01.01.2006]

#### **§ 21. Rights and obligations of defence counsel and removal of defence counsel**

(1) Defence counsel have the right to:

- 1) participate in proceedings starting with detention of the person subject to proceedings or with the performance of another procedural act performed as the first in the case concerning the person subject to proceedings, while non-appearance of the counsel shall not stay the performance of any procedural act;
- 2) receive from natural and legal persons the documents necessary for the provision of legal assistance to the person being defended;
- 3) submit evidence as well as requests and applications;
- 4) with the knowledge of the body to conduct the proceedings, use technical equipment in the performance of their defence obligations provided this does not interfere with the procedural act.

(2) Following the rules provided in this Code, defence counsel have the right to:

- 1) participate in proceedings together with the person subject to proceedings or independently;
- 2) contest a procedural act or decision of the body to conduct the proceedings.

(3) Where the grounds provided for in subsection 19 (3) of this Code are present, the participation of defence counsel is mandatory starting from commencement of court proceedings.

(4) Under misdemeanour procedure, defence counsel are removed on the grounds and in accordance with the rules provided under criminal procedure.  
[RT I 2003, 26, 156 – entry into force 21.03.2003]

#### **§ 22. Grant of legal aid**

[RT I 2004, 56, 403 – entry into force 01.03.2005]

(1) In misdemeanour proceedings, legal aid is granted on the grounds and in accordance with the rules provided in the State Legal aid Act.  
[RT I 2004, 56, 403 – entry into force 01.03.2005]

(2) If the court finds that the person subject to proceedings is unable to protect their rights or that, without the assistance of an advocate, their essential interests in court proceedings may fail to be protected, the court may, on its own initiative, decide to grant legal aid to the person on the grounds and in accordance with the rules provided in the State Legal Aid Act.  
[RT I 2004, 56, 403 – entry into force 01.03.2005]

(3) If a person falling under subsection 3 of § 19 of this Code has not chosen defence counsel for themselves, the Bar Association appoints a counsel for them at the request of the court and at the expense of the state.  
[RT I 2009, 1, 1 – entry into force 01.01.2010]

(4) A copy of the order made concerning the grant of legal aid is placed in the misdemeanour file.  
[RT I 2009, 1, 1 – entry into force 01.01.2010]

### **§ 23. Compensation for defence counsel fee in the case of termination of misdemeanour proceedings**

In the case that misdemeanour proceedings are terminated on the grounds provided in clauses 1–3 and 5–6 of subsection 1 of § 29, a reasonable fee paid by the person subject to proceedings to the defence counsel chosen by that person shall, at the request of the person and on the basis of a court order be reimbursed to the person from the funds of the national or local government budget.

[RT I 2003, 26, 156 – entry into force 21.03.2003, applied retroactively 01.09. 2002]

## **Division 4 Experts and Interpreters or Translators in Misdemeanour Procedure**

### **§ 24. Experts and interpreters or translators**

(1) Experts participate in misdemeanour proceedings and recuse themselves or are removed on the grounds and following the rules provided under criminal procedure.

(2) In out-of-court proceedings, interpreters or translators are engaged in the conduct of procedural acts at the request of the party to proceedings or the witness; an interpreter or translator is engaged in the conduct of court proceedings whenever necessary. Interpreters or translators recuse themselves or are recused from proceedings on the grounds and following the rules provided under criminal procedure.

[RT I, 14.02.2014, 1 – entry into force 24.02.2014]

## **Division 5 Grounds for Officials of Bodies to Conduct Out- of-court Proceedings and for Judges to Recuse Themselves, and Recusal of Officials of Bodies to Conduct Out-of-court Proceedings and of Judges**

### **§ 25. Grounds for officials of bodies to conduct out-of-court proceedings or for judges to recuse themselves**

(1) An official of a body to conduct out-of-court proceedings, or a judge, is required to recuse themselves if they:

- 1) are a person close to the person subject to proceedings, which means their lineal ascendant or descendant or first or second degree collateral relative, or are or have been a first degree relative by marriage, an adoptive parent, adoptive child or the spouse of the person subject to proceedings;
- 2) have previously conducted proceedings in the same misdemeanour case;
- 3) cannot remain impartial for any other reason.

(2) The participation of a judge in proceedings before the Criminal Chamber of the Supreme Court does not constitute a ground for the judge to recuse themselves from further proceedings in the same misdemeanour case before the Supreme Court.

(3) Officials of bodies to conduct proceedings and judges are not allowed to recuse themselves from proceedings in a misdemeanour case unfoundedly.

(4) Persons who, within the meaning of clause 1 of subsection 1 of this section, have a close relationship or are close to the person subject to proceedings, may not serve on the judicial panel dealing with the case.

(5) The official of a body to conduct out-of-court proceedings or the judge formalizes their recusal by a reasoned recusal order which is included in the misdemeanour file.

### **§ 26. Recusal of officials of bodies to conduct out-of-court proceedings or of judges**

(1) If the official of a body to conduct out-of-court proceedings, or the judge, does not recuse themselves when grounds for recusal provided in subsection 1 of § 25 of this Code are present, a party subject to proceedings may submit an application for recusal of the official or the judge. In court proceedings, the body to conduct out-of-court proceedings also has the right to submit an application for recusal of the judge. The application for recusal of an official of the body to conduct out-of-court proceedings or of the judge is to be submitted without delay upon learning of the grounds for recusal.

(2) The application for recusal of an official of the body to conduct out-of-court proceedings may be submitted until the making of determination in the misdemeanour case.



(3) The application for recusal of the judge may be submitted until the end of the introductory stage of the hearing of the misdemeanour case or appeal. If the ground for recusal becomes apparent at a later stage and is notified without delay to the judge, the application for recusal may be submitted until the end of the substantive hearing of the case.

(4) An official of a body to conduct out-of-court proceedings recuses themselves by a substantiated order or, in the case of denial of the application for recusal, substantiates their non-recusal in the decision entered in the misdemeanour case. The judge dealing with a misdemeanour case as a single judge resolves the application for recusal by making a separate order without convening a sitting, or by making a substantiated order recorded in the minutes of the sitting or, in the case of denial of the application, substantiates their non-recusal in the decision entered in the misdemeanour case.

(5) If the court is considering the appeal in a collegial formation, it hears the explanations of the judge to be recused and the opinions of the person subject to proceedings and of their representative. The application for recusal is resolved by an order made in chambers. An application for recusal of a single member of the judicial panel is resolved by the rest of the panel without the presence of the judge to be recused. If the votes against and the votes in favour are divided equally, the judge is deemed recused. An application for recusal of several members of the panel, or of the entire panel, is resolved by the same panel by a simple majority vote.

(6) When an application for recusal has been filed, the official of the body to conduct out-of-court proceedings, or the judge, may only perform urgent procedural acts before resolving the petition.  
[RT I 2003, 83, 557 – entry into force 01.01.2004]

### **§ 27. Filing of appeal against denial of the application for recusal of an official of the body to conduct out-of-court proceedings or of the judge**

A party subject to proceedings who has filed an application for recusal of an official of the body to conduct the out-of-court proceedings or of the judge may raise objections concerning denial of their application in the appeal filed against the decision made in the case. Objections may include a reference to the ground for recusal of the official of the body to conduct out-of-court proceedings or of the judge if the application for recusal was filed within the prescribed time limit but was denied or if the ground for recusal became apparent after adjudication of the misdemeanour case.

## **Chapter 3 PARTICIPATION IN COURT PROCEEDINGS OF BODIES TO CONDUCT OUT-OF-COURT PROCEEDINGS**

### **§ 28. Rights and obligations in court proceedings of bodies conducting out-of-court proceedings**

(1) The body that conducted out-of-court proceedings in the case has the right to participate in court proceedings in that case.

(2) In court proceedings, the body that conducted out-of-court proceedings in the case has the right to:

- 1) participate in judicial hearing of the misdemeanour case;
- 2) submit evidence and requests;
- 3) examine the misdemeanour file;
- 4) contest the decision of the court in accordance with the rules prescribed by this Code.

(3) In court proceedings, an official of the body that conducted out-of-court proceedings in the case is required to:

- 1) appear when summoned by the court if mandatory appearance is indicated in the summons;
- 2) comply with lawful directions of the court.

## **Chapter 4 CIRCUMSTANCES PRECLUDING MISDEMEANOUR PROCEEDINGS AND GROUNDS FOR TERMINATION OF MISDEMEANOUR PROCEEDINGS**

### **§ 29. Circumstances precluding misdemeanour proceedings**

(1) Misdemeanour proceedings are not commenced and any proceedings commenced must be terminated if:

- 1) the act in question does not contain the elements of a misdemeanour;

- 2) the person has already been sanctioned for the same act, regardless of whether the sanction was imposed in the Republic of Estonia or in another state;
- 3) a decision to terminate misdemeanour proceedings concerning the same act has been entered with regard to the person;
- 4) the act in question contains the elements of a criminal offence;
- 5) the limitation period for the misdemeanour has expired;
- 6) the Act which prescribed a sanction for the misdemeanour has been repealed;
- 7) the person in whose respect the misdemeanour proceedings are to be or have been commenced is dead or, in the case of a legal person, has been dissolved.

(2) With respect to a minor who, when they committed the unlawful act, is deemed incapable of forming *mens rea* grounds of their age, but is a child in need of assistance for the purposes of § 26 of the Child Protection Act, the body to conduct the out-of-court proceedings, or the court, sends a notification, and a copy of the requisite portion of the documents of the relevant misdemeanour case, to the local authority in whose administrative territory the minor has their residence.

[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

(3) Regardless of the provision made in subsection 1 of this section, misdemeanour proceedings are commenced if this is requested by the person subject to proceedings in order to rehabilitate themselves and if the limitation period has not expired.

### **§ 30. Termination of misdemeanour proceedings for considerations of expediency**

[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

(1) The body conducting misdemeanour proceedings may terminate those proceedings if:

- 1) the person subject to proceedings is not culpable to a high degree and there is no public interest in continuing the proceedings;
- 2) the person subject to proceedings has voluntarily compensated for or remedied the harm caused by the misdemeanour;
- 3) the person subject to proceedings has undertaken to participate in a community programme or
- 4) the minor subject to proceedings has undertaken to have recourse to a conciliation service or has assumed another appropriate obligation.

(1<sup>1</sup>) Compliance with the obligation provided for in clause 3 of subsection 1 of this section is based on the minimum period of application of the specific community programme, which must not exceed ten months. The body to conduct out-of-court proceedings appends to the misdemeanour file a summary of the completion of the social programme.

(1<sup>2</sup>) If the person in whose respect misdemeanour proceedings were terminated on the basis of clause 3 or 4 of subsection 1 of this section does not perform the obligation assumed or commits a new offence during participation in the community programme, recourse to the conciliation service or performance of the obligation, the body to conduct out-of-court proceedings may resume the proceedings by making the corresponding order. If a sanction is imposed on the person as a result of resumed proceedings, the period of participation in the community programme or recourse to the conciliation service is not deducted from the sanction.

(1<sup>3</sup>) In the case of termination of misdemeanour proceedings on the grounds provided in subsection 1 of this section, the person subject to proceedings reimburses the costs of the case. The costs of the case of a minor subject to proceedings are borne by the state.

(1<sup>4</sup>) When determining the costs of the case, the body to conduct the proceedings has regard to the provisions made in subsection 3 of § 180 of the Code of Criminal Procedure.

(2) If the body to conduct out-of-court proceedings finds that a person who was at least fourteen but less than eighteen years of age when they committed the misdemeanour should not be subjected to a sanction or to a rehabilitation measure provided for in subsection 2 of § 87 of the Penal Code, that body may caution the minor, terminate the proceedings and, if the minor is a child in need of assistance for the purposes of § 26 of the Child Protection Act, send a notification regarding that minor, and a copy of the requisite portion of the documents of the misdemeanour case, to the local authority in whose administrative territory the minor has their residence.

[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

## **Chapter 5**

## **PROCEDURAL ACTS, PROCEDURAL TIME LIMITS AND CASE COSTS**

### **§ 31. Collection of evidence and application of provisions of criminal procedure when performing procedural acts**

(1) Under misdemeanour procedure, the presentation and collection of evidence is subject to the relevant provisions of criminal procedure without prejudice to special rules provided in this Code.  
[RT I, 06.07.2013, 3 – entry into force 16.07.2013]

(1<sup>1</sup>) If the place, time or manner, or other aspects, of the commission of the misdemeanour have been photo or video recorded in the course of state supervision, the recording may be used as an independent evidentiary item in misdemeanour proceedings, provided the following are apparent from that recording:

- 1) the link between the recording and the misdemeanour case;
  - 2) when, under what circumstances and by whom the recording was created;
  - 3) other facts which are relevant with a view to resolving the misdemeanour case.
- [RT I, 06.07.2013, 3 – entry into force 16.07.2013]

(2) The body to conduct out-of-court proceedings, and the court, has the right to require a natural or legal person to produce any documents or physical or other objects required for resolving the misdemeanour case.

(3) Where this is unavoidably necessary to accomplish the aim of proceedings concerning a corruption misdemeanour, the body to conduct the corresponding out-of-court proceedings may request that the court make an order allowing access to banking secrets and to data in the register of fund units.  
[RT I, 29.06.2012, 1 – entry into force 01.04.2013]

### **§ 31<sup>1</sup>. Fingerprinting, and taking DNA samples from, persons subject to proceedings**

Persons subject to proceedings who are suspected of having committed the offences defined in §§ 15<sup>1</sup> and 15<sup>2</sup> of the Narcotic Drugs and Psychotropic Substances and their Parent Substances Act or in § 218 of the Penal Code, may be fingerprinted for the purposes of proceedings and for the purposes of detection and prevention of offences, and their DNA samples may be taken. The data obtained as a result of fingerprinting such persons and of analyzing the DNA samples taken from them is entered, respectively, in the National Fingerprint Database and the National DNA Database.  
[RT I, 04.07.2012, 1 – entry into force 01.08.2012]

### **§ 31<sup>2</sup>. Requiring electronic communications undertakings to provide data**

(1) The Data Protection Inspectorate, the Financial Supervision Authority, the Estonian Internal Security Service, the Environmental Inspectorate, the Tax and Customs Board and the Police and Border Guard Board may address enquiries to electronic communications undertakings concerning the data required to identify an end user linked to certain identification tokens used in a public electronic communications network, except for data relating to facts of transmission of messages.

(2) With the permission of the court, the authorities mentioned in subsection 1 of this section may address individual enquiries to electronic communications undertakings concerning data listed in subsections 2 and 3 of § 111<sup>1</sup> of the Electronic Communications Act but not mentioned in the first subsection of this section. For the purposes of this section, an individual enquiry means a request for obtaining the information specified in subsections 2 and 3 of § 111<sup>1</sup> concerning a communication session related to transmitting a particular telephone call, e-mail, electronic comment or other individual message.

(3) The enquiries mentioned in this section may be made only if this is unavoidably necessary for accomplish the aim of the misdemeanour proceedings.  
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

### **§ 31<sup>3</sup>. Official of the body that conducted out-of-court proceedings as source of evidence**

(1) The official of the body that conducted out-of-court proceedings in the case who directly perceived any aspects of the commission of the misdemeanour and who described these in the misdemeanour report or in the determination made under expedited procedure may participate in court proceedings or proceedings related to an appeal in the case as a witness concerning the factual circumstances perceived by them.  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) The official referred to in subsection 1 of this section may not participate in court proceedings or proceedings related to any appeal in the case as a representative of the body that conducted out-of-court proceedings in that case.

[RT I, 06.07.2013, 3 – entry into force 16.07.2013]

#### **§ 31<sup>4</sup>. Photographs, films and other data recordings as evidence**

(1) Under misdemeanour procedure, photographs, films or other data recordings made by the body to conduct the proceedings may constitute an independent evidentiary item provided they conform to the provisions of clauses 1–3 of subsection 1<sup>1</sup> of § 31 of this Code.

[RT I, 06.07.2013, 3 – entry into force 16.07.2013]

(2) A notation is made in the misdemeanour report or in the determination made under expedited procedure concerning any requests made, or the absence of any requests, by persons who were present during the photographing, filming or other recording.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

#### **§ 31<sup>5</sup>. Data in national registers**

If the commission of a misdemeanour is proved by the data of a national register which have legal significance and the enquiry made to the register can be repeated, a notation concerning the making of the enquiry to the database is made in the misdemeanour report or in the decision made under expedited procedure. The notation must indicate the time of making the enquiry and the result of the enquiry.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

#### **§ 32. Prohibition on collection of evidence by covert operations**

(1) In misdemeanour procedure, the collection of evidence by means of covert operations is prohibited.

(2) Evidence collected by means of a covert operation in criminal proceedings may be used as evidence in misdemeanour proceedings provided criminal proceedings in the case have been terminated.

#### **§ 33. Prohibition on declaring witnesses anonymous**

In misdemeanour procedure, witnesses may not be declared anonymous.

#### **§ 33<sup>1</sup>. Prohibition on witness representatives**

When interviewed under misdemeanour procedure, witnesses are not entitled to a representative.

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

#### **§ 34. Special rules concerning physical examination of persons**

(1) The physical examination of persons may be conducted by an official of the body to conduct out-of-court proceedings who, according to § 45 of this Code, is authorized to make arrests.

(2) An official of the body to conduct out-of-court proceedings who does not have the authority to make arrests may make a request to the Police and Border Guard Board to be assisted by a police officer in order to carry out the physical examination. The police officer carries out the physical examination together with the official of the body to conduct out-of-court proceedings.

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

(3) The official of the body to conduct out-of-court proceedings who carried out the physical examination of a person draws up a report concerning the examination. If the examination was carried out with the assistance of a police officer, the report is also signed by that officer.

#### **§ 35. Special rules concerning searches**

(1) Under misdemeanour procedure, the body to conduct out-of-court proceedings may conduct searches on the basis of their own order which has been endorsed with the permission of the county judge.

(2) No search may be conducted in the premises of a diplomatic representation.

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

#### **§ 36. Prohibition on seizure of property**

Under misdemeanour procedure, the seizure of property is prohibited.

### **§ 37. Prohibition on application of preventive measures provided for under criminal procedure**

Unless otherwise provided by this Code, the application in misdemeanour proceedings of any preventive measures provided for under criminal procedure is prohibited.

### **§ 38. Procedural time limits; costs of bodies to conduct out-of-court proceedings and of courts**

(1) Under out-of-court as well as court procedure, procedural time limits are calculated and reinstated and case costs are calculated following the relevant provisions of criminal procedure.

(2) The Government of the Republic establishes guidelines for reimbursement of costs to participants of hearings in misdemeanour cases.

## **Chapter 6 SUMMONING AND THE IMPOSITION OF FINES AND COMPELLED ATTENDANCE IN CASE OF NON-APPEARANCE**

### **§ 39. Ascertaining the whereabouts of the person subject to proceedings**

If the whereabouts of the person subject to proceedings are unknown, they are to be ascertained by the body to conduct the out-of-court proceedings or, in the case of court proceedings, by the court.

### **§ 40. Summons**

(1) Persons are summoned to appear before the body to conduct the proceedings by a summons.

(2) A summons sent to a person contains the following particulars:

- 1) where a natural person is being summoned, their given name, surname and residential address; where a legal person is being summoned, their name and the address of their seat;
- 2) where a body to conduct out-of-court proceedings is being summoned, the name and the address of the seat of that body;
- 3) the reason for summoning the person, and the capacity in which the person is summoned;
- 4) the legal definition of the misdemeanour and, if misdemeanour proceedings have been commenced with respect to a specific person, their given name and surname;
- 5) the time and place of appearance;
- 6) where the person subject to proceedings is being summoned, their rights and obligations according to § 19 of this Code;
- 7) whether, where the person subject to proceedings is being summoned, their appearance is mandatory, and the consequences of non-appearance according to § 43 of this Code;
- 8) whether, where the body to conduct out-of-court proceedings is being summoned, their appearance is mandatory;
- 9) where a witness is being summoned, the obligatory nature of their appearance, and the consequences of non-appearance according to § 43 of this Code;
- 10) the obligation to give notice of non-appearance and of its reasons.

(3) The final part of the summons contains a notice form which is completed if the summons is delivered to the person against signed receipt. The form sets out the given name and surname of the person to whom the summons is addressed, the person's signed receipt for having received the summons and the date of receiving the summons. If the person refuses to accept the summons, a note by the body to conduct the proceedings concerning the refusal, the date of the refusal and the signature and official title of the body to conduct the proceedings.

[RT I 2003, 26, 156 – entry into force 21.03.2003]

### **§ 41. Rules for the service of summonses**

(1) A summons is delivered to the person to whom it is addressed against signed receipt according to subsection 2 of this section or served to that person by post in the form of a registered letter subject to notice of delivery according to subsection 3 or sent by electronic means according to subsection 4.

(2) The summons is delivered to an adult or to a minor of at least 14 years of age against signed receipt on the notice form, in which the time of delivery of the summons is noted. If it was not possible to deliver the summons to the addressee, it is delivered, against signed receipt on the notice form, to a family member of at least 14 years of age who lives with the addressee, and the time of delivery is noted. If the person refuses to sign

for receiving the summons, the refusal to accept the summons and the date of the refusal is noted in the notice form. The summons is deemed to have been received by the person as of the date of refusal to accept it.

(3) A summons sent by post is deemed to have been received by the addressee on the date indicated in the notice of delivery form completed by the postal service provider.  
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) Where the service of a summons is to be effected by electronic means, the summons is sent to the e-mail address that is indicated by the addressee in a procedural document or that is published on the Internet. The summons must include a digital signature and must be protected from third parties. When sending the summons, a note is included in the message stating that receipt of the summons must be acknowledged without delay by an e-mail message to the sender's address. A summons sent by electronic means is deemed to have been received by the addressee as of the date of acknowledgement of its receipt. If receipt of the summons is not acknowledged within three days following its sending, the summons is sent in the form of a registered letter subject to notice of delivery or delivered to the person against signed receipt by the body to conduct the proceedings.

(4<sup>1</sup>) If the summons is made accessible through the E-File system, a notice concerning the fact of the summons is sent to the addressee's e-mail address which is indicated in a procedural document or published on the Internet. The notice must include a link to the digital summons in the E-File system and the time limit for reviewing that summons which is three days from the moment of sending the message. If the sender and the time of sending can be identified through the E-File system, no digital signature is included in the summons. A summons made accessible through the E-File system is deemed to have been served if the recipient opens it in the information system or acknowledges its receipt in the information system without opening the document, as well as if the corresponding actions are performed by another person to whom the recipient has made it possible to view documents in the information system. If the summons has not been reviewed in the E-File system within three days following the sending of the notice, the summons is sent in the form of a registered letter subject to notice of delivery or delivered to the addressee against signed receipt.  
[RT I, 22.03.2013, 9 – entry into force 01.04.2013]

(5) The summons must be served on the person subject to proceedings and their defence counsel with sufficient notice to make it possible for them to appear. When the summons is served on the defence counsel chosen by the person subject to proceedings, it is deemed also to be served on the principal of that counsel.

(6) A summons addressed to a minor of less than 14 years of age or to a person suffering from a mental disorder is sent to their parent or other statutory representative.

(7) If the person subject to proceedings has made their residence or seat known in a procedural document that they have signed, the summons is sent to the person to that address. If the person has not notified the body to conduct the proceedings of having changed their address, the summons is sent to their last address that is known to the body to conduct the proceedings.

(8) Notices read by an official of the body to conduct out-of-court proceedings or by a judge to the parties subject to proceedings who are present are deemed equivalent to delivery of the summons against signed receipt provided a corresponding note is been made in the relevant procedural document.

(9) The notice of delivery form completed by the postal service provider, the notice form mentioned in subsection 3 of § 40 of this Code concerning receipt of the summons, a printout of the e-mail message concerning the issue of the summons and a printout of the acknowledgement are included in the misdemeanour file.  
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(10) The minister responsible for the area may by a regulation enact specific requirements for electronic service of procedural documents in court proceedings through the E-File system.  
[RT I, 22.03.2013, 9 – entry into force 01.04.2013]

#### **§ 42. Valid reasons for non-appearance of the person summoned**

(1) If it is not possible for the person summoned to appear before the body to conduct the proceedings at the time specified in the summons, they must give notice of this without delay.

(2) Valid reasons for non-appearance are:

- 1) the person summoned not being present in the locality, which cannot be considered evasion of misdemeanour proceedings;
- 2) a delay in receiving the summons;
- 3) other reasons that the body to conduct the proceedings regards as valid.

#### **§ 43. Imposition of fines or of compelled attendance for non-appearance**

(1) If the person subject to proceedings who has received a summons in which mandatory appearance is indicated, or if a witness who has received the summons, does not appear in court, the court makes an order by which it imposes a fine in the amount of up to 30 fine units on the person or witness.

(2) The court may release the persons referred to in subsection 1 of this section from the liability to pay the fine imposed on them if they prove that their non-appearance in court was due to a valid reason provided in subsection 2 of § 42 of this Code.

(3) If the persons referred to in subsection 1 of this section have received the summons and have not appeared before the body conducting the out-of-court proceedings or in court, that body or the court may, by order, direct that they be compelled to attend.

(4) Compelled attendance is effected by the police.

## **Chapter 7** **ARREST**

### **§ 44. Basis and time limit of arrests**

(1) A person with regard to whom there is a justified reason to believe that they have committed a misdemeanour may be arrested for up to 48 hours if:

- 1) they attempt to escape;
- 2) their identity has not been ascertained;
- 3) they are likely to continue to commit misdemeanours;
- 4) they are likely to hinder or evade misdemeanour proceedings.

(2) When a person is arrested:

1) they are taken to the Police and Border Guard Board facility or to the official premises of the body to conduct out-of-court proceedings who, under § 45 of this Code, has the authority to make arrests or to a police arrest house;

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

2) their statement regarding the commission of the misdemeanour is taken without delay and a report on their arrest, or a misdemeanour report, is drawn up;

3) they are taken without delay to a county court for a hearing of their case if they have committed a misdemeanour and the body to conduct out-of-court proceedings deems it necessary to impose detention, and the corresponding misdemeanour report and other procedural documents have been drawn up. In such a case, the person subject to proceedings may file an objection with the court.

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

(3) The arrest commences from the moment when the person is arrested. The time spent under arrest is included in the custodial term of the sentence in accordance with the rules provided in subsection 2 of § 68 of the Penal Code.

(4) If it becomes apparent that there is no reason to hold the person, they are released without delay.

(5) If the person has not been arrested on the grounds provided in subsection 1 of this section, the time taken up by interviewing them or by performing any other procedural act in their respect is not deemed time spent under arrest.

(6) The provisions of subsections 2–4 of § 35<sup>1</sup> of the Code of Criminal Procedure do not apply upon the making of arrests under this Code.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

### **§ 45. Persons authorized to make arrests**

(1) The following officials of the bodies to conduct out-of-court proceedings are authorized to make arrests on the grounds and following the rules provided in § 44 of this Code:

- 1) police officers or officials of the Tax and Customs Board authorized to enforce customs legislation;  
[RT I, 16.06.2017, 1 – entry into force 01.07.2017]
- 2) officials authorized to enforce civil aviation safety rules, maritime safety rules, railway safety rules or railway traffic rules;
- 3) environment officials performing hunting, fishing or forestry enforcement.
- 4) prison officers in the case of the misdemeanour defined in subsection 1 of § 325 of the Penal Code.  
[RT I 2010, 44, 258 – entry into force 19.07.2010]

(2) An official of the body to conduct out-of-court proceedings who does not have the authority to make arrests may make a request to the Police and Border Guard Board to be assisted by a police officer in the making of an arrest on the grounds provided in subsection 1 of § 44 of this Code. The police officer makes the arrest together with the official of the body to conduct out-of-court proceedings who made the request.

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

## § 46. Arrest report

(1) A report is drawn up concerning any arrest made on the grounds provided in subsection 1 of § 44 of this Code. The drawing up of the arrest report is not required if a misdemeanour report is drawn up on making the arrest and the information listed in subsection 4 of § 69 of this Code is recorded in that report.

(2) The arrest report sets out:

- 1) the place and date of the procedural act;
- 2) the name of the body to conduct out-of-court proceedings and the position, given name and surname of the official of that body who drew up the report;
- 3) the position, given name and surname of the police officer with whose assistance the arrest was made;
- 4) the given name and surname of the person subject to proceedings;
- 5) the time of and grounds for the arrest together with a reference to subsection 1 of § 44 of this Code;
- 6) the place, date and hour of the arrest;
- 7) the legal definition of the misdemeanour;
- 8) the explanation to the person subject to proceedings of their rights and obligations according to § 19 of this Code;
- 9) a description of the clothes and footwear of the person arrested and information concerning any external injuries;
- 10) a list of the objects taken from the person at the time of their arrest, and the identifying features of those objects;
- 11) any declarations or requests made by the prisoner;
- 12) the provision of procedural law that served as the basis for the procedural act.

(3) The report is signed by the person who draws up that report and by the police officer who assisted in the making of the arrest. The person subject to proceedings signs the report to show that they have been apprised of the report and that the rights and obligations provided in § 19 of this Code have been explained to them. If the person subject to proceedings refuses to sign the report, the corresponding entry is made in that report.

(4) At the request of the person subject to proceedings, at least one person of their choice is notified of their location. If the person arrested is a minor, their arrest must be notified without delay to their parent or guardian or curator and to the social services department.

## Chapter 8 PROCEDURAL DOCUMENTS UNDER MISDEMEANOUR PROCEDURE

### § 47. Procedural documents

(1) Procedural documents are:

- 1) in out-of-court proceedings – the misdemeanour report, reports on procedural acts, and any orders or determinations made by the body to conduct the out-of-court proceedings;
- 2) in court proceedings – court orders, minutes of court sittings and the judgment.

(1<sup>1</sup>) With the consent of the person subject to proceedings provided in a reproducible format, the drawing up of the report of the procedural act may be replaced by an audio and video recording of the procedural act, provided the recording contains the information provided for in subsection 2, in clause 1 of subsection 4 and in subsection 5 of § 49 of this Code and an oral confirmation by the person subject to proceedings concerning the provision of explanations to them of their rights and obligations, or their refusal to provide such a confirmation.  
[RT I, 06.07.2013, 3 – entry into force 16.07.2013]

(1<sup>2</sup>) If the person subject to proceedings does not consent to the drawing up of the report of the procedural act being replaced by an audio and video recording of that act, the procedural act is reported following the rules prescribed by this Code.  
[RT I, 06.07.2013, 3 – entry into force 16.07.2013]

(1<sup>3</sup>) It is prohibited to alter the audio and video recording of the procedural act referred to in clause 1 of subsection 6 of § 19 of this Code after the recording has been reviewed by the person subject to proceedings.  
[RT I, 06.07.2013, 3 – entry into force 16.07.2013]

(2) Any orders or any reports of procedural acts which are drawn up in the course of collecting evidence in misdemeanour proceedings and which the Code of Misdemeanour Procedure does not regulate are drawn up following the requirements of criminal procedure without prejudice to the rules special to misdemeanour procedure.

### § 47<sup>1</sup>. Making procedural documents available in court proceedings

(1) The court makes the procedural documents of court proceedings immediately available to the parties to those proceedings in the E-File system regardless of how such documents are served on those parties.



(2) The minister responsible for the area may by regulation enact specific requirements for making procedural documents available through the information system.  
[RT I, 22.03.2013, 9 – entry into force 01.04.2013]

#### **§ 48. Order**

(1) An order is:

- 1) a substantiated procedural ruling of the body to conduct out-of-court proceedings or of the court, which is drawn up as a separate procedural document and included in the misdemeanour file;
- 2) in out-of-court proceedings or court proceedings, a procedural ruling which is made to resolve a singular issue and which is not required to be substantiated.

(2) The introduction of an order that is to be substantiated sets out:

- 1) the place at and date on which the order is drawn up;
- 2) the name of the court or the body to conduct out-of-court proceedings and the given name, surname and official title of the person who draws up the order;
- 3) the name of the misdemeanour case – the person with regard to whom misdemeanour proceedings have been commenced, and the legal definition of the misdemeanour;
- 4) the given name, surname and personal identification code of the person subject to proceedings or, in the case of an alien or a person without a personal identification code, their place and date of birth, nationality, residential address and place of employment or, if the person subject to proceedings is a legal person, their name and registry code or, in the case of a foreign legal person, the combination of numbers or letters equivalent to a registry code, and the address of the seat of that person.

(3) The main part of an order that is to be substantiated must contain:

- 1) the reasons for the procedural ruling;
- 2) the order's basis in procedural law.

(4) The final part of an order to be substantiated sets out the ruling made to resolve the issue, and the procedure for appeal against the order. The order is signed by the person who drew it up.

(5) When drawing up an order, the additional requirements for the content of the particular order are to be observed.

(6) Compliance with the order of the body to conduct the proceedings is mandatory.

#### **§ 49. Report of procedural act**

(1) The report of a procedural act is drawn up in legible handwriting, typed or word-processed. If necessary, the assistance of a minute-taker may be used.

(2) The introduction of the report sets out:

- 1) the place and date of the procedural act;
- 2) the name of the court or of the body to conduct out-of-court proceedings and the official title, given name and surname of the person who draws up the report;
- 3) the name of the misdemeanour case and the name of the procedural act;
- 4) where this is provided for by law, a reference to the order on the basis of which the procedural act was performed;
- 5) the given name, surname and personal identification code of the natural person subjected to the procedural act, or the name and registry code of the legal person and the given name, surname, place of residence or seat and the procedural role of the representative of the legal person;
- 6) the given name, surname, place of residence or employment and procedural role of any other persons participating in the procedural act;
- 7) the time of commencement and end and the conditions of the procedural act;
- 8) explanation to the person of the rights and obligations relating to the procedural act;
- 9) the provision of procedural law that serves as the basis for the procedural act.

(3) The party subject to proceedings is invited to sign the introductory part of the report to show that their rights and obligations have been explained to them. If they refuse to sign, a corresponding entry is made in the report.

(4) The main part of the report describes:

- 1) the course and results of the procedural act with the degree of detail that is necessary for evidentiary purposes, observing the additional requirements prescribed by this Code for the content of procedural acts;
- 2) the use of technical equipment.

(5) The final part of the report lists the objects taken in the course of the procedural act, the manner in which they are packaged and the place of their storage.

(6) The report is signed by the person to draw up that report.

#### **§ 50. Annex to report of procedural act**

If this is necessary, and following the rules provided under criminal procedure, evidentiary information in the form of photographs, drawings, footage, audio or video recordings, or in any other form, may be preserved as an annex to the report of the procedural act.

#### **§ 50<sup>1</sup>. Transmission of digital documents**

(1) Unless otherwise provided for in this Code, any digital applications, appeals, objections and other documents to be filed in misdemeanour proceedings are filed personally or through the E-File system. The body to conduct proceedings enters any personally filed digital documents in the E-File system.

(2) In order to include a digital document in the misdemeanour file, that document is printed and placed in the file. The body to conduct the proceedings certifies the truth of the printed copy and of its correspondence to the digital document by their signature and by a note stating the identification number of the document in the E-File system.

[RT I 2008, 28, 180 – entry into force 15.07.2008]

#### **§ 50<sup>2</sup>. Misdemeanour file**

(1) The misdemeanour file is a set of documents collected in the misdemeanour case.

(2) With respect to each misdemeanour case, the court maintains a court file which includes, in chronological order, all the procedural documents and other documentation related to the case. Where this is prescribed by law, other objects related to the proceedings are appended to the court file.

(3) In addition to the provisions of this Code, court files in misdemeanour matters are also subject to those of subsections 3–7 of § 160<sup>1</sup> of the Code of Criminal Procedure.

[RT I, 22.03.2013, 9 – entry into force 01.04.2013]

#### **§ 51. Requirements for documents**

(1) The minister responsible for the area establishes model forms of documents for out-of-court proceedings in misdemeanour cases.

(2) The minister responsible for the area establishes rules for the drawing up, transmission and preservation of documents signed digitally in misdemeanour proceedings and of other digital documents.

[RT I 2008, 28, 180 – entry into force 15.07.2008]

## **Chapter 9 JURISDICTION OVER MISDEMEANOURS PROVIDED FOR IN PENAL CODE**

#### **§ 52. Bodies to conduct out-of-court proceedings concerning misdemeanours provided for in the Penal Code**

(1) Out-of-court proceedings concerning the misdemeanours defined in subsections 3 and 5 of § 108, in subsections 1 and 3 of § 151, in subsections 1 and 3 of § 152, in subsections 1 and 3 of § 153, in § 153<sup>1</sup>, in §§ 157, 165–170, 179<sup>1</sup>, 180, 224<sup>1</sup>, 225, 226 and 264<sup>1</sup>, in subsections 1 and 3 of § 266, in §§ 269, 271, 305, 334<sup>1</sup> and 334<sup>2</sup>, in subsections 1 and 3 of § 336 and in §§ 337, 338, 342, 372<sup>1</sup> and 426 of the Penal Code are conducted by the Police and Border Guard Board.

[RT I, 26.06.2017, 69 – entry into force 06.07.2017]

(2) Out-of-court proceedings concerning the misdemeanours defined in subsections 1 and 3 of § 157<sup>1</sup> of the Penal Code are conducted by the Data Protection Inspectorate.

(3) Out-of-court proceedings concerning the misdemeanours defined in subsections 1 and 2 of § 218, in § 275 and in subsection 1 of § 325 of the Penal Code are conducted by the Police and Border Guard Board, the Ministry of Justice and the prison.

(4) Out-of-court proceedings concerning the misdemeanours defined in § 225<sup>1</sup> of the Penal Code are conducted by the Consumer Protection and Technical Regulatory Authority.

[RT I, 12.12.2018, 1 – entry into force 01.01.2019]

(5) Out-of-court proceedings concerning the misdemeanours defined in subsections 1 and 3 of § 261 and in § 262 of the Penal Code are conducted by the Police and Border Guard Board and the executive of the rural municipality or city.

(6) Out-of-court proceedings concerning the misdemeanours defined in § 270 of the Penal Code are conducted by the Maritime Administration.

(7) Out-of-court proceedings concerning the misdemeanours defined in subsections 1 and 1<sup>1</sup> of § 277 of the Penal Code are conducted by the Police and Border Guard Board, the Estonian Internal Security Service, the Tax and Customs Board and the Rescue Board.

(8) Out-of-court proceedings concerning the misdemeanours defined in § 278 of the Penal Code are conducted by the Police and Border Guard Board and the Rescue Board.

(9) Out-of-court proceedings concerning the misdemeanours defined in § 279 of the Penal Code are conducted by the Police and Border Guard Board and the relevant law enforcement body.

(10) Out-of-court proceedings concerning the misdemeanours defined in subsections 1 and 3 of § 280 of the Penal Code are conducted by the Police and Border Guard Board and the administrative authority authorized to receive the information.

(11) Out-of-court proceedings concerning the misdemeanours defined in § 282 of the Penal Code are conducted by the executive of the relevant rural municipality or city.  
[RT I, 04.07.2017, 1 – entry into force 01.01.2018]

(12) Out-of-court proceedings concerning the misdemeanours defined in subsections 1 and 3 of § 339 of the Penal Code are conducted by the Police and Border Guard Board and the Consumer Protection and Technical Regulatory Authority.  
[RT I, 12.12.2018, 1 – entry into force 01.01.2019]

(13) Out-of-court proceedings concerning the misdemeanours defined in § 352 of the Penal Code are conducted by the Police and Border Guard Board, the Environment Inspectorate and the Rescue Board.

(14) Out-of-court proceedings concerning the misdemeanours defined in subsections 1 and 3 of § 353 of the Penal Code are conducted by the Environment Inspectorate and, as regards traffic requirements, by the Police and Border Guard Board.

(15) Out-of-court proceedings concerning the misdemeanours defined in §§ 362 and 366 of the Penal Code are conducted by the Environment Inspectorate.

(16) Out-of-court proceedings concerning the misdemeanours defined in subsections 1 and 3 of § 372 of the Penal Code are conducted by the Police and Border Guard Board and the relevant law enforcement body.

(17) Out-of-court proceedings concerning the misdemeanours defined in § 398 and in subsections 1 and 3 of § 398<sup>1</sup> of the Penal Code shall be conducted by the Financial Supervision Authority.  
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

### **§ 52<sup>1</sup>. Competence for dealing with misdemeanours provided for in the Penal Code**

The misdemeanours defined in subsections 1 and 3 of § 151 of the Penal Code are dealt with by county courts.  
[RT I 2006, 31, 234 – entry into force 16.07.2006]

## **Chapter 10 OUT-OF-COURT PROCEDURE**

### **Division 1 Caution Procedure**

[Repealed -RT I, 19.03.2015, 1 - entry into force 29.03.2015]

**§ 53.–§ 54.**[Repealed - RT I, 19.03.2015, 1 - entry into force 29.03.2015]

### **Division 1<sup>1</sup>**

# Written Caution Procedure

[RT I 2008, 54, 304 - entry into force 27.12.2008]

## § 54<sup>1</sup>. Application of written caution procedure

(1) Where this is provided for by law, the body to conduct out-of-court proceedings may impose, on the registered owner of the motor vehicle or, if an authorized user has been entered in the register, on the authorized user (hereinafter '*person responsible for the motor vehicle*') a cautionary fine in relation to a traffic misdemeanour committed with the motor vehicle if:

- 1) the reason for the commencement of misdemeanour proceedings is the information transmitted by an automated traffic supervision device concerning a violation of traffic rules, from which it is possible to visually identify the registration plate of the motor vehicle and the time and place of establishment of the violation; or
- 2) the enforcement officer who discovered the offence was unable to immediately identify the driver of the motor vehicle and the violation was recorded on a photograph, on footage or on a recording made on other media from which the registration plate of the motor vehicle and the time and place of establishment of the violation are visually identifiable.

(2) The cautionary fine is imposed on the person who was the registered owner or authorized user of the motor vehicle at the time of commission of the misdemeanour.

(3) The cautionary fine imposed on an authorized user of a motor vehicle is not a sanction imposed for an offence, it is not entered in the criminal records database and it may not be invoked for the purposes of considering a person to be reoffending or for the application of other legal consequences prescribed for offences.

(4) The maximum rate of the cautionary fine is 190 euros. Cautionary fine rates for specific misdemeanours are provided in the Traffic Act.

[RT I 2010, 22, 108 – entry into force 01.01.2011]

(5) Where the traffic misdemeanour is a minor one and the body to conduct the out-of-court proceedings finds that cautioning the person responsible for the motor vehicle without imposing a fine is sufficient, that body may decide not to impose a cautionary fine and caution the person responsible for the motor vehicle in writing.

(6) Application of the written caution procedure in accordance with the rules provided in subsections 1 or 5 of this section terminates misdemeanour proceedings. The body to conduct the out-of-court proceedings resumes the proceedings under expedited or regular procedure on the grounds provided for in subsections 3 or 6 of § 54<sup>6</sup> of this Code.

[RT I 2008, 54, 304 – entry into force 27.12.2008]

## § 54<sup>2</sup>. Notice of fine

(1) In the case provided for in subsection 1 of § 54<sup>1</sup> of this Code, a notice of fine is sent to the person responsible for the motor vehicle, which sets out:

- 1) the time and place of imposing the cautionary fine;
- 2) the name, registry code and address of the body to conduct out-of-court proceedings;
- 3) the given name, surname and position of the official of the body to conduct the out-of-court proceedings who drew up the notice;
- 4) if the addressee of the notice is a natural person, their given name and surname, residential address and personal identification code or, if there is no such code, their date of birth;
- 5) if the addressee of the notice is a legal person, the name and registry code of the person or, in the case of a foreign legal person, the numerical or letter combination equivalent to the registry code, and the address of the seat, telephone number and e-mail address of the person;
- 6) a short description of the misdemeanour, including the time and place of its commission;
- 7) the legal definition of the misdemeanour;
- 8) the basis for the imposition of the cautionary fine;
- 9) the rate of the cautionary fine.

(2) In addition to the information provided for in subsection 1 of this section, the notice of fine sets out:

- 1) an explanation stating that a cautionary fine imposed on an authorized user of a motor vehicle is not a sanction for an offence, it is not entered in the criminal records database and it may not be invoked for the purposes of considering a person to be reoffending or for the application of other legal consequences prescribed for offences;
- 2) information stating that the cautionary fine must be paid within thirty days following receipt of the notice; after the expiry of this term the cautionary fine may be collected by means of compulsory enforcement;
- 3) information stating that the person responsible for the motor vehicle has the right to contest the notice within thirty days following its receipt, and an explanation concerning the procedure for contestation;
- 4) information stating that, at the request of the person responsible for the motor vehicle, a copy will be sent to that person of the photograph, footage or other recording by which the act was ascertained.

(3) A payment order which sets out the bank account number and a reference number is appended to the notice of fine.

(4) The official to draw up the notice of fine signs that notice. The notice may be signed digitally.

(5) A notice of fine is prepared in two identical copies the first of which is sent to the person responsible for the motor vehicle and the other remains with the body to conduct out-of-court proceedings. If the notice was signed digitally, the body to conduct out-of-court proceedings preserves an electronic copy of the notice sent.

[RT I 2008, 54, 304 – entry into force 27.12.2008]

### **§ 54<sup>3</sup>. Service of notices of fine**

(1) A notice of fine is sent to a natural person by post, by sending a registered letter to the address indicated in the population register or to another address of the person which is known to the body conducting the proceedings in accordance with subsection 3 of § 41 of this Code or by electronic means in accordance with subsection 4 of § 41 of this Code.

[RT I 2008, 54, 304 – entry into force 27.12.2008]

(2) If the person responsible for the motor vehicle does not reside at the address entered in the register, their actual whereabouts are unknown and the notice of fine cannot be delivered in any other manner, the body to conduct out-of-court proceedings may publish the notice in the official publication *Ametlikud Teadaanded*.

[RT I 2008, 54, 304 – entry into force 27.12.2008]

(3) When a notice of fine is published in the publication *Ametlikud Teadaanded*, the given name and surname of the person responsible for the motor vehicle and their personal identification code or, where this is not possible, the date of birth instead of the personal identification code. The notice is deemed to be served by public announcement when 30 days have passed from the day of its publication in *Ametlikud Teadaanded* or when the person acknowledges its receipt in the information system of *Ametlikud Teadaanded*.

[RT I, 19.03.2015, 1 – entry into force 06.04.2015]

(4) A notice of fine is sent to a legal person, to a state or local government agency or to a legal person in public law by regular letter to their address appearing in the register or by electronic means in accordance with subsection 4 of § 41 of this Code. When the notice is sent by electronic means, protection of the notice against third parties and acknowledgement of its receipt are not required. The document sent to a legal person, a state or local government agency or a legal person in public law at the address appearing in the register or at the e-mail address shown in the register is deemed to have been served when thirty days have passed from its sending.

[RT I 2010, 17, 91 – entry into force 10.05.2010]

(5) The notice of fine is to be sent within ten working days from ascertaining the misdemeanour.

[RT I, 31.05.2018, 1 – entry into force 01.01.2019]

### **§ 54<sup>4</sup>. Payment of cautionary fine**

(1) The cautionary fine must be paid within thirty days following receipt of the notice of fine. The fine is deemed to have been paid on time if it is received to the bank account specified in the notice by the due date for payment.

(2) If the person responsible for the motor vehicle has not contested the notice of fine but at the same time has failed to pay the fine by its due date, the body to conduct out-of-court proceedings sends the notice of fine to a bailiff for immediate compulsory enforcement on the grounds and in accordance with the rules provided in the Code of Enforcement Procedure.

(3) If the person responsible for the motor vehicle has paid the cautionary fine or if the fine is being enforced, no one may be subjected to a sanction for the same act by way of misdemeanour procedure.

[RT I 2008, 54, 304 – entry into force 27.12.2008]

### **§ 54<sup>5</sup>. Contestation of the notice of fine**

(1) If the person responsible for the motor vehicle does not consent to the cautionary fine that has been imposed, that person has the right to contest the notice within thirty days following its receipt. If the fine is contested, it does not become effective.

[RT I 2008, 54, 304 – entry into force 27.12.2008]

(2) An appeal against a notice of fine is filed in writing with the body to conduct out-of-court proceedings who drew up the notice and sets out:

1) the name of the body to conduct out-of-court proceedings who drew up the notice and with which the appeal is filed;

- 2) if the appeal is filed by a natural person, their given name, surname, residential address, telephone number and e-mail address;
  - 3) if the appeal is filed by a legal person, the name and registry code of that person or, in the case of a foreign legal person, the numerical or letter combination equivalent to a registry code, and the address of the seat, the telephone number and the e-mail address of that person;
  - 4) if the appellant has a representative, their given name and surname, address of their seat, and their telephone number and e-mail address;
  - 5) the name and address of the body to conduct out-of-court proceedings which imposed the cautionary fine;
  - 6) the number and date of the notice;
  - 7) the content of and reasons for the request made by the appellant.
- [RT I 2008, 54, 304 – entry into force 27.12.2008]

(2<sup>1</sup>) The appeal is to be signed by the appellant.  
[RT I, 14.02.2014, 1 – entry into force 24.02.2014]

(3) If the person responsible for the motor vehicle is a natural person, they must, if they are contesting the notice of fine on the grounds that the motor vehicle was used by another person, indicate in the appeal the given name, surname, residential address, the number of the driving licence, and the date of birth or personal identification code of the person who was using the motor vehicle at the time stated in the notice.  
[RT I 2010, 17, 91 – entry into force 10.05.2010]

(4) The person responsible for the motor vehicle is exempted from the obligation provided in subsection 3 of this section if they submit an official confirmation showing that, prior to the time of commission of the act described in the notice of fine, a competent authority was informed of the theft, loss or destruction of the motor vehicle or of its registration plate, or if they submit evidence concerning the presence of circumstances which rule out unlawfulness.  
[RT I 2008, 54, 304 – entry into force 27.12.2008]

(5) A legal person and the state, local government or a legal person in public law sets out in the appeal the given name and surname, residential address, the number of the driving licence and the date of birth or personal identification code of the natural person who was using the motor vehicle at the time stated in the notice of fine.  
[RT I 2010, 17, 91 – entry into force 10.05.2010]

(6) A legal person and the state, local government or a legal person in public law is exempted from the obligation provided in subsection 5 of this section, if they submit an official confirmation showing that, prior to the time of commission of the act described in the notice of fine, a competent authority was informed of the theft, loss or destruction of the motor vehicle or of its registration plate, or if they submit evidence concerning the presence of circumstances which rule out unlawfulness.  
[RT I 2008, 54, 304 – entry into force 27.12.2008]

#### **§ 54<sup>6</sup>. Resolution of the appeal by the body to conduct out-of-court proceedings**

(1) If the appeal of the person responsible for the motor vehicle does not conform to the requirements of subsection 2 of § 54<sup>5</sup> of this Code, the body to conduct out-of-court proceedings makes an order refusing to proceed with the appeal and sets a time limit for the appellant to cure the defects.  
If the residential address of the person responsible for the motor vehicle is not indicated in the appeal, the body to conduct out-of-court proceedings dismisses the appeal.  
[RT I 2008, 54, 304 – entry into force 27.12.2008]

(2) The body to conduct out-of-court proceedings dismisses the appeal and returns it by making the corresponding order if:

- 1) the appeal is filed after expiry of the time limit provided in subsection 1 of § 54<sup>5</sup> of this Code and no request has been made for reinstatement of that time limit, or if the body has decided not to reinstate the time limit;
  - 2) the appeal is filed by a person who under subsection 1 of § 54<sup>5</sup> of this Code does not have the right to file an appeal;
  - 3) the person who filed the appeal has not cured the defects found in that appeal within the time limit set under the rules provided in subsection 1 of this section;
  - 4) the appeal is based on the circumstances described in subsections 4 or 6 of § 54<sup>5</sup> of this Code but the required confirmation or evidence is missing.
- [RT I 2008, 54, 304 – entry into force 27.12.2008]

(3) If the person responsible for the motor vehicle submits the evidence referred to in subsection 4 or 6 of § 54<sup>5</sup> together with the appeal, the body to conduct out-of-court proceedings may decide not to resume misdemeanour proceedings and draw up an order by which it cancels the notice of fine and decides not to resume misdemeanour proceedings.  
[RT I 2008, 54, 304 – entry into force 27.12.2008]

(4) If the person responsible for the motor vehicle indicates in the appeal the given name and surname, residential address, the number of the driving licence and date of birth or personal identification code of the

natural person who used the motor vehicle at the time stated in the notice of fine, the body to conduct out-of-court proceedings sends the notice to that natural person.  
[RT I 2010, 17, 91 – entry into force 10.05.2010]

(5) Service of the notice of fine takes place in accordance with § 54<sup>3</sup> of this Code and its contestation in accordance with subsections 1 and 2 of § 54<sup>3</sup> of this Code.  
[RT I 2008, 54, 304 – entry into force 27.12.2008]

(6) If the individual identified by the person responsible for the motor vehicle contests the notice of fine, the body to conduct out-of-court proceedings resumes misdemeanour proceedings by an order or by a procedural act under expedited or regular procedure. When imposing a sanction or sentence in resumed proceedings, the cautionary fine rate indicated in the notice is not binding on the body conducting the proceedings.  
[RT I 2008, 54, 304 – entry into force 27.12.2008]

(7) The body to conduct out-of-court proceedings sends a copy of the orders mentioned in subsections 1, 2 or 3 of this section to the residential address of the individual identified in the appeal by the person responsible for the motor vehicle by regular letter or to the e-mail address indicated in the appeal.  
[RT I 2008, 54, 304 – entry into force 27.12.2008]

### **§ 54<sup>7</sup>. Special rules concerning proceedings in respect of traffic misdemeanours committed by means of motor vehicles registered in other Member States of the European Union**

(1) Where a traffic misdemeanour is committed by means of a motor vehicle of another Member State of the European Union, with the exception of the United Kingdom of Great Britain and Northern Ireland and Denmark (hereinafter, *Member State*), written caution proceedings are conducted without prejudice to the special rules provided in this section.

(2) In order to draw up and serve the notice of fine, the body to conduct out-of-court proceedings addresses an enquiry to the competent authority that is mentioned in subsection 1 of § 200<sup>3</sup> of the Traffic Act and that is authorized to exchange national registration data of vehicles of the Member State of the European Union for obtaining the particulars of the person responsible for the motor vehicle and of the motor vehicle.

(3) The competent authority transmits the following information to the body to conduct out-of-court proceedings:

- 1) the given name, surname, personal identification code or, if there is no such code, the date of birth, and the residential address of the natural person who is the registered owner of the motor vehicle or who appears in the register as the authorized user of that vehicle;
- 2) the name and the address of the seat of the legal person who is the registered owner of the motor vehicle or who appears in the register as the authorized user of that vehicle;
- 3) the combination of letters and numbers on the registration plate of the motor vehicle;
- 4) motor vehicle identification number (VIN, chassis or frame number).

(4) When the body to conduct out-of-court proceedings has received from a competent authority the particulars listed in subsection 3 of this section concerning the person responsible for the motor vehicle, that body draws up the notice of fine and appends to the notice a translation into one of the official languages of the Member State concerned, or draws up the notice of fine in one of the official languages of that Member State. If a copy of the photograph by which the act was ascertained is appended to the notice, the information referred to in clause 4 of subsection 2 of § 54<sup>2</sup> of this Code is not included in it. Of the information referred to in clause 5 of subsection 1 of § 54<sup>2</sup> of this Code, the notice sets out the name of the legal person and the address of its seat.

(5) The notice of fine is sent within five working days following receipt of the particulars from the competent authority by regular letter to the residential address or to the address of the seat of the person responsible for a motor vehicle. The notice of fine is deemed to have been delivered when 30 days have passed from its sending.

(6) The person responsible for the motor vehicle has the right to contest a notice of fine on the grounds that the motor vehicle was used by another person by indicating in the appeal the given name and surname, residential address and personal identification code – or, if this is unknown, their date of birth – of the person who used the motor vehicle.

(7) Where the residence of the person mentioned in subsection 6 of § 54<sup>6</sup> of this Code is not in Estonia, the body to conduct out-of-court proceedings refuses to resume misdemeanour proceedings if this person contests the notice of fine, draws up an order by which it cancels the notice and sends information concerning this to the person who contested the notice and who is responsible for the motor vehicle.

(8) If the residence of the addressee of the notice of fine is not in Estonia, subsection 2 of § 54<sup>4</sup> of this Code does not apply.

## **Division 1<sup>2</sup>** **Abridged Procedure**

[RT I, 31.05.2018, 1 - entry into force 01.01.2019]

### **§ 54<sup>8</sup>. Application of abridged procedure**

(1) Where this is provided for by law, when commencing misdemeanour proceedings, the body to conduct out-of-court proceedings applies the abridged procedure and imposes a corrective fine on the person who committed the act that shows the elements of a misdemeanour. The application of abridged procedure is not mandatory if:

- 1) circumstances are present which do not permit the abridged procedure to be completed on the scene;
- 2) the person subjected to abridged procedure wishes to contest having committed the act that shows the elements of a misdemeanour.

(2) Abridged procedure is not applied if:

- 1) written caution proceedings are commenced with regard to the same act;
- 2) the act that shows the elements of a misdemeanour and that constitutes the grounds for the application of the abridged procedure includes the necessary elements of several misdemeanours and regular or expedited proceedings are commenced with regard to at least one of them;
- 3) with respect to the misdemeanour, the law prescribes, as the principal sentence, the revocation of certain privileges or a term of custodial detention, or also prescribes certain ancillary orders.

(3) Where the abridged procedure is applied in the case of a person who is at least fourteen but less than eighteen years of age, their legal representative is notified of this without delay.

(4) The maximum rate of the corrective fine is 80 euros. The rate of the corrective fine for a misdemeanour is established by law. Where a corrective fine is imposed on a person who is at least fourteen but less than eighteen years of age, the rate provided by law for the fine is divided by two.

(5) When imposing corrective fines on persons subjected to the abridged procedure, the provisions of subsections 1 and 3 of § 63 of the Penal Code are to be taken into consideration.

(6) A corrective fine imposed upon the abridged procedure is not a sanction for an offence, it is not entered in the criminal records database and it may not be invoked for the purposes of considering the person to be reoffending or for the application of other legal consequences prescribed for offences.

(7) When applying the abridged procedure, the body to conduct out-of-court proceedings:

- 1) explains to the person subjected to that procedure the rights mentioned in subsection 8 of this section;
- 2) explains to that person the misdemeanour that is the subject of proceedings against them and, according to subsection 2 of § 54<sup>9</sup> of this Code, the special rules that apply when the abridged procedure is used;
- 3) draws up the determination that concludes the abridged procedure as set out in § 54<sup>9</sup> of this Code.

(8) A person subjected to the abridged procedure has the right to:

- 1) know what misdemeanour the proceedings against them are for;
- 2) review the recordings made in the course of the corresponding law enforcement operations;
- 3) give explanations concerning the circumstances of the misdemeanour;
- 4) contest the determination that concludes the abridged procedure in accordance with the rules provided by this Code.

(9) When using the abridged procedure, the body to conduct out-of-court proceedings may decide not to formalize an evidentiary item and, instead, in the determination that concludes the abridged procedure, only refer to the source of the evidence.

[RT I, 31.05.2018, 1 – entry into force 01.01.2019]

### **§ 54<sup>9</sup>. Determination that concludes the abridged procedure**

(1) With regard to the imposition of a corrective fine on the person subjected to the abridged procedure, the body to conduct out-of-court proceedings draws up the determination that concludes the abridged procedure and that sets out:

- 1) the date and place of making the determination;
- 2) the name and address of that body;
- 3) the given name, surname and position of the official of that body who made the determination;
- 4) the given name and surname, personal identification code and residential address of the person subjected to the abridged procedure or, if the person is an alien or does not have a personal identification code, their date and place of birth, citizenship and residential address;
- 5) information stating that an explanation has been provided to the person subjected to the abridged procedure regarding their rights that are set out in subsection 8 of § 54<sup>8</sup> of this Code;



- 6) the place and time of commission of the misdemeanour;
- 7) the legal definition of the misdemeanour: the name, section, subsection and clause of the relevant Act and, if this is needed, any alternative definition that is relevant, a short description of the misdemeanour or the legal rule that was infringed;
- 8) the evidence or sources of evidence to prove the commission of the misdemeanour;
- 9) the basis for imposition of the corrective fine;
- 10) the rate of the corrective fine.

(2) In addition to the information provided for in subsection 1 of this section, the determination that concludes the abridged procedure sets out:

- 1) an explanation that a corrective fine imposed in alternative proceedings is not a sanction for an offence, it is not entered in the criminal records database and it may not be invoked for the purposes of considering the person to be reoffending or for the application of other legal consequences prescribed for offences;
- 2) information stating that the corrective fine must be paid within 15 days following receipt of the determination that concludes the abridged procedure and that, after the expiry of this time limit, the corrective fine may be collected by means of compulsory enforcement;
- 3) the details of the bank account to which the corrective fine must be transferred: the name of the bank, the holder of the account, the reference number and the number of the account;
- 4) information stating that the person subjected to the abridged procedure, or their representative, has the right to contest the determination that concludes the abridged procedure within 15 days following its receipt by filing an appeal with the body to conduct the out-of-court proceedings, as well as information to the effect that, if an appeal is filed, the determination that concludes the abridged procedure does not enter into effect but that, instead, misdemeanour proceedings will be resumed under the expedited or regular procedure, as well as information that, on resumption of proceedings, the body to conduct the out-of-court proceedings will not be bound by either the legal definition of the misdemeanour or the rate of the corrective fine indicated in the determination that concludes the abridged procedure;
- 5) information concerning the fact that transmission, to the person subjected to the abridged procedure, with the consent of that person and by electronic means, of the determination that concludes the abridged procedure does not change the time limits provided in clauses 2 and 4 of this subsection.

(3) When the determination that concludes the abridged procedure is delivered to the person subjected to that procedure, it is explained to them that the time limit for appealing the determination starts to run from the date of its delivery.

(4) The determination that concludes the abridged procedure is signed by the official of the body to conduct the out-of-court proceedings who drew up that determination.

(5) The determination that concludes the abridged procedure is drawn up in two identical copies the first of which is given to the person subjected to that procedure immediately after the signing of the determination against an acknowledgement of receipt signed for on the second copy of the determination. With the consent of the person subjected to the abridged procedure, a copy of the determination is sent to the e-mail address of the person. The sending of a copy of the determination does not change the time limits provided in §§ 54<sup>10</sup> and 54<sup>11</sup> of this Code.

(6) If the person subjected to the abridged procedure refuses to sign for acknowledgement of receipt of the determination that concludes the abridged procedure, the official of the body to conduct the out-of-court proceedings notes this on the determination in question, also affixing their signature and indicating their position title. In such a case, it is deemed that the person has received the determination on the day that they refused to accept it.

(7) With the consent of the person subjected to the abridged procedure, the body to conduct the out-of-court proceedings may decide not to draw up and sign the determination that concludes the abridged procedure in accordance with the rules provided in subsections 4 and 5 of this section, and to draw up and transmit such a determination to that person only electronically. The consent of the person to the electronic drawing-up and transmission of the determination is confirmed by an electronic note made by them. The official of the body to conduct the out-of-court proceedings who drew up the determination appends to it their own electronic note. The determination is sent to the person without delay.

(8) Where the determination that concludes the abridged procedure is drawn up in accordance with the rules provided in subsection 7 of this section, the person subjected to that procedure is deemed to have received the determination if they have appended an electronic note to it.

(9) The drawing up of the determination that concludes the abridged procedure terminates the misdemeanour proceedings. Misdemeanour proceedings are resumed by the body to conduct the out-of-court proceedings in accordance with the provisions of subsection 1 of § 54<sup>12</sup> of this Code.

[RT I, 31.05.2018, 1 – entry into force 01.01.2019]

### **§ 54<sup>10</sup>. Payment and enforcement of corrective fines**

(1) Corrective fines shall be paid to the bank account indicated in a determination that concludes the abridged procedure within 15 days after the receipt of the decision. A corrective fine is deemed to be paid on time if it is received to the bank account specified in the determination that concludes the abridged procedure by the due date for payment.

(2) If the person subjected to the abridged procedure does not contest the determination that concludes the abridged procedure but fails to pay the corrective fine by the due date, the body to conduct out-of-court proceedings shall send the determination that concludes the abridged procedure which has entered into force within ten days to a bailiff for compulsory enforcement.

(3) If the determination that concludes the abridged procedure has entered into force, the person subjected to the abridged procedure shall not be punished for the same act under misdemeanour procedure.  
[RT I, 31.05.2018, 1 – entry into force 01.01.2019]

### **§ 54<sup>11</sup>. Contestation of decisions made in alternative proceedings**

(1) If a person subjected to the abridged procedure does not agree to the determination that concludes the abridged procedure, the person has the right to appeal the decision within 15 days after the receipt thereof. For this purpose, the person must file an appeal with the body to conduct out-of-court proceedings that prepared the determination that concludes the abridged procedure. In the case an appeal is filed, the determination that concludes the abridged procedure shall not enter into force.

(2) An appeal shall be filed in writing and it shall set out:

- 1) the name and address of the body to conduct out-of-court proceedings which prepared the determination that concludes the abridged procedure;
- 2) the given names and surname, residential address, telephone number and email address of the person subjected to the abridged procedure.;
- 3) in the case of a representative, the given names and surname, address of the registered office, telephone number, e-mail address and power of attorney of the representative of the person subjected to the abridged procedure;
- 4) the number and date of determination that concludes the abridged procedure and the fact that the person subjected to the abridged procedure does not agree to the determination that concludes the abridged procedure.

(3) An appeal shall be signed by the person who files it.  
[RT I, 31.05.2018, 1 – entry into force 01.01.2019]

### **§ 54<sup>12</sup>. Resolution of appeal by the body to conduct out-of-court proceedings**

(1) If a person subjected to the abridged procedure has contested a determination that concludes the abridged procedure, the body to conduct out-of-court proceedings shall resume the misdemeanour proceedings by its order or procedural act under expedited or general procedure. A body to conduct out-of-court proceedings may refuse to resume misdemeanour proceedings and prepare an order for cancellation of the determination that concludes the abridged procedure and refusal to resume misdemeanour proceedings if any of the circumstances provided for in subsection 29 (1) of this Code exist.

(2) If an appeal of the person subjected to the abridged procedure is not in compliance with the requirements provided for in subsection 54<sup>11</sup>(2) of this Code, the body to conduct out-of-court proceedings shall make an order refusing to proceed with the appeal and shall grant a term for elimination of the deficiencies to the appellant.

(3) The body to conduct out-of-court proceedings shall dismiss an appeal and return it by an order, if:

- 1) the appeal is filed after expiry of the term provided for in subsection 54<sup>11</sup>(1) of this Code and a request for restoration of the term has not been submitted or the body to conduct out-of-court proceedings has refused to restore the term;
- 2) the appellant subject to alternative proceedings has failed to eliminate the deficiencies contained in the appeal within the term granted in accordance with the procedure prescribed in subsection (2) of this section;
- 3) the appeal is filed by a person who in accordance with subsection 54<sup>11</sup>(1) of this Code does not have the right to file an appeal.

(4) A body to conduct out-of-court proceedings shall send a copy of the order specified in subsection (1), (2) or (3) of this section to the residential address of the person indicated in the appeal by unregistered letter or to the e-mail address indicated in the determination that concludes the abridged procedure or appeal.

(5) In resumed alternative proceedings, the legal assessment of misdemeanour and the rate of corrective fine indicated in the determination that concludes the abridged procedure shall not be binding on the body to conduct out-of-court proceedings.

(6) An official of body to conduct out-of-court proceedings who prepared the determination that concludes the abridged procedure may not participate as a body to conduct out-of-court proceedings in any resumed

proceedings. An official of a body to conduct out-of-court proceedings who directly perceived the facts relating to the misdemeanour and prepared the determination that concludes the abridged procedure may participate as a witness in resumed proceedings concerning the facts perceived by them.  
[RT I, 31.05.2018, 1 – entry into force 01.01.2019]

## **Division 2**

### **Expedited Procedure**

#### **§ 55. Application of expedited procedure**

(1) A body to conduct out-of-court proceedings may apply expedited procedure if the facts relating to the commission of a misdemeanour are explicit and the person subject to proceedings has been:

- 1) notified of their rights and obligations as prescribed in § 19 of this Code;
- 2) explained that a misdemeanour report is not prepared in expedited procedure;
- 3) provided with an opportunity to give testimony with regard to the commission of the misdemeanour, and the person has consented to the expedited procedure.

(2) By a decision made by expedited procedure:

- 1) a fine of up to 200 fine units may be imposed on a natural person;  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]
- 2) a fine of up to 13,000 euros may be imposed on a legal person.  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(3) Expedited procedure shall not be applied and general procedure shall be applied, if:

- 1) the person subject to proceedings does not consent to the expedited procedure or if he or she is 14 to 18 years of age or suffers from a mental disorder;
- 2) it is necessary to decide on confiscation, imposition of detention or deprivation of driving privileges as a principal punishment, or imposition of a supplementary punishment.  
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(4) A body to conduct out-of-court proceedings shall collect evidence in expedited procedure in accordance with the provisions of Chapter 5 of this Code.

(5) Upon making a decision by way of expedited procedure, a body to conduct out-of-court proceedings shall resolve the issues listed in § 108 of this Code.

#### **§ 56. Testimony concerning commission of misdemeanour**

(1) Testimony of a natural person subject to proceedings and the testimony of the legal representative of a legal person subject to proceedings concerning the commission of a misdemeanour shall be sound and video recorded or recorded on the form of a decision made by expedited procedure or as a separate document. When the minutes are taken, the person subject to proceedings may write their testimony concerning the commission of the misdemeanour in own hand.

[RT I, 06.07.2013, 3 – entry into force 16.07.2013]

(2) When a person subject to proceedings is interrogated, the following shall be recorded:

[RT I, 06.07.2013, 3 – entry into force 16.07.2013]

- 1) the date and place of giving the testimony;
- 2) the name of the body conducting the out-of-court proceedings who takes the testimony;
- 3) if the person subject to proceedings is a natural person, their given name, surname and personal identification code or, in the case of an alien or a person without a personal identification code, their place and date of birth, the name and number of their identity document, nationality, address of the residence, place of employment, telephone number and e-mail address;
- 4) if the person subject to proceedings is a legal person, the name and registry code of the person or, in the case of a foreign legal person, the numerical or letter combination equal to a registry code, and the address of the seat, telephone number and e-mail address of the person;
- 5) the given name and surname of the legal representative of the legal person subject to proceedings, the address of their residence or seat, their place of employment, telephone number and e-mail address;
- 6) notification of the person subject to proceedings of the rights and obligations of the person in accordance with § 19 of this Code and of the specifications concerning expedited procedure in accordance with clauses 55 (1) 2) and 3) of this Code, whereas the person subject to proceedings shall certify by a separate signature on the minutes of the interrogation that he or she has been notified of such rights, obligations and specifications, or shall confirm it orally in the case the testimony is sound and video recorded;

[RT I, 06.07.2013, 3 – entry into force 16.07.2013]

- 7) the testimony of the person subject to proceedings concerning commission of the misdemeanour;

8) the person's consent or refusal of consent to the expedited procedure, which consent shall be certified by a separate signature on the minutes or shall confirm it orally in the case the testimony is sound and video recorded.

[RT I, 06.07.2013, 3 – entry into force 16.07.2013]

(2<sup>1</sup>) If the testimony of a person is recorded in a decision made by expedited procedure, the information specified in clauses (2) 6) and 8) of this section is set out and the person shall sign to confirm it in the decision made by expedited procedure.

[RT I 2008, 54, 304 – entry into force 27.12.2008]

(3) The minutes of interrogation shall be signed or an oral confirmation is made in the case of sound and video recording of the testimony by the natural person subject to proceedings or by the legal representative of the legal person subject to proceedings.

[RT I, 06.07.2013, 3 – entry into force 16.07.2013]

(4) If a person specified in subsection (3) of this section refuses to give testimony, sign the minutes or make a confirmation, he or she is deemed to refuse consent to the expedited procedure. The refusal shall be noted in the minutes of interrogation or on the form of a decision made by expedited procedure or is sound and video recorded and the general procedure shall be commenced.

[RT I, 06.07.2013, 3 – entry into force 16.07.2013]

### **§ 57. Content of decision made by expedited procedure**

(1) A decision made by expedited procedure shall set out:

- 1) the date and place of making the decision;
- 2) the name, registry code and address of the body to conduct out-of-court proceedings;
- 3) the given name, surname and position of the official of the body to conduct out-of-court proceedings who made the decision;
- 4) the personal data of the person subject to proceedings in accordance with clause 109 4) or 5) of this Code;
- 5) the information stating whether the person subject to proceedings has been notified of the rights thereof and whether the person consents to the expedited procedure;
- 6) the place and time of commission of the misdemeanour;
- 7) a short description of the misdemeanour;

[RT I, 06.07.2013, 3 – entry into force 16.07.2013]

8) the evidence to prove the commission of the misdemeanour;

8<sup>1</sup>) the testimony of the person subject to proceedings concerning commission of the misdemeanour.

[RT I 2008, 54, 304 – entry into force 27.12.2008]

9) the legal assessment of the misdemeanour: the title, section, subsection and clause of the Act;

10) the mitigating and aggravating circumstances;

11) the amount of the fine imposed on the person subject to proceedings or, in the case of application of subsection 63 (1) of the Penal Code, the amount of the fine in accordance with the provision of law which prescribes the most onerous punishment or, in the case of application of subsection 63 (3) of the Penal Code, the amounts of the fines for each separate misdemeanour;

12) payment of the fine in instalments in accordance with the provisions of subsections 66 (2) and (3) of the Penal Code;

13) how to proceed with the objects used as physical evidence and with other seized objects;

14) the ruling concerning the procedure expenses;

15) information stating that the person subject to proceedings and the counsel of the person have the right to file an appeal against the decision with the county court within 15 days as of the receipt of the decision;

16) if the fine is not to be paid in instalments, information stating that the fine must be paid to a bank account within 15 days as of the receipt of the decision, setting out the name and code of the bank and the name of the holder and the number of the bank account to which the fine is to be paid;

16<sup>1</sup>) information stating that the cautionary fine may be paid in cash to the body conducting the out-of-court proceedings if the cautionary fine is imposed for violation of the border regime or for unlawful crossing of the state border or temporary border line of the Republic of Estonia;

17) information stating that the decision shall be executed if the person does not pay the fine in full within 15 days after receipt of the decision or does not file an appeal against the decision with the county court.

(2) A decision shall be signed by the official of the body conducting the out-of-court proceedings.

(3) A decision made by way of expedited procedure shall be prepared in two identical copies the first of which is given immediately after signing to the person subject to proceedings against a signature on the other copy of the decision. The person subject to proceedings shall indicate the date of receipt of the decision on the other copy of the decision.

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

## **Division 3**

# **General Procedure**

## **Subdivision 1**

### **General requirements**

#### **§ 58. Commencement of misdemeanour proceedings**

- (1) Misdemeanour proceedings are commenced by the first procedural act.
- (2) Upon performance of the first procedural act, the person subject to proceedings shall be notified of the rights and obligations thereof in accordance with § 19 of this Code.
- (3) In the case of violation of the requirements of law for which suspension of a special right is prescribed, the document certifying the special right shall be immediately taken away from the person subject to proceedings upon commencement of the misdemeanour proceedings and added to the materials concerning the misdemeanour matter.

#### **§ 59. Resolution of notice concerning misdemeanour**

- (1) A notice concerning misdemeanour is a notice which describes the events, facts or activities in which elements of a misdemeanour may be present.
- (2) If a notice is submitted concerning a misdemeanour, the body to conduct out-of-court proceedings is required to commence misdemeanour proceedings within 15 days from receipt of the notice concerning misdemeanour or decide on refusal to commence misdemeanour proceedings and notify the person who submitted the notice concerning misdemeanour of refusal to commence misdemeanour proceedings.
- (3) A notice concerning refusal to commence misdemeanour proceedings need not state the reasons therefor if refusal to commence misdemeanour proceedings is based on § 29 of this Code and the notice concerning misdemeanour does not refer to any damage caused by the misdemeanour to the person submitting it.
- (4) After delivery of a notice concerning refusal to commence misdemeanour proceedings, the person who submitted the notice concerning misdemeanour may submit an appeal to the head of the body to conduct out-of-court proceedings against refusal to commence misdemeanour proceedings in accordance with the procedure prescribed in § 76 of this Code.  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

#### **§ 60. Summoning to body to conduct out-of-court proceedings**

- (1) A person subject to proceedings and the witnesses shall be summoned to the body conducting the out-of-court proceedings by a summons in accordance with the procedure provided for in §§ 40 and 41 of this Code.
- (2) A summons shall set out that appearance is mandatory and that compelled attendance in accordance with subsection 43 (3) of this Code may be applied with regard to a person who has been summoned but fails to appear without good reason.

#### **§ 61. Referral of materials concerning misdemeanour matter to prosecutor if elements of criminal offence become evident in act**

- (1) If an official of a body to conduct out-of-court proceedings finds in the course of the misdemeanour proceedings that the act contains elements of a criminal offence, the materials concerning the misdemeanour matter shall be immediately sent to a prosecutor for a decision on the commencement of criminal proceedings. If the body to conduct out-of-court proceedings is a pre-trial investigation authority, criminal proceedings shall be commenced without the materials being sent to the prosecutor. The ruling on the commencement of criminal proceedings may be made until the making of the decision on the punishment for the misdemeanour.
- (2) If a prosecutor, after examining the materials of a misdemeanour matter, decides not to commence criminal proceedings or terminates the criminal proceedings concerning the matter but there is reason to believe that the act contains elements of a misdemeanour, he or she shall immediately return the materials to the body to conduct out-of-court proceedings for resumption of misdemeanour proceedings.  
[RT I 2003, 26, 156 – entry into force 21.03.2003]

## **§ 62. Disclosure of information concerning out-of-court proceedings**

(1) Information concerning pre-trial proceedings may be disclosed before making of a decision in the interests of the misdemeanour proceeding, the public or a data subject only if disproportionate damage is not caused thereby to the misdemeanour proceeding, interests of the state or business secrets or, in particular in the case of disclosure of personal data of specific categories, to the rights of data subjects or third persons.  
[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

(2) Disclosure of a decision made in out-of-court proceedings after making of the decision is permitted on the terms prescribed by subsections 408<sup>1</sup>(2) and (3) of the Code of Criminal Procedure, taking account of the differences of out-of-court procedure.  
[RT I 2007, 12, 66 – entry into force 25.02.2007]

(3) A person who directly suffered proprietary damage due to a misdemeanour and their representative have the right to examine the decision made in the misdemeanour matter.  
[RT I, 05.12.2017, 1 – entry into force 15.12.2017]

## **§ 63. Joinder and severance of misdemeanour matters**

(1) If a person has committed several misdemeanours or if several persons have committed one and the same misdemeanour or several misdemeanours, the misdemeanour matters may be joined.

(2) Misdemeanour matters may be severed if severance does not prejudice the thoroughness and objectivity of misdemeanour proceedings.

(3) Misdemeanour proceedings are joined or severed by an order of the body conducting the out-of-court proceedings or of the county court. A copy of an order on severance of misdemeanour matters shall be included in the files of the severed misdemeanour matters.  
[RT I 2005, 39, 308 – entry into force 01.01.2006]

# **Subdivision 2 Collection of evidence**

## **§ 64. Collection of evidence**

A body to conduct out-of-court proceedings shall collect evidence in accordance with the provisions of Chapter 5 of this Code.

## **§ 65. Testimony of person subject to proceedings**

(1) Minutes of the testimony of a natural person subject to proceedings or the legal representative of a legal person subject to proceedings concerning the commission of a misdemeanour shall be taken on the form for the minutes of interrogation, or in the misdemeanour report in accordance with clause 69 (2) 3) of this Code. The person subject to proceedings may write their testimony himself or herself in hand-writing.

(2) The minutes of interrogation shall set out:

- 1) The minutes of interrogation shall set out: the information listed in clauses 56 (2) 1) to 5) of this Code;
- 2) notification of the person subject to proceedings of the rights and obligations of the person in accordance with § 19 of this Code, whereas the person subject to proceedings shall certify by a separate signature on the minutes of the interrogation that he or she has been notified of such rights and obligations;
- 3) the testimony of the person subject to proceedings concerning commission of the misdemeanour.

(3) The minutes of interrogation shall be signed by the natural person subject to proceedings or by the legal representative of the legal person subject to proceedings.

(4) If a person specified in subsection (3) of this section refuses to give testimony or gives testimony but refuses to sign it, the official of the body to conduct out-of-court proceedings shall make a notation concerning the refusal in the minutes of the interrogation.

# **Subdivision 3 Deciding on confiscation in course of misdemeanour proceedings**

## **§ 66. Request by body to conduct out-of-court proceedings for decision on confiscation**

If the direct object of commission of a misdemeanour has been seized in the course of misdemeanour proceedings and the lawful possessor of the object has not been identified, the body conducting the out-of-court proceedings shall submit a reasoned request for a decision on confiscation to the county court if the

body is not competent to decide on confiscation. The request shall be sent to the county court together with the misdemeanour file.

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

#### **§ 67. Deciding on confiscation in course of misdemeanour proceedings**

(1) A county court shall resolve a request for confiscation specified in § 66 of this Code by making an order in written procedure without summoning the participants in the proceedings.

(2) In order to resolve the request, a county court may require the body which conducted the out-of-court proceedings to submit additional materials.

(3) The participants in the proceedings, and the persons not participating in the proceedings, whose legitimate interests are restricted by an order specified in subsection (1) of this section have the right to receive a copy of the order and file an appeal against the court order in accordance with the procedure provided for in Chapter 16 of this Code.

(4) If a body to conduct out-of-court proceedings is competent to decide on confiscation and the direct object of commission of the misdemeanour has been seized in misdemeanour proceedings but the lawful possessor of the object has not been identified, the body may decide on confiscation by an order made in the course of the misdemeanour proceedings.

(5) The participants in the proceedings and the persons not participating in the proceedings, whose legitimate interests are restricted by an order specified in subsection (4) of this section have the right to receive a copy of the order and file an appeal in accordance with the procedure provided for in § 76 of this Code.

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

## **Subdivision 4 Misdemeanour report**

#### **§ 68. Preparation of misdemeanour report**

(1) In general procedure, a misdemeanour report shall be prepared on a misdemeanour.

(2) If a need arises to supplement evidentiary information or amend the legal assessment of a misdemeanour during preparation of a report, the report shall be supplemented.

(3) If a person has committed several misdemeanours, one report, or if necessary, several reports may be prepared.

(4) If several persons have jointly committed one misdemeanour, one report shall be prepared.

[RT I 2003, 26, 156 – entry into force 21.03.2003]

#### **§ 69. Content of misdemeanour report**

(1) The introduction of a misdemeanour report shall set out:

- 1) the date and place of preparation;
- 2) the name, registry code and the address of the seat of the body conducting the out-of-court proceedings;
- 3) the given name, surname, position, telephone number and e-mail address of the official of the body conducting the out-of-court proceedings;
- 4) the data of the person subject to proceedings in accordance with clause 56 (2) 3) or 4) of this Code;
- 5) the given name, surname, address of the residence, telephone number and e-mail address of the legal representative of the natural person;
- 6) the given name, surname, position, address of the seat, telephone number and e-mail address of the legal representative of the legal person;
- 7) the given name, surname and administrative address of the counsel, or information stating whether the person subject to proceedings requests the participation of the counsel in the proceedings;
- 8) information stating that the person subject to proceedings has been notified of the rights and obligations specified in § 19 of this Code.

(2) The main part of a misdemeanour report shall set out:

- 1) a short description of the misdemeanour and the time and place of the commission of the misdemeanour;
- 2) the legal assessment of the misdemeanour: the title, section, subsection and clause of the Act;
- 3) the testimony of the person subject to proceedings or a reference to the separate minutes taken of the testimony of the person;

- 4) the testimonies of the witnesses or a reference to the separate minutes taken of the testimonies of the witnesses;
- 5) information concerning the damage caused by the misdemeanour;
- 6) if dealing with the misdemeanour matter falls under the jurisdiction of a court, information stating whether the person subject to proceedings wishes to participate in the hearing of the misdemeanour matter;
- 7) other evidence and information necessary for resolving the misdemeanour matter.

(3) If it is necessary to amend the legal assessment of a misdemeanour entered in a misdemeanour report, the report shall be supplemented by an entry on the new legal assessment of the misdemeanour together with each date of amendment of the legal assessment and the signature of the official of the body to conduct out-of-court proceedings.

(4) If a report on the detention of a person has not been prepared, the final part of the misdemeanour report shall set out:

- 1) the duration of and basis for the detention, together with a reference to subsection 44 (1) of this Code;
- 2) the date and time of the detention;
- 3) a list of the objects seized from the person upon detention, and the characteristic features of the objects;
- 4) the petitions and requests of the person detained.

(5) Information necessary for conducting the proceedings concerning misdemeanours in certain fields may be added to a misdemeanour report.

(6) The final part of a misdemeanour report shall set out that the person subject to proceedings and the counsel of the person have the right to file objections and evidence concerning the misdemeanour proceedings with the body conducting the out-of-court proceedings and examine the misdemeanour file at the body within 15 days as of the receipt of a copy of the misdemeanour report. At the request of the person subject to proceedings and with the consent of the body to conduct out-of-court proceedings, the term for examination of the misdemeanour file and filing of objections may be reduced.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(7) If the testimony of a person subject to proceedings or a witness has been entered in a misdemeanour report, the testimony shall be signed by the person subject to proceedings or the witness who gave the testimony. If the person subject to proceedings refuses to give testimony or gives testimony but refuses to sign it, the official of body conducting the out-of-court proceedings shall make a notation concerning the refusal in the misdemeanour report.

(8) A misdemeanour report shall be signed by the official of the body to conduct out-of-court proceedings who prepared the report.

[RT I 2003, 26, 156 – entry into force 21.03.2003]

#### **§ 70. Service of copy of misdemeanour report on participants in proceedings and giving notice of time and place for examination of decision of body to conduct out-of-court proceedings**

(1) A copy of a misdemeanour report shall be served on a person subject to proceedings against signature. Upon service of a misdemeanour report, the person subject to proceedings shall be explained their right to file objections to the misdemeanour report and that the decision of the body to conduct out-of-court proceedings shall be made by way of written proceedings and the person subject to proceedings has the right to examine the decision at the body to conduct out-of-court proceedings. It is also explained that a copy of the decision is sent to the e-mail address of the person subject to proceedings at request.

[RT I, 19.03.2015, 1 – entry into force 01.09.2015]

(2) A participant in the proceedings shall certify receipt of a copy of a misdemeanour report by a signature on the report, accompanied by the date of receipt of the copy. If the participant in the proceedings refuses to certify receipt of a copy of the misdemeanour report by a signature, the official title of the body conducting the out-of-court proceedings shall make a corresponding notation on the report, accompanied by the date of the refusal and their signature and position. In such case, the participant in the proceedings is deemed to have received a copy of the misdemeanour report on the date of refusal to accept the copy.

(3) If a copy of a misdemeanour report has been served on the counsel of a person subject to proceedings, the copy is deemed to be served also on the person subject to proceedings.

(3<sup>1</sup>) If the person subject to proceedings is 14 to 18 years of age, the body to conduct out-of-court proceedings shall immediately inform, at the choice of the person subject to proceedings, either their parent or another legal representative or guardian of the preparation of the misdemeanour report.

[RT I 2010, 44, 258 – entry into force 19.07.2010]

(4) If resolving a misdemeanour matter is within the competence of a body to conduct out-of-court proceedings in accordance with law, the decision of the body to conduct out-of-court proceedings shall be available to the person subject to proceedings at the body to conduct out-of-court proceedings when 30 days have expired from service of a copy of the misdemeanour report on the person subject to proceedings. At the request of the person subject to proceedings and with the agreement of the body to conduct proceedings, the term for examining of the decision on the misdemeanour matter and for service of the copy of the decision may be reduced. If the person



subject to proceedings has expressed a wish upon service of the misdemeanour report or in their objection for receiving the decision to their e-mail address, a copy of the decision shall be sent to the requested address.  
[RT I, 19.03.2015, 1 – entry into force 01.09.2015]

(5) In the case provided for in subsection (4) of this section, the date on which the decision of the body to conduct out-of-court proceedings becomes available for examination at the body to conduct out-of-court proceedings and when the person subject to proceedings or their counsel may receive a copy of the decision shall be indicated in the misdemeanour report and a copy thereof upon service of the copy of the misdemeanour report on the person subject to proceedings. With the agreement of the person subject to proceedings, the body to conduct out-of-court proceedings may send a copy of the decision made to the e-mail address indicated by the person subject to proceedings or notify the person subject to proceedings of the decision made through the e-file system. Notification of the person subject to proceedings of the decision made or sending of a copy of the decision to the person subject to proceedings does not change the time limits for appeal provided for in § 114 of this Code.

[RT I, 19.03.2015, 1 – entry into force 01.09.2015]

(6) The person subject to proceedings shall be explained upon service of a copy of a misdemeanour report that the term for appeal of the decision of the body to conduct out-of-court proceedings shall commence from the date when the decision of the body to conduct out-of-court proceedings is accessible by the person subject to proceedings at the body to conduct out-of-court proceedings.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

### **§ 71. Sending misdemeanour file to county court for hearing of matter**

(1) If dealing with the misdemeanour matter falls within the jurisdiction of a county court in accordance with § 83 of this Code, the body conducting the out-of-court proceedings shall, when 20 days have elapsed since the receipt of a copy of the misdemeanour report by the person subject to proceedings or the counsel of the person, send the misdemeanour file together with the objections filed and the annexed materials to the county court for the hearing of the matter.

(2) If dealing with the misdemeanour matter falls within the jurisdiction of a county court in accordance with § 83 of this Code and the person subject to proceedings has been detained in accordance with subsection 44 (1) of this Code, the measures provided for in clause 44 (2) 3) of this Code shall be applied.

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

## **Subdivision 5 Decisions in general procedure**

### **§ 72. Making decision of body to conduct out-of-court proceedings**

(1) If in accordance with law dealing with a misdemeanour matter falls within the competence of a body to conduct out-of-court proceedings and the law does not prescribe hearing of the misdemeanour matter by a court, the body shall make a decision specified in § 73 of this Code by way of written proceedings without summoning the participants in the proceedings, taking into account the testimony of the person subject to proceedings, the evidence collected in the matter, the objections filed and the annexed materials.

(2) When making the decision, the body to conduct out-of-court proceedings shall resolve the issues listed in § 108 of this Code.

### **§ 73. Decisions of bodies conducting out-of-court proceedings in general procedure**

(1) A body to conduct out-of-court proceedings makes:

1) decisions concerning imposition of fines or, as a principal punishment, withdrawal of the right to drive a vehicle, or fines and, as a supplementary punishment, withdrawal of the right to drive a vehicle or deprivation of right to access state secrets and classified information of foreign states or right to process state secrets and classified information of foreign states;

[RT I 2008, 54, 304 – entry into force 27.12.2008]

2) order to terminate misdemeanour proceedings on the bases provided for in § 29 or 30 of this Code.

(2) If the body to conduct out-of-court proceedings makes an order on the termination of misdemeanour proceedings concerning a minor who at the time of the commission of the unlawful act was not capable of guilt on the grounds of their age or was fourteen to eighteen years of age, the provisions of subsections 29 (2) or 30 (2) of this Code respectively shall be observed.

## **§ 74. Content of decision of body to conduct out-of-court proceedings**

- (1) A decision of a body to conduct out-of-court proceedings shall set out:
- 1) the date and place of making the decision;
  - 2) the name, registry code and address of the body to conduct out-of-court proceedings;
  - 3) the given name, surname and position of the official of the body to conduct out-of-court proceedings who made the decision;
  - 4) the data of the person subject to proceedings in accordance with clause 109 4) or 5) of this Code;
  - 5) the place and time of commission of the misdemeanour;
  - 6) a short description of the misdemeanour;
  - 7) the date of the misdemeanour report on which the decision is based, and the name of the person who prepared the report;
  - 8) the reasons for disregarding the information contained in the objection;
  - 9) the legal assessment of the misdemeanour: the title, section, subsection and clause of the Act;
  - 10) the mitigating and aggravating circumstances;
  - 11) the amount of the fine imposed on the person subject to proceedings or, in the case of application of subsection 63 (1) of the Penal Code, the amount of the fine in accordance with the provision of law which prescribes the most onerous punishment or, in the case of application of subsection 63 (3) of the Penal Code, the amounts of the fines for each separate misdemeanour;  
11<sup>1</sup>) the term of deprivation of the person subject to proceedings of the right to drive a vehicle or the right to access state secrets and classified information of foreign states or the right to process state secrets and classified information of foreign states imposed as principal or supplementary punishment;  
[RT I 2008, 54, 304 – entry into force 27.12.2008]
  - 12) the ruling on confiscation if the body conducting the out-of-court proceedings is competent to rule on confiscation;
  - 13) payment of the fine in instalments in accordance with the provisions of subsections 66 (2) and (3) of the Penal Code;
  - 14) how to proceed with the objects used as physical evidence and with other seized objects;
  - 15) the ruling concerning the procedure expenses;
  - 16) the procedure and term for appeal;
  - 17) if the fine is not to be paid in instalments, information stating that the fine must be paid to a bank account in full within 15 days as of the date when the decision of the body becomes available for examination at the body, and the name and code of the bank and the name of the holder and the number of the bank account to which the fine is to be paid;
  - 18) information stating that the decision concerning the fine shall be executed if the person subject to proceedings fails to pay the fine in full or the person or the counsel thereof does not file an appeal against the decision within 15 days after the date when the decision of the body becomes available for examination by the participants in the proceedings at the body;
  - 19) information stating that the decision concerning the deprivation from the right to drive a vehicle or the right to access state secrets and classified information of foreign states and the right to process state secrets and classified information of foreign states imposed as a principal or supplementary punishment shall be executed if the person subject to proceedings or the counsel thereof does not file an appeal against the decision within 15 days after the date on which the decision of the body to conduct out-of-court proceedings becomes available for examination by the participants in the proceedings at the body to conduct out-of-court proceedings and the participants in the proceedings may receive copies of the decision.  
[RT I 2008, 54, 304 – entry into force 27.12.2008]
- (2) A decision shall be signed by the official of the body to conduct out-of-court proceedings who made the decision.

## **§ 75. Order on termination of misdemeanour proceedings**

- (1) The introduction of an order on termination of a misdemeanour proceedings prepared by an official of a body to conduct out-of-court proceedings shall contain the information prescribed in subsection 48 (2) of this Code.
- (2) The main part of an order on termination of a misdemeanour proceedings shall set out:
- 1) the grounds for that procedural ruling;
  - 2) the basis for termination of misdemeanour proceedings in accordance with § 29 or 30 of this Code.
- (3) The final part of an order on termination of misdemeanour proceedings shall set out:
- 1) the procedural ruling;
  - 2) the ruling on confiscation if the body conducting the out-of-court proceedings is competent to rule on confiscation;
  - 3) how to proceed with the objects used as physical evidence and with other seized objects;
  - 3<sup>1</sup>) deletion of the information collected in the misdemeanour matter on the basis of clauses 29 (1) 1) to 3) and 5) to 7) of the Code of Misdemeanour Procedure from the state register of fingerprints and the state DNA register upon termination of misdemeanour proceedings;  
[RT I, 04.07.2012, 1 – entry into force 01.08.2012]
  - 4) the procedure for appeal against the order in accordance with § 76 of this Code.
- (4) An order shall be signed by the official of the body to conduct out-of-court proceedings who made the order.

(5) If the body to conduct out-of-court proceedings makes an order on the termination of misdemeanour proceedings concerning a minor who at the time of the commission of the unlawful act was not capable of guilt on the grounds of their age or was fourteen to eighteen years of age, the provisions of subsections 29 (2) or 30 (2) of this Code respectively shall be observed.  
[RT I 2003, 26, 156 – entry into force 21.03.2003]

(5<sup>1</sup>) If any information was collected in the misdemeanour matter which shall be deleted from the state register of fingerprints or the state DNA register, the body to conduct proceedings shall notify the Estonian Forensic Science Institute of termination of the criminal proceedings in a format which can be reproduced in writing.  
[RT I, 04.07.2012, 1 – entry into force 01.08.2012]

(6) Participants in the proceedings, and persons not participating in the proceedings whose interests are concerned by an order may receive a copy of the order.

(7) A participant in the proceedings or a person not participating in the proceedings shall certify receipt of a copy of an order by a signature on the order, accompanied by the date of receipt of the order.

## **Subdivision 6**

### **Appeals against activities of bodies conducting out-of-court proceedings**

#### **§ 76. Appeal against activities of body to conduct out-of-court proceedings**

(1) Participants in the proceedings and persons not participating in the proceedings have the right to file appeals against the activities of a body to conduct out-of-court proceedings with the head of the body until the decision is made in the matter by the body.

(2) An appeal against an order of a body to conduct out-of-court proceedings on termination of misdemeanour proceedings or on confiscation made in the misdemeanour proceedings may be filed by a person subject to proceedings or a person not participating in the proceedings within 15 days as of the receipt of a copy of the order.

(3) An appeal specified in subsections (1) and (2) of this section shall be addressed to the head of the body to conduct out-of-court proceedings and sent at the address of the seat of the body to conduct out-of-court proceedings.  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(4) An appeal shall set out:

- 1) the head of the body to conduct out-of-court proceedings as the addressee, and the name of the body to conduct out-of-court proceedings with which the appeal is filed;
- 2) the given name and surname, procedural status, and the address of the residence or seat of the appellant;
- 3) the order or procedural act contested, the date of making the order or performance of the procedural act, and the name of the person with regard to whom the order or procedural act is contested;
- 4) which part of the order or procedural act is contested;
- 5) the content of and reasons for the requests submitted in the appeal;
- 6) a list of the documents annexed to the appeal.

(5) Submission of an appeal against the activities of body to conduct out-of-court proceedings shall not suspend the appealed activity.  
[RT I 2003, 26, 156 – entry into force 21.03.2003]

#### **§ 77. Resolution of appeal by head of the body to conduct out-of-court proceedings**

(1) The head of a body to conduct out-of-court proceedings or an official authorized by a legal instrument of the head of the body shall resolve an appeal against the activities of the body by written procedure within five days as of the receipt of the appeal.

(2) When resolving the appeal, the head of the body to conduct out-of-court proceedings or the official authorized by a legal instrument of the head may, by order:

- 1) deny the appeal;
- 2) grant the appeal in full or in part and recognise that the rights of the person were violated if the violation can no longer be eliminated;
- 3) annul the contested order or suspend the contested procedural act in full or in part, thereby eliminating the violation of a right.

(3) Denial of an appeal shall be reasoned.

(4) An appellant shall be notified of the right to file an appeal with a county court in accordance with § 78 of this Code.

(5) An order made to resolve the appeal shall be immediately sent to the body to conduct out-of-court proceedings which made the contested order, and a copy of the order shall be sent to the appellant.  
[RT I 2005, 39, 308 – entry into force 01.01.2006]

#### **§ 78. Filing of appeals with county court**

(1) If a person does not consent to the order made when deciding an appeal in accordance with subsection 77 (2) of this Code, and the contested activities of the body to conduct out-of-court proceedings have violated the rights or freedoms of the person, the person has the right to file an appeal with the county court.

(2) An appeal may be filed:

- 1) by a participant in the proceedings within ten days as of the receipt of the contested order;
- 2) by a person not participating in the proceedings within ten days as of the date when the person became or should have become aware of the contested order.

(3) An appeal shall be filed in writing in compliance with the requirements prescribed in subsection 76 (4) of this Code. The appeal shall be addressed to the county court and filed with the body to conduct out-of-court proceedings which made the contested order.

(4) A body to conduct out-of-court proceedings which receives an appeal shall forward the appeal together with the materials to a county court immediately.  
[RT I 2005, 39, 308 – entry into force 01.01.2006]

#### **§ 79. Resolution of appeals in county court**

(1) A county judge shall consider the appeal within five days following its receipt.

(2) The appeal shall be considered by written procedure, within the limits of the appeal and with regard to the person concerning whom it is filed.

(3) When resolving the appeal, the county judge may:

- 1) deny the appeal;
- 2) grant the appeal in full or in part and recognise that the rights of the person were violated if the violation can no longer be eliminated;
- 3) annul the contested order or suspend the contested procedural act in full or in part, thereby eliminating the violation of a right.

(4) A court which receives an appeal may suspend the contested order or procedural act.

(5) The county court shall send the order made to resolve the appeal to the body to conduct out-of-court proceedings which made the contested order or performed the contested procedural act and a copy of the order to the appellant.  
[RT I 2005, 39, 308 – entry into force 01.01.2006]

#### **§ 80. Discontinuance of appeal**

An appeal against the activities of a body to conduct out-of-court proceedings which is filed in accordance with § 76 or 78 of this Code may be discontinued until resolution of the appeal.

## **Subdivision 7 Proceeding with matters in out-of-court proceedings**

#### **§ 81. Preparation of misdemeanour file and proceeding with matters in misdemeanour proceedings**

(1) Upon completion of out-of-court proceedings, the body conducting the out-of-court proceedings shall prepare a misdemeanour file, systematising the materials of the misdemeanour matter for this purpose. For reasons of expediency, misdemeanour file may be without covers. The pages of a misdemeanour file shall be numbered.

(2) A body to conduct out-of-court proceedings shall proceed with misdemeanour matters in accordance with the document management procedure established for government agencies, taking into account the specifications provided for in this Code.

## **§ 81<sup>1</sup>. E-File processing information system**

(1) The E-File processing information system (hereinafter *E-File system*) is a database within the state information system maintained for the processing of procedural information and personal data in misdemeanour proceedings the objective of which is:

- 1) to provide an overview of misdemeanour matters in which proceedings are conducted by bodies conducting out-of-court proceedings and courts as well as cases in which misdemeanour proceedings were not commenced;
- 2) to reflect information concerning acts performed in the course of misdemeanour proceedings;
- 3) to enable organisation of the activities of the bodies conducting proceedings;
- 4) to collect statistics which are necessary for the making of criminal policy decisions;
- 5) to enable electronic forwarding of data and documents.

(2) The following information shall be entered in the database:

- 1) information concerning misdemeanour matters in which proceedings are conducted, cases in which misdemeanour matters were not commenced, and matters in which misdemeanour proceedings have been terminated;
- 2) information concerning acts performed in the course of misdemeanour proceedings;
- 3) digital documents in the cases provided in this Code;
- 4) information concerning the bodies conducting proceedings, participants in the proceedings, persons at fault, experts and witnesses;
- 5) decision of a body conducting out-of-court and a court.

(3) The E-File system shall be established and the statutes of the register shall be approved by the Government of the Republic.

(4) The controller of the data of the E-File system is the Ministry of Justice. The processor of the E-File system is the person appointed by the minister responsible for the area.

(5) The minister responsible for the area may issue regulations for organisation of the activities of the E-File system.

[RT I 2008, 28, 180 – entry into force 15.07.2008]

## **§ 82. [Repealed – RT I 2008, 28, 180 – entry into force 15.07.2008]**

# **Chapter 11 HEARING OF MISDEMEANOUR MATTERS IN COUNTY COURTS**

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

## **Division 1 Competence to Deal with Misdemeanour Matter and Preparation for Hearing the Matter**

### **§ 83. Competence to deal with misdemeanour matters**

A misdemeanour matter shall be dealt with by a county judge if:

- 1) the county court is competent to deal with the misdemeanour matter or decide on confiscation in accordance with law;
- 2) when dealing with the misdemeanour matter, the imposition of detention, sanction of a minor, or prohibition to keep animals is to be decided on.

[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

### **§ 84. Sending misdemeanour file to county court for the hearing of the matter**

If dealing with the misdemeanour matter falls within the jurisdiction of a county court in accordance with § 83 of this Code, the body to conduct out-of-court proceedings shall send the misdemeanour file to a county court following the rules provided in subsection 71 (1) of this Code for the hearing of the matter.

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

### **§ 85. Preparation for hearing of misdemeanour matter**

(1) During preparations for judicial hearing of the matter, the county judge shall:

- 1) verify the jurisdiction over the misdemeanour matter;
- 2) ascertain the parties to court proceedings and the witnesses, interpreters or translators and experts, and notify them of the time and place of the hearing of the matter;
- 3) ascertain the evidence to be examined at judicial hearing of the matter and take measures for submission of the evidence in a court session;
- 4) resolve the hearing of a witness in another county court on the basis of a letter of request;
- 5) resolve the performance of expert assessments, taking into account the opinions of the parties to court proceedings;
- 6) resolve the requests submitted by the parties to court proceedings.

(2) If a court finds that the adjudication of a matter falls within the competence of an administrative court and the administrative court has previously found that the adjudication of the same matter does not fall within its competence, a Special Panel formed by the Criminal Chamber and the Administrative Chamber of the Supreme Court shall determine following the rules provided in § 711 of the Code of Civil Procedure the court into whose competence the adjudication of the matter falls.

[RT I, 20.11.2014, 1 – entry into force 01.05.2015]

#### **§ 86. Summoning to the hearing of the matter**

The parties to court proceedings and the witnesses, interpreters or translators and experts shall be summoned to a county court in accordance with the provisions of §§ 40 and 41 of this Code.

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

## **Division 2 General Conditions for Hearing Misdemeanour Matters**

#### **§ 87. Limits for hearing the misdemeanour matter**

The misdemeanour matter shall be heard only with regard to the person subject to proceedings and to the extent specified in the misdemeanour report.

#### **§ 88. Maintenance of order when hearing misdemeanour matters**

(1) Participants in the proceedings and other persons present in a courtroom shall comply with the lawful orders of the county judge.

(2) A judge may impose a fine in the amount of up to 30 fine units on a person who interferes with or hinders the hearing of a misdemeanour matter, or remove them from the courtroom.

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

#### **§ 89. Participation of person subject to proceedings in the hearing of the matter**

(1) A person subject to proceedings has the right to participate in the hearing of the misdemeanour matter personally, together with a counsel or through a counsel.

(2) A county judge may require the participation of the person subject to proceedings in the hearing of the misdemeanour matter if this is necessary in the interests of the misdemeanour proceedings.

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

#### **§ 90. Hearing the misdemeanour matter without the person subject to proceedings and counsel thereof**

(1) If a person subject to proceedings and the counsel thereof have been notified of the place and time for hearing the matter and they have received the summons before the hearing of the matter but have not requested adjournment of the hearing or the request for adjournment has not been granted, the matter shall be heard without the person subject to proceedings or the counsel thereof.

(2) The hearing of the matter shall be adjourned by an order made in compliance with the provisions of subsection 93 (1) of this Code at a reasoned request of the person subject to proceedings or the counsel thereof.

(3) The hearing of the matter shall be adjourned by an order if the counsel of a person subject to proceedings who is 14 to 18 years of age or suffers from a mental disorder fails to appear at the session.

#### **§ 91. Participation of body to conduct out-of-court proceedings in the hearing of the misdemeanour matter**

(1) The participation of a body to conduct out-of-court proceedings in the hearing of the misdemeanour matter in a county court is mandatory and the corresponding notice is included in the summons sent to the body.

(2) If an official of a body to conduct out-of-court proceedings fails to appear at the hearing of the matter, the county judge shall adjourn the hearing of the matter and notify the head of the body in writing of the failure of the official to appear.

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

#### **§ 92. Hearing the misdemeanour matter without witness or expert**

If a witness or expert fails to appear at the hearing of the matter, the county judge shall hear the opinions of the parties to court proceedings and decide whether it is possible to hear the matter.

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

#### **§ 93. Adjournment of hearing the misdemeanour matter**

(1) Hearing the misdemeanour matter shall be adjourned if:

- 1) the misdemeanour matter cannot be heard without the persons who have failed to appear in the session;
- 2) continuing of the session is precluded by any other good reason.

(2) Before adjournment of hearing the misdemeanour matter, the persons who have appeared at the session may be heard and summoning them to the session for the second time may be forgone.

#### **§ 94. Formalisation of court orders**

(1) A court shall formalise termination of misdemeanour proceedings, compelled attendance, removal, and ordering of expert assessments by an order made in chambers in accordance with the provisions of § 48 of this Code.

(2) Court orders not specified in subsection (1) of this section shall be formalised as procedural documents and included in the misdemeanour file or shall be made orally and entered in the minutes of the court session.

## **Division 3 Opening of Hearing of Misdemeanour Matter**

#### **§ 95. Commencing the hearing of the misdemeanour matter**

The county judge commencing the hearing of the misdemeanour matter shall:

- 1) announce the title of the misdemeanour matter to be heard;
- 2) ascertain whether the persons summoned have appeared at the session, establish their identity and verify the authority of the counsels and representatives;
- 3) ascertain whether the parties to court proceedings and the witnesses, interpreters or translators and experts who have failed to appear received a summons;
- 4) involve interpreters or translators, experts and witnesses in accordance with the provisions of criminal procedure;
- 5) announce their name and the names of the interpreters or translators and experts, and explain the rights of the parties to court proceedings to such parties;
- 6) ascertain the requests and petitions of challenge of the parties to court proceedings and resolve such requests and petitions.

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

## **Division 4 Judicial Examination**

#### **§ 96. Commencement of judicial examination**

(1) A judge shall announce the commencement of judicial examination and make a proposition to the body to conduct out-of-court proceedings to present the misdemeanour report.

(2) After presentation of a misdemeanour report, the judge shall explain the contents of the report to the person subject to proceedings and ask whether person confesses to the commission of the misdemeanour.

#### **§ 97. Rules for examination of evidence**

A judge shall hear the opinions of the participants in the proceedings concerning the order of examination of evidence and make a corresponding order which shall be recorded in the minutes of the court session.

### **§ 98. Rules for interrogation of person subject to proceedings**

- (1) The interrogation of a person subject to proceedings commences by the proposition of the judge to give testimony with regard to the circumstances on the basis of which the misdemeanour report was prepared.
- (2) An official of a body to conduct out-of-court proceedings and the counsel may question the person subject to proceedings after he or she has given testimony.
- (3) The court has the right to question the person subject to proceedings at any stage of judicial examination.
- (4) A person subject to proceedings has the right to question the other parties to court proceedings throughout the course of judicial examination.
- (5) If the matter is heard in the absence of the person subject to proceedings, the judge shall present the prior testimony of the person and the contents of their written petitions.

### **§ 99. Rules for hearing witnesses**

- (1) Witnesses shall be heard individually in the absence of other witnesses who have not yet been heard. Before the hearing of a witness, their identity shall be established and their relationship with the person subject to proceedings shall be ascertained.
- (2) A judge shall make a proposition to a witness to tell the court everything he or she knows concerning the misdemeanour matter.
- (3) After a witness has given testimony, he or she shall be questioned by an official of the body conducting the out-of-court proceedings, the person subject to proceedings and the counsel of the person.
- (4) If a witness has been summoned to a court at the request of a participant in the proceedings, such participant shall be the first to question the witness.
- (5) Questions may be submitted to a witness to clarify and supplement the testimony previously given by them. The judge is required to exclude leading questions and questions which are irrelevant to the misdemeanour matter. The judge has the right to question witnesses at any stage of judicial examination.
- (6) A judge may confront witnesses with one another on their own initiative or at the request of a participant in the proceedings.
- (7) Witnesses who have been heard shall stay in the courtroom until the end of judicial examination and shall not leave without the permission of the judge.
- (8) If a witness fails to appear at the hearing of the matter, the county judge may disclose the testimony given by the witness in the out-of-court proceedings.  
[RT I 2005, 39, 308 – entry into force 01.01.2006]

### **§ 100. Examination of written evidence**

Written evidence shall be disclosed and submitted to the parties to court proceedings who participate in the hearing of the matter and, if necessary, to experts and witnesses.

### **§ 101. Inspection of physical evidence and scene of misdemeanour**

- (1) Physical evidence may be inspected at any stage of judicial examination on the initiative of the judge or at the request of the parties to court proceedings. The parties to court proceedings may submit petitions to the court and the person subject to proceedings may give statements in connection with the inspection of physical evidence.
- (2) A judge may conduct an on-site inspection of the scene of a misdemeanour and of the related physical evidence which cannot be brought to the court. The judge shall conduct the inspection in the presence of the parties to court proceedings and, if necessary, of a witness or expert.
- (3) The course and the results of an inspection shall be recorded in the minutes of the court session.

### **§ 102. Expert assessments in the hearing of misdemeanour matters**

- (1) A judge may order an expert assessment at the request of a party to court proceedings or at their own initiative.
- (2) An expert participating in the hearing of the misdemeanour matter may examine the evidence necessary for the conduct of an expert assessment and, with the permission of the body conducting the proceedings, question the parties to court proceedings and the witnesses with regard to the circumstances relevant to the conduct of the expert assessment.



### **§ 103. Completion of judicial examination**

(1) After examination of all the evidence relating to a misdemeanour matter, the judge shall ask the parties to court proceedings whether they request the submission of any further items for judicial examination.

(2) The court shall, by order, resolve any requests that are submitted.

(3) After the performance of necessary additional procedural acts, the judge shall declare the judicial examination completed.

## **Division 5 Summations**

### **§ 104. Rules for summations**

(1) In summations, the parties to court proceedings shall speak in the order determined by the court. The person subject to proceedings shall be the last to speak.

(2) The court shall not limit the duration of the summations but may stop a participant in the summations if he or she digresses from the facts established in judicial examination.

(3) The county judge shall announce the time of pronouncement of the decision after the summations.  
[RT I 2005, 39, 308 – entry into force 01.01.2006]

## **Division 6 Minutes of court session**

### **§ 105. Taking minutes of court sessions**

(1) Minutes shall be taken of a court session if a witness or expert is interrogated in the session or if so requested by a party to court proceedings. If minutes are not taken of a court session, the requests of the parties to court proceedings shall be included in the court judgment.

(2) The minutes shall set out:

- 1) the date and place of the session, and the time of the beginning and end of the session;
- 2) the name and composition of the court;
- 3) the names of the parties to court proceedings, the clerk of the court session and of the interpreters or translators and experts;
- 4) the title of the misdemeanour matter being heard;
- 5) explanation of the rights and obligations of the parties to court proceedings and other persons to such parties and persons;
- 6) the names of the court activities in chronological order, and the conditions, course and results of the acts;
- 7) the petitions and requests and the results of adjudication thereof;
- 8) the titles of the orders made in the court session;
- 9) the requests submitted by the parties in the summations;
- 10) the making of a court judgment or order in chambers;
- 11) the time of pronouncement of a court judgment or order, and explanation of the procedure for appeal;
- 12) the date when the decision becomes available in the court for examination by the parties to court proceedings;
- 13) waiver of the right of appeal if notice is given of the waiver upon pronouncement of the court judgment.

(3) The judge and the clerk of a court session shall sign the minutes within three days after the court session. Amendments made to the minutes shall be certified by the signature of the judge and the clerk of the court session.

### **§ 106. Comments concerning minutes of court session**

(1) The parties to court proceedings have the right to submit their comments concerning the incorrectness or inaccuracy of the minutes of a court session within three days after the signing of the minutes. The comments shall be considered by the judge who, in the case of agreement with the comments, shall make corrections to the minutes of the court session and the corrections shall be certified by the signatures of the judge and the clerk of the court session.

(2) If a judge does not agree with the comments submitted, he or she shall make an order on the incorrectness of the comments. The party to court proceedings has the right to repeat such comments in an appeal filed against the court decision.

## **Division 7 Decisions**

### **§ 107. Decisions of county courts**

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

(1) A county court makes:

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

1) judgments on imposition of a fine or detention, as a principal or supplementary punishment withdrawal of the right to drive a vehicle or as a supplementary punishment deprivation of the right to access state secrets and classified information of foreign states or the right to process state secrets and classified information of foreign states or on prohibition to keep animals;

[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

2) court judgments on termination of misdemeanour proceedings on the bases provided for in clause 29 (1) 1) and § 30 of this Code.

(2) In the cases provided for in clauses 29 (1) 2)-7) of this Code, a court shall make an order on termination of the misdemeanour proceedings. If the court makes a judgment or order on the termination of misdemeanour proceedings concerning a minor who at the time of the commission of the unlawful act was not capable of guilt on the grounds of their age or was fourteen to eighteen years of age, the provisions of subsections 29 (2) or 30 (2) of this Code respectively shall be observed.

(3) The court may add to a judgment or order, whereby a participant in the proceedings is ordered to pay an amount of money to the Republic of Estonia that arises from a claim which has not arisen from participation of the state or administrative body of the state in the proceedings as a participant in the proceedings, the data required for payment of the claim in a separate document.

[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(4) A list of the data required for the fulfilment of the claim specified in subsection (3) of this section and the technical requirements for formalising these shall be established by a regulation of the minister responsible for the area.

[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

### **§ 108. Issues to be resolved when entering judgment**

The following shall be ascertained in order to make a court judgment:

- 1) whether an act with the elements of a misdemeanour provided by law has been committed;
- 2) the legal assessment of the misdemeanour: the title, section, subsection and clause of the Act;
- 3) whether the misdemeanour was committed by the person subject to proceedings;
- 4) the unlawfulness and wrongfulness of the act;
- 5) whether mitigating or aggravating circumstances exist;
- 6) the type and category or term of the punishment;
- 7) how to proceed with regard to physical evidence and other seized objects;
- 8) whether to apply confiscation;
- 9) whether to impose a punishment in accordance with subsection 63 (1) or (3) of the Penal Code;
- 10) whether to terminate misdemeanour proceedings and to impose sanctions applicable on minors provided for in § 87 of the Penal Code;

[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

11) under the Compensation for Damage Caused in Offence Proceedings Act, how to decide the request to compensate for damage caused in offence proceedings.

[RT I, 20.11.2014, 1 – entry into force 01.05.2015]

### **§ 109. Introduction of court judgment**

The introduction of a court judgment shall set out:

- 1) that the judgment is made on behalf of the Republic of Estonia;
- 2) the place and time of making the judgment;
- 3) the name of the court making the judgment, the given name and surname of the judge and of the clerk of the court session, and the given name and surname of the official of the body which conducted the out-of-court proceedings, the counsel, interpreters or translators who participated in the session;
- 4) the given name, surname and personal identification code of a natural person subject to proceedings or, in the case of an alien or a person without a personal identification code, their place and date of birth and nationality, address of the residence and place of employment;
- 5) the name and registry code of a legal person subject to proceedings or, in the case of a foreign legal person, the numerical or letter combination equal to a registry code, and the address of the seat of the person;

- 6) the title, section, subsection or clause of the Act which prescribes the misdemeanour heard by the court.

### **§ 110. Main part of court judgment**

The main part of a court judgment shall set out:

- 1) the time and place of commission of the misdemeanour, the facts established in the session, and the supporting evidence;
- 2) the facts which were not established during the session, the evidence which is deemed to be unreliable, and the reason why the court finds it unreliable;
- 3) the facts which were declared to be a matter of common knowledge in the session and were used in making the judgment;
- 4) the unlawfulness and wrongfulness of the act;
- 5) the mitigating and aggravating circumstances;
- 6) the reasons for amending the legal assessment of the misdemeanour during the session and for imposing a punishment lesser than the minimum punishment provided by law;
- 7) the provisions of this Code which were the basis for making the court judgment.

### **§ 111. Final part of court judgment**

The final part of a court judgment shall set out:

- 1) the given name and surname of the natural person subject to proceedings or the name of the legal person subject to proceedings;
- 2) the misdemeanour or misdemeanours of which the person subject to proceedings person is convicted, and the title, section, subsection and clause of the Act on which the conviction is based;
- 3) the amount of the fine imposed on the person subject to proceedings or, in the case of application of subsection 63 (1) of the Penal Code, the amount of the fine in accordance with the provision of law which prescribes the most onerous punishment or, in the case of application of subsection 63 (3) of the Penal Code, the amounts of the fines for each separate misdemeanour;
- 4) the term of the detention imposed on the person subject to proceedings and the time of commencement of the service of the detention;
- 4<sup>1</sup>) the term of deprivation of the person subject to proceedings of the right to drive a vehicle imposed as a principal or supplementary punishment, or of the right to access state secrets and classified information of foreign states or the right to process state secrets and classified information of foreign states imposed as a supplementary punishment, or of prohibition to keep animals;  
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]
- 5) payment of the fine in instalments in accordance with the provisions of subsections 66 (2) and (3) of the Penal Code, or service of the detention in part in accordance with the provisions of subsections 66 (1) and (3) of the Penal Code;
- 6) the ruling concerning confiscation;
- 7) how to proceed with regard to physical evidence and other seized objects;
- 8) the ruling concerning the procedure expenses;
- 8<sup>1</sup>) a decision on a request to compensate for damage caused in offence proceedings in accordance with the Compensation for Damage Caused in Offence Proceedings Act;  
[RT I, 20.11.2014, 1 – entry into force 01.05.2015]
- 9) the procedure and term for appeal;
- 10) information stating that the fine must be paid to a bank account within the term for appeal against the judgment, as of the date when the court judgment becomes available in court for examination by the parties to court proceedings, and the name and code of the bank and the name of the holder and the number of the bank account to which the fine is to be paid;  
[RT I 2003, 26, 156 – entry into force 21.03.2003]
- 11) information stating that the court judgment shall be executed if the person subject to proceedings fails to pay the fine in full or the person or the counsel thereof does not file an appeal against the judgment within the term for the appeal, as of the date when the court judgment becomes available for examination by the parties to court proceedings in the court.  
[RT I 2003, 26, 156 – entry into force 21.03.2003]

### **§ 112. Order on termination of misdemeanour proceedings**

(1) In the cases provided for in subsection 107 (2) of this Code, a county judge shall make an order on termination of misdemeanour proceedings in accordance with the provisions of subsections 48 (2) to (4) of this Code. The order shall state the decision on a request to compensate for damage caused in offence proceedings in accordance with the Compensation for Damage Caused in Offence Proceedings Act.  
[RT I, 20.11.2014, 1 – entry into force 01.05.2015]

(2) Participants in the proceedings, and persons not participating in the proceedings whose interests are concerned by an order provided for in subsection (1) of this section may receive a copy of the order.

### **§ 113. Pronouncement of court judgment and final part thereof, and explanation of right of appeal**

(1) A judge shall pronounce a court judgment at the time announced in accordance with subsection 104 (3) of this Code.

(2) A court may prepare the final part of a court judgment as a separate procedural document and explain the main grounds for the judgment orally upon pronouncement of the judgment.

(3) If a person subject to proceedings is not proficient in the language of the proceedings, the final part of the court judgment and the explanations of the judge shall be translated for them.

(4) After pronouncement of a court judgment or the final part thereof, the judge shall:

1) in the case only the final part of the court judgment is pronounced, announce the date on which the court judgment becomes available for examination by the parties to court proceedings in court and the parties may receive copies of the court judgment, whereas the date shall be recorded in the minutes of the court session or, if minutes are not taken, in the final part of the court judgment;

2) explain the procedure for appeal against the court judgment in accordance with subsection 137 (3) of this Code and the right of the parties to court proceedings to waive the right of appeal immediately. The waiver shall be recorded in the minutes of the session or, if minutes are not taken, in the final part of the court judgment and certified by the signature of the person waiving the right of appeal;

3) explain that if a party to a court proceedings intends to exercise the right of appeal, the party must notify the county court thereof in writing within seven days as of the pronouncement of the final part of the court judgment, except in the case prescribed in subsection 137 (1<sup>1</sup>) of this Code.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(5) A court shall, in accordance with the provisions of § 41 of this Code, send a copy of the decision to a party of the court proceedings who did not participate in the pronouncement of the decision.

(6) If all parties to court proceedings waive their right of appeal in accordance with the procedure prescribed in clause (4) 2) of this section or if none of the parties to court proceedings gives notice, by the due date prescribed in clause (4) 3) of this section, of their wish to exercise the right of appeal, the court judgment shall contain only the information specified in §§ 109 and 111 of this Code.

(7) A court judgment and the final part thereof shall be included in the misdemeanour file.

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

## **Chapter 12 PROCEDURE OF APPEAL IN COUNTY COURTS**

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

### **Division 1 Appeal to County Court against Decisions of Bodies Conducting Out-of-court Proceedings**

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

### **§ 114. Right of appeal to county court and term of appeal**

(1) A participant in the proceedings has the right to file an appeal with a county court against the following decisions of the body which conducted the out-of-court proceedings:

1) a decision made by way of expedited procedure in accordance with subsection 55 (2) of this Code;

2) a decision made by way of the general procedure in accordance with subsection 73 (1) of this Code.

[RT III 2008, 24, 160 – entry into force 16.05.2008, judgment of Supreme Court *en banc* No. 3-1-1-88-07 dated 16.05.2008 declares to be in conflict with the Constitution and repeals clause 114 (1) 2) of the Code of Misdemeanour Procedure in the part where it does not allow a person not participating in proceedings to file an appeal with a county court against a decision made in accordance with subsection 73 (1) of the Code of Misdemeanour Procedure in general procedure by which the means of transport belonging to the person not participating in the proceedings is confiscated.]

(2) A decision on cautioning made in accordance with § 54 or a notice of fine issued in accordance with 54<sup>2</sup> of this Code is not subject to appeal.

[RT I 2008, 54, 304 – entry into force 27.12.2008]

(3) Appeals against a decision of a body to conduct out-of-court proceedings which is made by way of expedited procedure provided for in clause (1) 1) of this section shall be filed with a county court within 15 days as of the receipt of the decision by the person subject to proceedings.

(4) Appeals against a decision of a body to conduct out-of-court proceedings which is made by way of the general procedure provided for in clause (1) 2) of this section shall be filed with a county court within 15 days as of the date when the decision became available for examination by the participants in the proceedings at the body.

(5) During a term of appeal, the misdemeanour file is kept at the body which conducted the out-of-court proceedings and shall not be disclosed. The participants in the proceedings may examine the misdemeanour file and make excerpts therefrom or request copies to be made of the contents of the file for a charge.

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

#### **§ 115. Requirements for appeal against decision of body to conduct out-of-court proceedings**

(1) An appeal against a decision of a body to conduct out-of-court proceedings shall be filed in writing and shall set out:

- 1) the name of the court with which the appeal is filed;
- 2) if the appellant is a natural person, their given name, surname, address of the residence, telephone number and e-mail address;
- 3) if the appellant is a legal person, the name and registry code of the person or, in the case of a foreign legal person, the numerical or letter combination equal to a registry code, and the address of the seat, telephone number and e-mail address of the person;
- 4) if the appellant has a counsel, the given name and surname of the counsel and the address, telephone number and e-mail address of the seat of the counsel;
- 5) the name and address of the body to conduct out-of-court proceedings which made the decision;
- 6) the number and date of the decision of the body to conduct out-of-court proceedings and the given name and surname of the natural person subject to proceedings or the name of the legal person subject to proceedings with regard to whom the contested decision was made;
- 7) which part of the decision is contested;
- 8) the content of and reasons for the requests of the appellant;
- 9) the persons whose appearance at a session is requested, and evidence to be examined in court at the request of the appellant.

(2) An appeal shall be filed together with a number of copies corresponding to the number of persons participating in the proceedings.

(3) An appellant shall set out the following in the appeal:

- 1) whether the appellant wishes to participate in the court session;
- 2) if he or she does not have a counsel, whether he or she requests the participation of a counsel in the proceedings.

(4) An appeal shall be signed by the individual filing that appeal. If an appeal is signed by a counsel, their authorisation document shall be annexed to the appeal if such document is not included in the misdemeanour file.

(5) The following shall be annexed to an appeal:

- 1) a copy of the decision of a body to conduct out-of-court proceedings against which the appeal is filed;
- 2) evidence;
- 3) the names and addresses of the witnesses whose hearing is requested;
- 4) other documents considered necessary by the appellant.

#### **§ 116. Requirement to submit misdemeanour file and sending file to county court**

(1) After receiving an appeal against a decision which a body to conduct out-of-court proceedings has made by way of expedited procedure in accordance with subsection 55 (2) of this Code or by way of the general procedure in accordance with subsection 73 (1) of this Code, the county court shall immediately request the body to submit the misdemeanour file to the court.

(2) A body to conduct out-of-court proceedings shall send a misdemeanour file requested by a county court to the court immediately.

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

## **Division 2 Pre-trial Procedure**

#### **§ 117. Acts in pre-trial proceedings**

(1) In pre-trial proceedings, a county judge shall:

- 1) verify the jurisdiction over the matter and compliance with the requirements of §§ 114 and 115 of this Code;
- 2) refuse to proceed with the appeal or dismiss the same on the bases provided for in § 118 of this Code;
- 3) terminate misdemeanour proceedings on the basis provided for in § 119 of this Code, or
- 4) adjudicate the matter by written procedure in accordance with § 120 of this Code.

(2) If the appeal is not decided in accordance with clauses (1) 2)-4) of this section, the judge shall ascertain the persons to be summoned to the court session, the limits of judicial hearing arising from the appeal, and the evidence to be examined, resolve the requests submitted in the appeal, send copies of the appeal to the parties to court proceedings and, following § 121 of this Code, direct the matter to hearing.

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

#### **§ 118. Refusal to proceed with appeal and dismissal of appeal in pre-trial proceedings**

(1) If an appeal is not in compliance with the requirements of § 115 of this Code, the county judge shall make an order refusing to proceed with the appeal and shall grant a term for the appellant for elimination of the deficiencies.

(2) A county judge shall make an order dismissing the appeal and shall send a copy of the order to the appellant together with the appeal if:

- 1) the appeal is filed after expiry of the term provided for in subsection 114 (3) or (4) of this Code and a request for restoration of the term has not been submitted or the county court has refused to restore the term;
- 2) the appeal is filed by a person who in accordance with subsection 114 (1) of this Code does not have the right to file an appeal;
- 3) the appellant has failed to eliminate the deficiencies contained in the appeal within the term granted in accordance with the procedure prescribed in subsection (1) of this section;
- 4) the appeal is discontinued before the beginning of the court session.

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

#### **§ 119. Termination of misdemeanour proceedings on the grounds of circumstances precluding such proceedings**

(1) A county judge may annul a decision of a body to conduct out-of-court proceedings by an order without conducting a court session or summoning the participants in the proceedings and terminate misdemeanour proceedings solely on the basis of the appeal if he or she finds that in the out-of-court procedure the proceedings were not terminated on the grounds of circumstances precluding misdemeanour proceedings in accordance with § 29 of this Code.

(2) A copy of an order specified in subsection (1) of this section shall be sent to the participants in the proceedings. Persons not participating in the proceedings whose interests are concerned by the order may receive a copy thereof.

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

#### **§ 120. Adjudication of matter by written procedure**

(1) A county judge may adjudicate an appeal by written procedure without holding a court session and make the decision in accordance with the provisions of § 132 of this Code if the court has sent a copy of the appeal to the other party to court proceedings and has ascertained the position of the other party with regard to the appeal, and the parties to court proceedings have declared in the appeal or a response to the appeal that they do not wish to participate in the court session.

(2) If, during written procedure, a county court finds that the matter should be adjudicated in a court session, the court shall order a court session.

(3) If a party to court proceedings submits new evidence to a county court together with an appeal and the court accepts the evidence, the matter may be adjudicated by written procedure only if the parties to court proceedings do not request a court session to be held for examining the new evidence.

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

#### **§ 121. Directing the appeal to hearing by county court**

(1) The order of the county court directing the appeal to judicial hearing shall set out:

- 1) the place and time of the court session;
- 2) the given names and surnames of the natural persons or the names of the legal persons to be summoned to the court session;
- 3) whether the matter is to be heard in a public court session or in camera;
- 4) appointment of a counsel in accordance with § 22 of this Code;
- 5) decisions on requests.

(2) An appeal shall not be filed against an order specified in subsection (1) of this section concerning denial of a request but the request may be submitted again in at judicial hearing.

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

## **§ 122. Summoning to court session**

The parties to court proceedings shall be summoned to a session by a summons in accordance with the provisions of §§ 40 and 41 of this Code.

# **Division 3 Hearing of the Appeal in County Court**

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

## **§ 123. Procedure for hearing appeals in court**

(1) County courts shall hear appeals in accordance with the provisions of this Code which govern the hearing of misdemeanour matters in court, taking into account the specifications provided for in Divisions 3 and 4.

(2) The county court shall hear the misdemeanour matter in its entirety, regardless of the limits of the appeal filed, and shall verify the factual and legal circumstances on the basis of which the body which conducted the out-of-court proceedings made its decision.

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

## **§ 124. Opening of court session**

(1) The court shall announce the matter to be heard and the name of the person who filed the appeal.

(2) The court shall commence judicial hearing of the appeal by performing the acts provided for in § 95 of this Code.

## **§ 125. Adjournment of hearing the appeal**

(1) At the reasoned request of a party to court proceedings, the county judge may adjourn the hearing of the appeal once for a period of up to one month in accordance with § 42 of this Code. The county judge may adjourn the hearing of the appeal for the same term if the need to require submission of additional evidence emerges when hearing the appeal.

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

(2) The court may adjourn the hearing of the appeal at the request of a participant in the proceedings or on its own initiative until the entry into force of a judgment entered by the Supreme Court on adjudication of a constitutional review matter pending before that Court if the judgment may have an effect on the validity of the legislative or regulatory act of general application which is to be applied in the misdemeanour matter concerned.

(3) [Repealed – RT I, 05.12.2017, 1 – entry into force 15.12.2017]

## **§ 126. Participation of appellant and of official of body to conduct out-of-court proceedings in judicial hearing of the appeal**

(1) The appellant and an official of the body to conduct out-of-court proceedings are required to participate in judicial hearing of the appeal if the court considers their participation necessary.

(2) If the appellant fails to appear at the hearing of the appeal although they were notified of the obligation to participate in judicial hearing of the appeal in the summons sent to them and the hearing of the appeal is not adjourned in accordance with § 125 of this Code, the court shall make an order dismissing the appeal.

[RT I, 05.12.2017, 1 – entry into force 15.12.2017]

(2<sup>1</sup>) If, in the case specified in subsection (2) of this section, the counsel of the appellant is in attendance at the hearing of the matter, the court shall give an opportunity to the counsel to apply for hearing the the appeal without the participation of the appellant. In the case of denial of the application, the hearing of the appeal shall be adjourned once according to subsection 125 (1) of this Code.

[RT I, 05.12.2017, 1 – entry into force 15.12.2017]

(3) The failure of an official of the body to conduct out-of-court proceedings to appear shall not hinder the hearing of the appeal.

## **§ 127. Discontinuance of appeal**

(1) The appellant has the right to discontinue the appeal in whole or in part until the end of judicial hearing.

(2) A petition for discontinuance of an appeal shall be submitted to a county court in writing or orally in a court hearing. A written petition shall be included in the misdemeanour file and an oral petition shall be recorded in the minutes of the court session and certified by the signature of the appellant on the minutes.

(3) A person subject to proceedings has the right to discontinue an appeal filed by the counsel of the person if the participation of the counsel in the misdemeanour proceedings is not mandatory.

(4) If a county court establishes incorrect application of substantive law or a material violation of the law on misdemeanour procedure whereby the situation of the person subject to proceedings has been aggravated, the court shall reject the discontinuance of the appeal.

(5) If the appeal is discontinued before the beginning of judicial hearing of the appeal, the appeal shall be dismissed by making the corresponding order. If the appeal is discontinued during judicial hearing, the proceedings shall be terminated by an order.

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

#### **§ 128. Rules for judicial examination**

(1) The court shall present the appealed part of the decision of the body to conduct out-of-court proceedings, the contents of and the reasoning of the requests submitted in the appeal, and the contents of any other documents submitted to the court together with the appeal.

(2) A court shall explain the right to discontinue the appeal in accordance with § 127 of this Code and the consequences of the discontinuance to the appellant and ask whether he or she will proceed with the appeal or discontinue the appeal in whole or in part.

(3) The court shall examine the evidence annexed to the appeal in accordance with §§ 97-103 of this Code.

#### **§ 129. Termination of judicial examination of the appeal**

(1) After examining all of the evidence in the matter, the county judge shall ask the persons participating in judicial hearing whether they have any requests.

(2) The court shall resolve the requests by an order.

(3) After resolving the requests, the county judge shall conclude judicial examination of the matter and open the summations.

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

#### **§ 130. Summations in judicial hearing of the appeal**

(1) In summations, the appellant shall be heard first, followed by the other participants in the proceedings in the order determined by the court.

(2) The court shall not limit the duration of the summations but may stop a participant in the summations if he or she digresses from the facts established in judicial examination.

(3) The county judge shall announce the time of pronouncement of the decision after the summations.

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

#### **§ 130<sup>1</sup>. Audio recording of court session**

(1) Court sessions shall be audio recorded.

(2) A court session may be left unrecorded if:

(1) it becomes evident before a session or in the course of a session that recording is technically impossible and if the court is convinced that holding of the court session without recording it is appropriate and in line with the interests of the parties to court proceedings;

2) the session is held outside the court premises;

3) the session is held for pronouncement of the decision;

4) in the case of sessions of the Supreme Court.

[RT I, 31.05.2018, 2 – entry into force 01.01.2019]

#### **§ 131. Minutes of court session**

Judicial hearing of the appeal shall be recorded in the minutes of the court session taken in accordance with the provisions of subsections 105 (2) and (3) of this Code.

## **Division 4**



# Making of Court Judgment

## § 132. Decisions of county courts in adjudication of appeals

A county court may, by a court judgment:

- 1) refuse to amend a decision of a body to conduct out-of-court proceedings, and deny the appeal;
- 2) annul a decision of a body to conduct out-of-court proceedings in full or in part and make a new decision if this does not aggravate the situation of the person subject to proceedings;
- 3) annul a decision of a body to conduct out-of-court proceedings and terminate the misdemeanour proceedings on the bases provided for in § 29 or 30 of this Code.

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

## § 133. Issues to be decided when adjudicating appeals

In order to adjudicate an appeal, a court shall ascertain:

- 1) whether the misdemeanour matter contains circumstances which would preclude misdemeanour procedure in accordance with § 29 of this Code;
- 2) whether the act of which the person subject to proceedings is accused occurred;
- 3) whether the act was committed by the person subject to proceedings;
- 4) whether the act is a misdemeanour and the legal assessment of the act is correct;
- 5) whether the punishment for the misdemeanour was imposed by a competent body to conduct out-of-court proceedings;
- 6) whether the body which conducted the out-of-court proceedings in the matter acted in compliance with the law on misdemeanour procedure;
- 7) whether the punishment was imposed on the person subject to proceedings in compliance with the bases for the imposition of the punishment;
- 8) whether the misdemeanour proceedings are subject to termination on the bases provided for in § 30 of this Code;
- 9) whether to terminate misdemeanour proceedings and to impose sanctions applicable on minors provided for in § 87 of the Penal Code;

[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

- 10) under the Compensation for Damage Caused in Offence Proceedings Act, how to decide the request to compensate for damage caused in offence proceedings.

[RT I, 20.11.2014, 1 – entry into force 01.05.2015]

## § 134. Judgment of county court

(1) A county court shall make a court judgment in accordance with § 107 and §§ 109-111 of this Code, taking into account the specifications prescribed in subsections (2) and (3) of this section.

[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(2) The introduction of a judgment made by a county court shall set out:

- 1) the appealed decision;
- 2) the contents of the decision made in the out-of-court proceedings, to the extent necessary for the making of a court judgment, and the requests of the appellant.

(3) The final part of a judgment made by a county court shall set out the decision provided for in clauses 132 1) to 3) of this Code.

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

## § 135. Pronouncement of court judgment and final part thereof and explanation of right of appeal in cassation

(1) A judge shall pronounce a court judgment at the time announced in accordance with subsection 130 (3) of this Code.

(2) A court may prepare the final part of a court judgment as a separate procedural document and explain the main grounds for the judgment orally upon pronouncement of the judgment.

(3) If a person subject to proceedings is not proficient in the language of the proceedings, the final part of the court judgment and the explanations of the judge shall be translated for them.

(4) After pronouncement of a court judgment or the final part thereof, the judge shall:

- 1) in the case only the final part of the court judgment is pronounced, announce the date on which the court judgment becomes available for examination by the parties to court proceedings in court and on which the parties may receive copies of the court judgment, whereas the date shall be recorded in the minutes of the court session or, if minutes are not taken, in the final part of the court judgment;

2) explain the procedure for appeal against the court judgment in accordance with §§ 155 and 156 of this Code and the right of the parties to court proceedings to waive the right of appeal in cassation immediately. The waiver shall be recorded in the minutes of the session and certified by the signature of the person waiving the right;

3) if a party to court proceedings intends to exercise the right of appeal in cassation, the party must notify the county court thereof in writing within seven days as of the pronouncement of the final part of the court judgment, except in the case prescribed in subsection 156 (1<sup>1</sup>) of this Code.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(5) A court shall, in accordance with the provisions of § 41 of this Code, send a copy of the decision to a party of court proceedings who did not participate in the pronouncement of the decision.

(6) If all of the participants in the proceedings waive their right of appeal in cassation in accordance with the procedure prescribed in clause (4) 2) of this section or if none of the participants gives notice, by the due date prescribed in clause (4) 3) of this section, of their wish to exercise the right of appeal in cassation, the court judgment shall contain only the information specified in §§ 109 and 111 of this Code.

(7) A court judgment and the final part thereof shall be included in the misdemeanour file.

(8) The judgments of the county courts shall not be contested by way of appeal procedure.

(9) An appeal in cassation may be filed against a judgment of a county court in accordance with Division 1 of Chapter 14 of this Code.

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

## **Chapter 13**

### **APPEAL PROCEDURE**

#### **Division 1**

#### **Appeal to Circuit Court**

##### **§ 136. Right of appeal**

(1) The parties to court proceedings have the right to file an appeal against the judgment of the county court made when hearing the misdemeanour matter in accordance with subsection 107 (1) of this Code.

(2) No appeal may be filed against the judgment made by the county court when hearing an appeal in accordance with § 132 of this Code.

(3) The party to court proceedings who files the appeal is the appellant for the purposes of appeal procedure.

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

##### **§ 137. Term for appeal**

(1) If a party to court proceedings intends to exercise the right of appeal, the party must notify the county court thereof in writing within seven days as of the pronouncement of the final part of the court judgment, except in the case prescribed in subsection (1<sup>1</sup>) of this section.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(1<sup>1</sup>) If a party to court proceedings gives notification of the intention to exercise the right of appeal during the term specified in subsection (1) of this section and does not waive it, the remaining parties to court proceedings have the right of appeal regardless of whether they themselves have given notification of the intention to exercise the right of appeal.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) A county court shall give written notification to a party to court proceedings of the intention of the other party to exercise the right of appeal or waive the exercise of the right of appeal after submission of the notification.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(3) An appeal shall be filed with a circuit court within 15 days as of the date when the judgment became available for examination by the parties to court proceedings in the court in accordance with clause 113 (4) 1) of this Code.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(4) If, when adjudicating the misdemeanour matter, the court declared a legislative or regulatory act of general application, which was to be applied in accordance with the conclusion of a court judgment, to be in conflict with the Constitution and refused to apply that act, appeals shall be filed within ten days as of the

pronouncement of the decision made by the Supreme Court by way of constitutional review concerning the act which the court refused to apply.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(5) At the request of an appellant, the court may restore a term for appeal by an order if the court finds that the term was allowed to expire for good reason. Restoration may be applied for within 14 days as of the day when the impediment ceased to exist.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(6) The restoration of the term for appeal shall be resolved by an order of the circuit court which is not subject to appeal.

(7) An appellant shall be notified of an order on the restoration of or refusal to restore a term for appeal.

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

### **§ 138. Requirement to submit misdemeanour file and examination of file**

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(1) Immediately after receipt of an appeal, a circuit court shall require the county court which conducted proceedings in the matter to submit the misdemeanour file. After receipt of a request to submit a misdemeanour file, the county court shall immediately send it to the circuit court.

(2) The parties to court proceedings may examine misdemeanour files at the county court until the file is sent to the circuit court, make excerpts therefrom and request copies to be made of the contents of the file for a charge.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

### **§ 139. Appeal**

(1) An appeal shall be filed in writing and shall set out:

- 1) the name of the circuit court with which the appeal is filed;
- 2) if the appellant is a natural person, the given name, surname, address of the residence, telephone number and e-mail address of the person;
- 3) if the appellant is a legal person, the name and registry code of the person and, in the case of a foreign legal person, the numerical or letter combination equal to a registry code, and the address of the seat, telephone number and e-mail address of the person;
- 4) if the appellant has a counsel, the given name and surname of the counsel and the address of the seat, telephone number and e-mail address of the counsel;
- 5) the name of the county court whose judgment is appealed, and the number and date of the judgment;
- 6) the given name and surname of the natural person subject to proceedings or the name of the legal person subject to proceedings with regard to whom the judgment is contested;
- 7) which part of the judgment is contested;
- 8) the content of and reasons for the requests of the appellant;
- 9) the persons whose appearance at a session is requested, and the evidence to be verified at the request of the appellant.

(2) An appeal may be based on:

- 1) the evidence examined by the county court;
- 2) the evidence concerning which the request for examination was denied by the county court;
- 3) the evidence not submitted to the county court if the failure to submit the evidence earlier is justified. If the appellant requests hearing of witnesses who were already heard in the county court, the appellant shall justify the relevance of their repeated hearing and pay the costs relating to the summoning of the witnesses.

(3) The appellant shall set out in the appeal:

- 1) whether the appellant wishes to participate in the court session;
- 2) if he or she does not have a counsel, whether he or she requests the participation of a counsel in the proceedings.

(4) An appeal shall be filed together with together with a number of copies corresponding to the number of parties to court proceedings.

(5) An appeal shall be signed by the appellant. If an appeal is signed by a counsel, their authorisation document shall be annexed to the appeal if such document is not in the misdemeanour file.

(6) The following shall be annexed to an appeal:

- 1) evidence in proof of the appeal;
- 2) the names and addresses of the witnesses whose hearing is requested;
- 3) other documents considered necessary by the appellant.

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

#### **§ 140. Notification of appeal**

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(1) A circuit court shall send copies of an appeal to the parties to court proceedings within three days as of the receipt of the appeal.

(2) The parties to court proceedings have the right to:

1) examine the misdemeanour file in the circuit court and make excerpts from the written evidence contained in the file and request the court office to make copies of such evidence for a charge;

2) submit a written objection to the appeal to the circuit court until the commencement of the court session.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

## **Division 2 Pre-trial Procedure in Circuit Court**

#### **§ 141. Acts of pre-trial procedure in circuit court**

(1) Under pre-trial procedure, the judge shall:

1) verify the right of appeal, the term for appeal and compliance of the appeal with the requirements of §§ 136, 137 and 139 of this Code;

2) refuse to proceed with the appeal on the basis of the provisions of subsection 142 (1) of this Code;

3) dismiss the appeal on the basis of the provisions of subsection 142 (2) of this Code;

4) return the misdemeanour matter to the county court to be heard anew on the basis of the provisions of § 143 of this Code;

5) terminate the misdemeanour proceedings on the basis of the provisions of subsection 144 (1) of this Code;

6) adjudicate the matter by written procedure in accordance with § 145 of this Code.

(2) If an appeal is not resolved in accordance with clauses (1) 2)-6) of this section, the judge shall ascertain the persons to be summoned to the court session, the limits of the judicial hearing arising from the appeal, and the evidence to be examined, resolve the requests submitted in the appeal, summon the parties to court proceedings to a court session in accordance with §§ 40 and 41 of this Code, and direct the matter to hearing in accordance with § 121 of this Code.

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

#### **§ 142. Refusal to proceed with appeal and dismissal of appeal**

(1) If an appeal is not in compliance with the requirements of § 139 of this Code, the circuit court judge shall make an order refusing to proceed with the appeal and shall grant a term for the appellant for elimination of the deficiencies.

(2) A circuit court judge shall make an order dismissing the appeal and shall send a copy of the order to the appellant together with the appeal if:

1) the appeal is filed after expiry of the term provided for in subsection 137 (3) of this Code and a request for restoration of the term has not been submitted or the judge has refused to restore the term;

2) the appeal is filed by a person who in accordance with subsection 136 (1) of this Code does not have the right to file an appeal;

3) the appeal is not filed against a court judgment prescribed in subsection 136 (1) of this Code;

3<sup>1</sup>) the appellant fails to notify the county court of the intention to exercise the right of appeal in writing within the term prescribed in clause 113 (4) 3) of this Code, unless the notification was not mandatory;

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

4) the appellant has failed to eliminate the deficiencies contained in the appeal within the term granted in accordance with the procedure prescribed in subsection (1) of this section;

5) the appeal is discontinued before the beginning of the court hearing.

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

#### **§ 143. Annulment of court judgment in pre-trial proceedings in the event that a material violation of the law on misdemeanour procedure is established and returning the misdemeanour matter to county court to be heard anew**

(1) If the circuit court judge establishes that a material violation of the law on misdemeanour procedure has occurred, the judge may annul the judgment of the county court by an order solely on the basis of the appeal without conducting a court session and without summoning the parties to court proceedings, and return the misdemeanour matter to the county court to be heard anew by another court panel.

(2) A copy of an order specified in subsection (1) of this section shall, within three days after preparation of the order, be served on or delivered against signature to the parties to court proceedings whose interests are concerned by the order.

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

**§ 144. Termination of misdemeanour proceedings under circumstances precluding misdemeanour procedure**

(1) A circuit judge may annul a judgment of a county court by an order without conducting a court session or summoning the participants in the proceedings and terminate the misdemeanour proceedings solely on the basis of an appeal if he or she finds that the proceedings were not terminated under circumstances precluding misdemeanour proceedings in accordance with § 29 of this Code.

(2) A copy of an order specified in subsection (1) of this section is sent to the participants in the proceedings, whereas the persons not participating in the proceedings whose interests are concerned by the order may also receive a copy thereof.

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

**§ 145. Adjudication of matter by written procedure**

(1) A circuit court judge may adjudicate an appeal by written procedure without holding a court session and make the decision in accordance with the provisions of § 153 of this Code if the court has sent a copy of the appeal to the other party to court proceedings and ascertained the position of the other party concerning the appeal, and the parties to court proceedings have declared in the appeal or a response to the appeal that they do not wish to participate in the court session.

(2) The position of the other party to court proceedings need not be ascertained following the rules provided in subsection (1) of this section if the circuit court makes a decision specified in clause 151 (1) 1) of this Code.

(3) If, during written procedure, a circuit court finds that the matter should be adjudicated in a court session, the court shall order a court session.

(4) If a party to court proceedings submits new evidence to the circuit court together with an appeal and the court accepts the evidence, the matter may be adjudicated by written procedure only if the parties to court proceedings do not request a court session to be held for examining the new evidence.

## **Division 3 Judicial Hearing in Circuit Court**

**§ 146. Procedure and term for judicial hearing**

(1) The circuit court shall conduct judicial hearings of misdemeanour matters in accordance with §§ 97–103 and 124–131 of this Code, taking into account the specifications provided for in this Division.

(2) The circuit court shall hear the misdemeanour matter within the limits of the appeal filed, except if it becomes evident that a material violation of the law on misdemeanour procedure or incorrect application of substantive law has occurred, which has aggravated the situation of the person subject to proceedings.

(3) If it becomes evident that a material violation of the law on misdemeanour procedure or incorrect application of substantive law has occurred, which has aggravated the situation of a person subject to proceedings, the circuit court shall extend the limits of the hearing of the misdemeanour matter to all persons subject to proceedings concerning the same misdemeanour regardless of whether an appeal has been filed with regard to them.

(4) The parties to court proceedings do not have the right to exceed the limits of the appeal in the judicial hearing of the appeal.

**§ 147. Jurisdiction of circuit court**

(1) A circuit court may, by a court judgment:

- 1) refuse to amend the judgment of the county court, and deny the appeal;
- 2) refuse to make substantive amendments to the judgment of the county court, and make corrections thereto;
- 3) amend the main part of the judgment of the county court by excluding facts presented therein;
- 4) annul the judgment of the county court in full or in part and make a new court judgment on the basis of the provisions of § 151 of this Code.

(2) The circuit court may, by an order:

- 1) annul the judgment of the county court on the grounds provided for in § 148 of this Code and return the misdemeanour matter to the county court to be heard anew by another court panel;

2) annul the judgment of the county court in full or in part and terminate misdemeanour proceedings on the basis of the provisions of § 29 or 30 of this Code.  
[RT I 2005, 39, 308 – entry into force 01.01.2006]

#### **§ 148. Grounds for annulment of court judgment in appeal procedure**

A circuit court shall annul the judgment of a county court on the following grounds:

- 1) the partiality or insufficiency of the proceedings;
- 2) incorrect application of substantive law according to § 149 of this Code;
- 3) material violation of the law on misdemeanour procedure according to § 150 of this Code;
- 4) non-conformity of the punishment or other sanction with the gravity of the misdemeanour or the personality of the person subject to proceedings.

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

#### **§ 149. Incorrect application of substantive law**

Substantive law has been applied incorrectly if:

- 1) a provision which should have been applied has not been applied;
- 2) a provision which should not have been applied has been applied.

#### **§ 150. Material violation of law on misdemeanour procedure**

(1) The law on misdemeanour procedure has been materially violated if:

- 1) misdemeanour proceedings have not been terminated under the circumstances provided for in § 29 of this Code;
- 2) a body that has conducted proceedings unlawfully has made the decision in misdemeanour proceedings;
- 3) the decision has been made with regard to a person who has not been notified of the place and time of hearing the matter;
- 4) the counsel appointed to represent the person subject to proceedings in accordance with the rules provided in § 22 of this Code did not participate in the proceedings;
- 5) the body conducting the proceedings has not signed the decision;
- 6) a misdemeanour report has not been prepared in the matter, where preparation of such report is prescribed by this Code;
- 7) the decision of the body conducting the proceedings has not been reasoned although a reasoned decision is prescribed by this Code;
- 8) the conclusions of the final part of the judgment of the body conducting the proceedings are not in conformity with the facts established with regard to the subject of proof;
- 9) the misdemeanour matter has been heard without an interpreter or translator in a language in which the person subject to proceedings is not proficient;
- 10) there are no minutes of the hearing of the misdemeanour matter or of the court session although taking of the minutes is prescribed by this Code, or the minutes have not been signed by the judge or the clerk of the court session.

(2) A court may deem any other violation of the law on misdemeanour procedure to be material if such violation results in an unlawful or unjustified court judgment.

#### **§ 151. Making of new court judgment in circuit court**

(1) A circuit court may, by a court judgment made on the basis of an appeal or, in the case of establishment of incorrect application of substantive law, regardless of the content of the appeal:

- 1) annul the judgment of the county court and terminate misdemeanour proceedings on the basis of the provisions of § 29 or 30 of this Code;
- 2) find the person subject to proceedings not guilty of some of the misdemeanours and impose a lesser punishment, or refuse to amend the punishment;
- 3) convict the person subject to proceedings of a lesser misdemeanour and impose a lesser punishment, or refuse to amend the punishment;
- 4) annul the punishment imposed by the judgment of a county court and impose a lesser punishment on the person subject to proceedings.

(2) If the circuit court establishes incorrect application of a provision of substantive law, the court shall consider the misdemeanour matter also with regard to the other persons subject to proceedings in the same matter regardless of whether they have filed an appeal.

(3) On the basis of an appeal of a body to conduct out-of-court proceedings, a circuit court may:

- 1) convict the person subject to proceedings of a more serious misdemeanour than the misdemeanour of which the person was convicted by the county court and impose a more onerous punishment, or refuse to amend the punishment;
- 2) annul the judgment of the county court concerning termination of the misdemeanour proceedings and make a judgment of conviction;
- 3) annul the punishment imposed by the judgment of the county court and impose a more onerous punishment on the person subject to proceedings.

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

### **§ 152. Returning the misdemeanour matter to the county court to be heard anew**

If material violation of the law on misdemeanour procedure is established in the course of a court hearing and such violation inevitably results in the annulment of the judgment of the county court, the circuit court shall, by an order, annul the judgment of the county court and return the misdemeanour matter to the county court for a new hearing by another court panel.

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

### **§ 153. Judgment of circuit court**

(1) A circuit court shall make a court judgment in accordance with § 107 and §§ 109-111 of this Code, taking into account the specifications prescribed in subsections (2)-(4) of this section.

[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(2) The introduction of a judgment of a circuit court shall set out:

- 1) the appealed court judgment;
- 2) the content of the appealed part of the judgment of the county court, and the requests of the appellant.

(3) The final part of a judgment of a circuit court shall set out the conclusions of the court in accordance with the provisions of §§ 147 and 151 of this Code.

(4) If a circuit court refuses to amend a judgment of a county court in accordance with clause 147 (1) 1) or 2) of this Code:

- 1) the court is not required to repeat in its judgment the facts set out in the main part of the judgment of the county court, but may add the reasoning of the circuit court, if necessary;
- 2) the court may decide to include in its judgment only the introduction, final part and such provisions of the procedural law which were the basis for making the judgment.

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

### **§ 154. Pronouncement of circuit court judgment and final part thereof, and explanation of right of appeal in cassation**

(1) After the summations, the court shall announce the time or day when the court decision will be available for the parties to proceedings at circuit court.

(2) A judgment of a circuit court or the final part thereof shall be pronounced in accordance with the provisions of subsections 135 (2) to (7) of this Code.

[RT I 2003, 83, 557 – entry into force 01.01.2004]

## **Chapter 14 CASSATION PROCEDURE**

### **Division 1 Appeal to Supreme Court**

#### **§ 155. Right of appeal in cassation**

(1) On the basis of the provisions of § 157 of this Code, a party to court proceedings has the right to file an appeal in cassation:

- 1) against a judgment of a county court made on the basis of the provisions of § 132 of this Code;
- 2) if the right of appeal has been exercised with regard to the party;
- 3) if the circuit court has made one of the judgments specified in subsection 147 (1) of this Code.

(2) The counsel, who is an advocate, of the person subject to proceedings, the body which conducted the out-of-court proceedings and its representative, who is an advocate, have the right to file an appeal in cassation.

(3) For the purposes of cassation proceedings, the body which conducted the out-of-court proceedings or the advocate representing the party to court proceedings who files an appeal in cassation is the appellant in cassation.

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

## **§ 156. Term for cassation**

(1) If a party to court proceedings intends to exercise the right of appeal in cassation, the party shall give notification to the county court or the circuit court thereof in writing within seven days as of the pronouncement of the final part of the court judgment, except in the case specified in subsection (1<sup>1</sup>) of this section.  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(1<sup>1</sup>) If a party to court proceedings gives notification of the intention to exercise the right of appeal in cassation during the term specified in subsection (1) of this section and does not waive it, the remaining parties to court proceedings have the right of appeal in cassation regardless of whether they themselves have given notification of the intention to exercise the right of appeal in cassation.  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) A county court or a circuit court shall give written notification to a party to court proceedings of the intention of the other party to exercise the right of appeal in cassation or waive the exercise of the right of appeal in cassation after submission of the notification.  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(3) An appeal in cassation is submitted to the Supreme Court in writing within 30 days as of making the judgment public.  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(4) [Repealed – RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(4<sup>1</sup>) If, when adjudicating a misdemeanour matter, the county court or circuit court declares a legislative or regulatory act of general application which is to be applied in accordance with the final part of a court judgment to be in conflict with the Constitution and refuses to apply that act, the term for submission of appeals in cassation shall be calculated as of the pronouncement of the decision made by the Supreme Court by way of constitutional review concerning the act which the court refused to apply.  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(4<sup>2</sup>) A term for cassation shall suspend upon submission of an application for state legal aid. In such case the term for cassation shall recommence as of the preparation of the order resolving the application for state legal aid.  
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) If a term for cassation is violated, the Supreme Court shall, by an order, return the appeal in cassation without considering the appeal.

(6) At the request of an appellant in cassation, the Supreme Court may restore the term for cassation if the Court finds that the term was allowed to expire for good reason. Restoration may be applied for within 14 days as of the day when the impediment ceased to exist.  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(6<sup>1</sup>) Restoration of the term or refusal to restore the term shall be formalised by an order of the Supreme Court.  
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

## **§ 157. Grounds for appeal in cassation**

The grounds for an appeal in cassation are:

- 1) incorrect application of substantive law according to § 149 of this Code;
- 2) material violation of the law on misdemeanour procedure according to § 150 of this Code.

## **§ 158. Appeal in cassation**

(1) Appeals in cassation shall be in typewritten form. An electronic copy of an appeal in cassation shall be added to the appeal.  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) An appeal in cassation shall set out:

- 1) the given name and surname of the appellant in cassation and the address, telephone number and e-mail address of the seat of the appellant in cassation;
- 2) the name of the county or circuit court which made the appealed court decision, and the number and date of the decision;
- 3) the given name and surname or name, the address of the residence or seat and the telephone number and e-mail address of the party to court proceedings in whose interests the appeal in cassation is filed;
- 4) the evidence already examined by the court on the basis of which the appellant in cassation proves that substantive law has been applied incorrectly or the law on misdemeanour procedure has been materially violated;
- 5) additional documents which the appellant in cassation considers necessary to submit in cassation proceedings in order to establish material violation of the law on misdemeanour procedure;



6) the content of and reasons for the requests of the appellant in cassation, the basis for the appeal in cassation according to § 157 of this Code and a reference to the relevant provisions of substantive law or the law on misdemeanour procedure and to the provision of substantive law or the law on misdemeanour procedure which has been violated;

7) a list of the documents annexed to the appeal in cassation.

8) justification of the necessity of oral proceedings if the appellant in cassation applies for oral proceedings.  
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) The following shall be annexed to an appeal in cassation:

- 1) the authorisation document of the appellant in cassation if such document is not in the file;
- 2) copies of the appeal in cassation for the parties to court proceedings.

(4) An appellant in cassation shall sign the appeal and indicate the date of preparation of the appeal in the appeal.

(5) An appellant in cassation may amend and supplement a submitted appeal in cassation until the end of the term for cassation, and also extend the appeal in cassation to the parts of the court judgment which were initially not appealed. Upon amendments to appeal in cassation, the provisions concerning appeals in cassation shall be observed.

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

### **§ 159. Requirement to submit misdemeanour file and examination of file**

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(1) Immediately after receipt of an appeal in cassation, the Supreme Court shall require the county or circuit court which conducted proceedings in the matter to submit the misdemeanour file. After receiving a request for delivery, the circuit court shall immediately send the misdemeanour file to the Supreme Court.

(2) The parties to court proceedings have the right to examine the misdemeanour file in the county court or circuit court until the file is sent to the Supreme Court.

(3) After the end of cassation proceedings, the Supreme Court shall return the court file to the court which conducted proceedings in the matter.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

## **Division 2 Pre-trial Procedure in Supreme Court**

### **§ 160. Acceptance of appeal in cassation**

(1) After receipt of an appeal in cassation which conforms to the requirements, the Supreme Court shall send a copy thereof to the party to court proceedings whose interests are concerned by the appeal in cassation and inform such person of the following circumstances:

- 1) the time of receipt of the appeal in cassation by the Court;
- 2) the obligation of the person to respond to the appeal in cassation within the term set by the court;
- 3) the mandatory contents of the response.

(2) The Supreme Court may request the position of a party to court proceedings in a specific issue.

(3) Within a reasonable period of time after the expiry of the term for giving response to an appeal in cassation, the Supreme Court shall decide on acceptance of an appeal in cassation or refusal to accept it on the basis of the misdemeanour file without summoning the participants in the proceedings.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(4) If an appeal in cassation is manifestly justified or manifestly unjustified, the decision on acceptance of the appeal in cassation may be made without sending the appeal in cassation to other persons or before the expiry of the term specified in subsection (3) of this section.

(5) An appeal in cassation shall be accepted if:

- 1) the allegations made in the appeal in cassation give reason to believe that the court has applied substantive law incorrectly or has materially violated the law on misdemeanour procedure;
- 2) the appeal in cassation contests the correctness of application of substantive law or requests annulment of a court judgment due to material violation of law on misdemeanour procedure, and a judgment of the Supreme Court is essential for the uniform application of law or elaboration of law.

(6) Acceptance of an appeal in cassation or refusal to accept an appeal in cassation shall be formalised by an order of the Supreme Court without setting out any reasons.

(7) The results of adjudication of requests for acceptance of appeals in cassation shall be immediately published on the website of the Supreme Court indicating the number of the court case and the legal assessment of the misdemeanour which form the content of the misdemeanour report. In the case of adjudication of requests for acceptance of appeals in cassation submitted in closed proceedings, only the result of adjudication of the request and the number of the court case together with a reference to closed proceedings shall be published on the website. Refusal of acceptance for processing on the basis that the appeal in cassation did not comply with the requirements provided by law and was therefore returned shall not be published on the website. The data of adjudication of requests for acceptance of appeals in cassation for processing shall be removed from the website when 30 days have expired from the communication of adjudication of the request.  
[ RT I, 13.03.2019, 2 – entry into force 15.03.2019]]

(8) If an appeal in cassation is rejected, the appeal in cassation and the order rejecting the appeal shall be included in the misdemeanour file which shall be returned to the county court. Upon rejection of an appeal in cassation, the basis for rejection shall be indicated in the order. A copy of the order shall be sent to the person subject to proceedings if the person has no counsel in the court proceedings.  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(9) Upon acceptance of the appeal in cassation, the Supreme Court may suspend, in whole or in part, the execution of the judgment made by the county court or circuit court on consideration of the appeal filed with the county or circuit court.  
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

#### **§ 160<sup>1</sup>. Refusal to proceed with petition for review**

If an omission hindering the consideration of cassation exists and the omission can obviously be eliminated, the court shall set the appellant in cassation a reasonable term by an order on elimination of the omission and shall hitherto refuse to proceed with the cassation.  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

#### **§ 161. Dismissal of appeal in cassation by Supreme Court**

The Supreme Court shall, by an order, dismiss the appeal in cassation if:

- 1) the appeal in cassation is filed after expiry of the term for cassation provided for in § 156 of this Code and a request for restoration of the term has not been submitted or the Supreme Court has refused to restore the term;
- 2) the appeal in cassation has been filed by a person who in accordance with subsection 155 (3) of this Code does not have the right to file such appeal;
- 3) the appellant in cassation has not eliminated the deficiencies contained in the appeal within the specified term and has not justified such failure;
- 4) the appellant in cassation fails to notify the county court or circuit court of the intention to exercise the right of appeal in cassation in writing within the term prescribed in clause 135 (4) 3) of this Code, unless the notification was not mandatory;  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]
- 5) the appeal is discontinued before the beginning of the court hearing.  
[RT I 2005, 39, 308 – entry into force 01.01.2006]

#### **§ 162. [Repealed – RT I, 23.02.2011, 1 – entry into force 01.09.2011]**

#### **§ 163. Examination of appeal in cassation**

A party to court proceedings has the right to examine the misdemeanour file and an appeal in cassation in the Supreme Court through an advocate representing the party, make copies of the appeal in cassation and the documents contained in the file at the expense of the party and submit a response to the appeal in cassation with the Supreme Court through an advocate representing the party.

#### **§ 164. Response to appeal in cassation**

- (1) The response to an appeal in cassation shall be prepared in typewritten form and shall set out:
- 1) the Supreme Court as the addressee;
  - 2) if the party to court proceedings in whose interests the response to the appeal in cassation is submitted is a natural person, the given name, surname, address of the residence, telephone number and e-mail address of the person;
  - 3) if the party to court proceedings in whose interests the response to the appeal in cassation is submitted is a legal person, the name of the person and the address of the seat, telephone number and e-mail address of the person;
  - 4) if the response to the appeal in cassation is submitted in the interests of a body to conduct out-of-court proceedings, the name, address, telephone number and e-mail address of the body;
  - 5) the appealed court judgment and the date thereof and the number of the misdemeanour matter;
  - 6) whether the appeal in cassation is deemed to be justified or is contested;

7) reasoned objections to the requests made in the appeal in cassation, the facts, and a reference to the provision of an Act on which the objections of the party to court proceedings are based.

8) justification of the necessity of oral proceedings if the person submitting the response to the appeal in cassation applies for oral proceedings.

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

(2) A response to an appeal in cassation shall be signed by the body which conducted the out-of-court proceedings or the advocate representing the party to court proceedings.

(3) If necessary, the Supreme Court may require a party to court proceedings to submit a response to an appeal in cassation.

[RT I 2003, 83, 557 – entry into force 01.01.2004]

**§ 165. [Repealed – RT I, 23.02.2011, 1 – entry into force 01.09.2011]**

## **Division 3**

### **Consideration of Misdemeanour Matters by Supreme Court**

#### **§ 166. Rules for consideration of misdemeanour matters under cassation procedure**

(1) Generally, the Supreme Court shall consider a misdemeanour matter by written procedure. In such case the Supreme Court shall set a term during which the parties to court proceedings may submit their positions to the court and the time for making the judgment public, and notify the parties to court proceedings thereof. If a copy of the appeal in cassation has not been sent to the parties to court proceedings in accordance with the procedure provided for in subsection 160 (1) of this Code, it shall be appended to the notice.

(2) The misdemeanour matter shall be considered by oral procedure in the case the Supreme Court deems it necessary. If the Supreme Court considers an appeal in cassation by oral procedure, it shall send summonses to the parties to court proceedings. The failure of a party to court proceedings who has received the summons to appear at the court session shall not hinder consideration of the matter, unless the Supreme Court decides otherwise.

(3) Parties to court proceedings have the right to examine the court file in the Supreme Court and make copies of the file at their own expense.

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

#### **§ 166<sup>1</sup>. Submission of request to European Court of Human Rights**

(1) The Supreme Court may, in a court case on which it is conducting proceedings, request the European Court of Human Rights to give an advisory opinion on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention on the Protection of Human Rights and Fundamental Freedoms or the protocols thereto in conformity with Protocol No. 16 to the Convention on the Protection of Human Rights and Fundamental Freedoms.

(2) The request must be reasoned and describe the relevant legal and factual circumstances of the court case on which proceedings are conducted.

(3) Advisory opinions of the European Court of Human Rights are not binding on the Supreme Court.

(4) If the Supreme Court requests the European Court of Human Rights to give an advisory opinion on an issue that has arisen in the case, the Supreme Court may suspend its proceedings for the time when proceedings are conducted on the request.

(5) The Supreme Court shall resume the proceedings suspended in accordance with subsection (4) of this section after receipt of an advisory opinion about the request, becoming aware of denial of the request or withdrawal of the request. The Supreme Court may also resume the proceedings earlier if proceedings concerning the request specified in subsection (1) of this section are disproportionately delayed.

(6) In the case of suspension of proceedings, the running of the procedural term provided for in subsection 176 (5) of the Code of Misdemeanour Procedure is suspended and, upon the expiry of the suspension, such term starts to run again from the beginning.

(7) The translation of a request into English or French and the translation of the decision of the European Court of Human Rights received for the submitted request into Estonian shall be organised by the Supreme Court at the expense of the state.

[RT I, 26.06.2017, 17 – entry into force 06.07.2017, § 166<sup>1</sup> is implemented as of the day of entry into force of Protocol 16 to the European Convention on the Protection of Human Rights and Fundamental Freedoms in respect of Estonia.]

#### **§ 167. Referral of misdemeanour matter for consideration by the full panel of Criminal Chamber of the Supreme Court**

(1) If, in the course of consideration of a misdemeanour matter, fundamentally different opinions arise regarding the application of the law in a three-member panel of the Criminal Chamber of the Supreme Court or if there is reason to believe that it may be necessary to amend a position regarding application of the law as stated by the Criminal Chamber in an earlier decision, the misdemeanour matter shall be referred, on the basis of an order, for consideration by the full panel of the Criminal Chamber which shall comprise at least five justices of the Supreme Court.

(2) When a misdemeanour matter is considered by the full panel of the Criminal Chamber, the presiding judge is the chairman of the Criminal Chamber or, in their absence, the member of the Criminal Chamber who is senior in office or, in case of equal seniority in office, the member who is senior in age.  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

#### **§ 168. Referral of misdemeanour matter for consideration to the Special Panel of the Supreme Court**

(1) The misdemeanour matter shall be referred for consideration to the Special Panel of the Supreme Court on the basis of a court order if the Criminal Chamber of the Supreme Court finds, when considering the matter, that interpretation of the law requires amendment of the position expressed by another Chamber or Special Panel of the Supreme Court in their most recent decision, or if this is necessary for ensuring uniform application of the law.  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) The Special Panel of the Supreme Court shall be formed by the Chief Justice of the Supreme Court on the basis of an order of the full panel of the Criminal Chamber.  
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) The members of a Special Panel of the Supreme Court are:  
1) the Chief Justice of the Supreme Court as the presiding judge;  
2) two justices of the Criminal Chamber of the Supreme Court;  
3) two justices from such chamber of the Supreme Court whose position concerning application of the law is contested by the Criminal Chamber.

(4) At the sessions of a Special Panel, materials shall be presented by a member of the Criminal Chamber.

#### **§ 169. Referral of misdemeanour matter for consideration to the Supreme Court en banc**

(1) The misdemeanour matter shall be referred for consideration to the Supreme Court en banc on the basis of a court order if the full panel of the Criminal Chamber finds it necessary:  
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

1) to amend the opinion concerning application of the law as stated in the latest decision of the Supreme Court en banc or of the Special Panel of the Supreme Court, or  
2) that competence to decide on uniform application of the law in the misdemeanour matter should lie with the Supreme Court en banc.

(2) The court panel considering the misdemeanour matter shall refer the matter for hearing by the Supreme Court en banc if adjudication of the misdemeanour matter requires resolution of an issue subject to consideration on the basis of the Constitutional Review Court Procedure Act.

#### **§ 170. Opening of Supreme Court session**

(1) The judge presiding over a court session shall:  
1) open the session and announce the misdemeanour matter to be considered and the person on the basis of whose appeal in cassation the matter is to be considered;  
2) ascertain whether the appellant in cassation, the body which conducted out-of-court proceedings and the advocates representing the other parties to court proceedings have appeared at the session, and verify the authority of the representatives;  
3) ensure participation of an interpreter or translator, if necessary;  
4) announce the composition of the court and the names of the appellant in cassation, the body which conducted out-of-court proceedings and the advocates representing the other parties to court proceedings, and ask whether they wish to submit petitions of challenge or other requests;  
5) ask the appellant in cassation whether he or she wishes to proceed with the appeal in cassation or discontinue the appeal.

(2) Discontinuance of an appeal in cassation shall be certified by the signature of the appellant on the appeal.

(3) The requests submitted shall be resolved by an order.

(4) If circumstances hindering consideration of the misdemeanour matter become evident during the court session, the court shall adjourn consideration of the matter by an order.  
[RT I 2003, 83, 557 – entry into force 01.01.2004]

#### **§ 171. Discontinuance of appeal in cassation**

(1) An appellant in cassation may discontinue an appeal in cassation in part or in full before the Supreme Court withdraws from the courtroom to make the judgment, and in the case of written procedure until the expiry of the term granted to the parties to court proceedings for submission of their positions.

(2) On the basis of a written request, a body to conduct out-of-court proceedings or a person subject to proceedings has the right to discontinue an appeal in cassation filed by the advocate representing or defending the party, except in the cases where participation of a counsel in misdemeanour proceedings is mandatory in accordance with subsection 19 (3) of this Code.

(3) If an appellant in cassation discontinues an appeal in cassation, the appeal in cassation shall be dismissed by making the corresponding court order and cassation proceedings shall be terminated with regard to such appeal in cassation.

(4) If the Supreme Court establishes that the county court or circuit court which adjudicated the misdemeanour matter has incorrectly applied substantive law and has thus aggravated the situation of the offender or that the law on misdemeanour procedure has been materially violated, consideration of the misdemeanour matter may be continued regardless of discontinuance of the appeal in cassation.  
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

#### **§ 172. Presentation of materials of misdemeanour matter**

(1) After opening a court session, the presiding judge or a member of the court shall present the materials of the misdemeanour matter.

(2) A presentation shall give an overview of:

- 1) the facts relating to the misdemeanour matter;
- 2) the content of and reasons for the appeal in cassation;
- 3) the requests of the appellant in cassation;
- 4) the explanations and objections submitted in the response to the appeal in cassation.

#### **§ 173. Hearing of opinions of appellant in cassation and other parties to court proceedings, and closing of court session**

(1) After presentation of the materials of a misdemeanour matter, the court shall hear the opinions of the appellant in cassation, the body which conducted out-of-court proceedings and the advocates representing the other parties to court proceedings who have appeared at the court session, whereas the appellant in cassation shall be heard first.  
[RT I 2003, 83, 557 – entry into force 01.01.2004]

(2) The court has the right to question an appellant in cassation, the body which conducted out-of-court proceedings and the advocates representing the other parties to court proceedings.  
[RT I 2003, 83, 557 – entry into force 01.01.2004]

(3) The presiding judge has the right to interrupt the person being questioned if he or she exceeds the limits of the appeal in cassation.

(4) After the persons questioned have been heard, the presiding judge shall close the court session and announce the time when the appellant in cassation and the other parties to court proceedings may examine the judgment of the Supreme Court in the office of the Criminal Chamber. The judgment of the Supreme Court shall be published on the website of the Supreme Court.  
[RT I 2010, 19, 101 – entry into force 01.06.2010]

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

#### **§ 173<sup>1</sup>. Written questions of Supreme Court**

(1) For ensuring the hearing of the parties' views on applicable law, the Supreme Court shall have the right, during the entire cassation proceedings, to pose written questions to the parties to court proceedings. Written questions are signed by a member of the court panel considering the matter. The written questions shall also set out the term for giving response to them which shall not be shorter than one week.

(2) A response to the written questions of the court shall be in typewritten form. The response shall be signed by the party to court proceedings to whom the questions are addressed.  
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

### **§ 173<sup>2</sup>. Limits for considering a misdemeanour matter under cassation procedure**

(1) The misdemeanour matter shall be considered within the limits of the appeal in cassation. During consideration of the matter, the appellant in cassation does not have the right to exceed the limits of the appeal in cassation. The provisions in the first sentence of this subsection do not preclude or restrict the right of the appellant in cassation to make submissions concerning the interpretation of law and submit objections to the positions of the other party to court proceedings.

(2) The Supreme Court is not bound by the legal grounds of an appeal in cassation.

(3) The Supreme Court shall extend the limits of considering a misdemeanour matter to all the persons subject to proceedings and all the misdemeanours they are accused of regardless of whether an appeal in cassation has been filed with regard to them if incorrect application of substantive law which has aggravated the situation of the person subject to proceedings or a material violation of law on misdemeanour procedure becomes evident.  
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

### **§ 174. Jurisdiction of Supreme Court**

The Supreme Court may, by judgment:

- 1) refuse to amend the judgment made by the county or circuit court on consideration of the appeal filed against a decision made in out-of-court proceedings, and deny the appeal in cassation;
- 2) refuse to make substantive amendments to the judgment made by the county or circuit court on consideration of the appeal filed against a decision made in out-of-court proceedings, and make corrections to the judgment;
- 3) amend the main part of the judgment made by the county or circuit court on consideration of an appeal filed against a decision made in out-of-court proceedings by excluding facts presented in the judgment;
- 4) annul the judgment made by the county or circuit court on consideration of the appeal filed against a decision made in out-of-court proceedings, and terminate misdemeanour proceedings by a judgment of the Supreme Court in accordance with the provisions of § 29 or 30 of this Code;
- 5) annul the judgment of the circuit court and enforce the judgment of the county court;  
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
- 6) annul the decision of the county court and execute the decision of the body which conducted the out-of-court proceedings;  
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
- 7) annul, in full or in part, the judgment made by the county or circuit court on consideration of the appeal filed against a decision made in out-of-court proceedings, and return the misdemeanour matter to be heard anew by the court which applied substantive law incorrectly or which materially violated the law on misdemeanour procedure;
- 8) annul, in full or in part, a judgment made by a county or circuit court in the hearing of an appeal filed against a decision made in the out-of-court proceedings, and, without collecting any additional evidence, make a new judgment which does not aggravate the situation of the offender.  
[RT I 2005, 39, 308 – entry into force 01.01.2006]

### **§ 175. Grounds for annulment of court judgment under cassation procedure**

The grounds for annulment of a court judgment under cassation procedure are:

- 1) incorrect application of substantive law according to § 149 of this Code;
- 2) material violation of the law on misdemeanour procedure according to § 150 of this Code.

### **§ 176. Judgment of Supreme Court**

(1) The introduction of a judgment of the Supreme Court shall set out:

- 1) the number of the court case;
- 2) the date of the judgment of the Supreme Court;
- 3) the panel of the court;
- 4) the name of the court case being considered;
- 5) the contested decision;
- 6) the date of hearing the court case;
- 7) consideration of the court case by written or oral procedure;
- 8) the given name and surname of the appellant in cassation, of the representatives of the other parties to court proceedings and of the interpreters or translators who participated in cassation proceedings;  
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) The main part of a judgment of the Supreme Court shall set out:

- 1) a summary of court proceedings to date;
- 2) the part of the court judgment which the appellant in cassation contests, and the requests of the appellant;
- 3) the explanations and objections submitted in the response to the appeal in cassation.

- 4) the opinions presented during the court session by the appellant in cassation, the body which conducted out-of-court proceedings and the advocates representing the other parties to court proceedings;
- 5) the reasons for the conclusions of the Supreme Court;
- 6) the legal basis for the conclusions of the Supreme Court.

(3) The final part of a judgment of the Supreme Court shall set out the conclusions of the court.

(4) If the Supreme Court refuses to amend a judgment of a county or circuit court in accordance with clause 174 1) or 2) of this Code:

- 1) the court is not required to repeat in its judgment the facts set out in the main part of the judgment of the county or circuit court, but may add the motives of the court;
- 2) the court may decide to include in its judgment only the introduction and final part of the judgment and such provisions of the procedural law which were the basis for making the court judgment.

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

(5) A judgment of the Supreme Court shall be accessible in the Office of the Supreme Court not later than 30 days after the session of the Supreme Court or the term granted to the parties to court proceedings for submission of their positions under written procedure. If necessary, this term may be extended by an order to up to 60 days.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

### **§ 177. Entry into force of decision of Supreme Court**

The decisions of the Supreme Court enter into force on the date of signature and are not subject to appeal.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

### **§ 178. Obligation to comply with judgment of Supreme Court**

(1) Compliance with the position stated in the judgment of the Supreme Court concerning application of the law is obligatory for:

- 1) the county or circuit court, when hearing the same misdemeanour matter;
- 2) the Supreme Court, taking into account the specifications provided for in §§ 167 to 169 of this Code.

(2) The Chambers of the Supreme Court shall comply with a judgment of a Special Panel of the Supreme Court concerning application of the law until such judgment is amended by another Special Panel of the Supreme Court or the Supreme Court en banc.

(3) The Chambers and Special Panels of the Supreme Court shall comply with a judgment of the Supreme Court en banc until the Supreme Court en banc itself amends the judgment.

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

## **Chapter 15 REVIEW PROCEDURE**

### **§ 179. Definition of review procedure**

(1) Review procedure means consideration of a petition for review by the Supreme Court in order to decide on resumption of misdemeanour proceedings in which the court decision has entered into force.

(2) A misdemeanour matter in which the court decision has entered into force and resumption of the proceedings in which is requested shall be referred to as a misdemeanour matter subject to review.

### **§ 180. Grounds for review**

The grounds for review are:

[RT I 2006, 48, 360 – entry into force 18.11.2006]

- 1) the unlawfulness or unfoundedness of a court judgment or order made in the misdemeanour matter subject to review, arising from a false testimony of a witness, knowingly wrong expert opinion, knowingly false interpretation or translation, falsification of documents, or fabrication of evidence, which has been established by a court judgment which has entered into force in another criminal matter or misdemeanour matter;
- 2) a criminal offence established by a court judgment which has entered into force, committed by the judge in the course of hearing the misdemeanour matter subject to review or in the course of hearing or considering an appeal filed against the decision made in out-of-court proceedings concerning the misdemeanour matter;
- 3) a criminal offence established by a court judgment which has entered into force, committed by the body which conducted the out-of-court proceedings in the misdemeanour matter subject to review, if the criminal offence could have had an effect on the court judgment made in the misdemeanour matter subject to review;

4) annulment of a court judgment or order which was one of the bases for making a court judgment or order in the misdemeanour matter subject to review, if this may result in termination of the misdemeanour proceedings in the misdemeanour matter subject to review due to absence of the elements of a misdemeanour in the act concerned, or in mitigation of the situation of the offender;

4<sup>1</sup>) the granting of an individual complaint filed with the European Court of Human Rights against a court judgment or order in a misdemeanour matter subject to review due to a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms or a Protocol thereto if such violation could have influenced the decision in the matter and it is not possible to eliminate the violation or compensate for the damage caused thereby in any other manner but by review;

5) any other facts which are relevant to the just adjudication of the misdemeanour matter but which the court was not aware of while making the court judgment or court order in the misdemeanour matter subject to review and which independently or together with the facts previously established may result in termination of the misdemeanour proceedings due to absence of the elements of a misdemeanour in the act concerned or in mitigation of the situation of the offender.

6) [Repealed – RT I 2003, 83, 557 – entry into force 01.01.2004]

### **§ 181. Right to submit petition for review**

(1) The parties to court proceedings have the right to submit petitions for review.

(2) On the grounds provided by clause 180 4<sup>1</sup>) of this Code, an advocate who is a criminal defence counsel to a person who filed an individual complaint with the European Court of Human Rights the right to file a petition for review if the advocate has filed an individual complaint with the European Court of Human Rights in a similar matter and on the same legal grounds or who has the right to file such complaints in similar matters and on the same legal grounds, considering the term provided by Article 35.1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

[RT I 2006, 48, 360 – entry into force 18.11.2006]

### **§ 182. Terms for submission of petitions for review**

A petition for review may be submitted:

- 1) on the grounds prescribed in clauses 180 1) to 4<sup>1</sup>) of this Code, within six months after entry into force of the court judgment;
- 2) on the grounds prescribed in clause 180 4) of this Code, within six months after entry into force of the court order;
- 3) on the grounds prescribed in clause 180 5) of this Code, within three months after the appearance of new facts;
- 4) on the grounds prescribed in clause 180 6) of this Code, within three months after the appearance of any other facts.

[RT I 2006, 48, 360 – entry into force 18.11.2006]

### **§ 183. Petition for review**

(1) A petition for review submitted to the Criminal Chamber of the Supreme Court shall be prepared in typewritten form.

(2) A petition for review shall set out:

- 1) the official title, given name, surname and address of the petitioner;
- 2) the name of the body to conduct out-of-court proceedings or court whose decision is requested to be reviewed, and the date of the decision;
- 3) the title of the misdemeanour matter to be reviewed;
- 4) the given name and surname of the person who has been convicted in the misdemeanour matter and with regard to whom review of the misdemeanour matter is requested;
- 5) the grounds for review according to § 180 of this Code;
- 6) a list of the documents annexed to the petition for review.

(3) If a petition for review is submitted by a body to conduct out-of-court proceedings or an advocate, a document certifying the authority of the person submitting the petition shall be annexed to the petition.

(4) If review of a misdemeanour matter is requested on the basis of the provisions of clauses 180 1) to 4<sup>1</sup>) of this Code, a copy of the court order or court judgment on which the request for review is based shall be annexed to the petition for review.

(5) A person submitting a petition for review shall sign the petition and indicate the date of preparation of the petition in the petition.

[RT I 2006, 48, 360 – entry into force 18.11.2006]

### **§ 184. Acceptance of petition for review**

(1) The Supreme Court shall decide on acceptance of a petition for review in accordance with § 160 of this Code within one month after the expiry of the term for responding to a petition for review. Upon acceptance



of a petition for review, the Supreme Court may suspend the execution of a court judgment made in the misdemeanour matter subject to review in part or in full as necessary.  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) If a petition for review is not in compliance with the requirements provided for in § 183 of this Code, the Supreme Court shall grant a term for elimination of the deficiencies.

(3) A petition for review shall be rejected if:

- 1) the Supreme Court finds that the petition for review does not contain the grounds for review;
- 2) the Supreme Court has previously rejected a petition for review submitted on the same grounds;
- 3) review of a court decision on the same grounds has been refused.

[RT I 2006, 48, 360 – entry into force 18.11.2006]

#### **§ 185. Refusal to proceed with petition for review**

The Supreme Court shall, by order, refuse to proceed with a petition for review if:

- 1) the petition for review is submitted after expiry of the term provided for in § 182 of this Code and the petitioner has not requested restoration of the term or the Supreme Court has refused to restore the term;
- 2) the petition for review is submitted by a person who in accordance with § 181 of this Code does not have the corresponding right;
- 3) the petition for review is not in compliance with the requirements of § 183 of this Code and the petitioner has failed to eliminate the deficiencies within the term granted by the Supreme Court.

#### **§ 186. Review procedure**

Review procedure shall be conducted following the provisions of §§ 166 to 173, 176 and 177 of this Code.

#### **§ 187. Jurisdiction of Supreme Court in review procedure**

If the petition for review is justified, the Supreme Court shall annul the contested court decision by a judgment and return the misdemeanour matter to the court which made the decision to be heard anew.

#### **§ 188. Proceedings in county or circuit court after review of misdemeanour matter**

(1) If a misdemeanour matter is reviewed, the court proceedings in the county or circuit court shall be conducted in accordance with the general procedure.

(2) Proceedings may be terminated without judicial examination if:

- 1) the offender is dead;
- 2) the facts are explicit and the body which conducted the out-of-court proceedings does not request judicial hearing.

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

## **Chapter 16 PROCEDURE FOR RESOLUTION OF INTERIM APPEALS**

#### **§ 189. Scope of application of interim appeals**

An interim appeal may be filed against an order made in proceedings before a court of the first or second instance or in execution proceedings if contestation of the order is not precluded under section 191 of this Code.

#### **§ 190. Right to file interim appeal**

A party to court proceedings and a non-party to proceedings have the right to file an interim appeal against an order of the court which restricts their rights or lawful interests, or those of a defended person.

#### **§ 191. Court orders not subject to contestation under procedure for resolution of interim appeals**

Interim appeals may not be filed against the following court orders:

- 1) orders limiting public access to a court sitting;
- 2) orders transferring a misdemeanour case to a court that has jurisdiction over the case;
- 3) orders of removal and orders denying a application for recusal;
- 4) [Repealed – RT I 2006, 21, 160 – entry into force 25.05.2006]
- 5) orders adjourning judicial hearing of the case;
- 6) orders of joinder or severance of misdemeanour cases;
- 7) orders resolving requests of the parties in court proceedings;

- 8) orders on collection of additional evidence in court proceedings;
  - 9) orders for the performance of an expert assessment;
  - 10) orders of refusal to proceed with an appeal in appeal proceedings in a district court or a court of appeal;
  - 11) orders directing the misdemeanour case to hearing by the court;
  - 12) court orders made in accordance with § 79 of this Code to resolve an appeal against the activities of a body to conduct out-of-court proceedings, except for court orders made concerning confiscation in the course of misdemeanour proceedings.
- [RT I 2005, 39, 308 – entry into force 01.01.2006]

### **§ 192. Interim appeals and procedure for filing such appeals**

(1) An interim appeal shall be filed with the court which drew up the contested order, unless otherwise provided for in subsection (1<sup>1</sup>) of this section.  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(1<sup>1</sup>) An interim appeal against an order of a court of appeal shall be filed with the Supreme Court.  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

- (2) An interim appeal shall be filed in writing and shall set out:
- 1) the name of the court with whom the appeal is filed;
  - 2) the name and procedural role of the appellant and the address of their residence or seat;
  - 3) the name of the court which made the contested order, the date of the order and the name of the party to court proceedings in respect of whom the order is contested;
  - 4) which part of the order is contested;
  - 5) the content of and reasons for the request made by way of the interim appeal;
  - 6) a list of the documents annexed to the interim appeal.

(3) The person to file the interim appeal shall sign that appeal and indicate on it the date on which the appeal was drawn up.

(4) The interim appeal shall be included in the misdemeanour file.

### **§ 193. Time limit for filing interim appeal**

(1) A party to court proceedings may file an appeal against a court order within 15 days as of the date on which the contested order was made. If a court order was made under written procedure, a party to court proceedings may file an appeal against the court order within 15 days as of the date on which the party became or should have become aware of the order to be contested.

(2) A person not participating in the proceedings may file an appeal against a court order within 15 days as of the date on which the person became or should have become aware of the order to be contested.  
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

### **§ 194. Procedure for consideration of interim appeals**

(1) An interim appeal shall be considered within the scope of the appeal and in respect of the person concerning whom it is filed.

(2) An interim appeal shall be considered by written procedure without the participation of the parties to court proceedings.

(3) Interim appeals shall be considered following the provisions of Chapters 11 to 14 of this Code without prejudice to any special rules provided in this Chapter.

### **§ 195. Consideration of interim appeal at the court which drew up the contested order**

(1) The court which drew up the order shall consider the interim appeal within five days after receiving that appeal.

(2) If the panel which drew up the contested order finds the interim appeal against that order well-founded, the panel shall make an order annulling the contested order and, if necessary, make a new order. Annulment of the contested order and of the making of a new order shall be notified to the appellant without delay.

(3) If the panel which drew up the contested order finds the appeal against the order unfounded, the panel shall without delay transmit the contested order and the interim appeal against that order to the court that has jurisdiction to deal with the matter.

### **§ 196. Consideration of interim appeal at the higher court**

(1) The higher court shall consider the interim appeal within ten days after receiving it.

(2) An interim appeal against an order made by a district court judge shall be considered by a single appeal judge.

(3) An appeal against an order of a court of appeal shall be considered by a three-member panel of the Criminal Chamber of the Supreme Court.

(4) The Supreme Court shall decide on acceptance of an interim appeal against an order of a court of appeal following the provisions of section 160 of this Code. The Supreme Court shall accept an interim appeal against an order made by the court of appeal concerning an interim appeal only if the decision of the Supreme Court in the matter is essential for uniform application of the law or for development of the law.  
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

#### **§ 197. Suspension of execution of contested order**

The court which receives an interim appeal may suspend the execution of the contested order.

#### **§ 198. Finality of order made on consideration of interim appeal**

The court order made on consideration of an interim appeal is final and not subject to further appeal.

## **Chapter 17 ENTRY INTO EFFECT AND EXECUTION OF DECISIONS**

### **Division 1 General Provisions**

#### **§ 199. Entry into effect of determinations and orders made in out-of-court proceedings and of court judgments and court orders**

(1) A determination made in out-of-court proceedings enters into effect if no appeal has been filed against it when the time-limit for appealing the determination expires.

(2) A court judgment or order enters into effect if the judgment or order can no longer be contested other than by review procedure, except in the cases provided for in subsections (3) and (4) of this section.

(2<sup>1</sup>) If the time-limit for filing an appeal against a determination made in out-of-court proceedings or against a court judgment or order is reinstated, the determination, judgment or order is deemed not to have entered into effect.

[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(3) A judgment imposing a detention enters into effect at the time it is made.

(4) A court order made by written procedure enters into effect at the time it is made.

(5) An order made in out-of-court proceedings enters into effect as of the making of the order.  
[RT I 2003, 26, 156 – entry into force 21.03.2003]

#### **§ 200. Binding force of determinations and orders of bodies conducting out-of-court proceedings and of court judgments and court orders**

The decisions and orders of the bodies conducting out-of-court proceedings and the court judgments and orders which have entered into force are binding on all persons in the territory of the Republic of Estonia.

#### **§ 201. Permissibility of execution of decisions and orders of bodies conducting out-of-court proceedings and of court judgments and court orders**

(1) A decision or order of a body to conduct out-of-court proceedings or a court judgment or order shall be executed if the decision, judgment or order has entered into force and execution thereof has not been adjourned in accordance with § 209 of this Code.

(2) If an appeal is filed with a county court against a decision of a body to conduct out-of-court proceedings or an appeal or appeal in cassation is filed against a court judgment with regard to only one of the persons subject to proceedings, the decision or judgment shall be executed with regard to the other persons subject to proceedings.

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

### **§ 202. Bodies to execute decisions and orders of bodies to conduct out-of-court proceedings or court judgments and orders**

(1) A decision or order of a body to conduct out-of-court proceedings which has entered into force shall be executed by the body to conduct out-of-court proceedings which made the decision in the out-of-court proceedings.

(2) A court judgment or order of a court of first instance which has entered into force shall be executed by the county court which made the decision in the matter.

(3) A court judgment made under appeal procedure in a county court or under cassation procedure which has entered into force shall be executed by the body to conduct out-of-court proceedings which made the first decision in the same misdemeanour matter.

(4) A decision of a court of appeal or court of cassation which has entered into force shall be executed by the county court which made the first court decision in the same misdemeanour matter.

(5) In the case provided for in subsection 204 (2) of this Code, the court judgment shall be enforced by the institution designated by a directive of the minister responsible for the area.

[RT I, 29.06.2014, 109 – entry into force 01.07.2014, the words "the Minister of Finance" substituted with the words "the minister responsible for the area" on the basis of subsection 107<sup>3</sup> (4) of the Government of the Republic Act.]

### **§ 203. Terms for execution of decisions and orders of bodies conducting out-of-court proceedings and of court judgments and court orders**

(1) A court judgment on the release of a person subject to proceedings from detention shall be executed immediately after pronouncement of the final part of the judgment.

(2) A decision of a body to conduct out-of-court proceedings or a court judgment on the punishment of an offender shall be executed within ten days as of the date of entry into force of the decision or judgment or of the date of return of the misdemeanour matter from the court of appeal or court of cassation.

[RT I 2003, 26, 156 – entry into force 21.03.2003]

(3) A court judgment on imposition of detention shall be executed following the rules provided in § 205 of this Code.

(4) An order of a body to conduct out-of-court proceedings or a court order shall be executed upon entry into force of the order.

(5) A decision shall not be executed if the term provided for in clause 82 (1) 3) of the Penal Code has expired and execution of the decision of the body to conduct out-of-court proceedings or the court judgment has not been adjourned.

[RT I 2009, 68, 463 – entry into force 01.01.2010]

## **Division 2 Execution of Decisions**

### **§ 204. Execution of fines imposed by decision of body to conduct out-of-court proceedings or by court judgment**

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

(1) A decision of a body to conduct out-of-court proceedings on imposition of a fine shall be deemed to be complied with and shall not be executed if:

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

1) the offender has paid the fine in full within 15 days as of the receipt of the decision of the body made by way of expedited procedure in accordance with subsection 55 (2) of this Code or, in the case of a fine paid in instalments, pays the instalments on time;

[RT I, 14.03.2011, 3 – entry into force 24.03.2011]

2) the offender has paid the fine in full within 15 days as of the date when the decision of the body to conduct out-of-court proceedings made by way of general procedure in accordance with clause 73 (1) 1) of this Code became available for examination by the participants in the proceedings at the body or, in the case of a fine paid in instalments, pays the instalments on time;

[RT I, 14.03.2011, 3 – entry into force 24.03.2011]

3) the fine imposed by a decision which is executed in accordance with subsection 202 (1) of this Code by the Tax and Customs Board, if the Tax and Customs Board has set off the fine in full in accordance with the procedure provided for in the Taxation Act before the expiry of the term for execution.

[RT I, 31.01.2014, 6 – entry into force 01.02.2014]

(2) A court judgment on imposition of a fine shall be sent to the institution appointed by a directive of the minister responsible for the area after the entry into force of the judgment who shall verify whether or not the offender has paid the fine in full. A court judgment on imposition of a fine shall be deemed to be complied with and shall not be executed if the Tax and Customs Board has set off the fine in full in accordance with the procedure provided for in the Taxation Act before the expiry of the term for execution.

[RT I, 29.06.2014, 109 – entry into force 01.07.2014, the words "the Minister of Finance" in the first sentence substituted with the words "the minister responsible for the area" on the basis of subsection 107<sup>3</sup> (4) of the Government of the Republic Act.]

(3) If the offender fails to pay the fine in full within the term specified in clause (1) 1) or 2) of this section or within the term for appeal against the court judgment or fails to comply with the term for payment of the fine in instalments, the institution executing the decision in accordance with § 202 of this Code shall send, within ten days, a copy of the decision to the bailiff on which a notation concerning the entry into force has been made.

[RT I, 14.03.2011, 3 – entry into force 24.03.2011]

(4) Decisions executed by the Tax and Customs Board in accordance with § 202 of this Code shall be executed in accordance with the procedure provided for in the Taxation Act.

[RT I, 31.01.2014, 6 – entry into force 01.02.2014]

### **§ 204<sup>1</sup>. Recognition and execution of fines imposed in foreign states in misdemeanour matters by decisions of bodies conducting out-of-court proceedings or by court judgments**

The provisions of criminal procedure for recognition and enforcement of foreign court judgments apply to recognition and execution of fines imposed in foreign states in misdemeanour matters by decisions of bodies conducting out-of-court proceedings or by court judgments, taking into consideration the substitution of fines by detention provided for in § 72 of the Penal Code, unless otherwise prescribed by the international agreements of the Republic of Estonia or the generally recognised principles of international law.

[RT I 2008, 33, 201 – entry into force 28.07.2008]

### **§ 204<sup>2</sup>. Requests to member states of European Union for execution of fines imposed in misdemeanour matters by decisions of bodies conducting out-of-court proceedings or court judgments**

Estonia may request from a member state of the European Union execution of a fine imposed on a person in a misdemeanour matter by a decision of a body to conduct out-of-court proceedings or a court judgment. The provisions of the Code of Criminal Procedure concerning recognition and execution of Estonian court judgments apply to requests for execution of decisions on fines.

[RT I 2008, 33, 201 – entry into force 28.07.2008]

### **§ 204<sup>3</sup>. Enforcement of withdrawal of right to drive**

In order to enforce withdrawal of the right to drive imposed as principal or supplementary punishment, the court judgment or decision of the body to conduct out-of-court proceedings shall be sent to the institution concerned for withdrawal from the offender the rights indicated in the decision and deposit of the documents issued to the offender for exercising such rights.

[RT I 2008, 54, 304 – entry into force 27.12.2008]

### **§ 205. Execution of detention**

(1) If execution of a court judgment on imposition of detention is not adjourned in accordance with § 209 of this Code and the offender was detained for the period of court proceedings, the county judge shall execute the court judgment immediately after the making of the judgment. A copy of the court judgment with a notation concerning entry into force of the judgment shall be sent to the house of detention of the location of the court, which made the judgment, or of the residence of the offender, including reservists and persons in active service, or to the Defence Forces in the case of detention imposed on a conscript.

[RT I, 01.03.2017, 1 – entry into force 01.04.2017]

(2) If execution of a court judgment has not been adjourned in accordance with § 209 of this Code and the offender was not detained for the period of court proceedings, the county court executing the court decision shall send an order to the offender setting out when and to which detention house the offender must appear to serve the sentence. A copy of the order and of the court judgment with a notation concerning the date of entry into force of the judgment shall be sent to the detention house in which the offender is to serve the sentence.

(3) In the case provided for in subsection (2) of this section, the time when the offender arrives at the detention house is deemed to be the time of commencement of the service of the detention.

(4) If an offender fails to appear at a detention house at the prescribed time to serve the detention, the detention house shall notify the court which executed the detention of such failure. In such case, the county court shall make an order on compelled attendance with regard to the offender.

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

#### **§ 206. Procedure for transfer of confiscated property**

[RT I, 31.12.2016, 2 – entry into force 01.02.2017]

(1) Unless otherwise provided by law, the body executing a court decision or a decision of a body to conduct out-of-court proceedings shall send the following documents to the agency authorized to administer confiscated property:

- 1) a copy of the court judgment or order or the decision or order of the body to conduct out-of-court proceedings with a notation concerning the entry into force thereof;
- 2) a copy of the procedural document concerning confiscated property.

(2) The cost of transfer and destruction of confiscated property shall be paid by the offender.

(3) The procedure for transfer of confiscated property and refund of the money received from transfer to the lawful possessor of the property from the budget shall be established by the Government of the Republic.

[RT I, 31.12.2016, 2 – entry into force 01.02.2017]

#### **§ 207. Execution of procedure expenses and other financial claims prescribed in decisions of bodies conducting out-of-court proceedings or court judgments**

The procedure expenses and other financial claims prescribed by a decision of a body to conduct out-of-court proceedings or a court judgment shall be executed in accordance with the procedure provided for in §§ 201, 203 and 204 of this Code.

#### **§ 207<sup>1</sup>. Enforcement and performance of community service**

(1) Community service is enforced by sending the decision which has entered into force to the probation supervision department of the residence of the offender.

[RT I, 31.12.2016, 2 – entry into force 01.01.2017]

(2) The head of the probation supervision department who receives a decision shall appoint an officer and the duty of the officer is to monitor the community service of the offender.

[RT I, 31.12.2016, 2 – entry into force 01.01.2017]

(3) The procedure for preparation, execution of sentence and supervision of community service shall be established by a regulation of the minister responsible for the area.

[RT I 2010, 44, 258 – entry into force 01.01.2012]

## **Division 3 Return of Objects in Misdemeanour Procedure**

#### **§ 208. Return of objects**

(1) If documents or objects have been taken away from a person with regard to whom misdemeanour proceedings are terminated, the county court executing the court judgment shall send the court judgment which has entered into force to the institution concerned for the return of such documents or objects to the owner or lawful possessor thereof.

(2) If documents or objects have been taken away from a person with regard to whom misdemeanour proceedings are terminated, the body to conduct out-of-court proceedings executing the decision shall return the objects to the owner or lawful possessor thereof or shall send the decision which has entered into force to the institution concerned for the return of such documents or objects to the owner or lawful possessor thereof.

(3) The return of a document certifying a special right shall be decided by the issuing institution on the bases and in accordance with the rules prescribed by law.

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

## **Division 4**

## **Resolution of Issues Arising in the course of Execution of Decisions of Bodies Conducting Out-of-court Proceedings or Court Decisions**

### **§ 209. Adjourment of execution of fine or detention imposed as punishment for misdemeanour**

(1) If circumstances exist which render impossible the immediate service of the detention imposed as a punishment for a misdemeanour, the county court executing the decision may, on the basis of a petition of the offender, adjourn the execution of the detention by an order which shall set out the date of commencement and expiry of the period of adjourment.

(2) If circumstances exist which render impossible the immediate payment of a fine imposed as a punishment for a misdemeanour, the county court or the body to conduct out-of-court proceedings executing the decision may, on the basis of a petition of the offender, adjourn the execution of the fine by an order which shall set out the date of commencement and expiry of the period of adjourment.

(3) In the case of adjourment of the execution of a detention, the decision shall be executed in accordance with the procedure provided for in subsections 205 (2) to (4) of this Code immediately after the date of expiry of the period of adjourment. A copy of the order on adjourment of the detention shall be sent to the detention house together with a copy of the decision.

(4) In the case of adjourment of the execution of a fine specified in subsection (2) of this section, the decision shall be executed immediately after the date of expiry of the period of adjourment. A copy of the order on adjourment of the payment of the fine shall be sent to the bailiff together with a copy of the decision on which the date of entry into force of the decision has been indicated.

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

### **§ 210. [Repealed – RT I 2004, 46, 329 – entry into force 01.07.2004]**

### **§ 210<sup>1</sup>. Resolution of issues arising in the course of performance of community service**

(1) If an offender evades community service, the probation officer shall submit a request to court to enforce the detention imposed on the offender.

[RT I, 31.12.2016, 2 – entry into force 01.01.2017]

(2) The judge in charge of execution of court judgments at the county court of the residence of an offender shall, by an order made within ten days as of the receipt of a report of the probation officer by the court, decide whether to annul the community service of the offender and enforce the sentence of imprisonment imposed on them by the court judgment in accordance with subsection 69 (6) of the Penal Code.

[RT I, 31.12.2016, 2 – entry into force 01.01.2017]

### **§ 210<sup>2</sup>. Notification of performance of community service**

If the hours of community service imposed on an offender have been performed, the probation officer shall send the relevant information to the criminal records database during the term and in accordance with the procedure provided for in the Criminal Records Database Act.

[RT I, 31.12.2016, 2 – entry into force 01.01.2017]

### **§ 210<sup>3</sup>. Request for interruption or suspension of community service**

(1) If an offender evades community service imposed on them and a probation officer ascertains such violation, the probation officer shall submit a request to a court which contains information on the facts of the violation, number of the hours of community service performed, summary of the explanation of the offender and a proposal to interrupt the community service and execute the detention.

[RT I, 31.12.2016, 2 – entry into force 01.01.2017]

(2) If an offender fails to perform the community service imposed on them due to an illness or family situation or for the reason that he or she is performing their obligation for conscription or participates in training exercises, the probation officer shall submit a request to a court for suspension of the term of community service. The request shall contain information on the bases of suspension and a proposal for the term of suspension. Upon suspension of the term and upon determination of a new term, the court shall take into account the general restrictions on the term of community service prescribed for the respective offence.

[RT I, 31.12.2016, 2 – entry into force 01.01.2017]

#### **§ 210<sup>4</sup>. Assignment of performance of community service**

(1) The minister responsible for the area may, in accordance with the procedure provided for in the Administrative Co-operation Act and on the basis of an administrative contract, assign a proportion of the performance of community service in the work area of a probation supervision department to a suitable local government or non-profit association which has expressed such desire. The right to submit a request for interruption of community service provided for in § 210<sup>3</sup> of this Code shall not be assigned.  
[RT I, 31.12.2016, 2 – entry into force 01.01.2017]

(2) Supervision over the activities of local governments or non-profit associations in performance of community service shall be exercised by the head of the probation supervision department of the same area and the minister responsible for the area.  
[RT I, 31.12.2016, 2 – entry into force 01.01.2017]

(3) A head of a probation supervision department and the minister responsible for the area may give mandatory instructions to a local government or a non-profit association in performing community service. In the event of unsatisfactory performance of community service or failure to comply with mandatory instructions, the minister responsible for the area may terminate the administrative contract in accordance with the procedure provided for in such contract.  
[RT I, 31.12.2016, 2 – entry into force 01.01.2017]

#### **§ 211. Substitution of fine imposed as punishment for misdemeanour by detention or community service and enforcement of punishment**

[RT I 2010, 44, 258 – entry into force 01.01.2012]

(1) If an offender fails to pay a fine in full within the prescribed term or to comply with the terms for the payment of a fine in instalments, whereas the term for payment of the fine has not been extended and the offender does not have any property which could be subject to a claim, the county court shall make an order on substitution of the fine by detention in accordance with § 72 of the Penal Code on the basis of a petition of a claimant.  
[RT I 2010, 44, 258 – entry into force 01.01.2012]

(1<sup>1</sup>) A county court shall resolve substitution of a fine by detention or community service in the presence of the offender. At the request of the offender, their counsel shall be summoned to court and their opinion shall be heard.  
[RT I 2010, 44, 258 – entry into force 01.01.2012]

(2) In the case of partial payment of a fine, the part of the fine which has been paid shall be taken into consideration in determination of the period of detention as a substitute for the fine or duration of community service in proportion to the paid sum.  
[RT I 2010, 44, 258 – entry into force 01.01.2012]

(3) If substitution of a fine by detention or community service is for some reason not possible or if the offender pays the fine before the imposition of the detention or community service, the county court shall make an order denying the petition of the claimant for substitution of the fine by detention or community service.  
[RT I, 14.03.2011, 3 – entry into force 24.03.2011]

(4) A court shall send a copy of an order specified in subsection (1) or (3) of this section to the bailiff and the offender.  
[RT I, 14.03.2011, 3 – entry into force 24.03.2011]

#### **§ 212. Resolution of issues arising in the course of execution of decisions of bodies conducting out-of-court proceedings or of court decisions**

(1) Issues not governed by this Chapter and other doubts and ambiguities arising in the course of execution of a decision of a body to conduct out-of-court proceedings or a court decision shall be resolved by the court or body which made the decision or by the body to conduct out-of-court proceedings or county judge executing the decision, by an order made by written procedure without summoning the participants in the proceedings.

(2) A copy of the order shall be sent to the bailiff and to the participants in the proceedings concerned.  
[RT I 2005, 39, 308 – entry into force 01.01.2006]

#### **§ 212<sup>1</sup>. Receipt of cautionary fines and corrective fines**

[RT I, 31.05.2018, 1 – entry into force 01.01.2019]  
A cautionary fine and corrective fine shall be transferred to the state budget. If a rural municipality or city government conducting out-of-court proceedings imposes a cautionary fine or corrective fine, the cautionary fine or corrective fine shall be transferred into the budget of the local government which made the corresponding decision.  
[RT I, 31.05.2018, 1 – entry into force 01.01.2019]



## **Chapter 18**

### **IMPLEMENTING PROVISIONS**

#### **§ 212<sup>2</sup>. Limitation period for execution of decisions of the Police and Border Guard Board which entered into force before 2010**

Execution of a decision of the Police and Border Guard Board on a fine and prescribed procedure expenses which entered into force before 2010 shall be deemed expired on 1 January 2018.  
[RT I, 30.12.2017, 2 – entry into force 09.01.2018]

#### **§ 212<sup>3</sup>. Assignment of performance of community service**

A judgment enforced or an order on community service imposed until 1 January 2017 which has not been complied with or has been complied with in part shall be sent to a probation supervision department within 30 days from 1 January until 30 January 2017.  
[RT I, 31.12.2016, 2 – entry into force 01.01.2017]

#### **§ 212<sup>4</sup>. Specifications for implementation of § 166<sup>1</sup>**

§ 166<sup>1</sup> of the Code of Criminal Procedure is implemented as of the day of entry into force of Protocol 16 to the European Convention on the Protection of Human Rights and Fundamental Freedoms in respect of Estonia.  
[RT I, 26.06.2017, 17 – entry into force 06.07.2017]

#### **§ 212<sup>5</sup>. Specifications for application of Division 1<sup>2</sup> of Chapter 10 of this Code**

Division 1<sup>2</sup> of Chapter 10 of this Code shall not apply to misdemeanour proceedings which were commenced before the entry into force of that Division.  
[RT I, 31.05.2018, 1 – entry into force 01.01.2019]

**§ 213.–§ 216.**[Omitted from this text.]

#### **§ 217. Entry into force of this Code**

The Code of Misdemeanour Procedure enters into force together with the Penal Code.