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Code of Criminal Procedure[1]

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28.06.2004	RT I 2004, 54, 387	01.07.2004
28.06.2004	RT I 2004, 56, 403	01.03.2005
consolidated text on paper RT	RT I 2004, 65, 456	
15.06.2005	RT I 2005, 39, 307	21.07.2005
15.06.2005	RT I 2005, 39, 308	01.01.2006
07.12.2005	RT I 2005, 68, 529	01.01.2006
15.12.2005	RT I 2005, 71, 549	01.01.2006
15.03.2006	RT I 2006, 15, 118	14.04.2006
19.04.2006	RT I 2006, 21, 160	25.05.2006
14.06.2006	RT I 2006, 31, 233	16.07.2006
14.06.2006	RT I 2006, 31, 234	16.07.2006
consolidated text on paper RT	RT I 2006, 45, 332	
27.09.2006	RT I 2006, 46, 333	01.01.2007
11.10.2006	RT I 2006, 48, 360	18.11.2006
13.12.2006	RT I 2006, 63, 466	01.02.2007, in part 01.01.2015
06.12.2006	RT I 2007, 1, 2	30.03.2007
13.12.2006	RT I 2007, 2, 7	01.02.2007
17.01.2007	RT I 2007, 11, 51	18.02.2007
24.01.2007	RT I 2007, 12, 66	25.02.2007
25.01.2007	RT I 2007, 16, 77	01.01.2008
15.02.2007	RT I 2007, 23, 119	02.01.2008
14.06.2007	RT I 2007, 44, 316	14.07.2007
22.11.2007	RT I 2007, 66, 408	01.01.2008
16.04.2008	RT I 2008, 19, 132	23.05.2008
11.06.2008	RT I 2008, 28, 180	15.07.2008
19.06.2008	RT I 2008, 29, 189	01.07.2008
19.06.2008	RT I 2008, 32, 198	15.07.2008
19.06.2008	RT I 2008, 32, 198	01.01.2009
19.06.2008	RT I 2008, 32, 198	01.01.2010
19.06.2008	RT I 2008, 33, 200	28.07.2008
19.06.2008	RT I 2008, 33, 201	28.07.2008
19.06.2008	RT I 2008, 35, 212	01.01.2009
19.11.2008	RT I 2008, 52, 288	22.12.2008
03.12.2008	RT I 2009, 1, 1	01.01.2010
06.05.2009	RT I 2009, 27, 165	01.01.2010
15.06.2009	RT I 2009, 39, 260	24.07.2009

15.06.2009	RT I 2009, 39, 261	24.07.2009
09.12.2009	RT I 2009, 68, 463	01.01.2010
20.01.2010	RT I 2010, 8, 34	27.02.2010
20.01.2010	RT I 2010, 8, 35	01.03.2010
22.04.2010	RT I 2010, 19, 101	01.06.2010
22.04.2010	RT I 2010, 22, 108	01.01.2011 enters into force on the date which has been determined in the Decision of the Council of the European Union regarding the abrogation of the derogation established in respect of the Republic of Estonia on the basis provided for in Article 140 (2) of the Treaty on the Functioning of the European Union, Council Decision 2010/416/EU of 13.07.2010 (OJ L 196, 28.07.2010, pp. 24-26).
18.06.2010	RT I 2010, 40, 239	18.06.2010 - The decision of the Constitutional Review Chamber of the Supreme Court declares the summary proceedings regulation to be in conflict with the Constitution to the extent that this does not efficiently ensure the right of defence.
16.06.2010	RT I 2010, 44, 258	01.01.2011
25.11.2010	RT I, 21.12.2010, 1	31.12.2010
27.01.2011	RT I, 23.02.2011, 1	01.09.2011
27.01.2011	RT I, 23.02.2011, 2	05.04.2011
27.01.2011	RT I, 23.02.2011, 3	01.01.2012
17.02.2011	RT I, 14.03.2011, 3	01.09.2011
17.02.2011	RT I, 21.03.2011, 2	01.01.2012 Repealed [RT I, 29.06.2012, 2]
08.12.2011	RT I, 22.12.2011, 3	23.12.2011 Repealed [RT I, 29.06.2012, 2]
07.12.2011	RT I, 28.12.2011, 1	01.01.2012, in part on the tenth day after publication in the Riigi Teataja.
08.12.2011	RT I, 29.12.2011, 1	01.01.2012
10.04.2012	RT I, 17.04.2012, 4	10.04.2012 - The decision of the Supreme Court en banc declares § 366 of the Code of Criminal Procedure to be in conflict with the Constitution to the extent that this does not prescribe the entry into force of a court judgment made pursuant to the general procedure, which establishes the absence of a criminal act, as grounds for review if a punishment of imprisonment was imposed for participation in such criminal act to a person by a court judgment made pursuant to the general procedure in the criminal matter subject to review.
30.05.2012	RT I, 15.06.2012, 2	01.06.2013
06.06.2012	RT I, 29.06.2012, 1	01.04.2013
06.06.2012	RT I, 29.06.2012, 2	09.07.2012, in part 01.01.2013 and 01.01.2015
06.06.2012	RT I, 29.06.2012, 3	01.01.2013, in part 01.07.2012 and 09.07.2012
14.06.2012	RT I, 04.07.2012, 1	01.08.2012
03.07.2012	RT I, 09.07.2012, 2	03.07.2012 - The judgment of the Supreme Court en banc declares clause 385 26) of the Code of Criminal Procedure to be in conflict with the Constitution and repeals it to the extent that this does not allow to file an appeal against an

		order made by a judge in charge of execution of court judgments at a county court on the basis of subsection 427 (2) of the Code of Criminal Procedure by which a sentence suspended on probation is enforced pursuant subsection 74 (4) of the Penal Code
13.11.2012	RT I, 16.11.2012, 6	13.11.2012 - The judgment of the Supreme Court en banc declares clause 385 26) of the Code of Criminal Procedure to be in conflict with the Constitution and repeals it to the extent that this does not allow to file an appeal against an order made by a judge in charge of execution of court judgments at a county court on the basis of subsection 427 (2) of the Code of Criminal Procedure by which the part of the punishment which was not served due to release on parole is enforced pursuant subsection 76 (5) of the Penal Code.
05.12.2012	RT I, 21.12.2012, 1	01.03.2013, in part 01.01.2013
11.12.2012	RT I, 28.05.2013, 6	11.12.2012 - The decision of the Constitutional Review Chamber of the Supreme Court declares § 407 of the Code of Criminal Procedure to be in conflict with the Constitution and repeals it to the extent this precludes the right of a minor to file an appeal against an order whereby the court authorises placement of the minor in a school for students who need special treatment.
13.03.2013	RT I, 22.03.2013, 9	01.04.2013, in part 01.01.2014
27.03.2013	RT I, 16.04.2013, 1	26.04.2013
30.04.2013	RT I, 03.05.2013, 12	30.04.2013 - The decision of the Supreme Court en banc declares clause 385 26) of the Code of Criminal Procedure to be in conflict with the Constitution and repeals it to the extent this does not allow to file an appeal against an order made by a judge in charge of execution of court judgments at a county court on the basis of subsection 428 (2) of the Code of Criminal Procedure by which the prison sentence substituted by community service is enforced pursuant to subsection 69 (6) of the Penal Code.
10.05.2013	RT I, 15.05.2013, 3	10.05.2013 - The order of the Constitutional Review Chamber of the Supreme Court declares that clause 385 26) of the Code of Criminal Procedure was in conflict with the Constitution at the time of making the order of the Tallinn Circuit Court dated 7 January 2013 to the extent this does not allow to file an appeal against an order made by a judge in charge of execution of court judgments at a county court on the basis of subsection 428 (2) of the Code of Criminal Procedure

		by which the prison sentence substituted by community service is enforced pursuant to subsection 69 (6) of the Penal Code.
20.06.2013	RT I, 05.07.2013, 2	15.07.2013
20.06.2013	RT I, 11.07.2013, 1	01.09.2013
26.09.2013	RT I, 04.10.2013, 3	27.10.2013
21.01.2014	RT I, 31.01.2014, 6	01.02.2014, in part 01.04.2014 and 01.07.2014
12.02.2014	RT I, 26.02.2014, 1	08.03.2014
19.02.2014	RT I, 13.03.2014, 4	01.07.2014
07.05.2014	RT I, 21.05.2014, 1	01.01.2015, in part 31.05.2014
12.06.2014	RT I, 21.06.2014, 11	01.07.2014, in part 01.01.2015
11.06.2014	RT I, 21.06.2014, 8	01.01.2015
19.06.2014	RT I, 12.07.2014, 1	13.07.2014, in part 1.01.2015
19.06.2014	RT I, 29.06.2014, 109	01.07.2014, the titles of ministers replaced on the basis of subsection 107^3 (4) of the Government of the Republic Act.
05.11.2014	RT I, 20.11.2014, 1	01.05.2015
09.12.2014	RT I, 22.12.2014, 9	01.01.2015
16.12.2014	RT I, 23.12.2014, 14	01.01.2015
10.12.2014	RT I, 30.12.2014, 1	01.01.2015
18.02.2015	RT I, 19.03.2015, 1	29.03.2015, in part 01.09.2016
26.11.2015	RT I, 17.12.2015, 3	27.12.2015
17.12.2015	RT I, 06.01.2016, 5	16.01.2016, in part 01.07.2016 and 01.01.2017
11.05.2016	RT I, 20.05.2016, 1	30.05.2016
15.12.2016	RT I, 28.12.2016, 14	07.01.2017, in part 01.04.2017
15.12.2016	RT I, 31.12.2016, 2	01.01.2017, in part 10.01.2017 and 01.02.2017
10.05.2017	RT I, 26.05.2017, 1	05.06.2017
31.05.2017	RT I, 16.06.2017, 1	01.07.2017
07.06.2017	RT I, 26.06.2017, 1	06.07.2017
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, 26.06.2017, 70	06.07.2017
14.06.2017	RT I, 07.07.2017, 1	01.11.2017
22.11.2017	RT I, 05.12.2017, 1	15.12.2017, in part 01.01.2018 and 01.07.2018
09.05.2018	RT I, 31.05.2018, 2	10.06.2018, in part 01.01.2019
21.11.2018	RT I, 07.12.2018, 2	17.12.2018
16.01.2019	RT I, 05.02.2019, 1	15.02.2019
23.01.2019	RT I, 05.02.2019, 2	15.02.2019
20.02.2019	RT I, 13.03.2019, 1	01.01.2020
20.02.2019	RT I, 13.03.2019, 2	15.03.2019
20.02.2019	RT I, 19.03.2019, 3	01.07.2019
04.12.2019	RT I, 20.12.2019, 1	30.12.2019
20.04.2020	RT I, 06.05.2020, 1	07.05.2020
17.06.2020	RT I, 10.07.2020, 2	01.01.2021
12.11.2020	RT I, 21.11.2020, 1	01.01.2021
17.12.2020	RT I, 29.12.2020, 1	08.01.2021
15.06.2021	RT I, 08.07.2021, 1	15.07.2021

Chapter 1
GENERAL PROVISIONS

§ 1. Scope of regulation of this Code

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

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

§ 2. Sources of the law of criminal procedure

The sources of the law of criminal procedure are:
1) the Constitution of the Republic of Estonia;
2) generally recognised principles and provisions of international law and international agreements binding on Estonia;
3) this Code and other legislation which provides rules of criminal procedure;
4) decisions of the Supreme Court on issues which are not regulated by other sources of the law of criminal procedure yet which have arisen in the application of the relevant legislation.

§ 3. Territorial and temporal applicability of the law of criminal procedure

(1) The law of criminal procedure applies in the territory of the Republic Estonia. The law of criminal procedure also applies outside the territory of the Republic Estonia if this arises from an international agreement or if the subject matter of criminal proceedings is an act of a person serving in the Defence Forces of Estonia.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) The law of criminal procedure that applies in criminal proceedings is the law in force at the time of performance of the procedural operation.

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

(4) During a state of emergency this Code applies, taking account of the specifications provided for in the State of Emergency Act.
[RT I 2009, 39, 260 – entry into force 24.07.2009]

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

The law of criminal procedure applies equally to all persons with the following exceptions:
1) the specifications concerning preparation of a statement of charges and performance of certain procedural operations with regard to the President of the Republic, members of the Government of the Republic, the Auditor General, the Chancellor of Justice and the Chief Justice and justices of the Supreme Court are provided for in Chapter 14 of this Code;
2) the specifications concerning procedural operations performed with regard to members of the *Riigikogu* before preparation of a statement of charges and of preparation of the statement of charges are provided for in Chapter 14^1 of this Code;
3) Estonian law of criminal procedure may be applied to a person enjoying diplomatic immunity or other privileges prescribed by an international agreement at the request of the relevant foreign state, taking into account the specifications provided in an international agreement.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

§ 5. Principle of state jurisdiction

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

§ 6. Principle of mandatory criminal proceedings

Investigative bodies and Prosecutors' Offices are required to conduct criminal proceedings upon the appearance of facts referring to a criminal offence, unless the circumstances provided for in § 199 of this Code exist which preclude criminal proceedings or unless the grounds to terminate criminal proceedings pursuant to subsection 201 (2), §§ 202, 203, 203^1, 204, 205, 205^1, 205^2 or subsection 435 (3) of this Code exist.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

§ 7. Presumption of innocence

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

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

(3) Any doubts concerning the suspect or the accused being guilty as charged which have not been eliminated in criminal proceedings shall be interpreted to the benefit of the suspect or accused.

§ 8. Safeguarding of rights of participants in proceedings

Investigative bodies, Prosecutors' Offices and courts shall:
1) in the performance of a procedural operation, in the cases provided by law, explain to the participants in proceedings the objective of the act and their rights and obligations;
2) provide the suspect and accused with a real opportunity to defend themselves;
3) ensure the assistance of a counsel to the suspect and accused in the cases provided for in subsection 45 (2) of this Code or if such assistance is requested by the suspect or accused;
4) in the cases of urgency, provide a suspect or accused held in custody with other legal assistance at his or her request;
5) deposit the unsupervised property of a suspect or accused held in custody with the person or local government specified by him or her;
6) ensure that the minor children of a person held in custody be supervised or the persons close to him or her who need assistance be cared for;
7) explain to a victim who is a natural person his or her right to contact a victim support official and, if necessary, receive victim support services and the state compensation prescribed for victims of crimes of violence and explain which opportunities arising from this Code can be used to ensure the safety of victims.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

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

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

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

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

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

§ 10. Language of criminal proceedings

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

(2) Suspects, accused, victims, civil defendants and third persons who are not proficient in the Estonian language shall be ensured the assistance of an interpreter or translator. In the case of doubt, proficiency shall be ascertained by the body conducting proceedings. If it is impossible to ascertain proficiency or the individual’s command of Estonian proves to be insufficient, the assistance of an interpreter or translator shall be ensured.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(2^1) If a suspect or accused is not proficient in the Estonian language, he or she shall be ensured the assistance of an interpreter or translator at his or her request or the request of his or her counsel at the meeting with the counsel which is directly related to the procedural operation performed with respect to the suspect or accused, the application or complaint submitted. If the body conducting proceedings finds that the assistance of an interpreter or translator is not necessary, the body shall formalise the refusal by an order.
[RT I, 04.10.2013, 3 – entry into force 27.10.2013]

(3) All documents which are requested to be included in a criminal and court file shall be in the Estonian language or translated into Estonian. Documents in other languages prepared by investigative bodies and prosecutors' office in terminated criminal proceedings shall be translated into Estonian by the order of the Prosecutor’s Office or at the request of a participant in proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

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

(5) If a suspect or accused is not proficient in the Estonian language, the text of the report on detention of the suspect, arrest warrant, European arrest warrant, statement of charges and judgment shall be translated into his or her native language or a language in which he or she is proficient, at least to the extent which is significant from the point of view of understanding the content of the suspicion or charges or for ensuring fairness of the proceedings.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(6) If a suspect or accused is not proficient in the Estonian language, he or she or his or her counsel may submit a reasoned application for translating a document which is significant from the point of view of understanding

the content of the suspicion or charges in the criminal matter or for ensuring the fairness of the proceedings into his or her native tongue or into another language in which he or she is proficient. If the body conducting the proceedings finds that the application for translating the documents is not justified either in full or in part, such body shall formalise the refusal by an order.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(6^1) If a victim who is a natural person is not proficient in the Estonian language, translating of the text which is essential for understanding the substance of the order on termination of criminal proceedings or the court judgment or for ensuring the fairness of the proceedings into his or her native language or a language in which he or she is proficient may be requested within ten days. A victim who is a natural person may also request translating of other documents which are essential for ensuring his or her procedural rights. If the body conducting proceedings finds that the request for translating other documents is not justified, such body shall formalise the refusal by an order.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(7) Instead of written translation of the documents listed in subsections (5)-(6^1) of this section, such documents may be translated orally or an oral summary may be made thereof, if:
1) this does not affect the fairness of the proceedings; or
2) a suspect or accused who has been informed of the consequences of waiver of written translation of the documents listed in subsections (5) and (6) of this section has filed a written application for waiver of written translation in a format which can be reproduced in writing or it was recorded in another manner.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(8) An oral translation shall be ensured to a suspect and accused immediately, a written translation of the documents shall be ensured to a suspect and accused within a reasonable period of time so that this does not impair the exercise of their rights of defence.
[RT I, 04.10.2013, 3 – entry into force 27.10.2013]

(9) A person may appeal refusal to provide translations or partial provision thereof on the basis of this section according to the provisions of §§ 228 or 229 of this Code or pursuant to Chapter 15 of this Code.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(10) If procedural documents were translated to a person on the basis of this section, then in the case these procedural documents are appealed, the terms of appeal shall be calculated as of the date of receipt of the translated documents.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

§ 11. Public access to court sessions

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

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

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

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

§ 12. Restrictions on public access to court sessions

(1) A court may declare that a session or a part thereof be held in camera:
1) in order to protect a state or business secret or classified information of foreign states;
[RT I 2007, 16, 77 – entry into force 01.01.2008]
2) in order to protect morals or the private and family life of a person;
3) in the interests of a minor or a victim;
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]
4) in the interests of the administration of justice, including in the cases where public access to the court session may endanger the security of the court, of a party to judicial proceedings or of a witness.

(2) The court shall resolve the imposition of restrictions on public access to a court session on the basis provided for in subsection (1) of this section by a reasoned order made on its own initiative or at the request of a party to judicial proceedings.
[RT I, 07.12.2018, 2 – entry into force 17.12.2018]

(3) With the permission of a court, an official of an investigative body, a court official, a witness, a qualified person, an expert, an interpreter or a translator, a person specified in clause 38 (5) 3) of this Code and a person close to the victim and accused for the purposes of subsection 71 (1) of this Code may observe a court session held in camera.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(4) In a closed court session, the court shall caution participants in proceedings and other persons present in the courtroom that the contents of the hearing held and the documents examined in a closed session must not be disclosed to the extent which is necessary for the protection of the right or interest specified in subsection (1) of this section.
[RT I, 07.12.2018, 2 – entry into force 17.12.2018]

(4^1) The court may, by substantiated order, require the participants in proceedings and other persons present in the courtroom to maintain the confidentiality of a fact which has become known to them in the course of the proceedings even if the court session has not been declared closed but maintaining confidentiality is clearly necessary for the protection of a right or interest specified in subsection (1) of this section.
[RT I, 07.12.2018, 2 – entry into force 17.12.2018]

(4^2) In the cases provided in subsections (4) and (4^1) of this section, a notation shall be made in the minutes of the court session concerning the participants in proceedings and other persons present in the courtroom being cautioned against violating the obligation to maintain confidentiality.
[RT I, 07.12.2018, 2 – entry into force 17.12.2018]

(5) [Repealed – RT I, 07.12.2018, 2 – entry into force 17.12.2018]

§ 13. Restrictions on recording of court sessions

(1) As of the opening of a court session until the pronouncement of the decision, the persons present in the courtroom may take written notes.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

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

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

§ 14. Adversarial nature of judicialproceedings

(1) In judicial proceedings, the functions of prosecution, defence and adjudication of the criminal matter shall be performed by different persons subject to proceedings.

(2) Withdrawal of the charges pursuant to the procedure provided for in § 301 of this Code releases the court from the obligation to continue the proceedings. If charges are withdrawn for the reason that the act of the accused comprises the necessary elements of a misdemeanour, withdrawal of the charges is the basis for termination of criminal proceedings. Withdrawal of the charges in other cases is the basis for a judgment of acquittal.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 15. Judicial hearing at first hand

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

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

(2) The decision of the circuit court may be based on:
1) evidence which has been presented and examined at first hand at judicial hearing by the circuit court and recorded in the minutes;
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]
2) evidence which has been examined at first hand in the county court and disclosed in appeal proceedings.

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

§ 15^1. Judicial hearing without interruption or delay

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

§ 15[2]. Processing of personal data in criminal proceedings

(1) In criminal proceedings, the body conducting proceedings shall have the right to process personal data, including personal data of specific categories, which are required for conduct of pre-court proceedings and judicial proceedings, taking of evidence, enforcement of the decisions made in criminal matters, conduct of surveillance activities or achievement of other objectives provided for in this Act.

(2) When processing of personal data in the course of criminal proceedings, the body conducting proceedings shall act as a law enforcement authority for the purposes of subsection 13 (2) of the Personal Data Protection Act, and processing of personal data shall be guided by the provisions established for law enforcement authorities.

(3) Exercise of the rights of data subjects arising from the Personal Data Protection Act shall be guided by the provisions of this Act, regardless of whether the data subject is a suspect, accused, victim, civil defendant, third party, witness or any other person.

(4) When processing personal pursuant to this Act, a data controller may restrict the rights of a data subject arising from the Personal Data Protection Act, if this is required in order to prevent or detect an offence, to conduct proceedings with respect to an offence or to enforce a punishment, to conduct civil, administrative or any other legal proceedings, to prevent any damage to the rights and freedoms of another person or data subject, to prevent endangering of national security or to ensure maintenance of public order.

(5) The following rights of data subjects may be restricted pursuant to subsection (4) of this section:
1) the right to know that their personal data are processed, including what personal data are processed, and the way, method, objective, legal basis, extent or cause of processing;
2) the right to know the recipients of their personal data and categories of personal data disclosed and information about whether their personal data are transmitted to foreign countries or international organizations;
3) the right to demand restrictions on processing of their personal data;
4) the right to object to processing of their personal data;
5) the right to know about breaches related to their personal data.

(6) Bodies conducting proceedings are joint controllers of personal data processed in the course of criminal proceedings in accordance with their competence.

(7) Transfer of personal data to persons in third countries that are not law enforcement agencies for the purposes of subsection 13 (2) of the Personal Data Protection Act shall be permitted only under the terms and conditions and pursuant to the procedure provided for in § 49 of the Personal Data Protection Act.
[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

Chapter 2
PERSONS INVOLVED IN CRIMINAL PROCEEDINGS

§ 16. Bodies conducting proceedings and participants in proceedings

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

(2) Participants in proceedings are the suspect or accused, his or her counsel, victim, civil defendant and third parties.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

§ 17. Parties to judicial proceedings

(1) The parties to judicial proceedings are the Prosecutor’s Office, the accused and his or her counsel and the victim, civil defendant and third parties.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

(2) The parties to judicial proceedings enjoy all the rights of participants in proceedings provided in this Code.

Subchapter 1

§ 18. Panels of county courts

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

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

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

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

(5) Pre-court proceedings shall be conducted by the judge sitting alone.

(6) The composition of a court panel to deal with a criminal matter by way of international cooperation is provided in Chapter 19.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

§ 19. Panels of circuit courts

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

(2) The chairman of the circuit court may assign a judge of a county court of the same circuit to a panel of the circuit court with the consent of the judge.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

§ 20. Panels of the Supreme Court

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

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

§ 21. Preliminary investigation judge

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

(2) In the case provided by this Code, permission for surveillance activities is granted by a preliminary investigation judge.
[RT I, 29.06.2012, 2 – entry into force 09.07.2012]

§ 22. Judge in charge of execution of court judgments

A judge in charge of the execution of court judgments is a county court judge who, sitting alone, shall perform the duties assigned to him or her by this Code in the execution of decisions.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

§ 23. Voting in collegial court panels and dissenting opinions of judges

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

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

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

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

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

(6) A judge who took the minority position in voting may present his or her dissenting opinion to the court judgment. The dissenting opinions appended to the judgments of the Supreme Court shall be published together with the judgments.
[RT I 2010, 19, 101 – entry into force 01.06.2010]

§ 23[1]. Court officials

(1) An order preparing the matter for adjudication or other case management orders which are not subject to appeal under the law, including an order on refusal to proceed with a petition, application or appeal, and an order on provision or extension of a term may also be made by a competent court official pursuant to the internal rules of the courts.

(2) The court may use the assistance of a court official in the preparation and formalisation of a decision.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

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

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

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

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

(4) A preliminary investigation judge of a county court in whose territorial jurisdiction the criminal offence was committed shall perform the duties of a preliminary investigation judge. Where it is impossible to clearly determine the place of commission of the criminal offence, a preliminary investigation judge of a county court of the place of performance of the procedural operation shall perform the duties of a preliminary investigation judge. Permission for surveillance activities is granted by a judge designated by the division of tasks plan who is not the chairman of the court.
[RT I, 13.03.2019, 1 – entry into force 01.01.2020]

(5) The jurisdiction of criminal matters proceedings in which are conducted by international cooperation is provided for in Chapter 19.

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

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

(2) If a criminal offence is committed abroad, the criminal matter shall be heard by the court of the residence of the suspect or accused in Estonia. If the suspect or accused does not have a residence in Estonia, the criminal matter shall be heard by Harju County Court.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

§ 26. Jurisdiction over joined criminal matters

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

§ 27. Jurisdiction over criminal matters concerning judges

(1) A criminal matter in which a judge is a participant in proceedings and which according to general jurisdiction should be heard by a county court within the territorial jurisdiction of the circuit court of the place of employment of the judge shall be referred for hearing by a county court within the territorial jurisdiction of another circuit court.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

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

court of the place of employment of the judge, permission for surveillance activities is granted, at the request of the Office of the Prosecutor General, by the chairman of the county court within the territorial jurisdiction of another circuit court or a judge designated by him or her acting as a preliminary investigation judge.
[RT I 2007, 1, 2 – entry into force 30.03.2007]

§ 27[1]. Jurisdiction of charge proceedings

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

(2) If a notice on refusal to commence criminal proceedings or order on termination of the criminal proceedings has been sent to the victim by the Office of the Prosecutor General, the appeal specified in subsection 208 (1) of this Code falls within the jurisdiction of the Tallinn Circuit Court.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

§ 28. Verification of jurisdiction and resolution of jurisdictional disputes

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

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

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

§ 29. Procedural assistance between courts

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

Subchapter 2
Prosecutor's Office

§ 30. Prosecutor's Office in criminal procedure

(1) The Prosecutor's Office shall direct pre-court proceedings and ensure the legality and efficiency thereof and represent public prosecution in court. In the case provided by this Code, the Prosecutor's Office has the right to file a civil action or proof of claim in public law. Unless otherwise provided by this Code, the Prosecutor's Office shall not have the rights of the body conducting proceedings provided by this Code in the collection of the evidence necessary for proving a civil action or proof of claim in public law.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

(2) The authority of the Prosecutor's Office in criminal proceedings shall be exercised, in the name of the Prosecutor's Office, independently by the prosecutor having regard only to the law. The authority of the Prosecutor's Office provided by this Code upon conducting the proceedings in a civil action or proof of claim in public law shall be exercised by the prosecutor or another person authorised by the Prosecutor General or a chief prosecutor.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

(3) When performing a task of the European Prosecutor's Office emanating from Council Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (OJ L 283, 31.10.2017, pp. 1–71), a European Prosecutor or a European Delegated Prosecutor have the same rights as those held by the Prosecutor's Office under this Code.
[RT 29.12.2020, 1 – entry into force 08.01.2021]

Subchapter 3
Investigative Bodies

§ 31. Definition of investigative body

(1) Investigative authorities are, within their respective jurisdictions, the Police and Border Guard Board, the Internal Security Service, the Tax and Customs Board, the Competition Board, the Military Police, the

Environment Board as well as the Department of Prisons of the Ministry of Justice and the prisons, which perform the functions of an investigative authority directly or through an institution administered by them or through a local office.
[RT I, 10.07.2020, 2 – entry into force 01.01.2021]

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

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

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

(5) The list of positions whose holders have the right to participate in criminal proceedings within the limits of the competence of the investigative body shall be approved by the heads of the bodies specified in subsection (1) of this section.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 32. Investigative bodies in criminal procedure

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

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

Subchapter 4
Suspect and accused

§ 33. Suspect

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

(2) The rights and obligations of a suspect shall be immediately explained to him or her and he or she shall be interrogated with regard to the content of the suspicion. Interrogation may be postponed if immediate interrogation is impossible due to the state of health of the suspect, or if postponing is necessary in order to ensure the participation of a counsel and interpreter or translator.

§ 34. Rights and obligations of suspects

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

(1^1) A suspect who is a minor and, taking into consideration the circumstances of the criminal matter and vulnerability of the person, a person below twenty-one years of age who is suspected of committing a crime when under eighteen years of age, shall have the right, in addition to as specified in subsection (1) of this section:
1) to notify their legal representative or any other person pursuant to subsections 35^2(1) and (2) of this Code;

2) to the presence of a legal representative or any other person during the performance of procedural operations and in a court session pursuant to subsection 35^2(3) of this Code;
3) to that a pre-trial report is prepared for his or her individual assessment at the latest before bringing the charges, except in the case this is not in his or her interests in the specific criminal proceedings, and that the conclusions of the individual assessment shall be taken into account upon making procedural decisions;
4) to that he or she shall undergo a medical examination without undue delay upon deprivation of liberty in the cases prescribed by law or if necessary, and at his or her request, the request of his or her counsel or the person specified in subsections 35^2(1) or (2) of this Code or on the initiative of the body conducting proceedings, and the conclusions thereof shall be taken into account upon making procedural decisions;
5) to special treatment upon deprivation of liberty;
6) to treatment in a manner that protects privacy and dignity according to his or her age, maturity, comprehension and special needs, including potential communication difficulties, and to proceedings without undue delay.
[RT I, 20.12.2019, 1 – entry into force 30.12.2019]

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

(3) A suspect is required to:
1) appear when summoned by an investigative body, Prosecutor's Office or court;
2) participate in procedural operations and obey the orders of investigative bodies, Prosecutors' Offices and courts.

§ 34^1. Suspects' right to examine materials of criminal file

(1) Suspects have the right to request access to the evidence which is essential for specifying the content of the suspicion filed against them, if this is required for ensuring fair proceedings and the preparation of defence. Access to the evidence collected shall be ensured at the latest after the Prosecutor's Office has declared the pre-court proceedings completed and submitted the criminal file for examination pursuant to § 224 of this Code.

(2) Suspects have the right to request access to any evidence which is essential for the hearing on whether an arrest warrant is justified and for contesting detention and taking into custody in court.

(3) Enabling access to the evidence specified in subsection (1) and (2) of this section shall be decided by the Prosecutor's Office. The Prosecutor's Office may make a determination on refusal to enable access to evidence if this may significantly damage the rights of another person or if this prejudices criminal proceedings in the matter.

(4) An appeal may be filed against the determination of the Prosecutor's Office concerning the refusal provided for in subsection (3) of this section in accordance with the provisions of § 228 of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

§ 35. Accused

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

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

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

(4) The accused with regard to whom a judgment of acquittal has entered into force is an acquitted person.
[RT I 2006, 15, 118 – entry into force 14.04.2006]

§ 35^1. Information on rights of suspects and accused

(1) The suspect or accused shall be immediately provided information orally or in writing on his or her rights in plain and intelligible language. Explanation of rights shall be confirmed by signature.

(1^1) The rights of a suspect and accused who is a minor shall be also introduced to their legal representatives and the person specified in subsection 35^2(2) of this Code.
[RT I, 20.12.2019, 1 – entry into force 30.12.2019]

(2) A suspect or accused who is detained or taken into custody shall be immediately submitted a written declaration of rights concerning his or her rights under criminal procedure. A suspect and accused shall have the right to keep the declaration in his or her possession during the time of detention or keeping in custody.

(3) If the suspect or accused specified in subsection (2) of this section is not proficient in the Estonian language, he or she shall be provided with the declaration of rights in his or her mother tongue or in a language in which he or she is proficient.

(4) The standard format of declarations of rights shall be established by a regulation of the minister responsible for the area.
[RT I, 20.12.2019, 1 – entry into force 30.12.2019]

§ 35[2]. Notification of and participation in proceedings by legal representatives or other persons

(1) The body conducting proceedings is required to inform the legal representative of a suspect or accused who is a minor of the rights and obligations of a suspect who is a minor, except in the situation where this is not in the interests of the minor or may significantly damage the criminal proceedings. In the later cases, a local government authority must be notified.

(2) If notification of the legal representative of a suspect or accused who is a minor is impossible or this is not in the interests of the minor or may significantly damage to the criminal proceedings, the body conducting the proceedings shall notify any other persons who has been designated by the suspect or accused who is a minor, and evaluated as suitable by the body conducting the proceedings.

(3) At the request of a suspect or accused who is a minor, his or her legal representative and the person specified in subsection (2) of this section may present with the child:
1) in a court session;
2) during the performance of procedural operations, if this is in the interests of the minor in the opinion of the body conducting the proceedings and does not impede the criminal proceedings by means of causing delays or in any other manner.
[RT I, 20.12.2019, 1 – entry into force 30.12.2019]

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

A suspect or accused who is a legal person shall participate in criminal proceedings through a member of the management board or the body substituting for the management board of the legal person or a trustee in bankruptcy and such person has all the rights and obligations of the suspect or accused, including the right to give testimony in the name of the legal person.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

Subchapter 5
Victim, Civil Defendant and Third Party

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

§ 37. Victim

(1) A victim is a natural or legal person whose legal rights have been directly violated by a criminal offence aimed at the person or by an unlawful act committed by a person not capable of guilt. In the case of an attempt to commit a criminal offence, a person is a victim even if, instead of the legal rights attacked, such legal rights are violated the violation of which is covered by the legal rights attacked. The state or another public authority is a victim only in the case it has a proprietary claim due to violation of its legal rights and the claim can be enforced in criminal proceedings. A natural person is a victim even in the case a criminal offence or an unlawful act committed by a person not capable of guilt caused the death of any person close to him or her and damage was caused to him or her as a result of the death.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(2) A victim who is a legal person shall participate in criminal proceedings through its legal representative, an employee authorised by the legal representative, a trustee in bankruptcy or a contractual representative and such person has all the rights and obligations of the victim. A legal representative or a trustee in bankruptcy of a victim who is a legal person has the right to give testimony in the name of the legal person.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

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

(4) A person is joined to the proceedings as a victim by subjection to procedural operations or by a determination of the body conducting proceedings. A person may be joined to proceedings as a victim at any stage of the proceedings and in any court instance until termination of appeal proceedings. If it becomes evident that a person was joined to proceedings without basis or the person no longer corresponds to the concept of a

victim due to changed circumstances, the person conducting the proceedings shall remove the person from the proceedings by the corresponding determination.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(5) If the body conducting pre-court proceedings denies the request for involvement of a person as a victim or removes a person joined to proceedings without basis as a victim, the victim shall be explained his or her right to submit an appeal against the determination of the body conducting the proceedings pursuant to the rules provided in § 228 of this Code. A person may apply for his or her joinder as a victim even by submitting an appeal against a court judgment.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

§ 37[1]. Victim's legal succession in proceedings

(1) If a victim who is a natural person dies or a victim who is a legal person is dissolved after filing of a civil action but before entry into force of the decision made thereon, the body conducting proceedings permits the universal successors of the victim to join proceedings as a third person. Universal succession is possible at any stage of proceedings.

(2) Universal successors of a victim shall have only the rights of the victim in connection with proceedings regarding civil actions.

(3) Any procedural operations performed prior to the joining of proceedings by a universal successor are binding on the universal successor to the same extent to which such acts would have been binding on the legal predecessor of the universal successor.

(4) If a victim who is a natural person dies or a victim who is a legal person is dissolved and the victim's universal successor is not known or identification thereof is impossible within a reasonable period of time, a court shall dismiss the civil action.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

§ 37[2]. Assessment of individual protection needs of victim who is natural person

(1) The body conducting proceedings is obligated to assess whether any circumstances exist which give reason to believe that the victim who is a natural person requires special treatment and protection in criminal proceedings.

(2) The assessment shall take into consideration the victim's personal characteristics, the gravity and nature of the criminal offence, the personality of the suspect, the circumstances relating to the commission of the criminal offence and the damage caused to the victim. A victim who is a minor is presumed to need special treatment and protection in criminal proceedings.

(3) As a result of the assessment, a decision shall be made concerning which of the opportunities provided in this Code to use to ensure the safety of the victim and whether the questioning of with the victim should be conducted on premises adapted for the special needs of the victim, or by, or with the participation of, a specialist trained for questioning victims with special protection needs or, if possible, by the same person throughout the proceedings.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

§ 38. Rights and obligations of victims

(1) A victim has the right to:
1) contest the refusal to commence, or termination of, criminal proceedings pursuant to the rules provided in §§ 207 and 208 of this Code;
2) file a civil action or proof of claim in public law through an investigative body or the Prosecutor’s Office during the term provided for in subsection 225 (1) or clause 240 4) of this Code;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
3) give or refuse to give testimony on the bases provided for in §§ 71-73 of this Code;
4) submit evidence;
5) submit requests and complaints;
6) examine the minutes of procedural operations and give statements on the conditions, course, results and minutes of the procedural operations, with such statements being recorded in the minutes;
7) examine the materials of the criminal file pursuant to the procedure provided for in § 224 of this Code;
8) participate in judicial hearing;
9) give consent to the application of settlement proceedings or to refuse to give such consent, to present an opinion concerning the charges and punishment and the amount of damage set out in the charges and the civil action or the proof of claim in public law;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
10) give consent to the application of temporary restraining order and request application of restraining order pursuant to the procedure provided for in § 310[1] of this Code;
[RT I 2006, 31, 233 – entry into force 16.07.2006]

11) request that his or her questioning be conducted by a person of the same sex when it comes to sexual violence, gender violence or a criminal offence committed in close relationship, except if the questioning is conducted by a prosecutor or a judge or if this would interfere with the course of proceedings.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(2) A victim is required to:
1) appear when summoned by an investigative body, Prosecutor's Office or court;
2) participate in procedural operations and obey the directions of investigative bodies, the Prosecutor's Office and the courts.

(3) [Repealed – RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(4) An investigative body or the Prosecutor's Office shall explain to the victim his or her rights, the procedure for filing a civil action, essential requirements for a civil action, term for filing a civil action and the consequences of allowing such term to expire, and the conditions and procedure for receipt of legal aid ensured by the state.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) A victim who is a natural person shall have the right to:
1) receive information concerning taking into custody of a person suspected of a criminal offence and request to be notified of release of the person held in custody in the event of any danger, except in the case communication of such information would cause any harm to the suspect;
2) request to be notified of the release of the convicted offender before the prescribed time or escape of the convicted offender from a custodial institution in the case the information can prevent danger to the victim;
3) have one person chosen by him or her to accompany him or her at any procedural operations unless the body conducting the proceedings has refused this with good reason.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]
4) apply for an opportunity to state an opinion on release on parole of an offender in the case of a criminal offence of the first degree provided for in Chapter 9 or 11 of the Penal Code;
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]
5) express an opinion on the impact associated with the criminal offence on him or her and on taking of responsibility for the criminal offence.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(6) The person accompanying the victim at procedural operations on the basis of clause (5) 3) of this section shall be cautioned that disclosing information relating to proceedings is not permitted and interference in the course of the procedural operations is not permitted.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

§ 38[1]. Invocation of victim's claim in criminal proceedings

(1) The victim shall have the right to file a civil action against the suspect, accused or defendant which the court shall consider as part of the criminal proceedings. The victim may submit a claim by a civil action if:
1) the objective of the claim is to restore or remedy the well-being of the victim infringed by the act which is the subject matter of the criminal proceedings if the factual circumstances which are the basis for the claim overlap in substantial part with the circumstances under which the criminal offence that is being considered in the proceedings was committed and if such claim could also be considered in civil proceedings;
2) it is a claim for compensation for damage against a public authority which could be filed under administrative court procedure.

(2) A public authority may, in addition to the provisions of subsection (1) of this section, file as a victim a proof of claim in public law for determination of financial obligations in public law claimed from the accused, if the factual circumstances which are the basis for such obligation overlap in substantial part with the circumstances under which the criminal offence that is being considered in the proceedings was committed. A proof of claim in public law may be filed by an administrative authority who would be entitled to determine the same financial obligation under administrative procedure. The filing of a proof of claim in public law in criminal proceedings shall exclude invocation of the same claim in other proceedings, except in the case the application is dismissed in criminal proceedings.

(3) A civil action or proof of claim in public law is filed through an investigative body or Prosecutor's Office during the term provided for in subsection 225 (1) or clause 240 4) of this Code.

(3[1]) If the state, local authority or another public authority has been joined to criminal proceedings as a victim and the representative thereof fails to file a civil action or proof of claim in public law during the term provided for in § 225 or clause 240 4) of this Code, the civil action or proof of claim in public law may be filed by the Prosecutor's Office instead of the state, local authority or other public authority.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

(3^2) If the state, local authority or another public authority has been joined to criminal proceedings as a victim and the representative thereof files a civil action or proof of claim in public law during the term provided for in § 225 or clause 240 4) of this Code in and it is manifest that the claim of the victim expressed therein is unreasonably small taking into consideration the harm caused by the criminal offence, is unproven or contains other significant deficiencies which may lead the court to reject or dismiss the civil action or proof of claim in public law, and the person who filed the civil action or proof of claim in public law fails to eliminate the deficiencies by the due date, the Prosecutor's Office may file a civil action or proof of claim in public law instead of the representative of the state, local authority or other public authority.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

(3^3) If the state, local authority or another public authority has been joined to criminal proceedings as a victim and the representative thereof withdraws the civil action or proof of claim in public law before the commencement of judicial hearing, the Prosecutor's Office may file the civil action or proof of claim in public law instead of the representative of the state, local authority or other public authority.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

(3^4) In the cases specified in subsections (3^1)-(3^3) of this section, the Prosecutor's Office shall file a civil action or proof of claim in public law to the benefit of the state.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

(4) Consideration of a civil action as part of criminal proceedings is exempt from state fees, with the exception of a civil action making a claim for compensation for non-proprietary damage, if the claim for compensation for non-pecuniary damage does not derive from the causing of a bodily injury or other health disorder or of the death of provider.

(5) The Republic of Estonia as a victim is exempted from payment of state fees upon filing of a civil action and proof of claim in public law.

(6) Resolution of any issues which are not regulated in this Code in relation to proceedings on the civil action shall be based on the provisions of the Code of Civil Procedure.

(7) Resolution of any issues which are not regulated in this Code in relation to proceedings on proofs of claim in public law shall be subject to the provisions of Chapter 26 of the Code of Administrative Court Procedure.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

§ 38^2. Specifications for enforceability of claims of victims in case of criminal offences related to competition

Proceedings on actions concerning damage caused by commission of an act provided for in § 400 of the Penal Code shall take place under civil procedure.
[RT I, 26.05.2017, 1 – entry into force 05.06.2017]

§ 39. Civil defendant

(1) A civil defendant is a natural or legal person who is not a person suspected of a criminal offence or the accused but:
1) a person bearing proprietary liability pursuant to law for damage caused to a victim by an act which is the object of the criminal proceedings; or
2) against whom a victim has a real right claim pursuant to law for restoration of rights or a claim arising from unjust enrichment and the objective of the claim is to restore or remedy the well-being of the victim infringed by an act which is the object of the criminal proceedings.

(2) A person is joined to proceedings as a civil defendant, and removed from proceedings, by a determination of the body conducting the proceedings. The body conducting the proceedings joins the person specified in subsection (1) of this section to proceedings at the request of a victim or the accused or on its own initiative if there is reason to believe that the claim of the victim against the civil defendant may be considered as part of criminal proceedings, or if it is necessary in order to protect the interests of the accused. The request of the victim must be accompanied by a civil action against the person whose joinder in the proceedings as a civil defendant the victim requests. If it becomes evident that a person was joined to proceedings without foundation or the person no longer corresponds to the concept of a civil defendant due to changed circumstances or if it becomes evident that the claim of the victim will not be considered as part of criminal proceedings, the body conducting the proceedings shall remove the person from the proceedings.

(3) A person may be joined to proceedings as a civil defendant until the completion of judicial examination by the county court.

(4) A civil defendant who is a legal person participates in criminal proceedings through its legal representative or a trustee in bankruptcy and such person has all the rights and obligations of a civil defendant.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

§ 40. Rights and obligations of civil defendants

(1) A civil defendant has the right to:
1) contest a civil action or file a counterclaim;
2) submit evidence;
3) submit requests and complaints;
4) examine the minutes of procedural operations and give statements on the conditions, course, results and minutes of the procedural operations, whereas such statements are recorded in the minutes;
5) examine the materials of the criminal file pursuant to the procedure provided for in § 224 of this Code;
6) participate in judicial hearing;
7) give consent to the application of settlement proceedings or to refuse to give such consent, to present an opinion concerning the damage set out in the charges and the civil action.

(2) A civil defendant is required to:
1) appear when summoned by an investigative body, Prosecutor's Office or court;
2) participate in procedural operations and obey the orders of investigative bodies, Prosecutors' Offices and courts.

§ 40[1]. Third party

(1) A third party is a natural or legal person who is not a person suspected of a criminal offence, accused, victim or civil defendant but whose rights or obligations may be decided on when dealing with the criminal matter or applying a specific procedure.

(2) A person is joined to proceedings as a third party and removed from the proceedings by an order of the body conducting proceedings. The body conducting proceedings joins to proceedings, as a third party, any persons who conform to the characteristics provided for in subsection (1) of this section. If it becomes evident that a person was involved in the proceedings without basis or if the person no longer corresponds to the concept of a third party due to changed circumstances, the person conducting the proceedings shall remove the person from the proceedings.

(3) The order on the joinder of a person as a third party to, or removal of the person from, proceedings may be made by the body conducting proceedings at each stage of the proceedings and in every court instance until entry into force of a court judgment or order made in special proceedings. A person may request his or her joinder to proceedings also in an appeal filed against the judicial decision. In such case, his or her joinder shall be resolved when deciding on acceptance of the appeal filed against the judicial decision.

(4) A third party who is a legal person shall participate in criminal proceedings through its legal representative or a trustee in bankruptcy and such person has all the rights and obligations of a third party.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

§ 40[2]. Rights and obligations of third parties

(1) Third parties have the right to:
1) submit evidence;
2) submit requests and complaints;
3) examine the minutes of procedural operations and give statements on the conditions, course and results of the procedural operations, whereas such statements are recorded in the minutes;
4) examine the materials of the criminal file pursuant to the procedure provided for in § 224 of this Code;
5) participate in judicial hearing.

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

(3) Third parties are required to:
1) appear when summoned by an investigative body, Prosecutor's Office or court;
2) participate in procedural operations and obey the orders of investigative bodies, Prosecutors' Offices and courts.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

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

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

(1) A victim, civil defendant or third party who is a natural person may participate in criminal proceedings personally or through a representative. Personal participation in criminal proceedings does not deprive the person of the right to have a representative.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

(2) A victim, civil defendant or third party who is a legal person may have a contractual representative in criminal proceedings s in addition to the legal representatives specified in subsections 37 (2), 39 (4) and 40^1(4) of this Code.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(3) In criminal proceedings, state legal aid shall be provided to victims, civil defendants and third parties on the bases and pursuant to the procedure prescribed in the State Legal Aid Act. If a court finds that the essential interests of a victim, civil defendant or third party may be insufficiently protected without an attorney, the court may decide to grant state legal aid to the person on its own initiative and on the bases and pursuant to the procedure prescribed in the State Legal Aid Act.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

(3^1) The body conducting proceedings shall designate a representative to a victim with restricted active legal capacity under state legal aid, if:
1) it may be presumed under the circumstances that the interests of the legal representative of the victim are in conflict with the interests of the victim;
2) the victim who is a minor is separated from his or her family;
3) the victim is an unaccompanied minor for the purposes of the Act on Granting International Protection to Aliens.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(4) A victim, civil defendant and third party may have up to three representatives. A representative may have several principals if the interests of the principals are not in conflict. An attorney or any other person who has acquired at least officially recognised Master's degree in the field of study of law or a qualification equal thereto for the purposes of subsection 28 (2^2) of the Republic of Estonia Education Act or a foreign qualification equal thereto may appear as a contractual representative in judicial proceedings.
[RT I 2008, 29, 189 – entry into force 01.07.2008]

(5) A representative has all the rights of the principal. A representative of a natural person or the contractual representative of a legal person does not have the right to give testimony in the name of the principal.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

(6) A representative is required to maintain the confidentiality of all the information which becomes known to him or her upon grant of state legal aid in the course of criminal proceedings. The representative is allowed to disclose to the principal the information which becomes known to him or her upon grant of state legal aid in criminal proceedings. The representative may disclose information concerning pre-court proceedings about the principal only with the consent of the principal and under the conditions prescribed in § 214 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

Subchapter 6
Counsel

§ 42. Counsel

(1) In criminal proceedings, the counsel is:
1) an attorney or, with the permission of the body conducting the proceedings, any other person who meets the educational requirements established for contractual representatives by this Code and whose competence in criminal proceedings is based on an agreement with the person being defended (contractual counsel), or
[RT I 2005, 71, 549 – entry into force 01.01.2006]
2) an attorney whose competence in criminal proceedings is based on an appointment of an investigative body, Prosecutor’s Office or court and an appointment by the Estonian Bar Association (appointed counsel).
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(2) In judicial proceedings, a person being defended may, by agreement, have up to three counsels.

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

§ 43. Choice and appointment of counsel

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

(2) A counsel shall be appointed by an investigative body, Prosecutor’s Office or court if:
1) a suspect or the accused has not chosen a counsel but has requested the appointment of a counsel;

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

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

(3^1) If a suspect or accused requests appointment of a counsel on the basis of clause (2) 1) of this section, the investigative body, Prosecutor's Office or court explains the terms and conditions of payment of remuneration and the procedure for compensation for costs to the counsel appointed to him or her.
[RT I, 28.12.2016, 14 – entry into force 01.04.2017]

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

(5) An order of an investigative body, Prosecutor's Office or court on the appointment of a counsel shall be sent to the Estonian Bar Association.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

§ 44. Substitute counsel

(1) The counsel may appoint a substitute counsel to participate in criminal proceedings in his or her stead during the period of time when he or she is prevented from participating in the proceedings. An investigative body, Prosecutor's Office or court may appoint a substitute counsel in criminal proceedings in the cases provided by law.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

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

§ 44^1. Substitute counsel provided under state legal aid

(1) In pre-court proceedings, the Estonian Bar Association shall appoint a substitute counsel based on an order of an investigative body, the Prosecutor's Office or court if the counsel chosen by the person cannot assume the duties of defence within 12 hours as of the detention of the person as a suspect or, in other cases, within 24 hours as of entry into an agreement to defend the suspect or accused or summoning to the body conducting the proceedings and the counsel has not appointed a substitute counsel for himself or herself.

(2) In judicial proceedings, the court may decide to appoint a substitute counsel if a chosen or appointed counsel cannot appear at the court session held in a matter dealt with by regular procedure in which he or she has assumed the duties of defence, and the counsel has not appointed a substitute counsel for himself or herself.

(3) If a chosen or appointed counsel is unable to participate in judicial hearing of a matter within three months as of the preliminary hearing, the court shall appoint a substitute counsel, requiring the Estonian Bar Association to appoint a counsel within one month as of making the court order and ensure the participation of the appointed counsel in judicial hearing within two months as of his or her appointment. If it becomes evident within one month as of making the order that the chosen or appointed counsel can himself or herself assume the duties of defence, the Estonian Bar Association shall not comply with the order and shall inform the court and provide the reasons thereof.

(4) In the cases specified in this section, an appointed substitute counsel shall participate in criminal proceedings until the counsel chosen by the suspect or accused or the appointed counsel can assume the defence duties.

(5) In the cases specified in this section, the appointment of a substitute counsel shall not terminate the authority of the counsel chosen by a suspect or accused or an appointed counsel or release the counsel from his or her defence duties.

(6) In the cases specified in this section, an appointed substitute counsel shall consult, if possible, with the counsel chosen by the suspect or accused or an appointed counsel prior to assuming the duties of defence and comply with the instructions of the chosen or appointed counsel upon performance of the duties of defence.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

§ 45. Participation of counsel in criminal proceedings

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

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

(2) The participation of counsel is mandatory for the entire course of criminal proceedings if:
1) the person was a minor at the time of commission of the criminal offence or unlawful act;
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]
2) due to his or her mental or physical disability, the person is unable to defend himself or herself or if defence is complicated due to such disability;
3) the person is suspected or accused of a criminal offence for which life imprisonment may be imposed;
4) the interests of the person are in conflict with the interests of another person who has a counsel;
5) the person has been held in custody for at least four months;
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]
6) [Repealed – RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(3) Participation of a counsel in pre-court proceedings is mandatory as of presentation of the criminal file for examination pursuant to the rules provided in subsection 223 (3) of this Code, except in the case where proceedings concern a criminal offence in the second degree, where the prosecutor considers it possible to resolve the criminal case by alternative procedure, including by alternative procedure conducted as expedited procedure, where the suspect has been informed in writing against a signature of the right to be assisted by counsel, the terms and conditions of being assisted by counsel and the consequences of failure to apply for the assistance of counsel but the suspect has not requested the participation of counsel in the proceedings and the prosecutor or judge finds that participation of a counsel is not required in the interests of the administration of justice.
[RT I, 28.12.2016, 14 – entry into force 01.04.2017]

(4) The participation of a defence counsel in judicial proceedings is mandatory, except:
1) in settlement proceedings, including in the settlement proceedings conducted pursuant to expedited procedure provided for in sections 239-250 of this Code, if the suspect or the accused has not submitted a request for participation of a counsel in judicial proceedings and participation of a counsel is not required in the interests of the administration of justice in the opinion of the body conducting proceedings;
2) in proceedings concerning a criminal offence in the second degree conducted by alternative procedure, including in the proceedings conducted by alternative procedure as expedited procedure provided for in sections 233-238 of this Code, if the accused has waived the right to counsel and participation of a counsel is not required in the interests of the administration of justice in the opinion of the body conducting proceedings.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(4^1) The requirements for the format of the waiver specified in subsection (4) of this section shall be established by a regulation of the minister responsible for the area.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4^2) If, at the request of the accused, the counsel does not participate in judicial hearing of the matter, the accused shall have the same procedural rights and obligations that the counsel would have in the course of the hearing.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4^3) [Repealed – RT I, 05.07.2013, 2 – entry into force 15.07.2013]

(5) An appointed counsel is required to participate in criminal proceedings until the end of consideration of the criminal matter under cassation procedure and he or she may refuse to assume the duties of defence on his or her own initiative or waive the duties of defence that he or she has assumed only on the bases provided in subsection 46 (1) of this Code.

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

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

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

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

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

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

1) the counsel has been exempted from the obligation to maintain a professional secret pursuant to the procedure provided for in subsection 45 (5) of the Bar Association Act or if the suspect or accused has requested the performance of an act which is in violation of law or the requirements for professional ethics;
2) performance of the duties of defence by such counsel would be in violation of the right of defence;
3) the person being defended violates any of the essential conditions of the client contract.

(1^1) [Repealed – RT I, 21.06.2014, 11 – entry into force 01.07.2014]

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

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

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

§ 47. Rights and obligations of counsel

(1) A counsel has the right to:
1) receive from natural and legal persons documents necessary for the provision of legal assistance to the person being defended;
2) submit evidence;
3) submit requests and complaints;
4) examine the minutes of procedural operations and give statements on the conditions, course, results and minutes of the procedural operations, with such statements being recorded in the minutes;
5) with the knowledge of the body conducting the proceedings, use technical equipment in the performance of the duties of defence if this does not interfere with the performance of procedural operations;
6) participate in the investigative activities carried out in the presence of the person being defended during pre-court proceedings with the right to put questions through the body conducting the proceedings;
7) after joining criminal proceedings, examine the record of interrogation of the person being defended and the record of detention of the suspect and, upon the completion of pre-court proceedings, all materials in the criminal file;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
8) confer with the person being defended without the presence of other persons for an unlimited number of times with unlimited duration unless a different duration of the conference is provided for in this Code.

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

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

§ 48. Waiver of counsel

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

Subchapter 7
Circumstances Precluding Participation in Criminal Proceedings

§ 49. Bases for judge to remove himself or herself

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

[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
2) has made a court order specified in §§ 132, 134, 135 or 137 of this Code as a preliminary investigation judge in the same criminal matter, except in the hearing of the criminal matter in settlement and summary proceedings;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
3) has previously been involved in proceedings in the same criminal in another capacity;
4) is or has been a person close to the accused, victim or civil defendant pursuant to subsection 71 (1) of this Code.
5) [Repealed – RT I, 23.02.2011, 1 – entry into force 01.09.2011]

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

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

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

(5) The removal of a judge by himself or herself shall be formalised by a reasoned petition for removal which shall be included in the court file.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) If a judge finds that he or she cannot be impartial for a reason not specified in subsection (1) of this section, the judge shall submit a petition of challenge pursuant to the procedure prescribed in § 49[1] of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 49[1]. Dealing with petition of challenge submitted by judge

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

(2) Until the petition of challenge is resolved, the judge or the court panel having received the petition of challenge may perform only urgent procedural operations.

(3) The chairman of a court or a judge appointed by the chairman shall, by order, resolve the petition of challenge by written procedure within three working days as of receipt of the petition.

(4) The petition of challenge of the chairman of a county court shall be resolved by the chairman of the circuit court or a judge appointed by him or her. The petition of challenge of the chairman of the circuit court shall be resolved by the Chief Justice of the Supreme Court or a justice appointed by the Chief Justice. The petition of challenge of a justice of the Supreme Court shall be resolved by the court panel hearing the matter.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 50. Removal of judge

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

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

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

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

(5) Petitions of challenge shall be resolved by an order made in chambers. A petition of challenge regarding a judge shall be adjudicated by the rest of the panel of the court in the absence of the judge to be removed. In the event of an equal division of votes, the judge is removed. A petition of challenge against several judges or the full panel of the court shall be resolved by the same panel of the court by a simple majority. If a court panel finds that the petition of challenge has to be granted for a reason not specified in subsection 49 (1) of this Code, no order shall be made but the petition of challenge shall be referred for resolution in accordance with the rules prescribed in § 49[1] of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) If a criminal matter is heard by a judge sitting alone, the judge shall resolve petitions of challenge himself or herself. If a judge finds that the petition of challenge has to be granted for a reason not specified in subsection

49 (1) of this Code, the judge shall refer the petition of challenge for resolution in accordance with the rules prescribed in § 49[1] of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

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

§ 51. Replacement of removed judge

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

§ 52. Bases for prosecutor to remove himself or herself

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

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

§ 53. Removal of prosecutor

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

(2) A petition of challenge submitted against a prosecutor in a pre-court proceedings shall be resolved by an order of the Office of the Prosecutor General within five days as of the submission of the petition.

(3) Petitions of challenge filed in judicial proceedings shall be resolved by the court.

§ 54. Bases for counsel to remove himself or herself

A person shall not act as counsel if he or she:
1) is or has been involved in the proceedings in the same criminal matter in another capacity;
2) in the same or related criminal matter, has previously defended or represented another person whose interests are in conflict with the interests of the person to be defended.

§ 55. Bases for removal of counsel

(1) If the bases provided for in subsection 20 (3[1]) of the State Legal Aid Act exist or if a counsel does not remove himself or herself on the bases provided for in § 54 of this Code, the court shall, by order, remove the counsel on its own initiative or at the request of a party to judicial proceedings.
[RT I 2009, 1, 1 – entry into force 01.01.2010]

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

(3) [Repealed – RT I, 21.06.2014, 11 – entry into force 01.07.2014]

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

(1) Proceedings for the removal of a counsel shall be conducted:
1) in a pre-court proceedings, by the preliminary investigation judge;
2) in a county court, by the judge sitting alone or one of the judges of the panel of the court;
3) in a circuit court or the Supreme Court, by one of the judges of the panel of the court.

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

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

(4) On the first working day following the date of receipt of the request for initiation of proceedings for the removal of a counsel, the judge shall schedule the time for a court session for the conduct of the proceedings and notify the Prosecutor's Office which submitted the request, the counsel to be removed, the person being defended by the counsel and, if the counsel to be removed is a member of the Bar Association, the leadership of the Bar Association of the scheduled time.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

§ 57. Proceedings for removal of counsel

(1) Proceedings for the removal of a counsel shall be conducted within five days as of receipt of the corresponding request.

(2) If the person who submitted the request fails to appear at the court session in which removal proceedings are to be conducted, the counsel shall not be removed.

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

(4) If a counsel who has received the summons fails, without good reason, to appear in a court session in which removal proceedings are conducted or if the reason for his or her failure to appear is unknown or if he or she fails to appear at the court session held after the adjournment, removal proceedings shall be conducted in his or her absence.

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

(6) The decision made in removal proceedings shall be formalised as a court order.

(7) A counsel who has been removed in accordance with the rules provided in this section and in section 55 has the right to re-join criminal proceedings after the basis for removal provided for in subsection 55 (2) of this Code has ceased to exist.

§ 58. Replacement of removed counsel

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

§ 59. Removal of other persons participating in proceeding

(1) An official of an investigative body who is conducting proceedings in a criminal matter is required to remove himself or herself on the bases provided for in subsections 49 (1) and (6) of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

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

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

(4) The representative of a victim, civil defendant, third party and witness is required to remove himself or herself on the bases provided for in § 54 of this Code. Upon removal of the representative of a victim, civil defendant, third party and witness, the provisions prescribed for removal of a counsel in this Code shall be applied.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) Petitions of challenge submitted in pre-court proceedings shall be resolved by an order of the Prosecutor's Office within three days as of the submission of the petition.

(6) Petitions of challenge filed in judicial proceedings shall be resolved by a court.

Chapter 3

PROOF

Subchapter 1
General Conditions for Proof and Taking of Evidence

§ 60. Proof and matter of common knowledge

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

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

(3) A fact concerning which reliable information is available from sources external to criminal proceedings may be declared a matter of common knowledge by the court.

§ 61. Evaluation of evidence

(1) No evidence has predetermined weight.

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

§ 62. Subject of proof

The facts relating to a subject of proof are:
1) the time, place and manner of commission of the criminal offence and other facts relating to the criminal offence;
2) the necessary elements of the criminal offence;
3) the guilt of the person who committed the criminal offence;
4) information describing the person who committed the criminal offence, and other circumstances affecting the liability of the person.

§ 63. Evidence

(1) Evidence means the statements of a suspect, accused, victim, the testimony of a witness, an expert's report, the statements given by an expert upon provision of explanations concerning the expert's report, physical evidence, reports on investigative activities, minutes of court sessions and reports or video recordings on surveillance activities, and other documents, photographs, films or other data recordings.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(1^1) Submission of information collected pursuant to the Security Authorities Act as evidence in criminal proceedings shall be decided by the Prosecutor General taking into account the restrictions specified in subsections 126^1(2) and 126^7(2) of this Code.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

(2) Evidence not listed in subsection (1) of this section may also be used in order to prove the facts relating to criminal proceedings, except in the case the evidence has been obtained by a criminal offence or violation of a fundamental right.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 64. General conditions for taking of evidence

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

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

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

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

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

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

§ 65. Evidence obtained on ships during voyages and in foreign states

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

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

(3) If an act to which the Penal Code of Estonia applies is committed on board a ship during a voyage, the documents prepared by the master of the ship pursuant to § 73 of the Merchant Shipping Code are the evidence in the criminal proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

Subchapter 2
Hearing of witnesses

§ 66. Witness

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

(2) A suspect or accused or the official of the investigative body, prosecutor or judge conducting the proceedings in the criminal matter shall not participate in the same criminal matter as witnesses. An official of an investigative body, prosecutor or judge who has conducted proceedings in the criminal matter may be a witness in judicial proceedings for verifying the reliability of evidence.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(2^1) The testimony of a witness concerning such facts relating to a subject of proof of which the witness has become aware through another person shall not be evidence unless:
1) the direct source of the evidence cannot be heard for the reason specified in subsection 291 (1) of this Code;
2) the content of the testimony of the witness is what he or she heard from another person about the circumstances perceived by him or her immediately before speaking in the case the specified person was, during speaking, still under the influence of what he or she had perceived, and there is no basis to believe that he or she distorts the truth;
3) the content of the testimony of the witness is what he or she heard from another person and which contains the admission of commission of a criminal offence or which is in another way in obvious conflict with the interests of the speaker;
4) the content of the testimony of the witness is the circumstances relating to a criminal offence committed jointly.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) A witness is required to give testimony unless there are lawful bases specified in §§ 71-73 of this Code for refusal to give testimony. While giving testimony, the witness is required to tell the truth.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 67. Ensuring safety of witnesses

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

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

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

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

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

(6) Regardless of whether or not a witness has been declared anonymous, the provisions of the Witness Protection Act may be applied to the witness in order to ensure his or her safety.
[RT I 2005, 39, 307 – entry into force 21.07.2005]

§ 67[1]. Representative of witness

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

(2) The body conducting the proceedings shall not allow a witness to be represented at the interrogation by persons who are already parties to the proceedings, witnesses or qualified persons, who may prove to be witnesses or qualified persons in the criminal matter concerned or if there is a reasonable doubt that the interests of the person are in conflict with the interests of the witness. Such prohibition to allow a person to act as a representative shall be formalised by an order of the body conducting proceedings, and the witness may contest it before the preliminary investigation judge within two working days as of receipt of the order.

(3) If a witness fails to appear for interrogation within two working days as of the time of the act specified in the summons of the body conducting proceedings together with a representative in compliance with the requirements of subsections (1) and (2) of this section, the interrogation shall be conducted without a representative.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

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

(5) A representative is required to maintain the confidentiality of all the information which becomes known to him or her upon grant of state legal aid in the course of criminal proceedings. The representative is allowed to disclose to the principal the information which becomes known to him or her upon grant of state legal aid. The representative may disclose information concerning pre-court proceedings about the principal only with the consent of the principal and under the conditions prescribed in § 214 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 68. Interrogation of witnesses

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

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

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

(4) A witness may be heard only as regards the facts relating to a subject of proof. Leading questions may be posed only in the cases specified in clauses 288[1](2) 2)-5) of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

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

(6) Questions concerning the moral character and habits of a suspect, accused or victim may be put to a witness only if the act which is the object of criminal proceedings needs to be assessed in inseparable connection with his or her previous conduct.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 69. Telehearing

(1) A body conducting the proceedings may organise telehearing if the direct hearing of a person is complicated or unreasonably burdensome or if telehearing is necessary to protect the interests of the person.
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

(2) For the purposes of this Code, telehearing means hearing:
1) by means of a technical solution, as a result of which the testimony of the person heard is seen and heard directly via live coverage and he or she can be asked questions;
2) by phone, as a result of which the testimony of the person is immediately heard and he or she can be asked questions.
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

(3) [Repealed – RT I, 06.05.2020, 1 – entry into force 07.05.2020].

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

(5) The provisions of § 489^{41} of this Code apply to hearing of persons staying in a foreign state, in co-operation between the Member States of the European Union, and in other cases the provisions of § 468 of this Code.
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

(6) The minister responsible for the area may establish more specific requirements for organising telehearing.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 69^{1}. Deposition of testimony

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

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

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

(4) The prosecutor, counsel, suspect and witness shall be summoned to the hearing before a preliminary investigation judge. A suspect shall not be summoned to hearing at the request of a witness or the prosecutor if the presence of the suspect at the hearing poses a threat to the safety of the witness. Summoning of persons to deposition of testimony shall be arranged by the participant in proceedings who requests the hearing. A counsel may request the assistance of a preliminary investigation judge for summoning a person to the extent provided for in subsections 163^{1}(4) and (5) of this Code.

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

(6) The provisions of §§ 155-158 and 287-291 of this Code shall apply to hearing and taking of minutes thereof.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 69^{2}. Written testimony

(1) In pre-trial procedure, a body conducting proceedings may require a witness to provide written answers to the questions posed within the term prescribed by the body conducting the proceedings if the body conducting the proceedings finds that direct or telehearing is not practicable.

(2) A person who is required to answer any questions in writing shall be informed of their rights, obligation and liability and explained that regardless of giving written testimony he or she may be called to a hearing.

(3) A person who gives written testimony shall confirm via the E-File system by his or her signature or in any other manner which can be reproduced that he or she has been advised of his or her rights, obligations and liability and that the answers given by him or her are true.
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

§ 70. Specifications concerning hearing of witnesses who are minors

(1) A body conducting proceedings may involve a child protection official, social worker, teacher or psychologist in the hearing of a witness who is a miner.
[RT I, 11.07.2013, 1 – entry into force 01.09.2013]

(2) If a body conducting proceedings has not received appropriate training, involvement of a child protection official, social worker, teacher or psychologist in the hearing of a minor is mandatory if:
[RT I, 11.07.2013, 1 – entry into force 01.09.2013]
1) the witness is up to ten years of age and repeated hearing may have a harmful effect on the mind of a minor;
2) the witness is up to fourteen years of age and the hearing is related to domestic violence or sexual abuse;
3) the witness is with speech impairments, sensory or learning disabilities or mental disorders.

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

(4) A suspect has the right to examine during the pre-court proceedings the video recordings specified in (3) of this section. The suspect or a counsel has the right to submit questions to witnesses during five days after the examining. The Prosecutor's Office shall consider a request within five days as of the receipt thereof. Denial of a request shall be formalised by an order a copy of which shall be communicated to the person who submitted the request. The fact that the request was denied shall not prevent re-submission of the request in accordance with the rules in section 225 of this Code or in judicial proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 71. Refusal to give testimony for personal reasons

(1) The following persons have the right to refuse to give testimony as witnesses:
1) the descendants and ascendants of the suspect or accused;
2) a sister, stepsister, brother or stepbrother of the suspect or accused, or a person who is or has been married to a sister, stepsister, brother or stepbrother of the suspect or accused;
3) a step or foster parent or a step or foster child of the suspect or accused;
4) an adoptive parent or an adopted child of the suspect or accused;
5) the spouse of or a person permanently living together with the suspect or accused, and the parents of the spouse or person, even if the marriage or permanent cohabitation has ended.

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

(1) the testimony may lay blame on him or her or a person listed in subsection (1) of this section for the commission of a criminal offence or a misdemeanour;
2) he or she has been acquitted or convicted in the same criminal offence as a joint principal offender or an accomplice.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

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

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

(1) The following persons have the right to refuse to give testimony as witnesses concerning the circumstances which have become known to them in their professional or other activities:
[RT I, 21.12.2010, 1 – entry into force 31.12.2010]
1) the ministers of religion of the religious organisations registered in Estonia;
2) counsels and notaries unless otherwise provided by law;
3) health care professionals and pharmacists regarding circumstances concerning the descent, artificial insemination, family or health of a person;
3^1) persons processing information for journalistic purposes regarding information which enables identification of the person who provided the information, except in the case taking of the evidence by other procedural operations is precluded or especially complicated and the object of criminal proceedings is a criminal offence for which at least up to eight years' imprisonment is prescribed as punishment, there is predominant public interest for giving testimony and the person is required to give testimony at the request of the Prosecutor's Office based on an order of a preliminary investigation judge or court order;
[RT I, 21.12.2010, 1 – entry into force 31.12.2010]
4) persons on whom the obligation to maintain a professional secret has been imposed by law.

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

(2^1) In the case provided for in clause (1) 3^1) of this section, the persons who in their professional activities come across the circumstances which may identity the person who provided information to the person processing the information for journalistic purposes has the right to refuse to give testimony.
[RT I, 21.12.2010, 1 – entry into force 31.12.2010]

(3) The persons specified in subsection (1) of this section and their professional support staff and the persons specified in subsection (2^1) do not have the right to refuse to give testimony if their testimony is requested by a suspect or accused.
[RT I, 21.12.2010, 1 – entry into force 31.12.2010]

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

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

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

(1) A witness has the right to refuse to give testimony concerning circumstances to which the State Secrets and Classified Information of Foreign States Act applies.
[RT I 2007, 16, 77 – entry into force 01.01.2008]

(2) If a witness refuses to give testimony in order to protect a state secret or classified information of a foreign state, the investigative body, Prosecutor's Office or court shall request the agency in possession of the state secret or classified information of a foreign state to confirm classification of the facts as state secret or classified information of a foreign state.
[RT I 2007, 16, 77 – entry into force 01.01.2008]

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

§ 74. Minutes of hearing of witness

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

(1) The following shall be entered in the minutes of the hearing of a witness:
1) the name, personal identification code or, in the absence thereof, date of birth, citizenship, education, residence and the place of work or the name of the educational institution of the witness;
2) the relationship between the witness and the suspect or accused;
3) the testimony.

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

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

(4) After a witness being heard has spoken in his or her own words, he or she may write the testimony in the minutes of the hearing in hand-writing, and a corresponding notation shall be made in the minutes.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

Subchapter 3
Interrogation of Suspect

§ 75. Interrogation of suspect

(1) Upon application of interrogation of a suspect, his or her name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship, education, native language and the place of work or educational institution shall be ascertained.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

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

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

(3^1) The suspect and his or her counsel have the right to get a copy of the record of interrogation of the suspect during the interrogation to the extent provided for in clauses 76 (1) 1)-3) of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) Subsection 66 (2^1), subsections 68 (3)-(6) and subsections 69 (1) and (2) of this Code apply to interrogation of suspects. If necessary, the questioning of a suspect who is a minor shall be recorded.
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

§ 76. Record of interrogation of suspect

(1) The following shall be entered in the minutes of the hearing of a witness:
1) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship, education, native language and the place of work or educational institution of the suspect;
2) marital status of the suspect;
3) the facts relating to the criminal offence of which the person is suspected and the legal assessment of the criminal offence pursuant to the relevant section, subsection and clause of the Penal Code;
4) statements of the suspect.

(2) The record of interrogation of a suspect shall be prepared pursuant to subsections 74 (2) and (4) of this Code.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

Subchapter 4
Confrontation, Comparison of Statements to Circumstances and Presentation for Identification

§ 77. Confrontation

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

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

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

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

(5) In the course of confrontation, statements are obtained pursuant to subsections 66 (2^1) and 68 (2)-(6) of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) The body conducting proceedings may organise the participation of a person confronted in confrontation by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code. Confrontation organized by means of a technical solution shall be video recorded.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 78. Record of confrontation

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

(2) At the request of the body conducting proceedings the correctness of each answer recorded shall be confirmed by the signatures of the persons confronted.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

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

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

§ 79. Comparison of statements to circumstances

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

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

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

§ 80. Report on comparison of statements to circumstances

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

§ 81. Presentation for identification

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

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

(3) A set of objects shall not be formed if the object presented for identification is:
1) a body;
2) an area, building, room or other object in the case of which presentation of several objects concurrently is impossible;
3) an object the features of which are substantially different from other objects and therefore a set of similar objects cannot be formed.

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

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

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

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

(8) In the course of presentation for identification, statements are obtained pursuant to subsections 66 (2^1) and 68 (2)-(6) of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 82. Report on presentation for identification

(1) A report on presentation for identification shall set out:
1) the names of the object or objects presented for identification;
2) the essential features which were similar for all the objects presented for identification, and where the object presented for identification was located among the other objects;
3) the place chosen by the person presented for identification among the other persons;

4) the proposal made to the identifier to watch the object or objects presented to him or her and say whether he or she recognises the object related to the event under investigation and whether he or she finds the object similar to or different from the other objects;
5) the features by which the identifier recognised the object.

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

Subchapter 5
Inspection and Inquiries to Electronic Communications Undertakings

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

§ 83. Objective of inspection and objects of inspection

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

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

(3) If the explanations of a suspect, accused, witness, qualified person or victim help to ensure the thoroughness, comprehensiveness and objectivity of the inspection, such person shall be asked to be present at the inspection.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 84. Inspection of scene of events

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

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

§ 85. Inspection of body

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

(2) The following shall be ascertained upon inspection of a body:
1) the identity of the body or, in the case of an unidentified body, a description of the body;
2) the location and position of the body;
3) the evidentiary traces of a criminal offence and the objects adjacent to the body;
4) the evidentiary traces of a criminal offence on the uncovered parts of the body, clothes, footwear, and covered parts of the body;
5) the signs of death;
6) other characteristics necessary for resolving the criminal matter.

(3) If possible, inspection of a body shall be conducted in the presence of a forensic pathologist or qualified person whose task is to:
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
1) ascertain that the person is dead unless death is evident;
2) assist the official of the investigative body in the conduct of the inspection in order to collect and record the source information necessary for an expert assessment.

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

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

(2) If additional examination of a document, thing or any other object used as physical evidence is necessary, inspection of the physical evidence shall be conducted.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 87. Inspection report

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

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

§ 88. Physical examination

(1) The following shall be ascertained upon physical examination:
1) whether there are evidentiary traces of a criminal offence on the body, clothes or footwear of the person and whether this gives reason to declare him or her as a suspect;
2) the nature of any health damage and the location and other characteristics of injuries;
3) the specific features of the body of the suspect, accused or victim or the distinctive characteristics on his or her body which need to be recorded with a view to resolving the criminal matter;
4) whether the person has objects which can be used as physical evidence with him or her or hidden in his or her body;
5) other facts relating to a subject of proof in the criminal matter.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(2) If the objective of a physical examination is to detect the evidentiary traces of a criminal offence on the body of the person, a forensic pathologist, a health care professional or another qualified person shall participate in the examination.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

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

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

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

§ 89. Seizure and examination of postal or telegraphic items

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

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

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

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

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

§ 90. Report on examination of postal or telegraphic items

A report on the examination of a postal or telegraphic item shall set out:
1) a reference to the order on the seizure of the postal or telegraphic item;
2) the name of the object of seizure;
3) information derived from the examination;
4) the name of the postal or telegraphic item which was confiscated in order to be used as physical evidence.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 90[1]. Request to electronic communications undertakings to submit information

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

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

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

Subchapter 6
Search and Investigative Experiment

§ 91. Search

(1) The objective of a search is to find an object to be confiscated or used as physical evidence, a document, thing or person necessary for resolving the criminal matter, assets to be seized in criminal proceedings, or a body, or to apprehend a fugitive in a building, room, vehicle or enclosed area. A search may be conducted if there is reasonable doubt that the object to be found is at the place of the search.

(2) Unless otherwise provided by this Code, a search may be conducted at the request of the Prosecutor's Office on the basis of an order of a preliminary investigation judge or on the basis of a court order. Both an order of a preliminary investigation judge as well as a court order resolving a search request by the Prosecutor's Office may be drawn up as an endorsement on the request of the Prosecutor's Office.

(3) A search may be conducted on the basis of an order of the Prosecutor's Office, except for searches of a notary's office or attorney's law office or at the persons processing information for journalistic purposes, if there is reason to believe that the suspect used or uses the site or vehicle to be searched at the time of commission of a criminal act or during the pre-court proceedings, and the person is suspected of committing the crime specified in subsection 126^2(2) of this Code.

(4) A search warrant shall set out:
1) what is being searched for as the objective of the search (hereinafter *object to be found*);
2) the reasons for the search;
3) the place where the search is conducted.

(5) In the cases of urgency, if execution of a search warrant on time is impossible, a search may be conducted on the terms and conditions specified in subsection (3) of this section on the basis of an authorisation of the Prosecutor's Office issued in a format which can be reproduced in writing.

(6) When a search is conducted on the bases specified in subsections (3) and (5) of this section, a preliminary investigation judge has to be notified thereof through the Prosecutor's Office during the first working day following the beginning of the search. A preliminary investigation judge shall decide on the admissibility of the search by an order which may be drawn up as an inscription on the determination of the Prosecutor's Office.

(7) If a search is conducted, the search warrant shall be presented for examination to the person whose premises are to be searched or to his or her adult family member or a representative of the legal person or the state or local government agency whose premises are to be searched. The warrant shall be signed to confirm the presentation. In the case specified in subsection (5) of this section, the person whose premises are to be searched or his or her adult family member or a representative of the legal person or the state of local government agency

whose premises are to be searched shall be explained upon implementation of a search the circumstances specified in subsections (4) of this section and the reasons for conducting a search urgently. The search report shall be signed to confirm that explanations of the circumstances were provided. In the absence of the responsible person or representative, a representative of the local authority shall be involved.

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

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

(10) In the course of a search, all objects may be taken away which are subject to confiscation or are evidently the evidence in the criminal proceedings if they were discovered without any search in a clearly visible place or in the course of reasonable search undertaken to find the objects to be found.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

§ 91[1]. Entry against possessor's will

If entry into a building, premises, vehicle or enclosed area against the will of the possessor thereof is required for performance of a procedural operation, it shall be done in compliance with the procedure provided for in § 91 of this Code, except for the case this is necessary for:
1) observation of a body or crime scene immediately after finding of the body or commission of the criminal offence, or
2) for detention of a person as a suspect immediately after the commission of the criminal offence.
[RT I, 12.07.2014, 1 – entry into force 13.07.2014]

§ 92. Search report

(1) A search report shall set out:
1) a proposal to hand over the object to be found or to show where the body is hidden or the fugitive is hiding;
2) the names of the objects which were handed over voluntarily;
3) the conditions, course and results of the search;
4) the names of the objects found and the characteristics of the objects which are relevant with a view to resolving the criminal matter;
5) the identification data of apprehended fugitives.
[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

(1[1]) In the case specified in subsection 91 (5) of this Code, the circumstances specified in subsection 91 (4) shall be indicated in the introduction to the search report and the reasons why the search in urgent.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(2) If physical examination is performed in the course of a search, the data listed in subsection 88 (4) of this Code may be entered in the search report. In such case a report on physical examination need not be prepared.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 93. Investigative experiment

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

(2) A suspect, accused, victim or witness shall participate in an investigative experiment if:
1) his or her assistance is necessary in order to recreate the circumstances relating to an event;
2) the results of the investigative experiment enable his or her statements or testimony to be verified;
3) the results of the experiment depend on the characteristics, abilities or skills of the participant in the experiment.

(3) Physical evidence may be used in an investigative experiment if:
1) replacement of the physical evidence may influence the results of the investigative activities, and the destruction of the evidence is precluded;
2) it is not necessary to present the physical evidence for identification to a person participating in the investigative experiment.

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

§ 94. Report on investigative experiment

A report on an investigative experiment shall set out:

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

Subchapter 7
Ascertainment of Facts Requiring Expertise

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

§ 95. Expert

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

(2) Upon ordering expert assessment, the body conducting proceedings shall prefer a state forensic institution. If the required class of expert assessment is not on the list of the expert assessments conducted by a state forensic institution, the body conducting the proceedings shall give preference upon appointment of an expert to an officially certified expert but other persons with the relevant knowledge may also be appointed as experts.
[RT I, 04.07.2012, 1 – entry into force 01.08.2012]

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

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

§ 96. Bases for expert to remove himself or herself

(1) An expert is required to remove himself or herself from criminal proceedings:
1) on the bases provided for in subsections 49 (1) and (6) of this Code;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
2) if he or she works in a position subordinate to a participant in criminal proceedings or an official of an investigative body who is conducting proceedings in the criminal matter or is in any other dependent relationship with such persons.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

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

(3) Earlier participation of an expert in criminal proceedings as an expert or qualified person does not constitute a basis for him or her to remove himself or herself.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

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

§ 97. Removal of expert

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

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

§ 98. Rights and obligations of experts

(1) An expert conducting an expert assessment has the right to:
1) request additions to be made to the materials of the expert assessment;

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

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

(3) If an expert fails to appear without good reason, a fine may be imposed on the expert by a preliminary investigation judge at the request of the Prosecutor's Office or by a court on the basis of a court order.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 99. Securing of conduct of expert assessment and investigation

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

(2) Where necessary, any prints of papillary skin ridges that have been collected in the course of a procedural operation are recorded in the database of the Automated Biometric Identification System (hereinafter, 'ABIS Database'), with other data concerning the collection of such prints being recorded in the National Fingerprint Database, and data obtained by analysing a DNA sample are recorded, where necessary, in the National DNA Database.
[RT I, 08.07.2021, 1 – entry into force 15.07.2021]

(3) Unless otherwise provided for by law, an investigative authority or any other authority vested with the relevant power may preserve any prints and samples that have been taken in the course of a procedural operation and that have not been identified. An investigative authority may preserve non-identified prints of papillary skin ridges or non-identified DNA samples taken in the course of investigative operations only if those prints or samples are not recorded in the National Fingerprint Database, in the ABIS Database or in the National DNA Database.
[RT I, 08.07.2021, 1 – entry into force 15.07.2021]

§ 99[1]. Fingerprinting of persons and taking of their DNA samples

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

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

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

(4) Biometric data obtained by fingerprinting any person mentioned in subsections 1 and 2 of this section are recorded in the ABIS Database, with data concerning the person and the fingerprinting being recorded in the National Fingerprint Database; any data obtained by analysing such a person's DNA sample are recorded in the National DNA Database.
[RT I, 08.07.2021, 1 – entry into force 15.07.2021]

(5) The data entered pursuant to subsection (4) of this section in the National Fingerprint Database and the National DNA Database shall be retained pursuant to the Forensic Examination Act.
[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

§ 99^2. Use for detection of offences of data obtained upon fingerprinting and analysis of DNA samples for other purposes

(1) It is permitted to use the data collected upon fingerprinting and analysis of the DNA samples taken for other purposes for securing the conduct of the expert assessment ordered in criminal proceedings if taking of evidence by other procedural operations is impossible or especially complicated or if this may prejudice criminal proceedings in the case.

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

(3) The activities specified in subsection (1) of this section may be performed only with a written permission of the Prosecutor's Office which also contains justifications of the need to use the data.
[RT I, 04.07.2012, 1 – entry into force 01.08.2012]

§ 100. Taking of comparative samples

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

(1) Comparative samples are taken in order to collect comparative trace evidence and samples necessary for an expert assessment or examination.
[RT I, 04.07.2012, 1 – entry into force 01.08.2012]

(1^1) For the purpose of exclusion of traces legally left on the scene of events, a victim, witness or another person may be fingerprinted and their DNA samples may be taken.
[RT I, 04.07.2012, 1 – entry into force 01.08.2012]

(2) An order on the taking of comparative samples is necessary if:
1) a suspect or accused refuses to allow comparative samples to be taken but the objective of the procedural operation can be achieved by force;
2) the taking of comparative samples infringes the privacy of the body of the person;
3) a legal person is required to submit documents as comparative samples.

(3) An order on the taking of comparative samples shall set out:
1) the person from whom the comparative samples are taken;
2) the type of the comparative samples;
3) the reason for the performance of the procedural operation.

(4) If taking of comparative samples infringes the privacy of the body of a person, a forensic pathologist, health care professional or another qualified person shall participate in the procedural operation.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) Investigative bodies or other competent authorities may preserve comparative samples taken for the purpose of conducting proceedings on, of detection and of prevention of offences, unless otherwise provided by law.
[RT I, 04.07.2012, 1 – entry into force 01.08.2012]

(6) The data obtained by fingerprinting a person under subsection 1^{1}of this section are not recorded in the National Fingerprint Database or the ABIS Database, or are removed from those databases immediately after the carrying out of the comparative inquiry. The public forensic institution concerned returns the material collected for comparison to the proceedings authority together with the expert's report or the report of the inquiry. Any material collected for comparison under this section is destroyed when the criminal case is closed, when the limitation period for the offence expires or when the judgment rendered in the case enters into effect. The material is destroyed by the proceedings authority in whose possession it is at the time of destruction. The destruction is documented in writing and the document attesting the destruction is included in the file.
[RT I, 08.07.2021, 1 – entry into force 15.07.2021]

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

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

§ 101. Report on taking of assessment material

A report on the taking of assessment material shall set out:
1) the names of the comparative trace evidence and samples taken;
2) the manner and conditions of taking the assessment material;
3) the amount or quantity of the assessment material.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

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

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

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

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

(4) The period for which a suspect or accused is placed in a medical institution shall be included in the term of his or her holding in custody.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 103. Exhumation from official place of burial

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

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

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

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

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

§ 104. Report on exhumation

A report on exhumation shall set out:
1) the name and location of the place of burial and information concerning the location of the grave;
2) a description of the grave and the grave markers;
3) information derived from inspection of the coffin and the body.

§ 105. Arrangement of conduct of expert assessment

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

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

§ 106. Order on expert assessment

(1) The main part of an order on an expert assessment shall set out:
1) the title and number of the criminal matter, the facts relating to the criminal offence, and other source information necessary for the expert assessment;
2) the reason for ordering the expert assessment.

(2) The final part of an order on an expert assessment shall set out:
1) the class of the expert assessment according to the field of special expertise;
2) the need to conduct an expert assessment;

[RT I, 04.07.2012, 1 – entry into force 01.08.2012]
3) the name of the expert or state forensic institution who is to execute the order on the expert assessment;
4) information concerning the objects of expert assessment related to the criminal act and concerning the comparative samples and the materials submitted for examination;
5) questions posed to the expert;
6) the term of the expert assessment in the case provided for in subsection 95 (3) of this Code.

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

(4) The following questions shall not be posed to an expert:
1) questions which are of legal nature or fall outside his or her area of expertise;
2) questions which can be answered without expert enquiry or conclusions based on specific expertise.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 107. Preparation of expert's report

(1) The introduction of an expert's report shall set out:
1) the date and place of preparation of the report;
2) the name of the person who ordered the expert assessment, and the date of preparation of the order on the expert assessment and of communication of the order to the expert;
3) the title and number of the criminal matter;
4) the class of the expert assessment;
5) information concerning the expert;
6) the name of the object of the expert assessment or of the person regarding whom the expert assessment was conducted;
7) whether and when additions to the materials of the expert assessment were requested to be made and the date on which such request was granted;
8) the source information necessary for the expert assessment;
9) questions posed to the expert in the order on the expert assessment and questions formulated by the expert on his or her own initiative;
10) the names of the persons who were present at the conduct of the expert assessment;
11) the measures to be applied with regard to the physical evidence submitted for expert assessment, comparative samples, materials or objects of expert assessment.
[RT I, 04.07.2012, 1 – entry into force 01.08.2012]

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

(3) The main part of an expert's report shall set out:
1) a description of the examination;
2) information derived from evaluation of the results of the examination, and the reasons for the expert opinion.

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

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

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

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

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

§ 108. Report on refusal to conduct expert assessment

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

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

§ 109. Hearing of experts

If necessary, an expert shall be heard in a pre-court proceedings in order to specify the content of the expert's report or the report on his or her refusal to conduct the expert assessment. An expert is heard pursuant to subsection 66 (2^1) and §§ 68 and 69 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 109^1. Qualified person

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

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

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

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

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

§ 109^2. ABIS Database

(1) The ABIS Database is an electronic database whose aim, for the purposes of this Code, is to process any biometric data obtained by fingerprinting a suspect, an accused or a convicted offender, or a victim, witness or any other person, as well as any prints of papillary skin ridges collected from a scene of events or obtained from another object:
1) for exclusion purposes;
2) for conducting offence proceedings and for the detection and prevention of offences;
3) for performing expert assessments and inquiries.

(2) The processing of data that have been entered in the ABIS Database is subject to the provisions of § $15^5$of the Identity Documents Act.

(3) The ABIS Database is established and its Constitutive Regulations are adopted by a regulation of the Government of the Republic.

(4) Data controllers of the ABIS Database are the Police and Border Guard Board and the Estonian Forensic Science Institute. The Database's processors are designated in its Constitute Regulations.

(5) The composition of the data to be recorded in the ABIS Database and the time limit for retention of such data are provided for in the Constitutive Regulations of the Database.

(6) Data in the ABIS Database are subject to an access restriction and have been declared to constitute data intended for internal use.
[RT I, 08.07.2021, 1 – entry into force 15.07.2021]

Subchapter 8
Taking of Evidence by Surveillance Activities

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

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

Subchapter 9

Document and Physical Evidence

§ 123. Document

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

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

§ 124. Physical evidence

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

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

(3) Physical evidence or confiscated objects are immediately returned to their owner or former lawful possessor if this does not hinder criminal proceedings. In general, physical evidence or confiscated objects are returned in their storage place.
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

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

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

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

§ 125. Storage of physical evidence

(1) Physical evidence shall be stored in a criminal file, physical evidence storage facility of an investigative body, Prosecutor's Office or court or on other premises in the possession of or territory guarded by it or in a forensic institution, or the measures prescribed in § 126 of this Code shall be applied to the physical evidence if this does not prejudice criminal proceedings in the case.
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

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

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

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

(5) If physical evidence is a document which is necessary for the owner in the future economic or professional activity thereof or for another good reason, the body conducting the proceedings shall make a copy of the

document for the owner. The authenticity of the copy shall be certified by the signature of the person conducting the proceedings on the copy.

(6) Subsections (1)-(5) of this section are applied also with regard to confiscated objects which are not physical evidence.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 126. Measures applicable to physical evidence and confiscated property

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

(1^1) Physical evidence which cannot be returned to the legal possessor thereof, in the case of which the costs of keeping thereof are unreasonably high, may be transferred at the request of the Prosecutor's Office and on the basis of an order of a preliminary investigation judge. The amount received from transfer shall be seized.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(1^2) Physical evidence which the owner or legal possessor thereof has failed to take away within six months after becoming aware of the decision on return may be transferred or destroyed by the holder thereof pursuant to the procedure provided for in the State Assets Act.
[RT I, 31.12.2016, 2 – entry into force 01.02.2017]

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

(2^1) Property seized in order to secure confiscation may be transferred at the request of the Prosecutor's Office and with the consent of the owner of the property on the basis of an order of a preliminary investigation judge. Property may be transferred without the consent of its owner if the costs of keeping thereof are unreasonably high or if this is necessary for prevention of decrease in the value of the property. The amount received from transfer shall be seized.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(2^2) Things of no or small value, pirated goods or counterfeit goods, which are seized in order to secure confiscation, may be destroyed without the consent of their owner or in the cases provided by law recycled at the request of the Prosecutor's Office on the basis of an order of a preliminary investigation judge, if the costs of keeping thereof are unreasonably high.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(3) An order of a body conducting proceedings or a court judgment shall prescribe the following measures applicable to physical evidence:
1) a thing bearing evidentiary traces of criminal offence, a document, or an impression or print made of evidentiary traces of a criminal offence may be stored together with the criminal matter, included in the criminal file or stored in the physical evidence storage facility or any other premises in the possession of the body conducting proceedings or in a forensic institution;
2) other physical evidence the ownership of which has not been contested shall be returned to the owner or lawful possessor thereof;
3) physical evidence of commercial value the owner or lawful possessor of which has not been ascertained shall be transferred into state ownership;
4) things of no value and pirated or counterfeit goods shall be destroyed or, in the cases provided by law, recycled;
5) objects which were used for staging a criminal offence shall be returned to the owners or lawful possessors thereof;
6) property which was obtained by the criminal offence and the return of which is not requested by the lawful possessor shall be transferred into state ownership or transferred in order to cover the costs of the civil action or proof of claim in public law.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

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

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

(5^1) The procedure provided for confiscated property shall apply to physical evidence transferred into state ownership on the basis of subsection (3) of this section and property obtained by criminal offence.
[RT I, 31.12.2016, 2 – entry into force 01.02.2017]

(6) The procedure for 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]

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

Chapter 3[1]
SURVEILLANCE ACTIVITIES

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

§ 126[1]. General conditions for conduct of surveillance activities

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

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

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

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

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

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

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

(8) A surveillance agency has the right to also process, when conducing the surveillance activities, the data available from other sources besides surveillance activities.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

§ 126[2]. Bases for conduct of surveillance activities

(1) The Police and Border Guard Board, the Security Police Board, the Tax and Customs Board, the Military Police and the Prisons Department of the Ministry of Justice and prisons (hereinafter *surveillance agency*) may conduct surveillance activities on the following bases:
1) a need to collect information about the preparation of a criminal offence for the purpose of detection and prevention thereof;
2) the execution of an order on declaring a person a fugitive;
3) a need to collect information in confiscation proceedings pursuant to the provisions of Chapter 16[1]of this Code;
4) a need to collect information in criminal proceedings about a criminal offence.

(2) On the basis of the provisions of clauses (1) 1) and 4) of this section, surveillance activities may be conducted in the event of criminal offences specified in §§ 89-93[1], 95-97, 99, 100[1], 101-104, 106-108, 110-114,

116, 118 and 120, subsection 121 (2), §§ 133-137, 138[1]and 141-146, § 157[3], subsections 151 (2) and (4), subsection 161 (2), §§ 162, 163, 172-179, 183-185, 187-190, 194, 195, 199 and 200, subsections 201 (2) and (3), subsections 202 (2) and (3), §§ 204, 206-214, 216[1]-217, 217[2], 222, 227, 231-238, 241, 243, 244, 246, 250, 251, 255 and 256, clause 258 2), §§ 259, 259[1]and 263, subsections 266 (2) and (4), §§ 274, 2901, 291, 291[1], 294, 296, 298-299, 300, 300[1], 302, 303, 310-313 and 315-316[1], subsection 321 (2), §§ 326-328, 331, 331[3], 333-334, 335, 336, 340 and 347, subsections 356 (1) and (3), subsections 357 (1) and (3), subsections 361 (1) and (3), subsections 364 (2)-(3), §§ 375-376[2], 384, 389[1], 391, 393, 394 and 394[1], subsections 398 (2) and (4), subsections 398[1](2) and (4), §§ 400, 402[3], 402[4], 403-407, 414-416, 418, 418[1], 421[1], 421[2], 434, 435 and 437-439, subsections 440 (3) and §§ 446 and 449 of the Penal Code.
[RT I, 20.12.2019, 1 – entry into force 30.12.2019]

(3) On the basis of this Code, surveillance activities may be conducted in respect of the following persons:
1) on the basis specified in clause (1) 1) of this section in respect of the person in the case of whom there are serious reasons to believe that he or she commits the criminal offence specified in subsection (2) of this section;
2) on the basis specified in clause (1) 2) of this section in respect of the person who is declared to be a fugitive;
3) on the basis specified in clause (1) 3) of this section in respect of the person who owns or possesses the assets which are the object of confiscation proceedings;
4) on the basis specified in clause (1) 4) of this section in respect of the person who is a suspect in criminal proceedings or with respect to whom there is justified reason to believe that he or she has committed or commits the specified criminal offence.

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

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

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

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

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

(9) Where the bases for surveillance activities cease to exist, the surveillance activities shall be immediately terminated.

(10) Surveillance activities may be conducted on the basis not specified in this Code only on the basis provided for in the Estonian Defence Forces Organisation Act, Taxation Act, Police and Border Guard Act, Weapons Act, Strategic Goods Act, Customs Act, Witness Protection Act, Security Act, Imprisonment Act, Aliens Act and Obligation to Leave and Prohibition on Entry Act. The provisions of this Chapter apply to conduct of surveillance activities, processing of information collected by surveillance activities, giving notification of surveillance activities and submission of information collected for examination with the specifications provided for in the above specified Acts.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

§ 126[3]. Surveillance activities

(1) On the basis specified in subsection 126[2](1) of this Code, a surveillance agency may covertly watch a person, thing or area, covertly take comparative samples and perform initial examinations, covertly examine a thing and covertly replace it.

(2) The Police and Border Guard Board and the Security Police Board may conduct the following surveillance activities on the basis specified in clause 126[2](1) 1) of this Code upon collection of information concerning the preparation for the criminal offence specified in §§ 244 and 246, clause 266 (2) 3) and §§ 255 and 256 of the Penal Code and on the basis specified in clauses 3) and 4):
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]
1) to covertly examine a postal item;
2) to covertly observe or wire-tap information;
3) to use a police agent.

(3) The Police and Border Guard Board and the Security Police Board may stage a criminal offence on the basis specified in clause 126^2(1) 4) of this Code for the purpose of detection of a criminal offence or detention of a criminal.

(4) The Prisons Department of the Ministry of Justice and prisons may conduct the following surveillance activities specified in clauses 126^2(1) 1) and 4) of this Code:
1) to covertly examine a postal item;
2) to covertly observe or wire-tap information.

(5) Covert entry into a building, premises, vehicle, enclosed area or computer system is permitted upon conduct of the surveillance activities specified in subsection (1) and clauses (2) 2) and 3) of this section in the case this is unavoidably necessary for the achievement of the objectives of the surveillance activities.

(6) For the purposes of this Code, entry into the possessions of other persons is deemed to be covert if the fact of entry is covert for the possessor or if a misconception of existing facts is knowingly caused by fraud upon entry and the possessor, with knowledge of the actual circumstances, would not have given possession for entry.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

§ 126^4. Grant of permission for surveillance activities

(1) Surveillance activities may be conducted with a written permission of the Prosecutor's Office or a preliminary investigation judge. The preliminary investigation judge shall decide the grant of permission by an order on the basis of a reasoned application of the Prosecutor's Office. The preliminary investigation judge shall consider a reasoned request submitted by the Prosecutor's Office without delay and grant or refuse to grant permission for the conduct of the surveillance activities by an order.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

(2) In cases of urgency, surveillance activities requiring the permission of the Prosecutor's Office may be conducted with the permission of the Prosecutor's Office issued in a format which can be reproduced in writing. A written permission shall be formalised within 24 hours as of the commencement of surveillance activities.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

(3) In the case of immediate danger to the life, physical integrity or physical freedom of a person or to proprietary benefits of high value and requesting a permission or execution thereof on time is impossible, surveillance activities requiring the permission of a court may be conducted, in cases of urgency, with the permission of the court issued in a format which can be reproduced in writing. A written application and permission shall be formalised within 24 hours as of the commencement of surveillance activities.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

(4) A permission issued in cases of urgency in a format which can be reproduced in writing shall contain the following information:
1) the issue of the permission;
2) the date and time of issue of the permission;
3) surveillance activities for which the permission is issued;
4) if known, the name of the person with regard to whom the surveillance activities are conducted;
5) the term of the permission for surveillance activities.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

(5) If covert entry into a building, premises, vehicle, enclosed area or computer system is necessary for conduct of surveillance activities or in order to install or remove technical appliances necessary for surveillance, the Prosecutor's Office shall apply for a separate permission of a preliminary investigation judge for such purpose.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

(6) The duration of surveillance activities conducted with respect to a specific person on the basis provided for in clauses 126^2(1) 1), 3) and 4) of this Code in the same proceedings must not exceed one year. In exceptional cases, the Prosecutor General may authorise or apply to a court for authorisation to conduct surveillance activities for more than one year. In a criminal case dealt with under Council Regulation (EU) 2017/1939, the relevant authorization is granted, or application made, by a European Prosecutor or a European Delegated Prosecutor.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

§ 126^5. Covert surveillance, covert collection of comparative samples and conduct of initial examinations, covert examination and replacement of things

(1) The Prosecutor's Office shall issue a permission for covert surveillance of persons, things or areas, covert collection of comparative samples and conduct of initial examinations and covert examination or replacement

of things for up to two months. The Prosecutor's Office may extend the term of the permission for up to two months at a time.

(2) In the course of the surveillance activities specified in this section, the information collected shall be, if necessary, video recorded, photographed or copied or recorded in another way.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

§ 126[6]. Covert examination of postal items

(1) Upon covert examination of a postal item, information derived from the inspection of the item is collected.

(2) After the covert examination of a postal item, the item shall be sent to the addressee.

(3) In the course of the activities specified in this section, the information collected shall be, if necessary, video recorded, photographed or copied or recorded in another way.

(4) In the course of covert examination of a postal item, the item may be replaced.

(5) A preliminary investigation judge grants permission for the surveillance activities specified in this section for up to two months. After expiry of the specified term, the preliminary investigation judge may extent this term by up to two months.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

§ 126[7]. Wire-tapping or covert observation of information

(1) Information obtained by wire-tapping or covert observation of messages or other information transmitted by the public electronic communications network or communicated by any other means shall be recorded.

(2) Information communicated by a person specified in § 72 of this Code or information communicated to such person by another person which is subject to wire-tapping or covert observation shall not be used as evidence if such information contains facts which have become known to the person in his or her professional activities, unless:
1) the person specified in § 72 of this Code has already given testimony with regard to the same facts or if the facts have been disclosed in any other manner;
2) a permission has been granted with respect to such person for wire-tapping or covert observation; or
3) it is evident on the basis of wire-tapping or covert observation of another person that the specified person commits or has committed a criminal offence.

(3) A preliminary investigation judge grants permission for the surveillance activities specified in this section for up to two months. After expiry of the specified term, the preliminary investigation judge may extent this term by up to two months.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

§ 126[8]. Staging of criminal offence

(1) Staging of a criminal offence is the commission of an act with the elements of a criminal offence with the permission of a court, taking into account the restrictions prescribed in subsection 126[1](3) of this Code.

(2) If possible, a staged criminal offence shall be photographed, filmed or audio or video recorded.

(3) A preliminary investigation judge grants permission for the surveillance activities specified in this section for up to two months. After expiry of the specified term, the preliminary investigation judge may extent this term by up to two months.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

§ 126[9]. Use of police agents

(1) A police agent for the purposes of this Code is a person who collects information on the basis specified in clauses 126[2](1) 1), 3) or 4) of this Code in criminal proceedings by using a false identity.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(2) The Prosecutor's Office shall issue a written permission for the use of police agents. Permission for the use of a police agent is granted for up to six months and this term may be extended by six months at a time.

(3) A police agent has all the obligations of an official of a surveillance agency in so far as the obligations do not require disclosure of the false identity.

(4) The statements of a police agent are used as evidence pursuant to the provisions of this Code concerning witnesses.

(5) Based on an order of the Prosecutor's Office, the fact of using a police agent or the identity of a police agent shall also remain confidential after completion of surveillance activities if disclosure may endanger the life or health, honour and good name or property of the police agent or the persons connected with him or her or his or her further activities as a police agent.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

§ 126[10]. Documentation of surveillance activities

(1) On the basis of the information collected by surveillance activities, an official of the body that conducted surveillance activities or applied for surveillance activities shall prepare a report on surveillance activities which shall set out:
1) the name of the body which conducted the surveillance activities;
2) the time and place of conducting the surveillance activities;
3) the name of the person with regard to whom the surveillance activities were conducted;
4) the date of issue of a permission of a court or a permission of the Prosecutor's Office which is the basis for surveillance activities;
5) the date of submission of an application of the Prosecutor's Office if the surveillance activities are based on a permission of a court;
6) information collected by surveillance activities which is necessary to achieve the purpose of surveillance activities or to resolve the criminal matter.

(2) The photographs, films, audio and video recordings and other data recordings made in the course of surveillance activities shall be appended to a report, if necessary.

(3) If necessary, the surveillance agency that conducted surveillance activities shall record the information collected by surveillance activities in a summary of surveillance activities. The summary of surveillance activities and the photographs, films, audio and video recordings and other data recordings made in the course of surveillance activities shall be appended to a surveillance file.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

§ 126[11]. Keeping of surveillance files

(1) The information collected by surveillance activities, data recordings made in the course of surveillance activities, data obtained in the manner specified in subsection 126[1](8) of this Code and data required for comprehension of the integrity of the information collected by surveillance activities concerning an undercover agent and simulated person, structural unit, body and branch of a foreign company shall be stored in a surveillance file.

(2) The procedure for keeping and storage of surveillance files shall be established by a regulation of the Government of the Republic on the proposal of the minister responsible for the area.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

§ 126[12]. Storage, use and destruction of surveillance files and data recordings collected by surveillance activities

(1) The photographs, films, audio and video recordings and other data recordings or any part thereof necessary for resolving a criminal matter and made in the course of surveillance activities shall be stored in the criminal file or together with the criminal matter. The rest of the materials on surveillance activities shall be stored at surveillance agencies pursuant to the procedure specified in subsection 126[11](2) of this Code.

(2) Surveillance files shall be stored as follows:
1) surveillance files kept on criminal offences under preparation, files on searching persons and confiscation files – until the redundancy of information contained therein, but for not longer than 50 years;
2) files on criminal offences – until the deletion of data concerning punishment from the criminal records database or expiry of the limitation period for the criminal offence.

(3) Information collected by a covert operation may be used in another covert operation, in other criminal proceedings, in security vetting, as well as, where provided for by law, to prevent money laundering or terrorist financing or, when deciding the hiring of a person or the granting of an authorization or licence to a person, to verify whether the person meets the requirements provided by law.
[RT I, 21.11.2020, 1 – entry into force 01.01.2021]

(4) The information collected by surveillance activities may be stored for study and research purposes. Personal data and, if necessary, the information collected shall be completely altered in order to prevent disclosure of persons who have been engaged in surveillance activities or recruited therefor.

(5) If preservation of a data recording made in the course of surveillance activities and added to a criminal file is not necessary, the person subject to the surveillance activities whose fundamental rights were violated by such surveillance activities may request destruction of the data recording after the entry into force of the court judgment.

(6) The data recording specified in subsection (5) of this section shall be destroyed by a court. A report shall be prepared on the destruction of a data recording and included in the criminal file.

(7) If the materials on surveillance activities are stored in a criminal file, the information concerning the persons accused in criminal proceedings whose private or family life was significantly violated by the surveillance activities and whose rights or freedoms may be significantly damaged by disclosure shall be removed from or covered up in the criminal file upon disclosure thereof pursuant to the Public Information Act.

(8) Files containing a state secret or classified information of a foreign state shall be stored and destroyed pursuant to the State Secrets and Classified Information of Foreign States Act.

(9) Surveillance files subject to destruction and data recordings collected shall be destroyed by a committee formed by the head of a surveillance agency in the presence of a prosecutor. The committee shall prepare a report concerning the destruction of a file and data recording collected which shall set out the number of the file or information concerning the destructed data recording and the reason for the destruction thereof.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

§ 126[13]. Notification of surveillance activities

(1) Upon expiry of the term of a permission for the conduct of surveillance activities and, when several surveillance activities are conducted that coincide at least partly in time, upon expiry of the term of the last permission, the surveillance agency shall immediately notify the person with respect to whom the surveillance activities were conducted and the person whose private or family life was significantly violated by the surveillance activities and who was identified in the course of the proceedings. The person shall be notified of the time and type of surveillance activities conducted with respect to him or her.

(2) With the permission of a prosecutor, a surveillance agency need not give notification of conduct of surveillance activities if this may:
1) significantly prejudice criminal proceedings in the case;
2) significantly damage the rights and freedoms of another person which are guaranteed by law or endanger another person;
3) endanger the confidentiality of the methods and tactics of a surveillance agency, the equipment or police agent used in conducting surveillance activities, of an undercover agent or person who has been recruited for secret cooperation.

(3) With the permission of the Prosecutor's Office, a person need not be given notification of surveillance activities until the basis specified in subsection (2) of this section cease to exist. The Prosecutor's Office shall verify the basis for non-notification in a criminal matter upon completion of pre-court proceedings but not later than one year after the expiry of the term of the permission for surveillance activities.

(4) If the grounds for non-notification of surveillance activities are still present one year after the expiry of the term of the authorisation for surveillance activities, the Prosecutor's Office applies, at the latest 15 days prior to the expiry of the specified term, for a permission of a preliminary investigation judge for extension of the non-notification term. The preliminary investigation judge grants permission by an order for non-notification of the person or refuses to grant such permission. Upon non-notification of a person, the order shall set out whether the non-notification is granted for an unspecified or specified term. In the case of non-notification during a specified term, the term during which a person is not notified shall be set out.

(5) If the basis specified in subsection (2) of this section have not ceased to exist upon expiry of the term of the permission granted for non-notification by a preliminary investigation judge specified in subsection (4) of this section, the Prosecutor's Office applies, at the latest 15 days prior to expiry of such term, for a permission from a preliminary investigation judge for extension of the non-notification term. The preliminary investigation judge grants permission by an order pursuant to the provisions of subsection (4) of this section.

(6) A person shall be immediately notified of surveillance activities upon expiry of the permission for non-notification or refusal to grant permission for the extension thereof.

(7) When a person is notified of surveillance activities conducted with respect to him or her, the procedure for appeal shall be explained to him or her.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

§ 126[14]. Submission of information collected by surveillance activities for examination

(1) The person who has been notified pursuant to § 126[13] of this Code shall be permitted at his or her request to examine the data collected with respect to him or her and the photographs, films, audio and video recordings and

other data recordings made in the course of the surveillance activities. With the permission of the Prosecutor's Office, the following information need not be submitted until the corresponding bases cease to exist:
1) information concerning the family or private life of other persons;
2) information the submission of which may damages the rights and freedoms of another person which are guaranteed by law;
3) information which contains state secrets, classified information of foreign states or secrets of another person that are protected by law;
4) information the submission of which may endanger the life, health, honour, good name and property of an employee of a surveillance agency, police agent, undercover agent, person who has been recruited for secret cooperation or another person who has been engaged in surveillance activities or of persons connected with them;
5) information the submission of which may endanger the right of a police agent, undercover agent and person who has been recruited for secret cooperation to maintain the confidentiality of cooperation;
6) the submission of which may result in communication of information concerning the methods, tactics of a surveillance agency and the equipment used in conduct of surveillance activities;
7) information which cannot be separated or disclosed without information specified in clauses 1)-6) of this subsection becoming evident.

(2) Upon submission of or refusal to submit information collected by surveillance activities for examination to a person, the procedure for appeal shall be explained to him or her.

(3) The procedure for notification of surveillance activities and submission of surveillance files shall be established by a regulation of the Government of the Republic on the proposal of the minister responsible for the area.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

§ 126[15]. Supervision over surveillance activities

(1) the Prosecutor's Office shall exercise supervision over the compliance of surveillance activities with the permission provided for in § 126[4] of this Code.

(2) The committee of *Riigikogu* specified in § 36 of the Security Authorities Act shall exercise supervision over the activities of surveillance agencies. A surveillance agency shall submit a written report to the committee through the appropriate ministry at least once every three months.

(3) The Ministry of Justice shall publish on its website once a year a report on the basis of the information obtained from surveillance agencies, Prosecutor's Offices and courts, which contains the following information concerning the previous year:
1) number and type of opened surveillance files;
2) number of permissions for surveillance activities by types of surveillance activities;
3) number of persons notified of conduct of surveillance activities and number of persons in the case of whom notification was postponed pursuant to subsection 126[13](4) of this Code for more than one year.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

§ 126[16]. Filing of appeals in connection with surveillance activities

(1) An appeal may be filed pursuant to the procedure provided for in Chapter 15 of this Code against the court order that grants permission for surveillance activities on the basis specified in this Code.

(2) An appeal may be filed pursuant to the procedure provided for in Subchapter 5 of Chapter 8 of this Code against the course of surveillance activities conducted on the basis specified in this Code, non-notification thereof and refusal to submit information collected thereby.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

§ 126[17]. Surveillance activities information system

(1) The surveillance activities information system (hereinafter *information system*) is a database belonging to the State Information Systems maintained for processing of the surveillance activities information provided for in this Code, the objective of which is to:
1) provide an overview of surveillance activities conducted by surveillance agencies;
2) provide an overview of requests of surveillance agencies and Prosecutor's Offices for conduct of surveillance activities;
3) provide an overview of permissions issued by Prosecutor's Offices and courts for conduct of surveillance activities;
4) provide an overview of notification of surveillance activities and submission of information collected by surveillance activities;
5) reflect information concerning the surveillance activities conducted;

6) enable the organisation of the activities of surveillance agencies, Prosecutor's Offices and courts;
7) collect statistics on surveillance activities which are necessary for the making of decisions concerning criminal policy;
8) enable electronic forwarding of data and documents.

(2) The information system shall be established and the statutes thereof shall be approved by the Government of the Republic.

(3) The chief processor of the information system is the Ministry of Justice.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(4) The minister responsible for the area may organise the activities of the information system by a regulation.
[RT I, 29.06.2012, 2 – entry into force 01.01.2015]

Chapter 3^2
PASSENGER NAME RECORD (PNR)

[RT I, 05.02.2019, 1 - entry into force 15.02.2019]

§ 126^{18}. Processing of passenger name record (PNR)

(1) A body conducting proceedings may request the passenger name record (PNR) from a passenger information unit if this is necessary for the achievement of the objectives of the criminal proceedings.

(2) Processing of the passenger name record (PNR) is permitted only in the case of the criminal offences listed in clauses 489^6(1) 1)-16), 18)-20), 22), 23), 25)-28) and 30)-32) of this Code.
[RT I, 05.02.2019, 1 – entry into force 15.02.2019]

Chapter 4
SECURING OF CRIMINAL PROCEEDINGS

Subchapter 1
Preventive Measure

§ 127. Choice of preventive measure

(1) A preventive measure shall be chosen taking into account the probability of absconding from criminal proceedings or execution of a court judgment, continuing commission of criminal offences, or destruction, alteration or falsification of evidence, the degree of the punishment, the personality of a suspect, accused or convicted offender, his or her state of health and marital status, and other circumstances relevant to the application of preventive measures.

(2) A preventive measure is altered pursuant to the provisions of this Code concerning application of preventive measures.

§ 128. Prohibition on departure from residence

(1) Prohibition on departure from the residence means the obligation of a suspect or accused or the representative of a suspect or accused who is a legal person not to leave his or her residence for more than seventy-two hours without the permission of the body conducting the proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) A prohibition on departure from the residence shall be applied by an order which shall be signed by a suspect or accused or the representative of a suspect or accused who is a legal person. A person shall be cautioned upon the obtainment of a signature that in the case of violation of the preventive measure a fine may be imposed on the person or a more severe preventive measure may be applied with regard to him or her.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) In pre-court proceedings, the prohibition on departure from residence may be imposed for not longer than one year. In the case of particular complexity or extent of a criminal matter or in exceptional cases arising from international cooperation in criminal proceedings, the Prosecutor's Office may extend the term of the prohibition on departure from residence in pre-court proceedings for more than six months.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) The preliminary investigation judge may, at the request of the Prosecutor's Office, or at the request of a party to judicial proceedings, by court order, impose a fine on a person who violates the prohibition on departure from residence.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 129. Supervision over members of Defence Forces

A suspect or accused who is a member of the Defence Forces serving in compulsory military service may, by way of a preventive measure, be subjected to the supervision of the command staff of his or her military unit on the basis of an order.
[RT I 2008, 35, 212 – entry into force 01.01.2009]

§ 130. Grounds for taking into custody and holding in custody

(1) Taking into custody is a preventive measure which is applied with regard to a suspect, accused or convicted offender and which means deprivation of a person of his or her liberty on the basis of a court order.

(2) A suspect or accused may be taken into custody at the request of the Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court order if he or she is likely to abscond from the criminal proceedings or continue to commit criminal offences and taking into custody is inevitable.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(3) In pre-court proceedings, the suspect or accused may be held in custody only within the time limits provided for in § 131^1 of this Code.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(3^1) [Repealed – RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(4) An accused who has been prosecuted and is at large may be taken into custody on the basis of an order of a county or circuit court if he or she has failed to appear when summoned by a court and may continue absconding from the judicial proceedings.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(4^1) An accused who is at large may be taken into custody by a court in order to ensure execution of imprisonment imposed by a judgment of conviction.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(5) A convicted offender may be taken into custody by a court pursuant to the procedure provided for in § 429 of this Code in order to secure execution of the court judgment.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(6) A member of the Defence Forces who is a suspect and does not stay in the territory of the Republic of Estonia may, at the request of the Prosecutor's Office, be taken into custody on the bases provided for in subsection (2) of this section in order to bring him or her to the Republic of Estonia on the basis of an order of a preliminary investigation judge.

§ 131. Procedure for taking into custody

(1) The Prosecutor's Office shall immediately notify the counsel of preparation of an application for an arrest warrant.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(2) On the order of the Prosecutor's Office, an investigative body shall convey a suspect or accused with regard to whom an application for an arrest warrant has been prepared to a preliminary investigation judge for consideration of the application.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(3) In order to issue an arrest warrant, a preliminary investigation judge shall examine the criminal file and interrogate the person to be taken into custody with a view to ascertaining whether the application for arrest warrant is justified. The prosecutor and, at the request of the person to be taken into custody, his or her counsel shall be summoned before the preliminary investigation judge and their opinions shall be heard. In the case of a minor who is taken into custody, a preliminary investigation judge shall assess particularly thoroughly the possible negative effects relating to taking into custody on the person held in custody.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(3[1]) A preliminary investigation judge may organise the participation of the persons specified in subsections (2) and (3) of this section when considering the request for taking into custody by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(3[2]) In the case a minor is taken into custody, a court may order that the taking into custody is replaced by placement of the minor in a closed child care institution and indicate in the arrest warrant the closed children's institution where the minor taken into custody is placed. Accompanying of a minor taken into custody outside the closed child care institution shall be performed in comply with the procedure provided for in § 7[41] of the Police and Border Guard Act.
[RT I, 05.12.2017, 1 – entry into force 01.07.2018]

(3[3]) A minor taken into custody who violates the terms and conditions of stay in a closed children's institution may be transferred to a prison for serving the punishment based on a report of the manager of the closed child care institution and with the permission of a court.
[RT I, 05.12.2017, 1 – entry into force 01.07.2018]

(4) For the purposes of taking a person who has been declared a fugitive or a suspect and who stays outside the territory of the Republic of Estonia into custody, a preliminary investigation judge shall issue an arrest warrant without interrogating the person. Not later than on the second day following the date of apprehension of a fugitive or bringing a suspect into Estonia, the person held in custody shall be taken before a preliminary investigation judge for interrogation.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(5) If there are no grounds for holding in custody, the person shall be released immediately.

§ 131[1]. Time limits for holding in custody during pre-court proceedings

(1) During pre-court proceedings, a person suspected or accused of a criminal offence in the first degree may not be held in custody for more than six months and a person suspected or accused of a criminal offence in the second degree for more than four months. A suspect or accused who is a minor may not be held in custody during pre-court proceedings for more than two months.

(2) In the case of particular complexity or extent of a criminal matter or in exceptional cases arising from international cooperation in criminal proceedings, a preliminary investigation judge may extend the time limit for holding in custody as specified in subsection (1) of this section on an application of the Prosecutor General. In a criminal case dealt with under Council Regulation (EU) 2017/1939, the aforementioned application is made by a European Prosecutor or a European Delegated Prosecutor.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

(3) The time limits specified in subsections (1) and (2) of this section shall not include the time spent in provisional custody and in custody for surrender in a foreign country in the case of a person whose extradition has been applied for by the Republic of Estonia or the time a person was held in custody in pre-court proceedings based on a decision of a competent authority of a foreign state prior to assumption of criminal proceedings by the Republic of Estonia.

(4) Upon taking a person into custody, a preliminary investigation judge shall issue an authorisation for up to two months to hold the suspect or the accused in custody. The preliminary investigation judge may extend the specified time limit based on a reasoned request of the Prosecutor's Office by up to two months at a time, taking into consideration the restriction provided for in subsections (1) and (2) of this section.

(5) If the degree of a criminal offence of which the person held in custody is suspected or accused is changed during the time of holding in custody, the provisions of subsection (1) of this section apply according to the new legal assessment of the criminal offence as of the time when the basis for suspecting or accusing the person according to the new degree of criminal offence becomes evident.

(6) A request for extension of the time limit on holding in custody is submitted and considered in accordance with the rules provided in § 131 of this Code.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

§ 132. Arrest warrant

(1) An arrest warrant shall set out:
1) the name and residence of the person to be taken into custody;
2) the facts relating to the criminal offence of which the person is suspected or accused, and the legal assessment of the act;
3) the grounds for taking into custody with a reference to §§ 130 or 429 of this Code;
4) the reason for taking into custody.

(2) An arrest warrant shall be included in the criminal file and a copy of the warrant shall be sent to the person in custody.

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

§ 133. Notification of taking into custody

(1) A preliminary investigation judge or court shall immediately give notification of taking of a person into custody to a person close to the person in custody and his or her place of employment or study.

(1^1) The Prosecutor's Office or an investigative body with an order of the Prosecutor's Office shall inform a victim who is a natural person of taking into custody and determine his or her wish to receive information about release of the person held in custody in the case the information can prevent danger to the victim.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(2) Notification of taking into custody may be delayed in order to prevent a criminal offence or ascertain the truth in criminal proceedings.

(3) If a foreign citizen is taken into custody, a copy of the arrest warrant or court judgment shall be sent to the Ministry of Foreign Affairs.

§ 134. Refusal to take into custody and release of person held in custody

(1) A preliminary investigation judge or a court shall formalise a refusal to take into custody or extend the term for holding in custody by an order.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) If the grounds for holding in custody cease to exist before a statement of charges is sent to a court pursuant to the procedure provided for in subsection 226 (3) of this Code, a preliminary investigation judge or Prosecutor's Office shall release the person held in custody by an order. When the person held in custody is released, the Prosecutor's Office or the investigative body with an order of the Prosecutor's Office shall inform the victim who is a natural person thereof in the case he or she so requested and the information can prevent danger to the victim.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

§ 135. Bail

(1) A preliminary investigation judge or a court may, with the consent of the suspect or accused, impose bail instead of taking into custody. The terms and conditions of and the time limit on imposition of bail instead of taking into custody may be prescribed in an arrest warrant.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(2) Bail is a sum of money paid to a prescribed account as a preventive measure by a suspect, accused or another person on behalf of him or her.
[RT I, 31.01.2014, 6 – entry into force 01.07.2014]

(3) A suspect or accused shall be released from custody after the bail has been received into a prescribed account.
[RT I, 31.01.2014, 6 – entry into force 01.07.2014]

(4) A court shall determine the amount of bail on the basis of the degree of the potential punishment, the extent of the damage caused by the criminal offence, and the financial situation of the suspect or accused. The minimum amount of bail shall be five hundred days' wages.

(5) Bail is imposed by a court order. To resolve an application for bail, the person held in custody shall be taken before a preliminary investigation judge; a prosecutor and, at the request of the person held in custody, his or her counsel shall be summoned to the judge and their opinions shall be heard.

(5^1) At the request of the Prosecutor's Office or on its own initiative, a court may, together with the imposition of bail, apply a prohibition on departure from residence with respect to a suspect or an accused pursuant to the procedure provided for in §§ 127 and 128 of this Code.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(5^2) A preliminary investigation judge may organise the participation of the persons specified in subsection (5) of this section in the resolution of an application for bail by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) If a suspect or accused absconds from criminal proceedings or intentionally commits another criminal offence or violates the prohibition on departure from his or her residence, the bail shall be charged to public

revenue on the basis of a court judgment or order on termination of criminal proceedings after deduction of the amount necessary for reimbursement of the expenses relating to the criminal proceedings.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(6^1) If the grounds for taking into custody cease to exist before a statement of charges is sent to a court pursuant to the procedure provided for in subsection 226 (3) of this Code, a preliminary investigation judge or Prosecutor's Office shall annul the bail by an order.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(7) Bail shall be refunded if:
1) the suspect or accused does not violate the conditions for bail;
2) criminal proceedings are terminated;
3) the accused is acquitted.

§ 136. Contestation of taking into custody or refusal to take into custody and of extension of or refusal to extend duration of custody on an application of the Prosecutor General, of a European Prosecutor or of a European Delegated Prosecutor

[RT I, 29.12.2020, 1 – entry into force 08.01.2021]
The Prosecutor's Office, a person held in custody or his or her counsel may file an appeal pursuant to the rules provided for in Chapter 15 of this Code against the imposition of, or a refusal to impose, pre-trial custody or against an extension, on an application of the Prosecutor General or of a European Prosecutor or a European Delegated Prosecutor, of the duration of such custody, or of a refusal to extend such duration.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

§ 137. Verification of reasons for bail

[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(1) A suspect, accused or counsel may submit a request to a preliminary investigation judge or court to verify the reasons for bail after four months have expired from imposition of bail.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(2) A preliminary investigation judge shall consider a request within five days as of receipt of the request. A prosecutor, counsel and, if necessary, the person on whom bail was imposed shall be summoned before the preliminary investigation judge. A new request may be submitted after expiry of the term provided for in subsection (1) of this section after consideration of the previous request.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(2^1) A preliminary investigation judge or court may organise the participation of the persons specified in subsection (2) of this section in the resolution of a request by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) In order to resolve a request, a preliminary investigation judge shall examine the criminal file. The request shall be resolved by a court order which is not subject to appeal.

(3^1) If a preliminary investigation judge or court finds that further imposition of bail is not justified, the court order shall set out whether bail is to be returned or holding of the suspect or accused in custody is applied.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) [Repealed – RT I, 19.03.2015, 1 – entry into force 01.09.2016]

§ 137^1. Commutation of holding in custody to electronic surveillance

(1) At the request of a suspect, accused or prosecutor, a preliminary investigation judge or court, with the consent of the person held in custody, may commute holding in custody to the obligation to submit to electronic surveillance provided for in subsection 75^1(1) of the Penal Code. The time of electronic surveillance shall not be deemed to be custody pending trial or detention and it is not included in the term of punishment.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(1^1) Upon expiry of the term of electronic surveillance or the term provided for in § $75^1$of the Penal Code, a preliminary investigation judge at the request of the Prosecutor's Office or a court decides on the application of further preventive measures.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(1^2) The provisions of subsection 75^1(3) of this Code apply to the term of application of electronic surveillance to a person in pre-court proceedings.
[RT I, 07.07.2017, 1 – entry into force 01.11.2017]

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

(3) When a preliminary investigation judge or court receives a request for commutation of holding in custody, he or she assigns a task to a probation officer of the residence of the suspect or accused to submit an opinion within five working days about the possibility of application of electronic surveillance.

(4) Electronic surveillance is applied by court order. For the purposes of resolving a request for electronic surveillance, the person held in custody shall be taken before a preliminary investigation judge or court; the prosecutor and, at the request of the person held in custody, his or her counsel shall be summoned to the judge or court and their opinions shall be heard.

(5) A preliminary investigation judge or court may organise the participation of the persons specified in subsection (4) of this section in the resolution of a request for application of electronic surveillance by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.

(6) Before making a decision on application of electronic surveillance, a preliminary investigation judge or court shall submit the opinion of a probation supervisor about the possibility of application of electronic surveillance at the place of residence of the suspect or accused.

(7) A suspect or accused shall be released from custody and electronic surveillance shall be applied to him or her upon expiry of a term for filing of an appeal against the order or entry into force of a court order made by a higher court.

(8) If a suspect or accused does not submit to electronic surveillance, a preliminary investigation judge or court shall commutate electronic surveillance to taking in custody by its order based on a report of the probation officer.

(9) The provisions concerning bail in this Code apply to application of or refusal to apply electronic surveillance in pre-court proceedings and verification of reasons for application of surveillance.
[RT I, 07.07.2017, 1 – entry into force 01.11.2017]

§ 137[2]. Release from custody of persons who committed unlawful act in state of mental incompetence or persons with severe mental disorder

(1) If it becomes evident as a result of expert assessment that a person held in custody committed an unlawful act in a state of mental incompetence, he or she is mentally ill, feeble-minded or he or she has another severe mental disorder, he or she shall be immediately released from custody by an order of the Prosecutor's Office, unless otherwise provided for in § 395[1] of this Code.

(2) An investigative body shall immediately communicate the expert's report specified in subsection (1) of this section to the Prosecutor's Office.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

Subchapter 2
Other Means of Securing Criminal Proceedings

§ 138. Consequences of failure to appear when summoned by body conducting proceedings

(1) A fine or detention for up to five days shall be imposed by a preliminary investigation judge at the request of the Prosecutor's Office or by a court on its own initiative on the basis of a court order on a person who failed to appear when summoned by the body conducting the proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) On the basis of a complaint submitted by a person on whom a fine or detention was imposed, a court may annul the fine or detention imposed on the person for failure to appear if the person proves that he or she failed to appear for a good reason provided for in § 170 of this Code.

(3) Compelled attendance may be imposed, pursuant to the provisions of § 139 of this Code, on a suspect, accused, convicted offender, victim, civil defendant or witness who failed to appear when summoned by a body conducting proceedings or such person may be declared a fugitive pursuant to the provisions of § 140 of this Code.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 138[1]. Imposition of fines

(1) In the case provided by this Code where a court or preliminary investigation judge has the right to impose a fine, the amount of such fine may be up to 3200 euros, unless this Code provides otherwise. In determining the amount of a fine, a court or preliminary investigation judge shall take the financial situation of the person and other circumstances into consideration.

(2) Instead of or in addition to a minor, a fine may be imposed on his or her parent or guardian, unless this Code provides otherwise. Instead of an adult with restricted active legal capacity, a fine may be imposed on his or her guardian. No fine shall be imposed on minors of less than 14 years of age and persons with restricted active legal capacity.

(3) A fine may be imposed on a person only after a warning of fine has been given to him or her, except in the case where prior notice is impossible or unreasonable.

(4) A fine imposed on a person for non-performance of an obligation does not release the person from performing the obligation. If an obligation is not performed after the imposition of a fine, a new fine may be imposed.

(5) A copy of the order whereby a fine is imposed shall be immediately delivered to the person fined or the representative thereof.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 139. Compelled attendance

(1) Compelled attendance means conveyance of a suspect, accused, convicted offender, victim, civil defendant or witness to an investigative body, forensic institution, Prosecutor's Office or court for the performance of a procedural operation and conveyance of a convicted offender to a prison or house of detention for serving the sentence.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) Compelled attendance may be applied if:
1) a person who received a summons fails to appear without a good reason specified in § 170 of this Code;
1[1]) there is reason to believe that the person evades criminal proceedings;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
2) prior summoning of the person may interfere with criminal proceedings, or if the person refuses to come voluntarily at the order of the investigative body or Prosecutor's Office;
3) the person evades execution of a court judgment.

(3) A person shall be conveyed to the Prosecutor's Office or court on the basis of an order of the Prosecutor's Office or court order which shall set out:
1) the name of the person subjected to compelled attendance, his or her status in the proceedings, residence and place of employment or name of the educational institution;
2) the reason for compelled attendance;
3) the time of execution of the order and the place where the person is to be taken.

(3[1]) Compelled attendance to a prison or a house of detention may be applied to a convicted offender on the bases of and pursuant to procedure provided for in subsection 414 (3) of this Code.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(4) An order on compelled attendance shall be communicated to an investigative body for execution.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

(5) A person subjected to compelled attendance may be detained for as long as is necessary for the performance of the procedural operation which is the basis for application of compelled attendance but not for longer than forty-eight hours.

§ 140. Search

(1) A body conducting the proceedings may declare a suspect, accused, victim, civil defendant or witness a fugitive by an order if he or she has failed, without a good reason specified in § 170 of this Code, to appear when summoned and if his or her whereabouts are unknown, and a body conducting the proceedings may declare a convicted offender a fugitive if he or she absconds from the execution of the court judgment.

(2) An order on declaring a person a fugitive shall set out:
1) the facts relating to the criminal offence;
2) the name of the fugitive, his or her status in the proceedings, residence and place of employment or name of the educational institution.

(2[1]) If necessary, the body conducting proceedings shall set out in an order on declaring a person fugitive the obligation to bring the fugitive, upon his or her apprehension, before the body conducting proceedings pursuant to the provisions on compelled attendance.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) An order on declaring a person a fugitive shall be communicated for execution to a surveillance agency which conducts or conducted proceedings in the criminal matter in relation to which the person was declared a fugitive. If proceedings in the criminal matter were conducted by an investigative body which is not a surveillance agency, the order on declaring a person a fugitive shall be communicated to the Police and Border Guard Board for execution.
[RT I, 29.06.2012, 2 – entry into force 09.07.2012]

(3[1]) In the case a suspect, accused or convicted offender is declared a fugitive, an arrest warrant or a decision which has entered into force and is the basis for the enforced imprisonment shall be communicated to a surveillance agency together with the order declaring a person a fugitive.
[RT I, 29.06.2012, 2 – entry into force 09.07.2012]

(4) Upon apprehension of a fugitive, compelled attendance at a body conducting proceedings shall be imposed on him or her or the fugitive is brought to the place of custody pending trial or imprisonment, and the body conducting the proceedings shall be notified thereof.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 140[1]. Identification

(1) Bodies conducting proceedings may identify participants in the proceedings, convicted offenders, experts and witnesses in accordance with the rules provided in section 32 of the Law Enforcement Act.

(2) If identification pursuant to the procedure provided for in subsection (1) of this section is impossible or disproportionately difficult, identification may be done in accordance with the rules provided in subsection section 33 of the Law Enforcement Act.
[RT I, 13.03.2014, 4 – entry into force 01.07.2014]

§ 140[2]. Prohibition on stay

In order to ensure performance of procedural operations, prohibition to stay may be applied with regard to a particular place or particular person pursuant to the procedure provided for in § 44 of the Law Enforcement Act.
[RT I, 13.03.2014, 4 – entry into force 01.07.2014]

§ 141. Exclusion of suspect or accused from office

(1) A suspect or accused shall be excluded from office at the request of the Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court order if:
[RT I 2004, 46, 329 – entry into force 01.07.2004]
1) he or she may continue to commit criminal offences in case he or she remains in the office;
2) his or her remaining in office may prejudice criminal proceedings in the case.

(2) A copy of an order on exclusion of a suspect or accused from office shall be submitted to the suspect or accused and sent to the head of his or her place of employment.

(3) If the grounds for exclusion from office cease to exist before a statement of charges is sent to a court pursuant to the procedure provided for in subsection 226 (3) of this Code, a preliminary investigation judge or Prosecutor's Office shall annul the exclusion from office by an order.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 141[1]. Temporary restraining order

(1) For protection of private life or other personality rights of a victim, a person suspected or accused of a crime against the person or against a minor may be prohibited to stay in places determined by a court, to approach the persons determined by the court or communicate with such persons at the request of the Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court order.
[RT I 2006, 31, 233 – entry into force 16.07.2006]

(1[1]) A court may apply, together with a temporary restraining order, the electronic surveillance provided for in § 75[1] of the Penal Code with the consent of the suspect or accused.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(1^2) In urgent cases, the protection order provided for in subsection (1) of this section may be established by an order of a prosecutor's office and regardless of the consent of the victim. In this case, the prosecutor's office shall inform a court of the establishment of the protection order within two working days and the court decides, taking into consideration the consent of the victim, on the admissibility of the protection order pursuant to the procedure provided for in subsections (1^3)-(6) of this section.
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

(1^3) An order on application of the temporary protection order specified in subsection (1) of this section and an order on admissibility of the protection order provided for in subsection (1^2) may be drawn up as an inscription on the request or order of the prosecutor's office.
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

(2) A temporary restraining order is applied to a suspect or accused with the consent of the victim.
[RT I 2006, 31, 233 – entry into force 16.07.2006]

(3) In order to issue an order on application of a temporary restraining order, a preliminary investigation judge shall examine the criminal file and interrogate the suspect or accused and, if necessary, the victim with a view to ascertaining whether the request for temporary restraining order is justified. A prosecutor and, at the request of the suspect or accused, a counsel shall also be summoned before the court or the preliminary investigation judge and their opinions shall be heard.
[RT I 2006, 31, 233 – entry into force 16.07.2006]

(3^1) A preliminary investigation judge or court may organise the participation of the persons specified in subsection (3) of this section in the resolution of a request for application of a restraining order by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) An order on temporary restraining order shall set out:
1) the reasons for the temporary restraining order;
2) the conditions of the temporary restraining order.
[RT I 2006, 31, 233 – entry into force 16.07.2006]

(5) A victim, Prosecutor’s Office, suspect, accused or his or her counsel may file an appeal pursuant to the procedure provided for in Chapter 15 of this Code against application of temporary restraining order or refusal to apply temporary restraining order.
[RT I 2006, 31, 233 – entry into force 16.07.2006]

(6) A copy of an order on establishment of temporary restraining order shall be submitted to a suspect or accused and victim and shall be sent to the Police and Border Guard Board. A preliminary investigation judge or court shall also immediately notify other persons whom the restraining order concerns of the application of temporary restraining order.
[RT I, 29.12.2011, 1 – entry into force 01.01.2012]

§ 141^2. Verification of reasons for exclusion from office and temporary restraining order

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

(1) A suspect or accused or his or her counsel may, upon expiry of four months from the exclusion from office or application of temporary restraining order, submit a request to a preliminary investigation judge or court to verify the reasons for the exclusion from office or application of temporary restraining order or to amend the conditions of application of temporary restraining order. A new request may be submitted four months after consideration of the previous request.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(1^1) If a temporary restraining order restricts the right of a suspect or accused to use his or her dwelling, the suspect, accused or his or her counsel may submit the request described in subsection (1) of this section upon expiry of one month from the application of a temporary restraining order.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) A preliminary investigation judge or court shall consider a request within five days as of the receipt thereof. The prosecutor, suspect or accused and, at the request of the suspect or accused, his or her counsel shall be summoned before the preliminary investigation judge or court. The victim shall be also summoned to the consideration of an application for verification of the reasons for a temporary restraining order.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2^1) A preliminary investigation judge or court may organise the participation of the persons specified in subsection (2) of this section in the resolution of a request by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) A request shall be resolved by a court order. An order made on considering a request is not subject to contestation, except in the case the conditions of the temporary restraining order are amended.
[RT I 2006, 31, 233 – entry into force 16.07.2006]

§ 141[3]. Amendment and annulment of temporary restraining order at request of victim and Prosecutor's Office

(1) At the request of a victim or at the request of the Prosecutor's Office and with the consent of the victim, a preliminary investigation judge or court may amend the conditions of a temporary restraining order or annul the temporary restraining order.

(2) In order to issue an order on amendment of the conditions of or annulment of a temporary restraining order, a preliminary investigation judge or court shall examine the criminal file and interrogate the suspect or accused and the victim with a view to ascertaining whether the request is justified. The prosecutor, victim, suspect or accused and, at the request of the suspect or accused, his or her counsel shall be summoned before the preliminary investigation judge or court.

(3) A copy of an order on amendment of the conditions of or annulment of a temporary restraining order shall be submitted to the suspect or accused and victim and to other persons whom the restraining order concerns.
[RT I 2006, 31, 233 – entry into force 16.07.2006]

§ 141[4]. Securing of confiscation, substitution thereof, civil action, proof of claim in public law and fine to extent of assets

[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(1) For securing confiscation, substitution thereof, civil action, proof of claim in public law or fine to the extent of assets, assets may be seized in the case of reasonable suspicion of criminal offence pursuant to the procedure provided for in § 142 of this Code, or other measures for securing an action provided for in § 378 of the Code of Civil Procedure may be applied if there is reason to believe that failure to secure the claim of the victim, confiscation, substitution thereof or fine to the extent of assets may impair the execution of a court decision or make it impossible.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(2) The procedure provided for in § 142 of this Code shall be complied with upon application of measures for securing actions.
[RT I, 26.02.2014, 1 – entry into force 08.03.2014]

(3) A means for securing a proprietary claim shall be chosen such that the means, when applied, would burden the suspect, accused, civil defendant or third party only in so far as this can be considered reasonable taking account of the circumstances. The amount of a financial claim must be taken into consideration upon securing thereof.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(4) A court may implement several measures concurrently to secure a financial claim.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

§ 142. Seizure of property

(1) The objective of seizure of property is to secure a civil action, proof of claim in public law, confiscation or replacement thereof or fine to the extent of assets. Seizure of property means recording the property of a suspect, accused, convicted offender, civil defendant or third party or the property which is the object of money laundering or terrorist financing and preventing the transfer of the property.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(2) Assets are seized at the request of the Prosecutor's Office on the basis of an order of a preliminary investigation judge or on the basis of a court order, taking into account the exceptions specified in subsection (3) of this section.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(2[1]) Seizure of any assets held in an account with a credit or financial institution means imposition of such restrictions on the use of the account during which the credit institution or financial institution does not comply with any account debiting instructions to the extent of the assets seized.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(3) In the cases of urgency, assets may be seized on the basis of an order of the Prosecutor's Office. A preliminary investigation judge must be informed of seizure of assets within 24 hours as of the seizure and the

preliminary investigation judge shall deliver a decision to grant or refuse to grant an authorisation by an order immediately but not later than 72 hours after becoming aware of the seizure. If the preliminary investigation judge refuses to grant permission, the property shall be released from seizure immediately.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(4) Upon seizure of property in order to secure a civil action, the extent of the damage caused by the criminal offence shall be taken into consideration.

(5) An order on the seizure of property shall be immediately submitted for examination to the person whose property is to be seized or to his or her adult family member, or if the property of a legal person is to be seized, to the representative of the legal person, and he or she shall sign the order to this effect. If obtaining of a signature is impossible, the order shall be communicated to the person whose property is to be seized or to the representative of the legal person who is the owner of the property to be seized. If property is seized in the courses of performance of a procedural operation, the representative of the local government shall be involved in the absence of the responsible person or representative.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) If necessary, an expert or qualified person who participates in a procedural operation shall ascertain the value of the seized property on site.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(7) Seized property shall be confiscated or deposited into storage with liability. Property shall be deposited into storage with liability on the basis of a deposit contract. The depositary shall ensure that property be preserved and the depositary shall be warned about a criminal punishment for unauthorised use, disposal of or intentional damage to the property.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(8) In order to seize an immovable, a preliminary investigation judge shall submit an order on the seizure to the Land Registry Department of the Tartu County Court in order for a prohibition on the disposal of the immovable to be made in the land register.
[RT I, 21.06.2014, 8 – entry into force 01.01.2015]

(9) For seizure of a movable or right entered in a state register, the Prosecutor’s Office shall submit an order on seizure to the relevant state register, for seizure of registered securities to the central securities depository.
[RT I, 26.06.2017, 1 – entry into force 06.07.2017]

(10) Property which pursuant to law is not be subject to a claim for payment shall not be seized.

(11) If the grounds for the seizure of property cease to exist before the completion of pre-court proceedings, the Prosecutor’s Office or preliminary investigation judge shall release the property from seizure by an order. Immovable property is released from seizure by an order of a preliminary investigation judge.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

§ 143. Report of seizure of property

(1) The report of seizure of property shall set out:
1) the names and characteristics of the seized objects and the number, volume or weight and value of the objects;
2) a list of property taken over or deposited into storage with liability;
3) absence of property to be seized if such property is missing.

(2) A list of seized property may be appended to the report of seizure of property and a notation concerning the list is made in the report. In such case, the report shall not contain the information listed in clause (1) 1) of this section.

§ 143[1]. Additional restrictions applied to persons whose personal liberty has been restricted

(1) If there is sufficient reason to believe that a suspect or accused who is held in custody or imprisoned or serving detention may adversely affect the conduct of criminal proceedings by his or her actions, the Prosecutor's Office or court may issue the order to transfer the suspect or accused, or to isolate the suspect or accused from other remand or convicted prisoners or persons serving a detention. The Prosecutor's Office or court may also, by order, restrict or totally prohibit the following with regard to a suspect or accused:
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
1) right to short or long-term visit;
2) right to correspondence or use of telephone;
3) right to prison leave;
4) right to prison leave under supervision or release.

(2) The order shall set out:
1) the name of the suspect or accused;
2) the reasons for and extent of transfer or restriction of rights;
3) the term for application of transfer or restrictions.

(3) The order shall be sent to the prison or house of detention to be executed without delay. A copy of the order shall be sent to the suspect or accused.

(4) The restriction specified in clause (1) 2) of this section shall not extend to the correspondence and use of telephone for communication with state agencies, local governments and their officials and with a criminal defence counsel.
[RT I 2006, 63, 466 – entry into force 01.02.2007]

Chapter 5
PROCEDURAL DOCUMENTS, TRANSLATION, INTERPRETATION AND SUMMONING

Subchapter 1
Procedural Documents

§ 144. Language of procedural documents

(1) Procedural documents shall be prepared in the Estonian language. If a procedural document is prepared in another language, a translation into Estonian shall be appended thereto.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) Translation into the Estonian language of procedural documents prepared in other languages by investigative bodies and the Prosecutor's Office in terminated criminal proceedings shall be appended at the order of the Prosecutor's Office or at the request of a participant in proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 145. Order

(1) An order is:
1) a substantiated determination on a procedural issue by the body conducting proceedings which is formalised in writing;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
1^1) a determination terminating criminal proceedings, made in accordance with the rules provided in subsection 206 (1^1) of this Code;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
1^2) in the case provided in this Code, a determination on a procedural issue which is endorsed on the request and whose reasons are not provided;
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]
2) a determination on a procedural issue which is made in accordance with the rules provided in section 137 of this Code and entered in the minutes of the court session as the result of resolving a specific issue in judicial proceedings and whose substantiation is not provided.

(2) The introduction of a reasoned order shall set out:
1) the date and place of preparation thereof;
2) the official title and name of the person who prepared the order;
3) the title of the criminal matter: the number of the criminal matter and the legal assessment of the criminal offence or the name of the suspect or accused.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

(3) The main part of a reasoned order shall set out:
1) the reasons for the order;
2) the basis for the order under procedural law.

(4) The final part of a substantiated order shall set out the determination made as a result of resolution of the criminal matter or a specific issue arising within that matter.

(4^1) The court may add to an order, whereby a participant in 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 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]

(4^2) A list of the data required for the fulfilment of the claim specified in subsection (4^1) 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]

(5) An order shall be prepared in accordance with the additional requirements for the content thereof.

(6) In the case provided by this Code, a reasoned order shall be submitted for examination to a participant in the proceedings and his or her rights and obligations shall be explained to him or her and the participant shall sign the order to this effect.

(7) An order made by a body conducting the proceedings in a criminal matter heard by the body is binding on everyone.

§ 146. Report of investigative activities and other procedural operations

(1) Report of the conditions, course and results of investigative activities or other procedural operations shall be made in typewritten form or in clearly legible handwriting. If necessary, the assistance of a secretary shall be used.

(2) The introduction of the report shall set out:
1) the date and place of the investigative activities or other procedural operations;
2) the official title and name of the person preparing the report;
3) the number of the criminal matter and the title of the investigative activities or other procedural operations;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
4) in the cases provided by law, a reference to the order on the basis of which the investigative activities or other procedural operations were conducted;
5) the status in the proceedings of the person subject to the investigative activities or other procedural operations, the person's name, residence or seat, address, and telecommunications numbers or electronic mail address;
6) the status in the proceedings, name, residence or seat and address of any other person who participated in the investigative activities or other procedural operations;
7) the time of commencement and end of the investigative activities or other procedural operations and other information relating thereto;
8) the performance of the investigative activities or other procedural operations pursuant to § 8 of this Code;
9) the basis of the investigative activities or other procedural operations under procedural law.

(3) If a witness who gives testimony in the course of investigative activities is at least fourteen years of age, the introduction of the report of the activities shall set out that the witness was warned that, pursuant to the Penal Code, refusal to give testimony without a legal basis or giving knowingly false testimony may result in a criminal punishment.

(4) A participant in the proceedings shall sign the introduction of the report in confirmation that his or her rights and obligations were explained to him or her.

(5) The main part of the report shall set out:
1) the course and results of the investigative activities or other procedural operations in such detail as is necessary for the purposes of proof and in compliance with the additional requirements provided for the content of procedural operations by this Code;
2) the technical equipment used.

(6) The final part of the report shall set out:
1) the names of the objects confiscated in the course of the investigative activities or other procedural operations and the manner of packaging of the objects;
2) submission of the report for examination to the persons who participated in the investigative activities or other procedural operations;
3) the annexes to the report.

(7) If the report contains conclusions the comprehension of which requires specific expertise, the report shall set out the method of reaching such conclusions and the personal data of the person who made the conclusions based on specific expertise.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(8) If a witness participates in a procedural operation under a fictitious name, a copy shall be made of the minutes of the procedural operation where no other personal data besides the fictitious name shall be indicated and the witness shall not sign the copy. The original report shall be placed in an envelope specified in subsection 67 (4) of this Code which is kept separately from the criminal file.

§ 147. Secretary

An investigative body or Prosecutor’s Office may use the assistance of a secretary when making report of the conditions, course and results of procedural operations.

§ 148. Annex to report of investigative activities or other procedural operations

(1) If necessary, evidentiary information may be recorded, in addition to the report of the investigative activities or other procedural operations, on a photograph, on film, as an audio or video recording, drawing or in any other illustrative manner.

(2) Photographs, drawings and other illustrative material shall be included in the criminal file together with the report, and films and audio and video recordings shall be packaged and stored with the criminal matter.

§ 149. Photographs

(1) The conditions, course and results of investigative activities or other procedural operations shall be photographed if this is considered necessary by the official of the investigative body or if the obligation to take photographs is provided for in this Code.

(2) If negatives are used in photographing, the negatives shall be appended to the report of the investigative activities or other procedural operations.

(3) Digital photographs shall be included in the minutes of a procedural operation or presented as an annex thereto and preserved in the form of computer files in the E-File system. Digital photographs may also be created of single shots of a video recording.
[RT I 2008, 28, 180 – entry into force 15.07.2008]

§ 150. Films and audio and video recordings

(1) An investigative activity or any other procedural operation or a distinct part thereof may be filmed or audio or video recorded. The witness or the participant in proceedings shall be notified thereof before the commencement of the investigative activities or other procedural operations.

(2) The information specified in subsections 146 (2) and (3) of this Code shall be set out at the beginning of an audio or video recording. After the completion of investigative activities or other procedural operations, the recording shall be submitted to the participants in the investigative activities or procedural operations for listening or watching.

(3) Report shall be made of investigative activities or other procedural operations on the basis of an audio or video recording of the activity or act pursuant to the procedure provided for in this Code.

(4) An audio or video recording shall be appended to the criminal file. Later changes to an audio or video recording are prohibited.

(5) A witness of less than 14 years of age shall not be shown the video recording of his or her hearing or the video recording of other investigative activities or procedural operations. The specified recordings need not be shown to witnesses of less than 18 years of age.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 151. Drawings

(1) Drawings may be appended to a report of investigative activities in order to illustrate the conditions, course and results of the activities and clarify and amend the content of the report.

(2) A drawing shall contain a reference to the report of the investigative activities and the time of preparing the report.

(3) A drawing shall be signed by a body conducting the proceedings. If a drawing is made by a qualified person or a person subject to the investigative activities, he or she shall also confirm the authenticity of the drawing by his or her signature.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) If necessary, a body conducting the proceedings shall have another person who participated in the investigative activities sign a drawing in order to confirm the authenticity of the drawing.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 152. Submission of report of investigative activities or other procedural operations for examination

(1) The report of investigative activities or any other procedural operations shall be submitted for reading to the person subject to the activities or acts and to other persons who participated therein or the report shall be read to the persons at their request and a notation to this effect shall be made in the report.

(2) Petitions concerning the conditions, course and results of investigative activities or any other procedural operations or concerning the report of the activities or acts, the requests for amendment of the report and other requests made upon examination of the report shall be entered in the same report.

(3) A copy of a search report or of a report of seizure of property shall be submitted to the person subject to the procedural operation or to his or her adult family member or, if the person is a legal person, state or local government agency, to the representative thereof who participated in the procedural operation. In the absence of such persons, a copy of the report shall be submitted to the representative of a local government agency.

(4) The report shall be signed by the person conducting the proceedings, qualified persons, persons subject to the act and the persons participating in the act.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) If a person specified in subsection (4) of this section refuses to sign the report or if a person is unable to sign the report due to a physical disability, a notation concerning the refusal and the reasons therefor or concerning the person's inability to sign the report shall be made in the report and confirmed by the official of the investigative body.

(6) A witness of less than 14 years of age shall not be enabled to examine the hearing record prepared on the basis of the video recording of his or her hearing or the video recording of other investigative activities or procedural operations. The specified record need not be shown to witnesses of less than 18 years of age.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 153. Summary of pre-court proceedings

(1) The summary of pre-court proceedings shall set out:
1) the date and place of preparation thereof;
2) the official title and name of the official of the investigative body;
3) the title of the criminal matter;
4) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship, education, native language and the place of work or educational institution of the suspect;
5) the suspect's criminal record;
6) the preventive measures applied with regard to the suspect and the duration thereof;
7) facts relating to the subject of proof which were ascertained in the pre-court proceedings, as listed in clause 62 1) of this Code;
8) a list of evidence;
9) a list of physical evidence and recordings, and information concerning the location thereof;
10) information concerning the objects seized in order to secure the confiscation thereof;
11) information concerning a civil action or a proof of claim in public law and the measures for securing the action;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
12) information concerning property which was obtained by the criminal offence;
13) a list of the data recorded in the National Fingerprint Database, the ABIS Database and the National DNA Database.
[RT I, 08.07.2021, 1 – entry into force 15.07.2021]

(2) The summary of pre-court proceedings shall be signed and dated by the official of an investigative body.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 154. Statement of charges

(1) The introduction of a statement of charges shall set out:
1) the date and place of preparation thereof;
2) the official title and name of the prosecutor;
3) the title of the criminal matter;
4) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship, education, native language and the place of work or educational institution of the accused;
5) the criminal record of the accused.

(2) The main part of a statement of charges shall set out:
1) the facts relating to the criminal offence;
2) the nature and extent of the damage caused by the criminal offence;
3) information concerning property which was obtained by the criminal offence;
3^1) the mitigating and aggravating circumstances;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
3^2) data on whether the victim has filed the request provided for in clause 38 (5) 2) or 4) of this Code or expressed the opinion provided for in clause 5);
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]
4) the evidence in proof of the facts which are the basis of the charge, and a reference to the facts which are intended to be proven with each piece of evidence;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

5) information concerning application and change of preventive measures applied to the accused and concerning the preventive measure in force;
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]
5[1]) in the case of the accused who is a citizen of a foreign state, information concerning the possibility to impose expulsion as a supplementary punishment provided for in § 54 of the Penal Code;
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]
6) information concerning the circumstances on the basis of which a fine to the extent of assets is calculated or the circumstances which are the basis for confiscation;
[RT I 2007, 2, 7 – entry into force 01.02.2007]
7) [Repealed – RT I, 05.07.2013, 2 – entry into force 15.07.2013]
8) information concerning the circumstances which are the prerequisites for the administration of addiction treatment of drug addicts or complex treatment of sex offenders;
[RT I, 15.06.2012, 2 – entry into force 01.06.2013]
9) information concerning the children and property of the accused requiring supervision;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
10) information concerning physical evidence and other objects seized during criminal proceedings;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
11) information concerning the expenses relating of the criminal proceedings;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
12) a list of the data recorded in the National Fingerprint Database, the ABIS Database and the National DNA Database.
[RT I, 08.07.2021, 1 – entry into force 15.07.2021]
13) data concerning appointment of a probation officer.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(3) The final part of a statement of charges shall set out:
1) the name of the accused;
2) the content of the charges;
3) the legal assessment of the criminal offence pursuant to the relevant section, subsection and clause of the Penal Code.

(4) A statement of charges shall be signed and dated by the prosecutor.

§ 154[1]. Civil action

(1) A civil action shall be filed in writing and shall set out:
1) the name, address and other contact details of the person filing a civil action;
2) the name of the accused or civil defendant against whom the civil action was filed. Prior to submission of a criminal file to the victim, the victim may refuse to state the name of the accused or civil defendant in a civil action. In such case, the victim must supplement the civil action within the term provided for in subsection 225 (1) or clause 240 4) of this Code;
3) the clearly expressed claim of the person filing the civil action;
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]
4) the factual circumstances which are the basis for the claim of the person filing the civil action;
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]
5) the evidence in proof of the facts which are the basis for the claim and upon which the victim intends to rely regardless of the set of evidence submitted by the Prosecutor's Office, if the person filing the civil action is not the Prosecutor's Office. If the civil action is filed by the Prosecutor's Office pursuant to subsections 38[1](3[1]), (3[2]) or (3[3]) of this Code, the civil action shall set out the evidence in proof of the facts which are the basis for the claim and on which the Prosecutor's Office intends to rely.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

(2) In an action for compensation of non-proprietary damage, the size of the compensation claimed may be left unspecified and fair compensation at the discretion of the court may be requested.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

§ 154[2]. Proof of claim in public law

A proof of claim in public law shall be filed in writing and it shall set out:
1) the person filing the proof of claim in public law, his or her address and other contact details;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
2) the name of the accused of defendant against whom the proof of claim in public law is filed;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
3) the clearly expressed claim of the person filing the proof of claim in public law;
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]
4) the basis of the claim under substantive law filed in the proof of claim in public law and the legal and factual reasoning thereof;

[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
5) the evidence in proof of the facts which are the basis for the claim and upon which the victim intends to rely regardless of the set of evidence submitted by the Prosecutor's Office, if the person filing the proof of claim in public law is not the Prosecutor's Office. If the proof of claim in public law is filed by the Prosecutor's Office pursuant to subsections $38^1(3^1)$, (3^2) or (3^3) of this Code, the civil action shall set out the evidence in proof of the facts which are the basis for the claim and on which the Prosecutor's Office intends to rely.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

§ 155. Minutes of court session

(1) The minutes of a court session of a court of first instance or a court of appeal is a procedural document which is prepared in typewritten or word-processed form and where the clerk of the court session records the conditions and course of the hearing of a criminal matter in his or her own wording or as summarised by the judge.

(2) The minutes of a court session shall set out:
1) the date and place of the session and the time of commencement and end of the session;
2) the name of the court and the composition of the panel of the court;
3) the names of the parties to judicial proceedings, the clerk of the court session, translators, interpreters and experts;
4) the title of the criminal matter being heard;
5) [Repealed – RT I, 23.02.2011, 1 – entry into force 01.09.2011]
6) the names of the court activities in chronological order;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
7) the questions posed by parties to judicial proceedings in a cross-examination and the testimony of the person being cross-examined;
8) the petitions and requests and the results of adjudication thereof;
9) the titles of the orders made in the court session;
10) the requests submitted by the parties in the summations;
11) the requests submitted in the final statement of the accused;
12) whether the court judgment or order was made in chambers;
13) pronouncement of the court judgment or order and explanation of the procedure and term for appeal.

(2^1) The clerk of a court session shall take the minutes of the session without interrupting the smooth running thereof.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2^2) If a court session was audio or video recorded, the audio or video recording shall be an integral part of the minutes of the court session. If the minutes contradict the recording, the recordings shall be relied upon.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) The minutes shall be signed and dated by the presiding judge and the clerk of the court session.

§ 156. Audio and video recording of court sessions

(1) Court sessions shall be audio recorded. A court may also video record a court session or any part thereof.
[RT I, 31.05.2018, 2 – entry into force 01.01.2019]

(2) If a court session or court activity is audio or video recorded, the court may use the recording in order to amend and specify the minutes of the court session.

(3) Changes to an audio or video recording are prohibited.

(4) Court sessions need not be recorded 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 judicial proceedings;
2) the session is held outside the court premises;
3) the session is held for pronouncement of the decision;
4) in the event of a session of the Supreme Court.
[RT I, 31.05.2018, 2 – entry into force 01.01.2019]

(5) Court sessions are audio or video recorded in digital format.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 156^1. Examination of recordings and minutes of court sessions

(1) Parties to judicial proceedings have the right to receive a copy of the minutes of a court session and the recording thereof in the case the court session is recorded.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) The court shall notify the parties to judicial proceedings of the time of signing the minutes and send the minutes immediately after signing thereof by electronic means to the prosecutor and other parties to judicial proceedings who have communicated their electronic mail addresses to the court. The parties to judicial proceedings may also examine the minutes in the court office.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) At the request of a party to judicial proceedings, the court shall make the signed minutes of a court session accessible to the parties to judicial proceedings not later than three days after the day of the court session.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) A copy of the audio recording of a court session shall be issued by a court office on a digital data medium or sent by electronic means within three days after submission of the respective request. Audio recordings of court sessions are made accessible to prosecutors by means of the E-File system.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) In the case a court session is video recorded, a court shall show the video recording to a party to judicial proceedings at the court within three days after submission of the respective request.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) A copy of the minutes or recording of a court session held in camera or a part thereof shall be issued by a court only in the case this does not endanger the interests specified in subsection 12 (1) of this Code. The court shall allow a party to judicial proceedings to examine the recordings or minutes of a court session held in camera at the court.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(7) The fee chargeable for making the audio recording copies specified in subsection (1) of this section in the amount of up to five euros and the procedure for payment thereof 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]

(8) A state fee shall be paid for a copy of the minutes specified in subsection (1) of this section in the amount provided for in subsection 61 (1) of the State Fees Act.
[RT I, 30.12.2014, 1 – entry into force 01.01.2015]

§ 156^2. Making procedural documents available in judicial proceedings

(1) The court shall make all procedural documents of judicial proceedings immediately available to parties to those proceedings in the E-File system regardless of how these are delivered to the parties.

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

§ 157. Court session clerks

(1) A court session clerk is a court officer whose duty is to conduct the technical preparations for a court session, to organise the audio and video recording thereof in the cases prescribed by law or at the direction of the court and to take minutes of the conditions, course and results of the court session.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) A court session clerk is required to remove himself or herself from criminal proceedings on the bases provided for in subsections 49 (1) and (6) of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) If a court session clerk does not remove himself or herself on the bases provided for in subsections 49 (1) and (6) of this Code, the prosecutor, accused, counsel, victim or civil defendant may submit a petition of challenge against the clerk. Petitions of challenge shall be resolved pursuant to the procedure prescribed in subsection 59 (6) of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 158. Request for amendment of minutes of court session

(1) Within three days after signing of the minutes of the court session, the parties to judicial proceedings may submit written requests for amendment of the minutes of the session and the requests shall be included in the criminal file.

(2) Requests shall be considered by a judge or presiding judge. If the judge or presiding judge consents to a request, he or she shall amend the minutes and the correctness of the amendments shall be confirmed by the signatures of the judge or presiding judge and the clerk of the court session.

(3) If a judge or presiding judge does not consent to a request for amendment, the request shall be considered in a court session held within five days as of receipt of the request. If possible, the audio or video recording of a court session shall be heard in order to resolve the request. The request shall be resolved by an order of the judge or presiding judge.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 159. Court judgment

(1) A court judgment is a decision on the merits of a criminal matter made in the name of the Republic of Estonia as a result of judicial proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) A court judgment shall be prepared pursuant to §§ 311-314 of this Code.

(3) The court may add to a judgment, whereby a participant in 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 proceedings as a participant in 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]

§ 160. Restoration of document

(1) If a procedural document or another document relevant for the resolution of a criminal matter is destroyed, lost or removed and restoration thereof is impossible, a copy of the document which has been authenticated by a court or notary is deemed to be equal to the original.

(2) If a procedural document cannot be replaced by an authenticated copy, the procedural document shall be restored on the basis of a draft of the document if such draft exists. A restored procedural document is deemed to be valid if the person conducting the proceedings who initially prepared the document confirms by his or her signature that the restored document corresponds to the original.

§ 160^1. Criminal file

(1) Criminal file means a set of documents collected in a criminal matter.

(2) The court maintains a court file on every criminal matter which it deals with and which includes, in chronological order, all the procedural documents and other documentation related to the matter. In the cases prescribed by law, other objects relevant to the proceedings shall be included in the court file.

(3) A court file is kept in the form of a collection of written documents.

(4) A court file may be maintained, in whole or in part, in digital form.

(5) If a court file is maintained in digital format, paper documents are scanned and saved in the E-File system under the relevant proceedings. The E-File system shall automatically record the time of saving a document and the data of the person saving it. Documents saved in the E-File system substitute for paper documents.

(6) The time and procedure for transfer to mandatory maintaining of digital court files, technical requirements for maintaining of digital court files and access thereto and preservation of electronic documents shall be established by a regulation of the minister responsible for the area.

(7) More specific requirements for archiving of digital court files and access to archived files and procedural documents shall be established by a regulation of the minister responsible for the area.
[RT I, 22.03.2013, 9 – entry into force 01.04.2013]

§ 160^2. Delivery of digital documents

(1) Digital applications, appeals and other documents in criminal proceedings shall be delivered directly or through the E-File system, unless otherwise provided for in this Code. A body conducting proceedings shall enter the directly delivered digital documents in the E-File system.
[RT I 2008, 28, 180 – entry into force 15.07.2008]

(2) For a digital document to be appended to a criminal file, the document shall be printed and included in the file. A body conducting proceedings shall certify the authenticity of the printed document and the correspondence thereof to the digital document by his or her signature and add the identification number of the document in the E-File system thereto.
[RT I 2008, 28, 180 – entry into force 15.07.2008]

(3) Advocates, notaries, bailiffs, trustees in bankruptcy and state or local government agencies shall submit applications, complaints and other documents to a body conducting proceedings by electronic means, unless there is good reason to submit procedural documents in another format.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 160[3]. Requirements for documents

(1) The requirements for a criminal file and the standard format of a statement of defence shall be established by the minister responsible for the area.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(1[1]) The standard format of documents of pre-court procedure in criminal matters shall be established by the Prosecutor General by direction provided to the Prosecutor's Office and investigative bodies on the basis of subsection 213 (5) of this Code.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(2) The procedure for the preparation, delivery and preservation of documents signed digitally in criminal proceedings and other digital documents shall be established by the minister responsible for the area.
[RT I 2008, 28, 180 – entry into force 15.07.2008]

§ 160[4]. Making of excerpts and obtainment of copies

(1) If a person has the right to examine procedural documents on the basis of this Code, he or she shall be allowed to make excerpts therefrom and receive a copy thereof for a fee, unless otherwise regulated by this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) In the interests of the criminal proceedings, the Prosecutor's Office may restrict the right to make excerpts and receive copies by a reasoned order for a certain period of time.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) A state fee shall be paid for a copy specified in subsection (1) of this section in the amount provided for in subsection 61 (1) of the State Fees Act.
[RT I, 30.12.2014, 1 – entry into force 01.01.2015]

Subchapter 2
Translation and Interpretation

§ 161. Translators and interpreters

(1) If a text in a foreign language needs to be translated or interpreted or if a participant in a criminal proceeding is not proficient in Estonian, a translator or interpreter shall be involved in the proceeding. Participation of an interpreter in a procedural operation or court session may be arranged by means of any technical solutions which comply with the requirements specified in subsection 69 (2) of this Code.
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

(2) An interpreter or translator is a person proficient in language for specific purposes or a person interpreting for a deaf or dumb person. Other subjects of criminal proceedings shall not perform the duties of an interpreter or translator.

(3) An interpreter or translator to whom the oath of interpreters and translators has not been administered shall be warned that he or she may be punished pursuant to criminal procedure for a knowingly false interpretation or translation.

(4) If an interpreter or translator does not participate in a procedural operation where the participation of an interpreter or translator is mandatory, the act is null and void.

(5) In order to ensure the correctness of interpretation or translation, an interpreter or translator has the right to pose questions to participants in the proceedings, examine the minutes of procedural operations and make statements concerning the report, and such statements shall be recorded in the minutes.

(6) An interpretation or translation of any aspect of a procedural operation rendered by an interpreter or translator shall be precise and complete and the interpreter or translator shall maintain the confidentiality of the information which became known to him or her in the course of the translation. If a non-staff interpreter or translator is not sufficiently proficient in language for specific purposes or in the form of expression of a deaf or mute person, he or she is required to refuse to participate in the criminal proceedings.
[RT I, 04.10.2013, 3 – entry into force 27.10.2013]

(7) A suspect or accused or his or her counsel may file an appeal against the provision of a false translation or interpretation by a translator or interpreter pursuant to the procedure provided for in § 228 of this Code.
[RT I, 04.10.2013, 3 – entry into force 27.10.2013]

§ 162. Bases for interpreters and translators to remove themselves and removal of translators or interpreters

(1) An interpreter or translator is required to remove himself or herself from criminal proceedings on the bases provided for in subsections 49 (1) and (6) of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

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

(2^1) A body conducting the proceedings may remove an interpreter or translator if the interpreter or translator does not perform his or her duties as required or if the quality of the interpretation or translation may impair the exercise of the right of defence of the suspect or accused.
[RT I, 04.10.2013, 3 – entry into force 27.10.2013]

(3) Petitions of challenge shall be resolved pursuant to the procedure prescribed in subsections 59 (5)-(6) of this Code.

Subchapter 3
Summoning and Publication of Time of Court Session

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

§ 163. Summons

(1) A summons shall set out:
1) the name of the person summoned;
2) the official title, name and details of the person issuing the summons;
3) the reason for summoning the person, and the capacity in which the person is summoned;
4) if a legal person is summoned, whether the summons is addressed to a legal representative or a representative;
5) whether appearance is mandatory;
6) the place and time of appearance;
7) the number of the criminal matter;
8) the obligation to give notice of failure to appear and of the reasons for such failure;
9) the consequences of failure to appear.

(2) The final part of a summons shall contain a notice which shall be completed if the summons is served on the person against signature. The notice shall set out the name of the person who received the summons, his or her signature confirming the receipt of the summons, the date of receipt of the summons and the obligation of the person who receives the summons in the absence of the summoned to deliver the summons to the summoned at the earliest opportunity or give notification to the person who issued the summons if delivery of the summons is impossible. If a person refuses to accept the summons, the person serving the summons shall make a notation on the notice in the final part of the summons and confirm the notation by his or her signature.

(3) If a person is summoned to a body conducting proceedings pursuant to the procedure provided for in § 164 of this Code, the notice provided for in subsection (2) of this section shall set out the number of the telephone or other means of communication to which the summons was sent.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 163[1]. Summoning pursuant to general procedure in county court

(1) Summoning of a witness, qualified person and expert in proceedings in a criminal matter conducted pursuant to the general procedure in a county court shall be organised by the party to judicial proceedings who applies for the hearing of the respective person in court.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) Summoning of a victim, civil defendant, third party and the representatives thereof in proceedings in a criminal matter conducted pursuant to the general procedure in a county court shall be organised by the Prosecutor's Office.

(3) Summoning of an accused in proceedings in a criminal matter conducted pursuant to the general procedure in a county court shall be organised by the counsel or the Prosecutor's Office as agreed in a preliminary hearing. Failing agreement, summoning of the accused shall be organised by the Prosecutor's Office.

(4) At the request of the parties to the judicial proceedings the court shall issue summonses to the parties in a preliminary hearing and set out the information listed in subsection 163 (1) of this Code in the summonses. The court shall indicate the details of the parties to judicial proceedings above the official title and details of the person issuing the summons.

(5) The court shall issue to the counsel, at his or her request, the address of the person in the population register who is summoned to court as a witness at the request of the counsel.

(6) A summons shall be served on a witness, qualified person and expert by a party to judicial proceedings or by a third party at the request of a party to judicial proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(7) If the Prosecutor's Office performs the duties prescribed in this section, the rights specified in clauses 213 (1) 5) and 10) of this Code extend to the Prosecutor's Office. The Prosecutor's Office has the right to summon independently persons in judicial proceedings whose summoning has been decided in a preliminary hearing.
[RT I 2008, 32, 198 – entry into force 01.01.2009]

§ 164. Regular procedure for service of summonses

(1) A person shall be summoned to an investigative body, Prosecutor's Office or court by a summons communicated by telephone or other means of communication.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) If there is reason to believe that a person absconds appearance at a body conducting proceedings or a person has expressed a wish to receive a written summons, the person shall be summoned to an investigative body, Prosecutor's Office or court by a written summons.

(3) The notices read by an official of an investigative body, prosecutor or court to the persons present are deemed to be equal to summonses served against signature within the meaning of subsection 165 (2) of this Code if a corresponding notation is made in the report.

(4) A summons shall be communicated to or served on a person in sufficient time for the appearance.

(5) Summonses may be served on any day and at any time.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 165. Rules for service of written summonses

(1) A written summons may be served against signed receipt on a notice, as a postal item delivered against signed receipt or by electronic means.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) A written summons shall be served on an adult or minor of at least fourteen years of age against signed receipt on a notice. The written summons addressed to a person who is less than fourteen years of age or suffers from a mental disorder shall be served on his or her parent or any other legal representative or guardian against signed receipt on a notice. If a summons cannot be served on the person summoned, the summons shall be served against signed receipt on a notice on an adult family member living together with the summoned or shall be sent to the place of employment or educational institution of the summoned for forwarding to him or her.

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

(4) A summons may be served on participants in proceedings by electronic mail at the electronic mail addresses disclosed by the participants in proceedings to a body conducting the proceedings or by the employer of a participant in proceedings or published on a personal website. The summons served by electronic mail shall include a notation stating the obligation to confirm the receipt of the summons electronically. In the case no confirmation of receipt of the summons is received within three working days as of serving the summons at the electronic mail address ascertained by the body conducting the proceedings, the summons shall be served as a postal item served against signature or shall be served on the person summoned against signature.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4^1) If a summons is made accessible through the E-File system, the person summoned shall be notified of the existence of the summons at his or her electronic mail address indicated in a procedural document or published on the Internet. The notice shall include a reference to the digital summons in the E-File system and the term for accessing thereof which is three days as of the moment of sending the summons. A summons shall not be accompanied by digital signature if the sender and the time of sending thereof can be identified through the E-File system. A summons made accessible through the E-File system is deemed delivered if the recipient opens it in the information system or confirms the receipt thereof in the information system without opening the document and in the case this is done by another person to whom access to the documents in the information system is enabled by the recipient. If the summons is not accessed through the E-File system within three days as of the date of sending thereof, the summons shall be sent as a postal item served against signature or it shall be served on the person summoned against signature.
[RT I, 22.03.2013, 9 – entry into force 01.04.2013]

(5) Notices concerning the serving of a summons against signature, notices of delivery issued by postal service providers, the printouts of electronic mails concerning the issue of the summons and the printouts of electronic mails confirming the receipt of the summons shall be included in the criminal file. The fact of the receipt of a summons through the E-File system shall be registered in the E-File system and no printout shall be included in the criminal file.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) The minister responsible for the area may, by regulation, establish more specific requirements for electronic delivery of procedural documents in judicial proceedings through the E-File system.
[RT I, 22.03.2013, 9 – entry into force 01.04.2013]

§ 166. Sending of summonses to prisoners

A summons shall be sent to a person held in custody or imprisoned person through the head of the custodial institution who shall arrange for the appearance of the summoned.

§ 167. Sending of summonses to persons serving in Defence Forces

A summons shall be sent to a person serving in the Defence Forces through the direct commander who shall arrange for the appearance of the summoned.
[RT I 2008, 35, 212 – entry into force 01.01.2009]

§ 168. Communication of summonses through notice in newspaper

(1) If there are several victims or civil defendants or if their identities cannot be established, an investigative body, Prosecutor's Office or court may summon such persons through a notice in a newspaper. A summons published in such manner is deemed to be served as of the publication of the notice.

(2) A notice in a newspaper shall set out the information listed in subsection 163 (2) of this Code.

(3) A notice shall be published in the newspaper prescribed for the publication of court notices at least twice with an interval of at least one week.

(4) The text of a notice published in a newspaper shall be included in the criminal file.

§ 169. Communication of summons to persons whose whereabouts are unknown

If a summons cannot be served on a person pursuant to the procedure provided for in §§ 164-167 of this Code, he or she shall be declared a fugitive by an order of an investigative body or Prosecutor's Office or by a court order pursuant to the provisions of § 140 of this Code.

§ 169^1. Publication of time of court session on website of court

The time of a court session is published on the website of a court indicating the number of the criminal matter, the name of the accused who is an adult and the initials of the accused who is a minor and the legal assessment of the criminal offence in which the person is accused pursuant to the corresponding section, subsection or clause of the Penal Code. In the case of a court session in camera, only the time of the session, number of the criminal matter and a notation that the court session is held in camera shall be published. The time of the court session shall be removed from the website when seven days have passed from the court session.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 170. Good reason for failure to appear when summoned

(1) If a person summoned cannot appear on the specified date, he or she shall immediately give notice thereof.

(2) Good reason for failure to appear is:
1) absence which is not related to evading criminal proceedings;
2) failure to receive a summons or belated receipt of the summons;
3) a serious illness of the person summoned or a sudden serious illness of a person close to him or her which prevents the person from appearing at the body conducting the proceedings;
3^1) participation in a court session prescribed earlier;
[RT I 2008, 32, 198 – entry into force 15.07.2008]
4) other circumstances which the investigative body, Prosecutor's Office or court deems to be a good reason.

(3) If an eyewitness to a criminal offence who has not been identified refuses to participate in criminal proceedings as a witness, an official of the investigative body may detain the person for identification for up to 12 hours and a report shall be prepared thereon.

(4) A person shall submit a certificate concerning the occurrence of an impediment specified in clause (2) 3) of this section to the body conducting proceedings. The format and the procedure for the issue of certificates shall be established by the minister responsible for the area.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

Chapter 6
TIME-LIMITS FOR PROCEEDINGS

§ 171. Calculation of time-limits

(1) Time-limits shall be calculated in hours, days and months. A time-limit shall not include the hour or day as of which the beginning of the time-limit is calculated.

(2) If a person is detained as a suspect or taken into custody, the time-limit shall be calculated as of the moment of his or her detention. If a person is sentenced to imprisonment, the time-limit shall be calculated as of the moment of his or her arrival at the prison for serving the punishment unless the time of commencement of the service of the sentence arises from a court judgment.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(3) Upon the calculation of a time-limit in days, the time-limit shall end on the last working day at twenty-four hours. If the end of a time-limit calculated in days falls on a day off, the first working day following the day off shall be deemed to be the last day of the time-limit.

(4) Upon the calculation of a time-limit in months, the time-limit shall end on the corresponding date of the last month. If the ending of a time-limit falls on a calendar month which lacks a corresponding date, the time-limit shall end on the last date of the month.

(5) If the end of a time-limit calculated in months falls on a day off, the first working day following the day off shall be deemed to be the last day of the time-limit.

(6) If an act is performed by an investigative body, Prosecutor's Office or court, the time-limit shall end at the time of the end of the working hours in the corresponding agency.

(7) A time-limit shall be deemed not to have been allowed to expire, if an appeal is posted or sent by commonly used technical communication channels before the expiry of the time-limit. A time-limit shall be deemed not to have been allowed to expire, if a person held in custody submits an appeal to the administration of the custodial institution before the expiry of the time-limit.

§ 172. Restoration of term for appeal

(1) A term for appeal expired with good reason shall be restored by order of the investigative body or Prosecutor's Office or court which conducts proceedings in the criminal matter.

(2) The following are good reasons for allowing a term for appeal to expire:
1) absence which is not related to evading criminal proceedings;
2) other circumstances which the investigative body, Prosecutor's Office or court deems to be a good reason.

(3) 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]

Chapter 7
EXPENSES RELATING TO CRIMINAL PROCEEDINGS

Subchapter 1
Types of expenses relating to criminal proceedings

§ 173. Expenses relating to criminal proceedings

(1) Expenses relating to criminal proceedings are:
1) procedure expenses;
2) special costs;
3) additional costs.

(2) Procedure expenses shall be compensated for by the obligated person pursuant to this Code to the extent determined by the body conducting proceedings.

(3) Special costs shall be compensated for by the person by whose fault those costs are incurred. The state may be ordered to bear special costs caused by a minor.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

(4) Additional costs shall be borne by the person who incurs such costs.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 174. Compensation for expenses of persons not subject to proceedings

[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
Expenses incurred by a person not subject to proceedings, except the procedure expenses specified in clauses 175 (1) 1)-3) of this Code, shall not be deemed to be procedure expenses.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 175. Procedure expenses

(1) The following are procedure expenses:
1) reasonable remuneration paid to the chosen counsel or representative and other necessary expenses incurred by a participant in proceedings in connection with criminal proceedings;
2) amounts paid to victims, witnesses, experts and qualified persons pursuant to § 178 of this Code, except expenses specified in clause 176 (1) 1) of this Code;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
3) expenses incurred by a state forensic institution or any other state agency or legal person in connection with conducting expert assessment or establishment of intoxication;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
4) remuneration established for an appointed counsel and the expenses thereof to the justified and necessary extent thereof;
[RT I 2009, 1, 1 – entry into force 01.01.2010]
5) expenses incurred in the making of copies of the materials of a criminal file for a counsel in accordance with subsection 224 (1) of this Code at the rate provided for in subsection 61 (1) of the State Fees Act;
[RT I, 30.12.2014, 1 – entry into force 01.01.2015]
6) storage fees and expenses relating to the forwarding and destruction of evidence;
7) expenses relating to the storage, transfer and destruction of confiscated property;
8) expenses incurred as a result of securing a civil action or proof of claim in public law;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
9) compensation levies paid upon a judgment of conviction;
10) other expenses incurred by a body conducting proceedings in the course of conducting criminal proceedings, except costs considered to be special or additional costs pursuant to this Code.

(2) If a participant in proceedings has several counsels or representatives, procedure expenses shall cover remuneration paid to the counsels or representatives in an amount not exceeding reasonable remuneration normally paid to one counsel or representative.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(3) If a suspect or the accused defends himself or herself, necessary defence expenses shall be included in procedure expenses. Excessive expenses which would not have occurred if a counsel had participated shall not be included in procedure expenses.

(4) Expenses related to the conduct of expert analyses incurred by persons not subject to proceedings shall be compensated for under the conditions and pursuant to the procedure provided for in the Forensic Examination Act.
[RT I 2010, 8, 35 – entry into force 01.03.2010]

§ 176. Special costs

(1) The following are special costs:
1) costs incurred as a result of the adjournment of a court session due to the failure of a participant in proceedings to appear;
2) costs relating to compelled attendance.

(2) The procedure for the calculation and the amount of special costs shall be determined by the Government of the Republic.

§ 177. Additional costs

The following are additional costs:
1) remuneration payable to a person not subject to proceedings for information concerning facts relating to a subject of proof;
2) the costs of keeping a suspect or the accused in custody;
3) amounts paid to interpreters or translators pursuant to § 178 of this Code;
4) the amounts paid in criminal proceedings pursuant to the Compensation for Harm caused in offence proceedings Act;
[RT I, 20.11.2014, 1 – entry into force 01.05.2015]
5) costs which have been incurred by state and local government agencies in connection with criminal proceedings and which are not specified in clauses 175 (1) 1) and 10) of this Code;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
6) amounts paid to representatives of witnesses pursuant to § 67^1 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 178. Compensation for expenses of victims, witnesses, interpreters, translators, experts and qualified persons

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

(1) The following expenses incurred in connection with criminal proceedings shall be reimbursed to a victim, witness, non-staff interpreter or translator and an expert or qualified person not employed by a state forensic institution:
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
1) unreceived income in accordance with subsection (4) of this section;
2) daily allowance;
3) travel and overnight accommodation expenses.

(2) Translators and interpreters, experts and qualified persons shall receive remuneration for the performance of their duties, unless they performed their duties as official duties. The hourly fee paid to experts, qualified persons and interpreters or translators shall not be less than the minimum hourly fee promised to be paid to a person in employment relationship and shall not exceed it more than 50 times.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) Expenses specified in subsection (1) of this section shall also be compensated for in case the court session is adjourned. Neither remuneration nor compensation shall be paid to the person who causes the adjournment.

(4) Victims, witnesses, translators and interpreters, experts and qualified persons whose salaries or wages are not retained shall receive compensation in the amount of their average wages, on the basis of a certificate from the employer, for the full time of their absence from work when summoned by the body conducting the proceedings. If a victim, witness, interpreter or translator, expert or qualified person fails to submit a certificate from the employer, compensation for the time of absence from work shall be calculated based on the established minimum wage.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) By its regulation, the Government of the Republic shall establish the following:
[RT I 2006, 21, 160 – entry into force 25.05.2006]
1) the amount of and the procedure for payment of remuneration payable to victims, witnesses, interpreters and translators, experts and qualified persons;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
2) the amount of and the procedure for payment of the compensations specified in subsection (1) of this section;
[RT I 2006, 21, 160 – entry into force 25.05.2006]
3) if necessary, specifications upon payment of remuneration or compensation to experts, qualified persons and interpreters and translators residing in a foreign state.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 179. Compensation levies

(1) The amount of compensation levies paid upon a judgment of conviction is:
1) in the case of conviction of a criminal offence in the first degree, 2.5 times the amount of the minimum monthly wage;
[RT I 2008, 19, 132 – entry into force 23.05.2008]
2) in the case of conviction of a criminal offence in the second degree, 1.5 times the amount of the minimum monthly wage.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(2) If a person is convicted on the basis of several sections of the Penal Code, the person shall pay the compensation levy corresponding to the degree of the most serious criminal offence.

(3) No compensation levies are prescribed if a sanction is imposed against a minor pursuant to subsection 87 (1) of the Penal Code.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

Subchapter 2
Compensation for expenses relating to criminal proceedings

§ 180. Compensation for procedure expenses in case of conviction

(1) In the case of a conviction, procedure expenses shall be compensated for by the convicted offender. In such case, the exceptions provided for in § 182 of this Code shall be taken into consideration.

(1^1) When determining the procedure expenses provided for in clause 175 (1) 4) of this Code, the court shall take the grounds and circumstances of the arise of procedural expenses into account upon making the decision to compensate.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(2) If several persons are convicted in a criminal matter, the distribution of expenses shall be decided by the court, taking into account the extent of the liability and financial situation of each convicted offender.

(3) When determining procedure expenses, a court shall take into account the financial situation and chances of re-socialisation of a convicted offender. If a convicted offender is obviously unable to reimburse procedure expenses, the court shall order a part of the expenses to be borne by the state. The procedural expenses of a minor may be covered by the state in full. A court may order that the expenses relating to criminal proceedings shall be compensated for in instalments.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

§ 181. Compensation for procedure expenses in case of acquittal

(1) In the case of an acquittal, procedure expenses shall be compensated for by the state, taking into account the exceptions provided for in § 182 of this Code.

(2) A person who has been acquitted shall reimburse any procedure expenses caused by the person's wrongful failure to perform his or her obligations or false admission of guilt.

§ 182. Division of procedural expenses related to civil action and proof of claim in public law

[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(1) If the case a civil action or proof of claim in public law is denied, the expenses related to the conduct of proceedings on the civil action or proof of claim in public law shall be borne by the victim. The fee of the legal aid appointed for the victim shall be borne by the state pursuant to the procedure provided for in subsection 41 (3^1) of this Code.

(2) If the case a civil action or proof of claim in public law is granted in full, the expenses related to the conduct of proceedings on the civil action or proof of claim in public law shall be borne by the accused or defendant.

(3) If a civil action or proof of claim in public law is granted in part, the court shall divide the expenses related to the conduct of proceedings on the civil action or proof of claim in public law between the victim, accused and defendant, taking into account all the circumstances.

(4) Regardless of the provisions of subsections (1)-(3) of this section, the court may decide that the costs of the accused, victim or defendant related to the conduct of proceedings on the civil action or proof of claim in public law be borne in part or in full by the party who incurred the costs in the cases where ordering payment of the costs by the opposing party would be extremely unfair or unreasonable for the latter.

(5) Upon dismissal of a civil action or proof of claim in public law due to a judgment of acquittal or termination of criminal proceedings, the costs related to the conduct of proceedings on the civil action or proof of claim in public law shall be borne by the state. Upon dismissal of a civil action or proof of claim in public law due to other reasons, the court shall divide the costs related to the conduct of proceedings on the civil action or proof of claim in public law between the victim and the state, taking into account all the circumstances.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(6) In the cases provided for in subsections (1), (3), (4) and (5) of this Code, if the person who files the civil action or proof of claim in public law is the Prosecutor's Office pursuant to subsection $38^{1}(3^{1})$, (3^{2}) or (3^{3}) of this Code, procedure expenses shall be borne by the state.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

§ 183. Compensation for procedure expenses upon termination of criminal proceedings

(1) If criminal proceedings are terminated, procedure expenses shall be covered for by the state, unless otherwise provided for in this Code.

(2) If criminal proceedings are terminated and the materials of the criminal matter are referred for a decision to be taken on commencement of misdemeanour proceedings due to elements of a misdemeanour being revealed in the case, the covering of the procedure expenses which would also have arisen in misdemeanour proceedings may be left to be determined in the decision resolving the misdemeanour proceedings. If the decision is taken not to commence misdemeanour proceedings, the procedure expenses shall be covered by the state.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

§ 184. Compensation for procedure expenses in case of false report of criminal offence

If criminal proceedings are commenced on the basis of a knowingly false report of a criminal offence, procedure expenses shall be reimbursed by the person who filed the report.

§ 185. Compensation for procedure expenses in appeal proceedings

(1) If a decision specified in clauses 337 (1) 2)-4) or subsection 337 (2) of this Code is made in appeal proceedings, procedure expenses shall be borne by the state.

(2) If a decision specified in clause 337 (1) 1) of this Code is made in appeal proceedings, procedure expenses shall be borne by the person in whose interests the appeal was filed. If the appeal was filed by the Prosecutor's Office, procedure expenses shall be borne by the state.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 186. Compensation for procedure expenses under cassation procedure and review procedure

(1) If a decision specified in clauses 361 1) 2)-7) of this Code is made in cassation proceedings, procedure expenses shall be borne by the state.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) If a decision specified in clause 361 (1) 1) of this Code is made in cassation proceedings, procedure expenses shall be borne by the person in whose interests the cassation was filed. If the cassation was filed by the Prosecutor's Office, procedural expenses shall be borne by the state.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(3) If a petition for review is denied, the reimbursement of procedure expenses may be imposed on the petitioner.

§ 187. Compensation for procedure expenses under the procedure for resolution of appeals against court orders

(1) If a court order is annulled in the course of proceedings for the resolution of an appeal against the order, procedure expenses shall be borne by the state.

(2) If an appeal against a court order is denied, procedural expenses shall be borne by the person in whose interests the appeal against the order was filed. If the appeal against a court order, which was denied, was filed in the interests of a suspect, accused or third person, the person obligated to compensate for the procedural expenses incurred in the course of proceedings dealing with the appeal against the order shall be determined upon making the final decision in the criminal matter on the basis of the provisions of §§ 180-184, $187^{1}$and 188 of this Code.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 187[1]. Compensation for procedure expenses under confiscation procedure

(1) If a confiscation request is granted, the procedure expenses related to the proceedings on the confiscation of property obtained by a criminal offence shall be compensated for by the convicted offender. If a confiscation request is granted in part, the court may decide that a part of the procedure expenses will be borne by the state.

(2) In the case the confiscation request is denied, procedure expenses shall be compensated for by the state.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

§ 188. Obligation of minor to compensate for expenses relating to criminal proceedings

If a minor is required to compensate for expenses relating to criminal proceedings, the body conducting the proceedings may impose the reimbursement of expenses on his or her parent, guardian or child care institution.

Subchapter 3
Determination concerning compensation for expenses relating to criminal proceedings

§ 189. Determination concerning compensation for expenses relating to criminal proceedings

(1) In pre-court proceedings, compensation for expenses relating to criminal proceedings shall be resolved by order of the investigative body or the Prosecutor's Office.

(2) In judicial proceedings, compensation for expenses relating to criminal proceedings shall be resolved by a court order or judgment.

(3) If compensation for expenses relating to criminal proceedings is prescribed by a court judgment, such compensation may be contested separately from the judgment in accordance with Chapter 15 of this Code.

(4) A request for determining the amount of the fee and the extent of compensation for costs of appointed counsel shall be resolved digitally in the information system of the investigative body, Prosecutor's Office or court.
[RT I, 21.05.2014, 1 – entry into force 31.05.2014]

(5) The cases when the body conducting proceedings may resolve the request specified in subsection (4) of this section by means of endorsement on the corresponding paper document shall be established by a regulation of the minister responsible for the area.
[RT I, 21.05.2014, 1 – entry into force 31.05.2014]

(5[1]) The body conducting proceedings may resolve the payment of compensation for the costs of a victim, witness, interpreter or translator, expert or qualified person by means of endorsement on the corresponding request.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

§ 190. Content of determination concerning compensation for expenses relating to criminal proceedings

In the determination concerning compensation for the expenses relating to criminal proceedings, the body conducting the proceedings shall set out:
1) who shall reimburse the procedure expenses and the share of the procedure expenses to be paid by each payer expressed as an absolute amount or, if this is impossible, as a fraction;
2) the amount of special costs and the person required to reimburse those costs;
3) whether and to what extent the request to compensate for harm caused in offence proceedings under the Compensation for Harm caused in offence proceedings Act is to be granted.
[RT I, 20.11.2014, 1 – entry into force 01.05.2015]

§ 191. Contestation of determination concerning compensation for expenses relating to criminal proceedings

(1) The Prosecutor's Office or the participant in proceedings who is required to compensate for the expenses relating to criminal proceedings on the basis of a determination concerning compensation for expenses relating to criminal proceedings may contest the determination in accordance with the provisions of sections 228 or 229 of this Code by an appeal or appeal in cassation or in accordance with Chapter 15 of this Code.

(2) When considering an appeal filed against a determination concerning compensation for expenses relating to criminal proceedings, the court may, regardless of the content of the appeal, extend the scope of consideration of the appeal to the entire determination.

(3) When considering an appeal or an appeal in cassation filed against a court judgment, the circuit court or the Supreme Court may make a new determination concerning compensation for expenses relating to criminal proceedings regardless of whether or not the expenses have been contested.

§ 192. Determining the compensation for expenses

(1) Compensation for expenses is a sum of money payable by a person on the basis of the determination concerning compensation for expenses relating to criminal proceedings.

(2) The body conducting proceedings shall determine the amount of the compensation for expenses at the request of a participant in proceedings or of the Prosecutor's Office on the basis of the determination concerning compensation for expenses relating to criminal proceedings if:
1) the distribution of procedure expenses in that determination is expressed by means of fractions;
2) the distribution of expenses in that determination is contradictory;
3) that determination grants compensation for expenses whose amount was not known at the time of granting.

(3) The order referred to in subsection (1) of this section may be contested pursuant to the procedure provided for in subsection 191 (1) of this Code.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

Chapter 8
PRE-COURT PROCEDURE

Subchapter 1
Commencement and Termination of Criminal Proceedings

§ 193. Commencement of criminal proceedings

(1) The investigative body or the Prosecutor's Office commences criminal proceedings by the first investigative activity or other procedural operation if a reason and grounds for commencement are present and if the circumstances provided in subsection 1 of section 199 of this Code are absent.

(2) If criminal proceedings are commenced by an investigative body, the body shall immediately notify the Prosecutor's Office of the commencement of proceedings.

(3) If criminal proceedings are commenced by the Prosecutor's Office, the Office shall transmit the materials of the criminal matter in accordance with investigative jurisdiction.

§ 194. Reason and grounds for criminal proceedings

(1) The reason for the commencement of criminal proceedings is a report of a criminal offence or other information indicating that a criminal offence has taken place.

(2) The grounds for criminal proceedings are constituted by ascertainment of criminal elements in the reason for the criminal proceedings.

§ 195. Report of criminal offence

(1) A report of a criminal offence shall be submitted to an investigative body or the Prosecutor's Office orally or in writing.

(2) A report in which a person is accused of a criminal offence is a complaint of crime.

(3) An oral report of a criminal offence which is submitted directly on site shall be recorded in a report and a copy of the report shall be submitted to the person who submitted the report of a criminal offence. A report of a criminal offence communicated by telephone shall be recorded in writing or audio recorded.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(4) If the person who submitted a report of a criminal offence is a victim who is a natural person, a written confirmation shall be sent to him or her confirming the receipt of the report of a criminal offence within 20 days as of the receipt thereof and the confirmation may be included in a notice of refusal to commence criminal proceedings or in the summons to a procedural operation.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(5) If necessary, language assistance shall be provided to a victim who is the person who submitted a report of a criminal offence. At the request of the victim, the confirmation concerning receipt of a report of a criminal offence shall be issued to him or her in a language which he or she understands.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

§ 196. Report of violent death

(1) If there is reason to believe that a person has died as a result of a criminal offence or if an unidentifiable body is found, an investigative body or the Prosecutor's Office shall be immediately notified thereof.

(2) If a health care professional conducting an autopsy suspects that the person died as a result of a criminal offence, he or she is required to notify an investigative body or Prosecutor's Office of such suspicion immediately.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 197. Other information referring to criminal offence

(1) If the Prosecutor's Office or an investigative body receives information released in the press indicating that a criminal offence has taken place, such information may be the reason for the commencement of criminal proceedings.

(2) If an investigative body or the Prosecutor's Office, in the performance of the duties thereof, receives information indicating that a criminal offence has taken place, such information may be the reason for the commencement of criminal proceedings.

§ 198. Response to report of criminal offence

(1) An investigative body or Prosecutor's Office shall, within ten days as of receipt of a report of a criminal offence, notify the person who submitted the report of the refusal to commence criminal proceedings in accordance with subsection 199 (1) or (2) of this Code.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(1^1) The term specified in subsection (1) of this section may be extended by ten days if demanding of additional information from the person who submitted the report on a criminal offence is necessary for deciding on commencement of or refusal to commence criminal proceedings. The person who submitted the report on a criminal offence shall be informed of extension of the term for response, and of the reasons for extension.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) If a complaint of crime is submitted, the investigative body or Prosecutor's Office shall also notify the person concerning whom the complaint was submitted of refusal to commence criminal proceedings, except in the case confidentiality of the fact of notification of a criminal offence is ensured pursuant to law or non-notification is required for prevention of crime.
[RT I, 29.06.2012, 1 – entry into force 01.04.2013]

§ 199. Circumstances precluding criminal proceedings

(1) Criminal proceedings shall not be commenced if:
1) no grounds for criminal proceedings are present;
2) the limitation period for the criminal offence has expired;
3) an amnesty precludes imposition of a punishment;
4) the suspect or accused is dead or the suspect or accused who is a legal person has been dissolved;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
5) a decision or an order on termination of criminal proceedings has entered into force in respect of the person on the same charges on the grounds provided for in § 200 of this Code;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
6) a suspect or accused is terminally ill and is therefore unable to participate in the criminal proceedings or serve a sentence;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
7) these criminal offences are specified in §§ 414, 415, 418 and 418^1 of the Penal Code and the person voluntarily surrenders the firearms, explosive devices in illegal possession or the substantial part, ammunition or explosive thereof;
[RT I, 16.04.2013, 1 – entry into force 26.04.2013]
8) criminal proceedings are concentrated in another state on the basis provided for in §§ 436^1-436^6 of this Code.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(2) Criminal proceedings shall not be commenced if detention of the suspect is substituted for pursuant to § 219 of this Code.

(3) Criminal proceedings shall be continued if this is requested for the purposes of rehabilitation by:
[RT I 2004, 46, 329 – entry into force 01.07.2004]
1) a suspect or accused in the cases provided in clause 2 or 3 of subsection 1 of this section;

2) the representative of a deceased suspect or accused in the case provided in clause 4 of subsection 1 of this section;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
3) a suspect, accused or his or her representative in the case provided in clause 6 of subsection 1 of this section.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 200. Termination of criminal proceedings on circumstances being revealed which preclude criminal proceedings

If circumstances specified in § 199 of this Code which preclude criminal proceedings are revealed in pre-court proceedings, the proceedings shall be terminated on the basis of the corresponding order of the investigative body with the permission of the Prosecutor's Office, or by order of the Prosecutor's Office.

§ 200[1]. Termination of criminal proceedings on account of impossibility to identify the person who committed the criminal offence

(1) If, in pre-court proceedings, the person who committed the criminal offence has not been identified and it is impossible to collect additional evidence or the collection thereof is not reasonable, the proceedings shall be terminated on the basis of an order of the investigative body with the permission of the Prosecutor's Office or by an order of the Prosecutor's Office. The proceedings may also be terminated partially in respect of a suspect or a criminal offence.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(2) Where the bases prescribed in subsection (1) cease to exist, proceedings shall be resumed pursuant to the procedure prescribed in § 193 of this Code.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 201. Termination of criminal proceedings committed by minors

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

(1) If commencement of criminal proceedings is refused or criminal proceedings are terminated for the reason that the unlawful act was committed by a minor who was incapable of guilt on the grounds of his or her age, the investigative body or Prosecutor's Office shall explain to the minor or his or her legal representative the nature of the act with the elements of a criminal offence and the grounds for termination of criminal proceedings. The investigative body or Prosecutor's Office may send a notification and a copy of the materials of the criminal matter in the required scope to the local authority of the place of residence of the minor.

(2) If the Prosecutor's Office finds that a person who has committed a criminal offence when at least fourteen but less than eighteen years of age can be influenced without imposition of a punishment or a sanction prescribed in § 87 of the Penal Code, the Prosecutor's Office may terminate criminal proceedings, caution the person and assign, with the consent of the person, as appropriate, the following obligations:
1) 10-60 hours of community service;
2) indemnification and remedy for damage caused by the criminal offence;
3) social program;
4) addiction treatment or another treatment;
5) conciliation service;
6) other relevant obligations.

(3) The Prosecutor's Office shall determine pursuant to subsection (2) of this section a term for compliance with the obligations which shall not be longer than ten months. If the person fails to comply with the obligation imposed on the person during the determined term, the Prosecutor's Office may resume criminal proceedings by an order.

(4) Prior to termination of criminal proceedings pursuant to subsection (2) of this section, the nature of the act with the elements of the criminal offence and the grounds for termination of criminal proceedings have to be explained to the minor who committed the criminal offence and his or her legal representative. In the case the criminal proceedings against a minor are terminated pursuant to this section, the prosecutor may send a notification and a copy of the materials of the criminal matter in the required scope to the local authority of the place of residence of the minor.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

§ 202. Termination of criminal proceedings in case of lack of public interest in proceedings and negligible guilt

(1) If the object of criminal proceedings is a criminal offence in the second degree and the guilt of the person suspected or accused of the offence is negligible, and he or she has remedied or has commenced to remedy the damage caused by the criminal offence or has paid the expenses relating to criminal proceedings, or assumed

the obligation to pay such expenses, and there is no public interest in the continuation of the proceedings, the Prosecutor's Office may request, with the consent of the suspect or accused, that the court terminate the proceedings.

(2) In the event of termination of criminal proceedings, the court may impose the following obligation on the suspect or accused at the request of the Prosecutor's Office and with the consent of the suspect or accused within the specified term:
1) to pay the expenses relating to the proceedings or compensate for the damage caused by the criminal offence;
[RT I 2007, 11, 51 – entry into force 18.02.2007]
2) to pay a fixed amount into the public revenues or to be used for specific purposes in the interest of the public;
3) to perform 10-240 hours of community service. The provisions in the second sentence of subsections 69 (2) and (4) and subsection (5) of the Penal Code apply to community service;
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]
4) to undergo the prescribed treatment;
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]
4^1) not to use narcotic drugs or psychotropic substances or alcohol;
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]
5) to participate in a social programme.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]
6) to submit to surveillance of compliance with prohibition on consumption of alcohol by an electronic device provided for in subsection 75^1(1) of the Penal Code;
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]
7) to comply with other relevant obligations.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(3) The term for fulfilment of the obligations listed in clauses (2) 1)-3) and 6) of this section shall not be longer than six months. The term for fulfilment of the obligations specified in clauses (2) 4)-5) of this section shall not be longer than eighteen months.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(4) A request of the Prosecutor's Office shall be resolved by an order of a judge sitting alone. If necessary, the prosecutor and the suspect or accused and, at the request of the suspect or accused, also the counsel shall be summoned to the judge for the resolution of the request of the Prosecutor's Office.

(5) If a judge does not consent to the request submitted by the Prosecutor's Office, he or she shall, by order, return the criminal matter for continuation of proceedings.

(6) If a person with regard to whom criminal proceedings have been terminated in accordance with subsection (2) of this section fails to perform the obligation imposed on him or her, a court, at the request of the Prosecutor's Office, shall resume the proceedings by an order. In imposition of a punishment, the part of the obligations performed by the person shall be taken into consideration.
[RT I 2007, 11, 51 – entry into force 18.02.2007]

(7) If the object of criminal proceedings is a criminal offence in the second degree for which the minimum rate of imprisonment is not prescribed as punishment or only a pecuniary punishment is prescribed as punishment by the Special Part of the Penal Code, the Prosecutor's Office may terminate the proceedings and impose the obligations on the bases provided for in subsections (1) and (2) of this section. The Prosecutor's Office may resume terminated criminal proceedings by an order on the bases provided for in subsection (6) of this section.

§ 203. Termination of criminal proceedings due to lack of proportionality of punishment

(1) If the object of criminal proceedings is a criminal offence in the second degree, the Prosecutor's Office may request termination of the proceedings by a court with the consent of the suspect or accused and the victim if:
1) the punishment to be imposed for the criminal offence would be negligible compared to the punishment which has been or presumably will be imposed on the suspect or accused for the commission of another criminal offence;
2) imposition of a punishment for the criminal offence cannot be expected during a reasonable period of time and the punishment which has been or presumably will be imposed on the suspect or accused for the commission of another criminal offence is sufficient to achieve the objectives of the punishment and satisfy the public interest in the proceedings.

(1^1) If the person suspected or accused of commission of a criminal offence provided for in Subchapter 1 of Chapter 12 of the Penal Code may be influenced not to commit offences in the future by treatment of the addiction disorder or keeping this disorder under control, the prosecutor's office may apply, with the consent of the suspected or accused, for termination of criminal proceedings by the court provided that the person is sent to medical treatment or the disorder is kept under control in any other manner. The court may impose obligations on the suspect or accused in accordance with the provisions of subsections 202 (2) and (3) of this Code.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(2) A request of the Prosecutor's Office shall be resolved by order of a single judge. If necessary, the prosecutor and the suspect or accused and, at the request of the suspect or accused, also the counsel shall be summoned to the judge for resolving the request of the Prosecutor's Office.

(3) If a judge does not consent to the request submitted by the Prosecutor's Office, he or she shall, by order, return the criminal matter for continuation of proceedings.

(4) If criminal proceedings were terminated taking into consideration a punishment imposed on the suspect or accused for another criminal offence and the punishment is subsequently annulled, the court may, at the request of the Prosecutor's Office, resume the proceedings by an order.

(5) If criminal proceedings were terminated taking into consideration a punishment which will presumably be imposed on the suspect or accused for another criminal offence, the court may, at the request of the Prosecutor's Office, resume the proceedings if the punishment imposed does not meet the criteria specified in clauses (1) 1) and 2) of this section.

(5^1) If criminal proceedings were terminated on the conditions provided for in subsection (1^1) of this section, the court may, by order, resume such proceedings at the request of the Prosecutor's Office if the person fails to perform the obligations imposed on him or her, withdraws his or her consent, or evades the treatment, or if the treatment is discontinued with a doctor's recommendation.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(6) If the object of criminal proceedings is a criminal offence in the second degree for which the minimum rate of imprisonment is not prescribed as punishment or only a pecuniary punishment is prescribed as punishment by the Special Part of the Penal Code, the Prosecutor's Office may terminate the proceedings on the bases provided for in subsection (1) of this section. The Prosecutor's Office may resume terminated proceedings by an order on the bases provided for in subsections (4) and (5) of this section.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 203^1. Termination of criminal proceedings on the basis of conciliation

(1) If facts relating to a criminal offence in the second degree which is the object of criminal proceedings are obvious and there is no public interest in the continuation of the proceedings and the suspect or accused has reconciled with the victim in accordance with the rules provided in section $203^2$of this Code, the Prosecutor's Office may request termination of the criminal proceedings by a court with the consent of the suspect or accused and the victim. Termination of criminal proceedings is not permitted:
1) in the criminal offences specified in §§ 133^1, 133^2, 134, 138-139, $141^1$and 143 and in the criminal offence specified in § 144 of the Penal Code, if the victim is under eighteen years of age;
[RT I, 20.12.2019, 1 – entry into force 30.12.2019]
2) in criminal offences committed against a victim who is less than fourteen years of age;
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]
3) if the criminal offence resulted in the death of a person;
4) in crimes against humanity and international security, against the state, criminal official misconduct, crimes dangerous to the public and criminal offences directed against the administration of justice.

(2) A request of the Prosecutor's Office shall be resolved by an order of a judge sitting alone. If necessary, the conciliator, the prosecutor, the victim, the suspect or accused and, at the request of the suspect or accused, also the counsel shall be summoned to the judge for the resolution of the request of the Prosecutor's Office.

(3) In the case of termination of criminal proceedings, the court shall impose, at the request of the Prosecutor's Office and with the consent of the suspect or accused, the obligation to pay the expenses relating to the proceedings and to meet some or all of the conditions of the conciliation agreement provided for in subsection 203^2(3) of this Code on the suspect or accused. The term for the performance of the obligation shall not exceed six months. A copy of the order shall be sent to the conciliator.

(4) If a judge does not consent to the request submitted by the Prosecutor's Office, he or she shall, by order, return the criminal matter for continuation of proceedings.

(5) If a person with regard to whom criminal proceedings have been terminated in accordance with subsection (1) of this section fails to perform the obligations imposed on him or her or commits another intentional criminal offence against the same victim within six months after termination of the proceedings, the court, at the request of the Prosecutor's Office, shall resume the criminal proceedings by its order.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(6) If the object of criminal proceedings is a criminal offence in the second degree for which the minimum rate of imprisonment is not prescribed as punishment or only a pecuniary punishment is prescribed as punishment by the Special Part of the Penal Code, the Prosecutor's Office may terminate the criminal proceedings and impose

the obligations on the bases provided for in subsections (1) and (3) of this section. The Prosecutor's Office may resume terminated criminal proceedings by an order on the grounds specified in subsection (5) of this section.

(7) A victim has the right to file an appeal against an order on termination of criminal proceedings made on the basis of this section within ten days as of receipt of a copy of an order on termination of the criminal proceedings pursuant to the procedure provided for in §§ 228-232 or §§ 383-392 of this Code.
[RT I 2007, 11, 51 – entry into force 18.02.2007]

§ 203[2]. Conciliation procedure

(1) The Prosecutor's Office or the court may, on the bases provided for in subsection 203[1](1) of this Code, direct that the suspect or accused and the victim participate in a conciliation procedure with the objective of concluding an agreement on reconciliation of the suspect or accused with the victim and on remedying of the damage caused by the criminal offence. The consent of the suspect or accused and the victim is necessary for application of conciliation procedure. In the case of a minor or a person suffering from a mental disorder, the consent of his or her parent or another legal representative or guardian is also required.

(2) The Prosecutor's Office or court shall send the order on application of conciliation procedure to the conciliator for organisation of conciliation.

(3) A conciliator shall formalise the conciliation as a written conciliation agreement which shall be signed by the suspect or accused and the victim and the legal representative or guardian of a minor or a person suffering from a mental disorder. A conciliation agreement shall contain the procedure for and conditions of remedying of the damage caused by the criminal offence. A conciliation agreement may contain other conditions.

(4) A conciliator shall send a report with a description of the course of conciliation to the Prosecutor's Office. In the case of conciliation, a copy of the conciliation agreement shall be appended to the report.

(5) After the termination of the criminal proceedings, the conciliator shall verify whether or not the conditions of the conciliation agreement approved as an obligation pursuant to the rules provided in subsection 203[1](3) of this Code are met. A conciliator has the right to request submission of information and documents for confirmation of the performance of the obligation. The conciliator shall notify the Prosecutor's Office of performance of the obligation failure to perform the obligation.

(6) A conciliator has the right, in performing his or her duties, to examine the materials of the criminal matter with the permission of and to the extent specified by the court. The conciliator shall maintain the confidentiality of facts which have become known to him or her in connection with conciliation proceedings. A court or the Prosecutor's Office may summon a conciliator for oral questioning in order to clarify the content of the agreement concluded under conciliation procedure.
[RT I 2007, 11, 51 – entry into force 18.02.2007]

§ 204. Termination of criminal proceedings concerning criminal offences committed by foreign citizens or in foreign states

(1) The Prosecutor's Office may terminate criminal proceedings by an order if:
1) the criminal offence was committed outside the territorial applicability of this Code;
2) the criminal offence was committed by a foreign citizen on board a foreign ship or aircraft located in the territory of the Republic of Estonia;
3) an accomplice to the criminal offence committed the criminal offence in the territory of the Republic of Estonia but the consequences of the criminal offence occurred outside the territorial applicability of this Code;
4) a decision concerning extradition of the alleged criminal offender to a foreign state has been made.
5) [Repealed – RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) The Prosecutor's Office may, by an order, terminate criminal proceedings concerning a criminal offence which was committed in a foreign state but the consequences of which occurred in the territory of the Republic of Estonia if the proceedings may result in serious consequences for the Republic of Estonia or are in conflict with other public interests.

(3) Termination of criminal proceedings on the basis of the nation's economic interests, interests in the field of foreign policy or other considerations is not permitted if this would be contrary to an international agreement binding on Estonia.
[RT I 2008, 33, 200 – entry into force 28.07.2008]

§ 205. Termination of criminal proceedings in connection with assistance received from person upon ascertaining facts relating to subject of proof

(1) The Office of the Prosecutor General may, by its order, terminate criminal proceedings with regard to a person suspected or accused with his or her consent if the suspect or accused has significantly facilitated the ascertaining of facts relating to a subject of proof of a criminal offence which is important from the point of view of public interest in the proceedings and if, without the assistance, detection of the criminal offence and taking of evidence would have been precluded or especially complicated.

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

(2) The Office of the Prosecutor General may, by its order, resume proceedings if the suspect or accused has discontinued facilitating the ascertaining of facts relating to a subject of proof of a criminal offence or if he or she has intentionally committed a new criminal offence within three years after termination of the proceedings.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 205[1]. Termination of criminal proceedings concerning criminal offences related to competition

(1) The Office of the Prosecutor General shall, by its order, terminate criminal proceedings with regard to a leniency applicant who complies with the conditions for application of leniency provided for in the Competition Act and who is the first to submit a leniency application which contains information that suggests the commission of the criminal offence defined in section 400 of the Penal Code and makes it possible to commence criminal proceedings. This subsection does not apply if criminal proceedings concerning the criminal offence whose commission is suggested by the information provided by the applicant for leniency have been commenced before submission of the leniency application.

(2) If criminal proceedings concerning a criminal offence provided for in § 400 of the Penal Code have been commenced before the submission of a leniency application, the Office of the Prosecutor General shall, by its order, terminate criminal proceedings with regard to a leniency applicant who complies with the conditions for application of leniency and who is the first to submit a leniency application together with evidence which, according to the Prosecutor's Office, contribute significantly to bringing charges. This subsection applies only if subsection (1) of this section is not applicable with regard to any leniency applicant.

(3) If, pursuant to subsection (1) or (2) of this section, there are no grounds for termination of criminal proceedings with regard to a leniency applicant who complies with the conditions for application of leniency, the punishment imposed on the person for a criminal offence provided for in § 400 of the Penal Code shall be reduced in proportion to the assistance received from the person in criminal proceedings.

(4) The Prosecutor's Office, having received a notice from the Competition Authority about leniency application, shall coordinate further activities of the leniency applicant with the investigative body and the leniency applicant. The Prosecutor's Office may grant the leniency applicant a deadline of one month for submission of evidence. If the investigative body and the Prosecutor's Office find after the evaluation of the evidence received through the leniency applicant that there are no basis for the application of leniency pursuant to subsection (1), (2) or (3) of this section, the Prosecutor's Office shall notify the leniency applicant of the rejection of the application.

(5) If, after an order specified in subsection (1) or (2) of this section is made, circumstances become evident which prevent application of leniency, the Office of the Prosecutor General may, by its order, resume proceedings with regard to the leniency applicant.
[RT I 2010, 8, 34 – entry into force 27.02.2010]

§ 205[2]. Termination of criminal proceedings in connection with lapse of reasonable time of proceedings

If it becomes evident in pre-court proceedings that the criminal matter cannot be resolved within a reasonable time, the Office of the Prosecutor General may terminate the criminal proceedings by an order with the consent of the suspect taking into account the gravity of the criminal offence, complexity and extent of the criminal matter, the hitherto course of criminal proceedings and other circumstances.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 206. Order on termination of criminal proceedings

(1) An order on the termination of criminal proceedings shall set out:

1) the basis for termination of the criminal proceedings pursuant to §§ 200-205[2] of this Code;
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

2) annulment of the preventive measure applied or other means of securing criminal proceedings;
[RT I 2006, 63, 466 – entry into force 01.02.2007]

3) how to proceed with the physical evidence or objects taken over or subject to confiscation;
[RT I 2007, 2, 7 – entry into force 01.02.2007]

3[1]) where criminal proceedings are terminated under § 200 of this Code, removal, from the National Fingerprint Database, from the ABIS Database and from the National DNA Database of the data collected in the criminal case;
[RT I, 08.07.2021, 1 – entry into force 15.07.2021]

4) the explanation specified in subsection 14 (1) of the Compensation for Harm caused in offence proceedings Act of the procedure for application for compensation for damage if the person acquires the right to demand compensation for damage according to § 5 or 6 of the Compensation for Harm caused in offence proceedings Act;

[RT I, 20.11.2014, 1 – entry into force 01.05.2015]
5) a determination concerning compensation for the expenses relating to the criminal proceedings;
6) the procedure for appeal against the order on termination of the criminal proceedings.

(1[1]) Upon termination of criminal proceedings, the reasons listed in clause 145 (3) 1) of this Code need not be stated in the order. A simplified order shall set out the right of the victim to submit a request to a body conducting proceedings within ten days as of receipt of the order for receipt of a reasoned order. The body conducting the proceedings prepares a reasoned order within fifteen days as of receipt of the request.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) A copy of an order on termination of criminal proceedings shall be sent without delay to:
1) the person who reported the criminal offence;
2) the suspect or accused and the counsel thereof;
3) the victim or the representative thereof;
4) the civil defendant or the representative thereof;
5) a third person or the representative thereof.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2[1]) If data have been collected in the criminal case which must be deleted from the National Fingerprint Database, from the ABIS Database or from the National DNA Database, the proceedings authority notifies the Estonian Forensic Science Institute of the termination of criminal proceedings in a form that allows for reproduction in writing.
[RT I, 08.07.2021, 1 – entry into force 15.07.2021]

(3) A victim has the right to examine the criminal file within ten days as of receipt of a copy of the order on termination of the criminal proceedings.

(4) A copy of an order on termination of criminal proceedings may be sent, by way of subordination, to a relevant agency which is to decide on the commencement of a misdemeanour or disciplinary proceedings.

(5) An order on termination of criminal proceedings on the basis of § 202 or 203 of this Code shall be published pursuant to the procedure provided for in § 408[1] of this Code and the names and personal data of the suspect shall be replaced with initials or characters.
[RT I 2008, 32, 198 – entry into force 01.01.2010]

§ 207. Contestation of refusal to commence or of termination of criminal proceedings before the Office of Prosecutor General

(1) A victim may file an appeal with the Prosecutor's Office on the bases provided for in subsection 199 (1) or (2) of this Code against refusal to commence criminal proceedings.

(2) A victim may file an appeal with the Office of the Prosecutor General against termination of criminal proceedings or denial of an appeal provided for in subsection (1) of this section by the Prosecutor's Office.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) An appeal specified in subsection (1) or (2) of this section may be filed within ten days as of receipt of a notice on refusal to commence criminal proceedings, a copy of the order prepared by the Prosecutor's Office to resolve the appeal or a copy of the reasoned order on termination of the criminal proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) The Prosecutor's Office shall resolve an appeal specified in subsection (1) of this section within fifteen days as of receipt of the appeal. The Office of the Prosecutor General shall resolve an appeal specified in subsection (2) of this section within one month as of receipt of the appeal.

(5) The Prosecutor's Office or the Office of the Prosecutor General shall prepare a reasoned order on denial of an appeal and shall send a copy of the order to the appellant.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 208. Contestation of refusal to commence or of termination of criminal proceedings in circuit court

(1) If an appeal or request specified in subsections 207 (1) or (2) of this Code for termination of criminal proceedings on the grounds specified in § 205[2] of this Code is denied by an order of the Office of the Prosecutor General, the person who submitted the appeal or request may contest the order in a circuit court through an attorney within one month as of receipt of a copy of the order.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(1[1]) Where, under Council Regulation (EU) 2017/1939, the issue of not commencing, or terminating, criminal proceedings has been conclusivelty disposed of in the Prosecutor's Office, the relevant disposition may be contested by a victim, through an attorney, before a Circuit Court of Appeal within one month following reception of that disposition.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

(2) An appeal filed with a circuit court shall set out:
1) the facts relating to the criminal offence;
2) the legal assessment of the criminal offence;
3) the evidence collected in support of the suspicion of criminal offence;
4) in the case of termination of criminal proceedings or of refusal to terminate proceedings on the basis of § 205^2 of this Code, a short description or the hitherto course of proceedings;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
5) the procedural operations whose performance, according to the appellant, was refused unfoundedly or the reasons why the appellant finds that his or her right to proceedings within a reasonable period of time has been violated.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) A circuit court shall prepare judicial hearing of an appeal specified in subsection (2) of this section pursuant to the provisions of § 326 of this Code, taking into account the specifications provided for in this section.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

(4) An appeal specified in subsection (2) of this section shall be resolved by a circuit court judge sitting alone within ten days as of receipt of the appeal. Before making a decision, the judge has the right to:
1) demand that the materials of the criminal file be submitted;
2) issue orders to the Office of the Prosecutor General to perform additional procedural operations.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

(5) If a judge finds that commencement or continuation of criminal proceedings is unfounded, he or she shall make an order which shall set out:
1) the reasons for denying the appeal;
2) an order requiring payment of the procedure expenses by the appellant.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

(6) If a judge concludes that commencement or continuation of the criminal proceedings is justified, he or she shall annul the order of the Office of the Prosecutor General and require the Office of the Prosecutor General to commence or continue criminal proceedings.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

(7) If a judge finds that the right of a suspect to proceedings within a reasonable period of time is violated, he or she shall annul the order of the Office of the Prosecutor General and terminate criminal proceedings. The judge shall terminate the criminal proceedings in compliance with the requirements of § 206 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(8) The opinions set out concerning the interpretation and application of a provision of law in the decision of the circuit court which annuls the order of the Office of the Prosecutor General are mandatory for the Prosecutor's Office in the corresponding criminal proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(9) In the case specified in subsection (5) of this section, the court may amend the order on termination of criminal proceedings by its own order.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 209. Archiving of criminal file

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

(1) If criminal proceedings are terminated on the bases provided for in §§ 200-205^2 of this Code, the criminal file shall be archived.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(1^1) In criminal matters submitted to the court pursuant to the general procedure, the criminal file shall be archived upon entry into force of a decision.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) The procedure for archiving criminal files and the terms for preservation of the files shall be established by a regulation of the Government of the Republic.

§ 210. E-File processing information system

(1) The E-File processing information system (hereinafter E-File system) is a database belonging to the State Information Systems maintained for the processing of procedural information and personal data the objective of which is to:

1) provide an overview of criminal matters in which proceedings are conducted by investigative bodies, Prosecutors' Offices or courts as well as criminal proceedings which were not commenced;
2) reflect information concerning acts performed in the course of criminal proceedings;
3) enable organisation of the activities of the bodies conducting proceedings;
4) collect statistics related to crime which are necessary for making of the decisions concerning criminal policy;
5) enable electronic forwarding of data and documents.

(2) The following information shall be entered in the database:
1) information concerning criminal matters in which proceedings are pending, criminal matters not commenced and terminated criminal matters;
2) information concerning acts performed in the course of criminal proceedings;
3) digital documents in the cases provided by this Code;
4) information concerning the bodies conducting proceedings, participants in the proceedings, convicted offenders, experts and witnesses;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
5) the decisions.

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

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

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

(6) On the basis of the data in the E-File system, the Ministry of Justice shall publish, by 1 March each year, a report on crime during the previous year.

(7) Crime statistics shall be published by the Ministry of Justice.

(8) The Government of the Republic shall establish rules for the publication of crime statistics.
[RT I 2008, 28, 180 – entry into force 15.07.2008]

Subchapter 2
General Conditions for Pre-Court Proceedings

§ 211. Purpose of pre-court proceedings

(1) The purpose of pre-court proceedings is to collect evidentiary information and create other conditions necessary for judicial proceedings.

(2) In pre-court proceedings, an investigative body and the Prosecutor's Office shall ascertain the facts vindicating or accusing the suspect or accused.

§ 212. Investigative jurisdiction

(1) Pre-court proceedings shall be conducted by a Police and Border Guard Board and the Security Police Board, unless otherwise provided for in subsection (2) of this section.
[RT I, 29.12.2011, 1 – entry into force 01.01.2012]

(2) In addition to the investigative bodies specified in subsection (1) of this section, pre-court proceedings are conducted by:
1) [Repealed – RT I 2009, 27, 165 – entry into force 01.01.2010]
2) the Tax and Customs Board in the case of tax and customs crimes, criminal offences relating to conveyance of narcotic drugs and psychotropic substances across the border and acts specified in § 421^1 of the Penal Code, except in the case where the object of the criminal offence was a radioactive substance, explosive substance or ammunition in a quantity which exceeds the limits provided for in subsection 46 (5) of the Weapons Act, or firearms not in full compliance with the technical requirements for rendering of weapons incapable of firing, and in the case of the acts specified in § 421^2 of the Penal Code, if the object thereof was goods used to commit human rights violations and services related thereto;
[RT I, 16.06.2017, 1 – entry into force 01.07.2017]
3) the Military Police in the case of criminal offences relating to service in the Defence Forces and war crimes;
[RT I 2008, 35, 212 – entry into force 01.01.2009]
4) [Repealed – RT I 2003, 88, 590 – entry into force 01.07.2004]
5) the Competition Board in the case of criminal offences relating to competition;
6) the Prisons Department of the Ministry of Justice and prisons in the case of criminal offences committed in prisons and criminal offences committed by imprisoned persons;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

7) the Environment Board regarding criminal offences relating to violation of the requirements for the protection and use of the environment and natural resources.
[RT I, 10.07.2020, 2 – entry into force 01.01.2021]

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

(4) The division of investigative jurisdiction between the Police and Border Guard Board and the Security Police Board shall be established by a regulation of the Government of the Republic.
[RT I, 29.12.2011, 1 – entry into force 01.01.2012]

(5) For reasons of expediency, the Prosecutor's Office may alter the investigative jurisdiction provided for in subsections (1) or (2) of this section by an order in a particular criminal matter.
[RT I 2009, 27, 165 – entry into force 01.01.2010]

§ 213. Prosecutor's Office in pre-court proceedings

(1) The Prosecutors' Office shall direct pre-court proceedings and ensure the legality and efficiency thereof and is competent to:
1) perform procedural operations, if necessary;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
2) be present at the performance of procedural operations and intervene in the course thereof;
3) terminate criminal proceedings;
4) demand that the materials of a criminal file and other materials be submitted for examination and verification;
5) issue orders to investigative bodies;
6) annul and amend orders of investigative bodies;
7) remove an official of an investigative body from criminal proceedings;
8) alter the investigative jurisdiction over a criminal matter;
9) declare pre-court proceedings completed;
10) demand that an official of an investigative body submit oral or written explanations concerning circumstances related to proceedings;
11) assign the head of the probation supervision department with the duty to appoint a probation officer;
12) perform other duties arising from this Code in pre-court proceedings.

(2) When exercising the rights specified in clauses (1) 1) and 2) of this section, the Prosecutor's Office has the rights of an investigative body.

(3) If the Prosecutor's Office finds elements of a disciplinary offence in the conduct of an official of an investigative body in pre-court proceedings, the Prosecutor's Office shall submit a written proposal to the person entitled to impose disciplinary penalties that disciplinary proceedings be commenced against the official of the investigative body. The person entitled to impose disciplinary penalties is required to notify the results of resolution of the proposal to the Prosecutor's Office in writing stating the reasons for the resolution within one month as of the receipt of the proposal.

(4) In the case of a suspect who is a minor or a person who is suspected of commission of a sexual offence or a person who is suspected of repeatedly driving a motor vehicle in the state of alcohol intoxication, the prosecutor's office shall assign the duty to appoint a probation officer to the head of the probation supervision department, except in the case this may hinder the application of expedited procedure.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(4^1) Upon application of the electronic surveillance provided for in § 75^1 of the Penal Code, except for electronic monitoring of compliance with the prohibition on consumption of alcohol, the Prosecutor's Office is obliged to assign a task to a probation supervision department of the residence of the suspect or accused to submit an opinion about the possibility of application of electronic surveillance in the place of residence of the suspect or accused.
[RT I, 07.07.2017, 1 – entry into force 01.11.2017]

(5) The Prosecutor General may give general instructions for Prosecutors' Offices and investigative bodies in order to ensure the legality and efficacy of pre-court proceedings. Instructions for an investigative body shall be approved by the head of the investigative body at which the instructions are directed.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(6) A higher ranking prosecutor may demand that a prosecutor submit oral or written explanations concerning circumstances related to proceedings and may, by order, revoke an unlawful or unfounded order, direction or demand of the prosecutor. The positions set out in the order of the higher ranking prosecutor on the interpretation and application of a provision of law are mandatory for the Prosecutor's Office in the criminal proceedings concerned.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(7) If an investigative body finds that compliance with an order issued by the Prosecutor's Office is inexpedient due to lack of funds or for another good reason, the head of the investigative body shall inform the Prosecutor General who decides on compliance with the order thereof and shall notify the minister responsible for the area thereof.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(8) In a criminal case dealt with under Council Regulation (EU) 2017/1939, unless this is contrary to that Regulation, the provisions of subsection 5–7 of this section apply to a European Prosecutor or a European Delegated Prosecutor.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

§ 214. Conditions for disclosure of information concerning pre-court proceedings

(1) Information concerning pre-court proceedings shall be disclosed only with the permission of and to the extent specified by the Prosecutor's Office and under the conditions provided for in subsection (2) of this section.

(2) Disclosure of information concerning pre-court proceedings is permitted in the interests of criminal proceedings, of the public or of the data subject provided this does not unduly:
1) induce crime or prejudice the detection of a criminal offence;
2) prejudice the interests of the Republic of Estonia or the criminal matter;
3) endanger a business secret or prejudice the activities of a legal person;
[RT I 2007, 12, 66 – entry into force 25.02.2007]
4) violate the rights of the data subject or third parties, particularly in the case of disclosure of personal data of specific categories.
[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

(3) In the event of violation of the prohibition on disclosure of information concerning pre-court proceedings, a preliminary investigation judge may impose a fine on the basis of a court order on participants in proceedings, other persons subject to the criminal proceedings or persons not subject to the proceedings. The suspect and accused shall not be fined.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 215. Obligation to comply with orders and demands of investigative bodies and Prosecutor's Office

(1) The orders and demands issued by investigative bodies and the Prosecutor's Office in the criminal proceedings conducted by them are binding on everyone and shall be complied with throughout the territory of the Republic of Estonia. The orders and demands issued by investigative bodies and the Prosecutor's Office are binding on the members of Defence Forces engaged in missions abroad, if the object of criminal proceedings is an act of a person serving in the Defence Forces. Costs incurred for compliance with a demand or order shall not be compensated for.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(2) An investigative body conducting criminal proceedings has the right to submit written requests to other investigative bodies for the performance of specific procedural operations and for other assistance. Such requests of investigative bodies shall be complied with immediately.

(3) A preliminary investigation judge may impose a fine on a participant in proceedings, other persons participating in criminal proceedings or persons not participating in the proceedings who have failed to perform an obligation provided for in subsection (1) of this section by a court order at the request of the Prosecutor's Office. The suspect and accused shall not be fined.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 216. Joinder and severance of criminal matters

(1) Several criminal matters may be joined for joint proceedings if persons are suspected or accused of committing a criminal offence together.

(2) A criminal matter may be severed, concerning a suspect or accused, from criminal matters in which persons are suspected or accused of committing a criminal offence together, or joining of such criminal matter may be refused, if:
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]
1) the location of a person is unknown or he or she evades criminal proceedings or he or she serves a custodial sentence abroad or other circumstances exist why he or she cannot be subjected to procedural operations within a reasonable period of time;
2) the person is a citizen of or stays in a foreign state;
3) the person requests, after the completion of pre-court proceedings, resolution of the criminal matter under alternative procedure or settlement procedure and application of alternative procedure or settlement procedure is impossible due to circumstances respectively referred to in clause 233 (2) 2) or clause 239 (2) 3).

(3) Several criminal matters may be joined for joint proceedings if persons are suspected or accused of:
1) commission of several criminal offences;

2) concealment of a criminal offence without prior authorisation or of failure to report a criminal offence.

(4) A criminal matter regarding one or more criminal offences may be severed from the original criminal matter, if this is necessary to avoid the expiry of the limitation period for a criminal offence or to ensure reasonable time of proceedings.

(5) If a minor is suspected or accused of committing a criminal offence together with an adult, the criminal matter of the minor may be severed in the interests of the minor for separate criminal proceedings regardless of the existence of the conditions for severance specified in this section.

(6) Criminal matters shall be joined and severed by an order of an investigative body or Prosecutor's Office or by a court order. A copy of an order on the severance of a criminal matter shall be included in the new file.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

Subchapter 3
Detention of suspect

§ 217. Detention of suspect

(1) Detention of a suspect is a procedural operation whereby a person is deprived of liberty for up to 48 hours. A report shall be prepared on a detention.

(2) A person shall be detained as a suspect if:
1) he or she is apprehended in the act of committing a criminal offence or immediately thereafter;
2) an eyewitness to a criminal offence or a victim indicates such person as the person who committed the criminal offence;
3) the evidentiary traces of a criminal offence indicate that he or she is the person who committed the criminal offence.

(3) A suspect may be detained on the basis of other information referring to a criminal offence if:
1) he or she attempts to escape;
2) he or she has not been identified;
3) he or she may continue to commit criminal offences;
4) he or she may evade or otherwise hinder criminal proceedings.

(4) A person who is apprehended in the act of committing a criminal offence or immediately thereafter in an attempt to escape may be taken to the police by anyone for detention as a suspect.

(5) An attorney may be detained as a suspect under the circumstances relating to his or her professional activities only at the request of the Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court order.

(6) Section 377 of this Code applies to the detention of the President of the Republic, a member of the Government of the Republic, a member of the *Riigikogu*, the Auditor General, the Chancellor of Justice, or the Chief Justice or a justice of the Supreme Court as a suspect.

(7) An official of an investigative body shall explain the rights and obligations of a person detained as a suspect to the person and shall interrogate the suspect immediately pursuant to the procedure provided for in § 75 of this Code.

(8) If the Prosecutor's Office is convinced of the need to take a person into custody, the Prosecutor's Office shall prepare an application for an arrest warrant and, within forty-eight hours as of the detention of the person as a suspect, organise the transport of the detained person before a preliminary investigation judge for resolution of the application.

(9) If the basis for the detention of a suspect ceases to exist in pre-court proceedings, the suspect shall be released immediately.

(10) A person detained as a suspect is given an opportunity to notify at least one person close to him or her at his or her choice of his or her detention through a body conducting proceedings. If the person detained is a minor, his or her legal representative shall be immediately notified of the detention, except in the case this is not in the interests of the minor. In the case of the latter, a local government authority must be notified. If the notification prejudices criminal proceedings, the opportunity to notify or notification of detention of a minor may be refused with the permission of the Prosecutor's Office.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

§ 217[1]. Stopping of vehicles

For the purpose of detention of a suspect or accused, a stop signal may be given to drivers and vehicles may be forced to stop in compliance with the procedure provided for in § 45 of the Law Enforcement Act.
[RT I, 13.03.2014, 4 – entry into force 01.07.2014]

§ 217[2]. Use of direct coercion

Direct coercion may be applied upon performance of procedural operations and acts securing criminal proceedings pursuant to the procedure provided in the Law Enforcement Act and other Acts.
[RT I, 13.03.2014, 4 – entry into force 01.07.2014]

§ 218. Report on detention of suspect

(1) A report on the detention of a suspect shall set out:
1) the basis for the detention and a reference to subsection 217 (2) and (3) of this Code;
2) the date and time of the detention;
3) the facts relating to the criminal offence of which the person is suspected and the legal assessment of the criminal offence pursuant to the relevant section, subsection and clause of the Penal Code;
[RT I 2006, 15, 118 – entry into force 14.04.2006]
4) explanation of the rights and obligations provided for in § 34 of this Code to the suspect;
5) the names and characteristics of the objects confiscated from the suspect upon detention;
6) a description of the clothing and bodily injuries of the detained person;
7) the petitions and requests of the detained person;
8) in the case the detained person is released, the grounds, date and time of release.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) The Prosecutor's Office is immediately informed of the detention of a suspect.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 219. Substitution of detention of suspect

(1) If a person has committed a criminal offence in the second degree for which a pecuniary punishment may be imposed and the person does not have a permanent or temporary place of residence in Estonia, an investigative body may, with the consent of the person, substitute the detention of the person as a suspect by a payment covering the procedure expenses, the potential pecuniary punishment and the damage caused by the criminal offence into the public revenues.

(2) A statement, a copy of which is sent to the Prosecutor's Office, shall be prepared on the substitution of the detention of a suspect and on the receipt of a payment into the public revenues.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

Subchapter 4
Completion of Pre-Court Proceedings

§ 220. Demand to submit information necessary for calculating average daily income

(1) Before the completion of pre-court proceedings, an investigative body shall demand that the Tax and Customs Board or, if necessary, an employer or another person or agency submit information necessary for calculating the average daily income of a suspect or accused.

(2) If necessary, Prosecutors' Offices and courts may demand submission of additional information necessary for calculating average daily income.

(3) A person or agency from whom a body conducting proceedings demands information necessary for calculation of average daily income shall respond to the inquiry within seven days as of the receipt thereof.

(4) A suspect or accused has the right to submit information concerning his or her income and debts to the body conducting the proceedings.
[RT I 2003, 88, 590 – entry into force 01.07.2004]

§ 221. Demand to submit information necessary for imposing fines to extent of assets and for confiscation of property which was obtained by criminal offence

(1) If a person is suspected or accused of a criminal offence for which a fine to the extent of the assets of the person may be imposed pursuant to law or confiscation may be applied on the basis of § 83[2]of the Penal Code, an investigative body may assign the collecting of the necessary data by an order to a bailiff.

(2) If necessary, Prosecutors' Offices and courts may demand submission of additional information necessary for calculation of the amount of a fine to the extent of the assets of a person or relating to confiscation.

(3) A bailiff shall ascertain the assets of a suspect, accused or third party and assess the value thereof. Within thirty days as of the receipt of the order, the bailiff shall prepare a statement concerning the financial situation of the person and shall submit the statement together with the evidence on the basis of which the statement was prepared to the body conducting the proceedings.

(4) A suspect, accused or third party has the right to submit information concerning his or her income and debts to the body conducting the proceedings.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

§ 221[1]. Demand to submit information for administration of addiction treatment of drug addicts and complex treatment of sex offenders

(1) If a person is a suspect or accused in a criminal offence for which imprisonment may be imposed pursuant to law and the imprisonment may be replaced by addiction treatment of drug addicts or replaced in part by complex treatment of sex offenders, an investigative body and the Prosecutor's Office may request, by an examination order, the opinion of a forensic psychiatric expert or forensic sexology expert on the need for the administration of addiction treatment or complex treatment to the suspect or accused.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) If necessary, a court may demand the submission of additional information required for administration of addiction treatment to drug addicts or complex treatment to sex offenders. If it is necessary based on such information or opinion received from a forensic psychiatric expert or forensic sexology expert, the body conducting the proceedings may request conduct of a forensic medical examination.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(3) A forensic psychiatric expert or forensic sexology expert shall ascertain the state of health of a suspect or accused and prepare an expert's report on it. The expert's report shall be submitted to a body conducting proceedings within thirty days as of the receipt of an order.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(4) An investigative body and Prosecutor's Office may contact the probation supervision department of the prison of the residence of a suspect or accused with the request to provide an opinion on the possibility of administration of addiction treatment to drug addicts or complex treatment of sex offenders based on the person of the suspect or accused, his or her living conditions and economic situation.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(5) A probation officer shall prepare an opinion within thirty days as of receipt of the request. To present an opinion, the probation officer has the right to examine the expert's report specified in subsection (3) of this section.

(6) A suspect and accused has the right to obtain information on his or her mental disorder, methods of treatment and diagnosis being used, and the organisation of addiction treatment of drug addicts or complex treatment of sex offenders, and to access his or her medical file.
[RT I, 15.06.2012, 2 – entry into force 01.06.2013]

§ 222. Acts performed by investigative body upon completion of pre-court proceedings

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

(1) If an official of an investigative body is convinced that the evidentiary materials necessary in a criminal matter have been collected, he or she shall immediately send the criminal file which materials have been systematised and the pages thereof numbered, to the Prosecutor's Office together with the physical evidence, recordings and a sealed envelope containing the personal data of anonymous witnesses. On the order of the Prosecutor's Office, he or she shall submit a summary to a court of the pre-court proceedings which complies with the requirements of § 153 of this Code. The summary of the criminal proceedings shall be also sent to the Prosecutor's Office by electronic means together with the criminal file on paper.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) If there are several suspects in the criminal matter, a joint summary of the pre-court proceedings shall be prepared setting out the personal data of each suspect separately.

(3) A statement concerning the expenses relating of the criminal proceedings shall be included in the criminal file sent to the Prosecutor's Office.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 223. Acts performed by Prosecutor's Office upon receipt of criminal files

(1) The Prosecutor's Office which receives a criminal file shall declare the pre-court proceedings completed, require the investigative body to perform additional acts or terminate criminal proceedings on the bases and pursuant to the procedure provided for in §§ 200-205[2] of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(2) If necessary, the Prosecutor's Office which receives a criminal file shall perform additional acts after the receipt of the file. The Prosecutor's Office has the right to eliminate materials insignificant from the point of view of the criminal matter from the criminal file and, if necessary, re-systematise the criminal file.

(3) If the Prosecutor's Office declares pre-court proceedings completed, the Prosecutor's Office shall submit the criminal file for examination pursuant to § 224 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) If necessary, the Prosecutor's Office shall perform the acts provided for in §§ 240 and 244[1] of this Code for the application of settlement procedure.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

§ 224. Submission of criminal file to suspect, criminal defence counsel, victim and civil defendant for examination

[RT I, 28.12.2016, 14 – entry into force 01.04.2017]

(1) The Prosecutor's Office shall submit a copy of a criminal file to a criminal defence counsel on electronic data media or, based on a reasoned written request of the counsel, on paper. The counsel may waive the copy of the file. The counsel shall sign to confirm receipt of the copy or waiver thereof.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(1[1]) Where participation of a counsel is not mandatory in presentation of a criminal file pursuant to subsection 45 (3) of this Code, the suspect shall be presented the file at the request of the suspect in the manner chosen by the prosecutor.
[RT I, 28.12.2016, 14 – entry into force 01.04.2017]

(2) The Prosecutor's Office shall submit a criminal file to a victim or civil defendant for examination at the request thereof.

(3) A recording made in criminal proceedings or physical evidence shall be submitted to the counsel, victim or civil defendant or the suspect specified in subsection (1[1]) of this section for examination at their request.
[RT I, 28.12.2016, 14 – entry into force 01.04.2017]

(4) If examination of a criminal file, recording or physical evidence is manifestly delayed, the Prosecutor's Office shall set a term for the examination.

(5) A victim and civil defendant have the right to make excerpts from the materials of the criminal file and request that copies be made of the materials of the criminal file by the Prosecutor's Office for a charge.

(6) A notation shall be made in a criminal file concerning examination of the criminal file, a recording made in the criminal matter or physical evidence by the suspect, counsel, victim or civil defendant.
[RT I, 28.12.2016, 14 – entry into force 01.04.2017]

(7) At the request of a counsel, media containing a state secret or classified information of a foreign state which are used as evidence in a criminal matter and which are not added to the criminal file shall be submitted to him or her for examination pursuant to the procedure provided for in the State Secrets and Classified Information of Foreign States Act. A notation shall be made in a criminal file concerning examination of the media containing a state secret or classified information of a foreign state.
[RT I 2007, 16, 77 – entry into force 01.01.2008]

(8) At the request of a counsel or suspect in the case specified in subsection (1[1]) of this section, the material eliminated pursuant to subsection 223 (2) of this Code shall be submitted to him or her for examination and he or she shall be allowed to make copies thereof for a fee.
[RT I, 28.12.2016, 14 – entry into force 01.04.2017]

(9) A state fee shall be paid for the copies specified in subsections (5) and (8) of this section in the amount provided for in subsection 61 (1) of the State Fees Act.
[RT I, 30.12.2014, 1 – entry into force 01.01.2015]

(10) The Prosecutor's Office shall decide upon submission of a file and materials eliminated therefrom to a counsel or suspect in the case specified in subsection (1[1]) of this section whether and to what extent he or she is permitted to make additional copies of the file or materials submitted, taking into account the need to protect

personal data. The Prosecutor's Office shall indicate the prohibition to make copies on the documents or files on the copy thereof submitted to the counsel or suspect.
[RT I, 28.12.2016, 14 – entry into force 01.04.2017]

§ 224[1]. Submission of file to suspect or accused

(1) A counsel shall submit the materials specified in § 224 of this Code to a suspect or accused at the request of thereof. Materials in the case of which the Prosecutor's Office has prohibited the making of copies shall be presented by the counsel only in his or her office premises or custodial institutions.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(2) A counsel is prohibited to hand the copies of the materials specified in § 224 of this Code to other persons, with the exception of a suspect or accused in the case and to the extent permitted in subsection 224 (10) of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 225. Submission and resolution of requests

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

(1) Participants in proceedings may submit requests to the Prosecutor's Office within ten days as of the date of submission of the criminal file to the participants for examination. If a criminal matter is especially extensive or complicated, the Prosecutor's Office may extend this term at a written request of a participant in the proceedings. Refusal to extend the term shall be formalised by an order of the Prosecutor's Office. Submission of an application for making a written translation of the materials of a criminal file shall not suspend the preparation of a statement of charges or sending thereof to a court.
[RT I, 04.10.2013, 3 – entry into force 27.10.2013]

(1[1]) The Prosecutor's Office shall return a civil action or proof of claim in public law filed after the expiry of the term provided for in subsection (1) of this section by an order and explain to the victim the right of the victim to file an action pursuant to civil procedure.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(2) The Prosecutor's Office shall consider a request within ten days as of the receipt of the request.

(3) Denial of the request shall be formalised by an order a copy of which shall be sent to the person who submitted the request. The fact that the request specified in subsection (1) of this section was denied in pre-court proceedings shall not prevent re-submission of the request in judicial proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) The materials of a criminal matter which are collected by additional acts shall be submitted for examination pursuant to § 224 of this Code.

(5) A request of a suspect or accused for application of alternative procedure shall be considered pursuant to § 234 of this Code. No order shall be drawn up concerning consideration of the request for application of alternative procedure. Refusal of the Prosecutor's Office to apply alternative procedure cannot be appealed.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

§ 226. Preparation of statement of charges and sending statement of charges to court

(1) If the Prosecutor's Office has submitted a criminal file for examination and is thereafter convinced that the necessary evidence in the criminal matter has been taken, the Prosecutor's Office shall prepare the statement of charges pursuant to § 154 of this Code.

(2) A list of the persons to be summoned to a court session at the request of the Prosecutor's Office shall be appended to a statement of charges. The list shall contain the given names, surnames of the persons to be summoned and places of residence or seat of the victim, civil defendant, third party and their representatives, the criminal defence counsel and the accused. In the case of an anonymous witness, his or her fictitious name shall be indicated in the list. An extract of the list shall contain only the given names and surnames of the persons to be summoned.
[RT I 2008, 32, 198 – entry into force 01.01.2009]

(3) The Prosecutor's Office shall send extracts of a statement of charges and of a list provided for in subsection (2) of this section to the accused and the counsel and the statement of charges to the court. The statement of charges shall be also sent to the court by electronic means.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(4) [Repealed – RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(5) If a statement of charges is sent to a court, an envelope specified in subsection 67 (4) of this Code shall remain in the Prosecutor's Office. The envelope shall be submitted to the court at the request thereof.

(6) If taking into custody is applied as a preventive measure in a criminal matter and the prosecutor deems it necessary to continue the application of the preventive measure, the Prosecutor's Office shall perform the acts specified in subsection (3) of this section not later than fifteen days before the end of the term provided for in subsection 130 (3) or (3^1) of this Code.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

(7) If a civil action or a proof of claim in public law was filed in pre-court procedure, the Prosecutor's Office shall send it to a court together with the statement of charges. The Prosecutor's Office shall send a copy of the civil action or a proof of claim in public law to the accused, the counsel thereof and the civil defendant. No evidence shall be appended to a civil action or proof of claim in public law in a criminal matter sent to a court pursuant to the general procedure.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

§ 227. Acts performed by counsel upon completion of pre-court proceedings

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

(1) After receipt of a copy of a statement of charges, a counsel shall submit his or her statement of defence to a court and a copy thereof to the Prosecutor's Office not later than three working days before the preliminary hearing. In the case of particular complexity or extent of a criminal matter, the court by extend the specified term at a reasoned request of the counsel.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) [Repealed – RT I 2008, 32, 198 – entry into force 15.07.2008]

(3) A statement of defence shall set out:
1) the opinions of the defence concerning the charges and the damage set out in the statement of charges, and which statements and opinions set out in the statement of charges are contested and which admitted;
2) the evidence which the counsel wishes to submit to the court and a reference to the facts which are intended to be proven with each piece of evidence;

(3) a list of the persons to be summoned to a court session at the request of the counsel;
4) other requests of the counsel.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) The standard format of a statement of defence shall be established by a regulation of the minister responsible for the area.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) If a counsel fails to submit a statement of defence by the term prescribed in this section, the court shall notify the leadership of the Estonian Bar Association immediately thereof and propose to the accused to select a new counsel by the date determined by the court, or appoint a substitute counsel to the accused, and require the Estonian Bar Association to appoint a counsel pursuant to subsection 44^1(1) of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

Subchapter 5
Appeal against activities of investigative body or Prosecutor's Office

§ 228. Appeal against activities of investigative body or Prosecutor's Office

(1) Before a statement of charges is prepared, a participant in proceedings or a person not subject to the proceedings has the right to file an appeal with the Prosecutor's Office against a procedural operation or order of the investigative body if he or she finds that violation of the procedural requirements in the performance of the procedural operation or preparation of the order has resulted in the violation of his or her rights.

(2) Before preparation of a statement of charges, a person specified in subsection (1) of this section has the right to file an appeal with the Office of the Prosecutor General against an order or procedural operation of the Prosecutor's Office.

(3) An appeal specified in subsection (1) or (2) of this section shall be filed directly with the body who is to resolve the appeal or through the person whose order or procedural operation is contested.

(4) An appeal shall set out:

1) the name of the Prosecutor's Office with which the appeal is filed;
2) the given name and surname, status in proceedings, residence or seat and address of the appellant;
3) the order or procedural operation contested, the date of the order or procedural operation, and the name of the person with regard to whom the order or procedural operation is contested;
4) which part of the order or procedural operation is contested;
5) the content of and reasons for the requests submitted in the appeal;
6) a list of the documents appended to the appeal.

(5) An appeal filed against the activities of an investigative body or Prosecutor's Office shall not suspend the execution of the contested order or performance of the procedural operation.

(6) If the Prosecutor's Office receives an appeal specified in subsections (1) and (2) of this section after the statement of charges have been sent to a court according to subsection 226 (3) of this Code, the appeal shall be communicated to the court which hears the criminal matter.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 229. Resolution of appeals by Prosecutor's Office or Office of Prosecutor General

(1) An appeal filed with the Prosecutor's Office or the Office of the Prosecutor General shall be resolved within 30 thirty days as of the receipt of the appeal.

(2) When resolving an appeal filed against an order or procedural operation of an investigative body or the Prosecutor's Office, the Prosecutor's Office or the Office of the Prosecutor General may, by an order:
1) deny the appeal;
2) grant the appeal in full or in part and recognise violation of the rights of the person if the violation can no longer be eliminated;
3) annul the contested order or suspend the contested procedural operation in full or in part, thereby eliminating the violation of the rights.

(3) An appellant shall be notified of the right to file an appeal with the county court pursuant to § 230 of this Code.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

(4) An order made when resolving an appeal shall be immediately sent to the investigative body or the Prosecutor's Office which prepared the contested order or performed the contested procedural operation and a copy of the order shall be sent to the appellant.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 230. Filing of appeals with county court

(1) If the activities of an investigative body or Prosecutor's Office in violation of the rights of a person are contested and the person does not agree with the order prepared by the Office of the Prosecutor General who considered the appeal, the person has the right to file an appeal with the preliminary investigation judge of the county court in whose territorial jurisdiction the contested order was prepared or the contested procedural operation was performed.

(1^1) In a criminal case dealt with under Council Regulation (EU) 2017/1939, a person has a right to contest, according to the rules provided in this section, any actions of an investigative authority or of the Prosecutor's Office which violate their rights, provided their complaint has been conclusively disposed of in the Prosecutor's Office under that Regulation.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

(2) An appeal shall be filed within ten days as of the date when the person became or should have become aware of the contested order.

(3) Appeals shall be filed in writing in accordance with the requirements of clauses 228 (4) 2)-6) of this Code.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

§ 231. Resolution of appeals by county courts

(1) A preliminary investigation judge shall consider the appeal within 30 days as of the receipt of the appeal.

(2) An appeal shall be considered by written procedure within the scope of the appeal and with regard to the person in respect of whom the appeal was filed.

(3) When resolving the appeal, the court may:
1) deny the appeal;

2) grant the appeal in full or in part and recognise a violation of the rights of the person if the violation can no longer be eliminated;
3) annul the contested order or suspend the contested procedural operation in full or in part, thereby eliminating the violation of the rights.

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

(5) An order of a preliminary investigation judge is final and not subject to appeal, with the exception of orders made to resolve appeals against the course of surveillance activities, non-notification thereof or refusal to submit information collected thereby.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

§ 232. Withdrawal of appeal

An appeal filed against the activities of an investigative body, Prosecutor's Office or the Office of the Prosecutor General may be withdrawn until resolution of the appeal.

Chapter 9
SIMPLIFIED PROCEDURES

Subchapter 1
Alternative Procedure

§ 233. Grounds for application of alternative procedure

(1) At the request of an accused and the Prosecutor's Office, the court may resolve a criminal matter by alternative procedure on the basis of the materials of the criminal file without summoning the witnesses or qualified persons.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(1^1) An accused and a prosecutor may submit a request for the application of alternative procedure to a court until the commencement of examination of evidence in a county court.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(2) Alternative procedure shall not be applied:
1) in the case of a criminal offence for which life imprisonment is prescribed as punishment by the Penal Code;
2) in the case of a criminal matter where several persons are accused and at least one of the accused does not consent to the application of alternative procedure.
3) [Repealed – RT I, 05.07.2013, 2 – entry into force 15.07.2013]

(3) Alternative procedure shall be applied pursuant to the provisions of Subchapters 2, 3, 5 and 6 of Chapter 10 of this Code, taking into account the specifications provided for in this Subchapter.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 234. Request for application of alternative procedure

(1) A suspect or accused may submit a request to the Prosecutor's Office for the application of alternative procedure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) If the Prosecutor's Office refuses to apply alternative procedure, criminal proceedings shall be continued pursuant to the general procedure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) If a suspect or accused, counsel and Prosecutor's Office consent to the application of alternative procedure before the performance of the acts listed in § 226 of this Code, the Prosecutor's Office shall prepare the statement of charges pursuant to § 154 of this Code and set out in the statement of charges that application of alternative procedure is requested in the criminal matter. The request of the suspect or accused and the statement of charges shall be included in the criminal file and the file shall be sent to the court.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) If a suspect or accused, counsel and Prosecutor's Office consent to the application of alternative procedure in the course of judicial proceedings, the Prosecutor's Office shall present the request of the accused and the criminal file to the court during a court session.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) The accused and the Prosecutor's Office may withdraw the request for the application of alternative procedure until the completion of judicial examination. If the accused or the Prosecutor's Office withdraws

the request for application of alternative procedure in the course of judicial hearing, the court shall make the decision provided for in clause 238 (1) 1) of this Code.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 235. [Repealed – RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 235[1]. Prosecution in alternative proceedings

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

(1) A judge who receives a criminal file shall verify the jurisdiction over the criminal matter pursuant to the provisions of §§ 24-27 of this Code and make an order on:
1) the prosecution of the accused pursuant to the provisions of § 263 of this Code;
2) the return of the criminal file to the Prosecutor's Office if there are no grounds for application of alternative procedure;
3) the return of the criminal file to the Prosecutor's Office and continuation of the proceedings if the court does not consent to deal with the criminal matter by alternative procedure.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

(2) If the bases provided for in § 258 of this Code become evident, the court shall organise a preliminary hearing which shall be held pursuant to the provided for in subsection 257[1](2) and §§ 259-262 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 236. Participants in court session

(1) A prosecutor, accused, his or her counsel, victim and civil defendant shall be summoned to a court session.

(2) The failure of a victim or civil defendant to appear in a court session shall hinder neither judicial hearing of the criminal matter nor consideration of the civil action or a proof of claim in public law.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(3) A court may organise the participation of the parties to judicial proceedings in the judicial hearing under alternative procedure by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) A prosecutor is not required to participate upon the pronouncement of a court judgment.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 237. Judicial examination under alternative procedure

(1) A judge announces the commencement of judicial examination and makes a proposal to the prosecutor to make an opening speech. The prosecutor gives an overview of the charges and the evidence which corroborates the charges and which the prosecutor requests to be examined by the court.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) After the opening speech of a prosecutor, the judge shall ask whether the accused understands the charges, whether he or she confesses to the charges and whether he or she consents to the criminal matter being dealt with by alternative procedure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) The judge shall make a proposal to the counsel to submit his or her opinion as to whether the charges are justified. Thereafter, the victim and the civil defendant or their representatives shall be given the floor.

(4) In judicial hearing, the participants in the court session shall rely only on the materials of the criminal file. The court shall intervene if the participants in proceedings refer to circumstances outside the criminal file.

(5) The accused may request that he or she be interrogated. The interrogation of the accused shall comply with the provisions of § 293 of this Code. If the accused has waived counsel pursuant to clause 45 (4) 3) of the Code, the prosecutor is the first to question the accused, followed by the other participants in proceedings in the order specified by the judge.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) The judge may question the participants in proceedings.

(7) At the end of judicial examination, the judge shall ask the participants in proceedings whether they would like to submit requests. The court shall resolve the requests in accordance with § 298 of this Code.

§ 237[1]. Commencement of alternative procedure during judicial proceedings

(1) If a judge receives the request specified in subsection 234 (4) of this Code, he or she shall continue judicial hearing in accordance with the rules provided in § 237 of this Code.

(2) If application of alternative procedure is refused on the basis of clause 2351 (1) 2) or 3) of this Code, the court shall continue the proceedings following general procedure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 238. Decisions under alternative procedure

(1) The court shall make one of the following decisions in chambers:
1) an order on the return of the criminal file to the Prosecutor's Office if there are no grounds for the application of alternative procedure;
2) an order on the return of the criminal file to the Prosecutor's Office if the materials of the criminal file are not sufficient for resolving the criminal matter under alternative procedure;
3) an order on termination of criminal proceedings if the grounds listed in clauses 199 (1) 2)-6) of this Code become evident;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
4) a judgment of conviction or acquittal with regard to the accused.

(2) If a judgment of conviction is made under alternative procedure, the court shall reduce the principal punishment to be imposed on the accused by one-third after considering all the facts relating to the criminal offence. If a punishment is imposed pursuant to § 64 of the Penal Code, the aggregate punishment to be imposed on the accused shall be reduced by one-third.

Subchapter 2
Settlement Procedure

§ 239. Grounds for application of settlement procedure

(1) A court may deal with a criminal matter by settlement procedure at the request of the accused or the Prosecutor's Office.

(2) Settlement procedure shall not be applied:
1) in the case of the criminal offences prescribed in §§ 89-91, 95-97, 99-102, subsection 102[2](2), § 103, subsections 110 (2), 111 (2), 112 (2), §§ 113-114, 118, 125, 135, subsections 141 (2) and (2[1]), subsections 141[1](2) and (3), clause 151 (2) 1) and subsection (4), clause 200 (2) 5), clause 214 (2) 3), §§ 237, 244 and 246, clauses 251 (3) 3), subsection 252 (3), subsections 259 (2), §§ 290[1]and 302, subsections 327 (3), 405 (3), 422 (2), § 435, clauses 441 1), 442 1), 443 1) and clause 445 (2) 1) and subsection (3) of the Penal Code;
[RT I, 20.12.2019, 1 – entry into force 30.12.2019]
2) if the accused, his or her counsel or the Prosecutor's Office does not consent to the application of settlement procedure;
3) in the case of a criminal matter where several persons are accused and at least one of the accused does not consent to the application of settlement procedure;
4) if the victim, civil defendant or third person does not consent to the application of settlement procedure.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]
5) [Repealed – RT I, 05.07.2013, 2 – entry into force 15.07.2013]

(2[1]) The consent of a victim specified in clause (2) 4) of this section is not required for the application of settlement procedure if the victim is the state, local authority or another public authority and the Prosecutor's Office has filed the civil action or proof of claim in public law instead of the representative thereof in accordance with subsection 38[1](3[1]), (3[2]) or (3[3]) of this Code.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

(3) An accused and prosecutor may submit a request for the application of settlement procedure to a court until the completion of judicial examination in a county court.

(4) Settlement procedure shall be applied pursuant to the provisions of Chapter 10 of this Code, taking into account the specifications provided for in this Subchapter.

§ 240. Commencement of settlement procedureby the Prosecutor's Office

If the Prosecutor's Office considers application of settlement procedure possible, the Office shall perform the following acts:
1) explain the option of applying settlement procedure, the rights of the suspect or accused and the counsel in settlement procedure and the consequences of application of settlement procedure to the suspect or accused and the counsel;

2) prepare a report pursuant to § 243 of this Code concerning the consent of the civil defendant to the application of settlement procedure;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
3) request the consent of the victim for settlement procedure and ask the victim who is a natural person whether he or she wishes to receive notification of the time of a court session, unless the victim has expressed his or her opinion about these issues earlier in the course of criminal proceedings, and explains that the victim does not have the right to withdraw the consent granted for settlement procedure;
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]
4) ascertain the opinion of the victim concerning the charges and the punishment, unless the victim has expressed his or her opinion about these issues earlier in the course of criminal proceedings and, if necessary, grant the victim a reasonable term for filing a civil action or an application for compensation for procedural expenses.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

§ 241. [Repealed – RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 242. Commencement of settlement procedure at request of suspect or accused

(1) If a suspect or accused wishes that settlement procedure be applied, he or she shall submit a written request pursuant to § 225 of this Code to the Prosecutor's Office.

(2) If the Prosecutor's Office consents to the application of settlement procedure, the Office shall perform the acts provided for in §§ 240 and 243 of this Code. If the Prosecutor's Office refuses to apply settlement procedure, criminal proceedings shall be continued following general procedure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 243. Report concerning consent granted by civil defendant and third person to application of settlement procedure

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

(1) A report concerning the consent granted by a civil defendant or third person to the application of settlement procedure shall set out:
1) the time and place of preparation of the report;
2) the official title and name of the person preparing the report;
3) the name of the suspect or accused;
4) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship and the place of work or educational institution of the civil defendant or third person;
5) a notation with regard to whether the rights of the civil defendant or third person in settlement proceedings and the consequences of settlement procedure have been explained to him or her;
6) the consent of the civil defendant to the application of settlement procedure and to the civil action of the victim or proof of claim in public law filed against him or her;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
7) the consent of the third person to the determination made concerning the person's rights or freedoms protected by law.

(2) The report shall be signed by the prosecutor and civil defendant or third person.

(3) A civil defendant or third person does not have the right to withdraw from a consent granted.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 244. Negotiations under settlement procedure

(1) After preparation of the report specified in 243 of this Code, the Prosecutor's Office shall commence negotiations with the suspect or accused and his or her counsel in order to conclude a settlement. At the beginning of negotiations, the Prosecutor's Office explains the rights of the suspect or accused in settlement procedure and the consequences of settlement procedure to the suspect or accused.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) [Repealed – RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(3) If the Prosecutor's Office and the suspect or accused and his or her counsel fail to reach a settlement concerning the terms and conditions provided for in subsection 245 (1) of this Code, the criminal proceedings shall be continued following general procedure.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(4) No settlement shall be concluded on a more severe punishment than 18 years' imprisonment.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 244[1]. Dismissal of civil action and proof of claim in public law under settlement procedure

(1) If the Prosecutor's Office finds that a civil action or proof of claim in public law is inadmissible or unfounded in full or in a substantial part, it shall return it by an order to the victim. The Prosecutor's Office may return a proof of claim in public law to the victim even in the case if this is necessary for the expeditious resolution of the criminal matter. An order dismissing a civil action or proof of claim in public law based on this section is not subject to contestation.

(2) The Prosecutor's Office shall return by an order a civil action or proof of claim in public law submitted after the term provided for in subsection 240 (4) of this Code. An appeal may be filed against an order of the Prosecutor's Office pursuant to the procedure provided for in Subchapter 5 of Chapter 8 of this Code. A victim may, *inter alia*, contest reasonableness of the term determined by the Prosecutor's Office.

(3) Dismissal of a civil action or proof of claim in public law does not exclude filing of the same claim under civil procedure or administrative court procedure or collection of the obligation which was the basis for the proof of claim in public law under administrative procedure, which the Prosecutor's Office explains in its order. If a victim has the right to file a civil action exempt from state fees according to subsection 38[1](4) of this Code, the victim also has the right to file on the same basis a civil action or appeal exempt from state fees in civil and administrative court proceedings.

(4) If, after dismissal of a civil action or proof of claim in public law on the basis of this section, proceedings continue in the same matter following the type of procedure other than the agreement process, the civil action or proof of claim in public law shall be appended to the statement of charges pursuant to the procedure provided for in subsection 226 (7) of this Code in the case the same civil action has not yet been filed under civil procedure or administrative court procedure or an administrative authority has not resolved the claim filed in a claim of proof in public law by an administrative act.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

§ 244[2]. Specifications for negotiations with foreign suspects and accused

(1) The Prosecutor's Office shall hold negotiations with a suspect who is an alien or accused for assuming an obligation by the alien to depart from the Republic of Estonia to a host country together with prohibition on entry within five to ten years, provided that in the estimation of the Police and the Border Guard it is possible for the suspect or accused to return to the host country.

(2) The Prosecutor's Office shall request an assessment of the possibility for the alien to return to the host country from the Police and Border Guard Board which shall send the assessment to the Prosecutor's Office within 30 days as of receipt of the request.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

§ 245. Settlement

(1) A settlement shall set out:
1) the time and place of conclusion of the settlement;
2) the official title and name of the prosecutor;
3) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship, education, native language and the place of work or educational institution of the accused;
4) the name of the counsel;
5) the criminal record of the accused;
6) the preventive measures applied with regard to the accused and the duration thereof;
6[1]) a notation that the rights of the suspect or accused under settlement procedure and the consequences of settlement procedure have been explained to him or her;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
7) the facts relating to the criminal offence;
8) the legal assessment of the criminal offence and the nature and extent of the damage caused by the criminal offence;
9) the type and the category or term of the punishment;
10) property subject to confiscation;
[RT I 2007, 2, 7 – entry into force 01.02.2007]
11) the cause and object of the civil action or proof of claim in public law filed against the accused;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
12) the expenses relating to criminal proceedings to be compensated for by the accused, if possible as an absolute amount.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) If a punishment is imposed on an accused for several criminal offences, the settlement shall set out the type and the category or term of each of the punishments and the type and the category or term of the aggregate punishment.

(3) If punishments are imposed on an accused pursuant to several court judgments, the settlement shall also set out the type and the category or term of the aggregate punishment.

(4) A settlement is deemed to be concluded when a prosecutor, accused and his or her counsel have signed the settlement.

(5) The Prosecutor's Office shall send copies of a settlement to the accused and his or her counsel and the criminal file to the court. If a victim who is a natural person has filed an application according to clause 240 3) of this Code for notification of the time of a court session, the Prosecutor's Office shall append the application of the victim to the settlement sent to a court.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

§ 245[1]. Prosecution under settlement procedure

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

(1) A judge who receives a criminal file shall verify the jurisdiction over the criminal matter pursuant to the provisions of §§ 24-27 of this Code and make an order on:
1) the prosecution of the accused pursuant to the provisions of § 263 of this Code;
2) the return of the criminal file to the Prosecutor's Office if there are no grounds for application of settlement procedure;
3) the return of the criminal file to the Prosecutor's Office granting the possibility to conclude a new settlement if the court does not consent to the legal assessment of the criminal offence or the type or the category or term of the punishment;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
4) the return of the criminal file to the Prosecutor's Office and continuation of the proceedings if the court does not agree to deal with the criminal matter under settlement procedure.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

(2) If the bases provided for in § 258 of this Code become evident, the court shall organise a preliminary hearing which shall be held pursuant to the provided for in subsection 257[1](2) and §§ 259-262 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 245[2]. Specifications for agreements entered into with foreign suspects and accused

(1) Where an agreement is entered into with an alien who assumes the obligation to depart from the Republic of Estonia to a host country, the agreement shall also include the following:
1) the term of validity of the prohibition on entry imposed on the alien and the scope of application thereof;
2) the obligation of the alien to depart from the Republic of Estonia to the host country by the determined date and the consequences of failure to comply with the agreement;
3) the information concerning enforcement of the obligation to depart if the alien is held in custody or in imprisonment in Estonia or if his or her liberty is restricted in any other manner.

(2) A judge in charge of execution of court judgments may, at the request of a prosecutor's office, enforce the sentence imposed on an alien to the extent not served, if the convicted offender does not comply with the assumed obligation to depart from the Republic of Estonia, he or she is suspected of commission of a new criminal offence before the performance of the obligation to depart, or he or she returns to the country before the expiry of term of the prohibition on entry imposed on him or her.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

§ 246. Participants in court session

(1) A prosecutor, accused and his or her counsel shall be summoned to a court session.

(1[1]) A court shall notify a victim who is a natural person based on the contact details submitted by him or her or through the e-file system of the time of a court session, if the victim so requested. The failure of a victim to appear in a court session shall not hinder judicial hearing of the criminal matter.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(2) The court may arrange the participation of parties to judicial proceedings in the judicial hearing conducted under settlement procedure by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.

(3) A prosecutor is not required to participate upon the pronouncement of a court judgment.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 247. Judicial hearing under settlement procedure

(1) A judge shall announce the commencement of the hearing of a settlement and make a proposal to the prosecutor to give an overview of the settlement.

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

(2) After hearing the overview of a settlement, the judge shall ask whether the accused understands the settlement and consents thereto. The judge shall make a proposal to the accused to explain the circumstances relating to the conclusion of the settlement and shall ascertain whether conclusion of the settlement was the actual intention of the accused.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) A judge shall ask the opinions of the counsel and the prosecutor concerning the settlement and whether they will adhere to the settlement.

(4) The judge may question the participants in proceedings.

(5) After completion of the hearing of a settlement, the court shall announce the time of pronouncement of the decision.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 248. Decisions under settlement procedure

(1) The court shall make one of the following decisions:
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
1) an order on the return of the criminal file to the Prosecutor's Office if there are no grounds for application of settlement procedure;
[RT I 2006, 21, 160 – entry into force 25.05.2006]
2) an order on the return of the criminal file to the prosecutor's office granting the possibility to conclude a new agreement if the court does not consent to the legal assessment of the criminal offence or the type or the category or term of the punishment, or with the obligation of the alien assumed by the agreement to depart from the Republic of Estonia to a host country together with prohibition on entry within five to ten years;
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]
3) an order on refusal to apply settlement procedure and on the return of the criminal file to the Prosecutor's Office if the court has doubts regarding the circumstances specified in § 306 of this Code;
4) an order on termination of criminal proceedings if the grounds listed in clauses 199 (1) 2)-6) of this Code become evident;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
5) a court judgment on the conviction of the accused and on imposition of the punishment agreed upon in the settlement on the accused.

(2) After a court has made an order specified in clause (1) 1) or 2) of this section, the court shall return the criminal file to the Prosecutor's Office for continuation of the criminal proceedings.

§ 249. Main part of judgment of conviction under settlement procedure

The main part of a court judgment shall set out:
1) the charges on which the court convicts the accused;
2) the content of the settlement.

§ 250. Commencement of settlement procedureduring judicial hearing

(1) If a judge receives the reports specified in § 243, the opinions specified in clause 240 3) and the settlement specified in § 245 of this Code, he or she shall continue judicial hearing pursuant to the procedure provided for in clause § 247. If judicial hearing has been commenced before the submission of the settlement, only the settlement shall be presented.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) If application of settlement procedure is refused on the basis of clause 248 (1) 1) or 2) of this Code, the court shall continue the proceedings following general procedure.

Subchapter 3
Summary Procedure

§ 251. Grounds for application of summary procedure

(1) If the facts relating to a subject of proof are explicit in the case of a criminal offence in the second degree and the prosecutor considers application of a pecuniary punishment as the principal punishment, the court may deal with the criminal matter by summary procedure at the request of the Prosecutor's Office.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(2) Summary procedure shall not be applied if the suspect is a minor.

(3) Summary procedure shall not be applied if addiction treatment of drug addicts or complex treatment of sex offenders can be administered to the suspect.
[RT I, 15.06.2012, 2 – entry into force 01.06.2013]

§ 252. Main part of statement of charges under summary procedure

(1) Under summary procedure, the Prosecutor's Office shall prepare a statement of charges the main part of which shall set out:
1) the facts relating to the criminal offence;
2) the legal assessment of the criminal offence;
3) the nature and extent of the damage caused by the criminal offence;
4) the evidence in proof of the charges;
5) a proposal concerning the type and the category or term of the punishment.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(2) A statement of charges and the materials of the criminal matter shall be sent to a court and copies of the statement of charges to an accused and his or her counsel.

(3) An accused and counsel may submit a written opinion concerning the resolution of the criminal matter to the court within thirty days as of receipt of the statement of charges.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 253. Decisions under summary procedure

Upon receipt of a criminal matter by a court but not earlier than fifteen days after submission of the statement of charges to an accused and counsel, a judge shall verify the jurisdiction over the criminal matter and make one of the following decisions:
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
1) a court judgment under summary procedure in accordance with section 254 of this Code;
2) an order on termination of criminal proceedings if the grounds provided for in clauses 199 (1) 2)-6) of this Code become evident;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
3) an order on refusal to apply summary procedure and on the return of the criminal file to the Prosecutor's Office.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 254. Court judgment under summary procedure

(1) If a judge consents to the conclusions presented in a statement of charges concerning the proof of the charges and the category or term of the punishment, he or she shall prepare a court judgment.

(2) The introduction of a court judgment made under summary procedure shall set out:
1) that the court judgment is made on behalf of the Republic of Estonia;
2) the date and place of making the court judgment;
3) the name of the court which made the judgment and the name of the judge;
4) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth and the place of work or educational institution of the accused;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
5) the criminal record of the accused.

(3) The main part of a court judgment made under summary procedure shall set out:
1) the facts relating to the criminal offence;
2) the legal assessment of the criminal offence;
3) the nature and extent of the damage caused by the criminal offence;
4) the reasons for the punishment to be imposed on the accused.

(4) The conclusion of a court judgment made under summary procedure shall set out:
1) the conviction of the accused pursuant to the corresponding section, subsection or clause of the Penal Code;
2) the category or term of the punishment;
3) a determination concerning the expenses related to the criminal proceedings;
4) the procedure and term for appeal against the summary judgment.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(5) A copy of a court judgment made under summary procedure shall be delivered to the accused, counsel, victim and the Prosecutor's Office in accordance with the provisions of subsections 164 (3) and (5) of this Code within three days as of the making of the judgment.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(6) Within fifteen days as of the receipt of a court judgment made under summary procedure, the accused and the counsel have the right to request that the court hear the criminal matter following general procedure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(7) If the accused or the counsel does not request that the court hear the criminal matter following general procedure, the court judgment made under summary procedure shall enter into force.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 255. Contestation of court judgment made under summary procedureand judicial hearing under general procedure

(1) If a convicted offender contests a court judgment made under summary procedure and requests that the court hear the criminal matter under general procedure, the judge shall prepare an order on the return of the criminal file to the Prosecutor's Office and the order shall serve as a basis for preparation of a new statement of charges pursuant to § 154 of this Code and for continuation of proceedings following general procedure.

(2) The judicial hearing under general procedure shall be conducted in accordance with the provisions of Chapter 10 of this Code.

§ 256. Commencement of summary proceedings at judicial hearing

(1) In the cases provided for in clause 269 (2) 2) of this Code, a prosecutor may submit a request for application of summary procedure to the court and make a proposal concerning the category or term of the punishment to be imposed on the accused.

(2) If a request is granted, the court shall conduct the summary procedure in accordance with sections 253 and 254 of this Code.

(3) If a request is denied, judicial hearing shall be continued following general procedure.

Subchapter 4
Expedited Procedure

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

§ 256[1]. Basis for application of expedited procedure

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

(1) If a person is suspected of a criminal offence in the second degree and the facts relating to the subject of proof of which are explicit and all necessary evidence concerning which have been taken, the Prosecutor's Office may request that the court deal with that criminal matter by expedited procedure. The request shall be made within 48 hours after the person has been interrogated as a suspect or after the person has been detained as a suspect.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(2) If a person is a suspect in a criminal offence provided for in Subchapter 1 of Chapter 12 of the Penal Code in the case of which there is no dispute over the facts relating to the commission of the criminal offence, he or she may be influenced not to commit offences in the future by treatment of the addiction disorder or keeping this disorder under control, and he or she has expressed a consent to sending to medical treatment or keeping the disorder under control in any other manner, expedited procedure may be applied in accordance with the rules provided in subsection (1) of this section and Subchapter 2 of Chapter 9 of this Code.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

§ 256[2]. Minutes for expedited procedure and statement of charges under expedited procedure

(1) The minutes for expedited procedure shall set out:
1) statements of the suspect and other data relating to the interrogation pursuant to subsection 76 (1) of this Code or reference to separate minutes concerning the interrogation of the suspect;
2) whether the suspect wishes the hearing of the criminal matter to be conducted without summoning the witnesses;
3) testimony of the witness and other data relating to the questioning pursuant to § 74 of this Code or reference to separate minutes concerning questioning of the witness;
4) a list of other evidence;
5) the data provided for in subsection 218 (1) of this Code if the person has been detained as a suspect.

(2) The minutes for expedited procedure shall be immediately forwarded to the Prosecutor's Office. Other evidence and the certificate provided for in subsection 222 (3) of this Code shall be appended to the expedited procedure report.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(3) If necessary, the Prosecutor's Office shall perform the acts necessary for the application of simplified procedures. In such case, the data specified in §§ 245 or 252 of this Code shall be added to the minutes. The acts specified in clauses 240 2) and 3) of this Code may be performed with regard to the victim only by an investigative body.

(4) The Prosecutor's Office shall prepare the statement of charges and add the data provided by § 154 of this Code to the minutes for expedited procedure, taking account of the differences of the minutes for expedited procedure.

(5) The accused and his or her criminal defence counsel shall be given a copy of the minutes for expedited procedure. If the accused is not proficient in the Estonian language, he or she may request that the minutes be translated into his or her native language or a language in which he or she is proficient. If, instead of the minutes for expedited procedure, separate procedural documents are prepared, the accused and criminal defence counsel shall be given copies of the statement of charges and the materials of the criminal matter.

(6) Criminal defence counsel has the right to examine all the materials related to the criminal matter after the interrogation of the suspect until the beginning of the trial. The Prosecutor's Office shall receive and resolve petitions and complaints until a request for application of expedited procedure is submitted to the court.
[RT I 2006, 15, 118 – entry into force 14.04.2006]

§ 256[3]. Summoning to court session

(1) The participants in proceedings and witnesses shall be summoned to court by the investigative body or the Prosecutor's Office in accordance with the rules provided in subsection 164 (3) of this Code with the approval of the court.

(2) The accused and criminal defence counsel shall be summoned to court by the Prosecutor's Office in accordance with the rules provided in subsection (1) of this section.
[RT I 2006, 15, 118 – entry into force 14.04.2006]

§ 256[4]. Judicial proceedings under expedited procedure

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

(1) The prosecutor shall make an oral request to the court for hearing the matter under expedited procedure and submit the materials related to the criminal matter to the court.
[RT I 2006, 15, 118 – entry into force 14.04.2006]

(2) The judge shall verify the jurisdiction in accordance with the rules provided in subsection 257 (1) of this Code and shall open the court session. A notation concerning the opening of the court session shall be made in the minutes of the court session. After declaring the commencement of judicial examination, the court shall make a proposal to the prosecutor to present the statement of charges.
[RT I 2006, 15, 118 – entry into force 14.04.2006]

(3) If immediate judicial hearing of the criminal matter is not possible, the court shall organise a preliminary hearing pursuant to the procedure provided for in §§ 258-263 of this Code.
[RT I 2006, 15, 118 – entry into force 14.04.2006]

(4) Judicial proceedings under expedited procedure shall be carried out in accordance with the rules provided in sections 233-238 or 239-250 or 251-256 or 266-317 of this Code, taking account of the differences provided for in this Subchapter.
[RT I 2006, 15, 118 – entry into force 14.04.2006]

(5) A prosecutor is not required to participate upon the pronouncement of a court judgment.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 256[5]. Decisions under expedited procedure

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

(1) The court shall make one of the following decisions:
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
1) an order on return of the materials of the criminal matter to the Prosecutors Office if there are no grounds for application of expedited procedure, except due to insufficient evidence;
[RT I 2006, 15, 118 – entry into force 14.04.2006]
2) a judgment of conviction or acquittal with regard to the accused.
[RT I 2006, 15, 118 – entry into force 14.04.2006]

(2) If the court makes a judgment of conviction under expedited procedure, the court shall reduce the amount of compensation levies specified in subsection 179 (1) of this Code but not more than by a half.
[RT I 2006, 15, 118 – entry into force 14.04.2006]

Chapter 10
PROCEDURE BEFORE COUNTY COURTS

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

Subchapter 1
Preliminary Procedure

§ 257. Prosecution

(1) A judge who receives a statement of charges shall verify the jurisdiction over the criminal matter pursuant to the provisions of §§ 24-27 of this Code and shall prosecute the accused by an order.

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

(3) In criminal matters referred to court under general procedure where holding in custody is applied as a preventive measure, a judge shall decide prosecution not later than on the working day preceding the end of the term of holding in custody.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

§ 257[1]. Preliminary hearing

(1) A court shall deal with organisational issues in a preliminary hearing before the commencement of judicial hearing of the matter, if any of the grounds specified in § 258 of this Code exists.

(2) If any of the grounds specified in clause 258 (1) 2) or 3) of this Code becomes evident, a judge shall hold a preliminary hearing for deciding on the prosecution of the accused.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 258. Grounds for holding preliminary hearings

(1) A preliminary hearing shall be held in order to:
1) decide on alteration or annulment of preventive measures or to consider a request for application of preventive measures;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
2) decide on return of the statement of charges to the Prosecutor's Office if the statement is not in compliance with the requirements of § 154 of this Code;
2[1]) if the statement of defence does not comply with the requirements provided for in subsection 227 (3) of this Code;
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]
3) decide on termination of the criminal proceedings on the bases provided for in clauses 199 (1) 2)-6) of this Code;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
4) planning of judicial hearing of a criminal matter referred to court under general procedure and dealing with requests of the parties to judicial proceedings;
[RT I 2008, 32, 198 – entry into force 15.07.2008]
5) dealing with other issues if a judge deems it necessary to hold a preliminary hearing.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

(2) Summonses to a preliminary hearing shall be served on the parties to judicial proceedings in accordance with the rules provided in sections 163-169 of this Code.

(3) If necessary, a court shall examine the materials of a criminal file.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 259. Participants in preliminary hearing

(1) A preliminary hearing shall be held by a judge sitting alone.

(2) The participation of a prosecutor and a criminal defence counsel in a preliminary hearing is mandatory.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

(3) If necessary, other participants in proceedings may be summoned to a preliminary hearing. If the preliminary hearing is held in order to decide on acceptance of a civil action or a proof of claim in public law or

to prepare a civil action or a proof of claim in public law for consideration, the victim and the civil defendant or the representatives thereof are summoned to the preliminary hearing.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(4) Minutes shall be taken of a preliminary hearing by a court session clerk.

(5) A judge may arrange the participation of the persons specified in this section in the preliminary hearing by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 260. Consequences of failure to appear at preliminary hearing

(1) If a prosecutor fails to appear at a preliminary hearing, the hearing shall be adjourned and the Prosecutor's Office shall be notified of the failure of the prosecutor to appear.

(1^1) If a criminal defence counsel fails to appear at a preliminary hearing, the hearing shall be adjourned. If the counsel is an attorney, the leadership of the Bar Association shall be notified of the counsel's failure to appear.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

(2) The failure of other parties to judicial proceedings to appear shall not preclude the holding of the preliminary hearing, unless the court decides otherwise. If the victim or his or her representative summoned to the preliminary hearing fail to appear at the preliminary hearing, the court may dismiss the civil action or a proof of claim in public law by an order. In such case the court shall primarily take into consideration to what extent postponement of a preliminary hearing would delay the hearing of the criminal matter and the reasons of the failure of the victim or his or her representative to appear at the preliminary hearing.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

§ 261. Procedure for conduct of preliminary hearings

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

(1) After opening a preliminary hearing, the judge shall:
1) announce the title of the criminal matter which is to be prepared for judicial hearing and the issues to be dealt with at the preliminary hearing and, in the case of involvement of an interpreter or translator, perform the acts required in subsection 161 (3) of this Code;
2) ascertain who has appeared at the preliminary hearing and, if necessary, identify of the persons who have appeared;
3) resolve the petitions of challenge.

(2) Following the application of a preliminary hearing, the judge shall explain the grounds for holding the hearing and hear the opinions of the parties who have appeared regarding the issues to be resolved in the preliminary hearing.

(3) For prosecution, a judge shall plan judicial hearing in cooperation with the parties to judicial proceedings in such a manner which helps to avoid unnecessary loss of time, repeated summoning of persons to court and adjournment of a court session.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

§ 262. Competence of judge in preliminary hearing

(1) In a preliminary hearing, a judge may make orders:
1) to prosecute the accused;
2) to return the statement of charges to the Prosecutor's Office if the statement of charges is not in compliance with the requirements of § 154 of this Code;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
2^1) to supplement the statement of defence or preparation of a new statement of defence within five working days as of the preliminary hearing, if the statement of defence does not comply with the requirements provided for in subsection 227 (3) of this Code;
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]
3) to terminate criminal proceedings in the cases specified in clauses 199 (1) 2)-6) of this Code;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
4) to apply or alter preventive measures;
4^1) to accept the civil action or proof of claim in public law or to grant a term for elimination of deficiencies thereof or to dismiss the civil action or proof of claim in public law;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
5) to resolve the requests of participants in proceedings.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

(2) If a court finds that dealing with the matter falls within the competence of an administrative court and the administrative court has previously found that dealing with the same matter does not fall within its competence, a Special Panel formed by the Criminal Chamber and the Administrative Law Chamber of the Supreme Court shall determine, in accordance with the rules provided in § 711 of the Code of Civil Procedure, the court that is competent to deal with the matter.
[RT I, 20.11.2014, 1 – entry into force 01.05.2015]

§ 263. Order on prosecution

An order on prosecution shall set out:
1) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship, education, native language and the place of work or educational institution of the accused;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
2) the number of the criminal case;
3) the time and place of the court session, if known. If a court session is planned to be held on several days, all the days of judicial hearing shall be indicated as the time of the court session;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
4) whether the criminal matter will be heard in a public court session or in camera;
5) the given names and surnames of the persons to be summoned to the court session and the time of appearance of the persons at judicial hearing, if known;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
6) hearing of a witness or victim under a fictitious name pursuant to subsection 67 (5) of this Code;
7) application or alteration of preventive measures;
8) the resolutions of requests.

§ 263[1]. Decision on acceptance of civil action and proof of claim in public law

[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(1) If a civil action or a proof of claim in public law is sent to a court together with the statement of charges, the court shall make an order on acceptance of the civil action or the proof of claim in public law or for grant of a term for the elimination of deficiencies of the civil action or the proof of claim in public law or dismissal of the civil action or the proof of claim in public law. If necessary, the court shall grant a term for the accused, counsel and civil defendant for submission of a written response to the civil action or the proof of claim in public law.

(2) Dismissal of the civil action or proof of claim in public law shall not exclude the filing of the same action under civil or administrative court procedure or the issue of an administrative act concerning the obligation which was the basis for the proof of claim in public law in administrative proceedings.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

§ 264. Involvement of probation officers

(1) If necessary, a judge shall assign the head of the probation supervision department with the duty to appoint a probation officer.

(2) The judge shall verify whether a pre-court report has been prepared in the criminal matter of an accused who is a minor, an accused who is charged with the commission of a sexual offence or of an accused who has been repeatedly charged with driving a motor vehicle in a state of alcohol intoxication, if this is required. Where the judge so directs, the probation officer shall amend the pre-court report.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(2[1]) Before application of the electronic surveillance provided for in § 75[1] of the Penal Code, if this is required, a judge shall verify whether an opinion has been prepared about the possibility of installation of an electronic surveillance device at the place of residence of the suspect or accused. At the order of the judge, a probation officer shall amend an opinion.
[RT I, 07.07.2017, 1 – entry into force 01.11.2017]

(3) At the order of a judge, a probation officer shall ascertain the facts relevant to the imposition of duties or community service and submit to the court a pre-court report which shall be included in the materials of the criminal matter.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 265. Summoning of prosecutor, participants in proceedings, witnesses, qualified persons and experts to court session

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

(1) A prosecutor and participants in proceedings shall be summoned to a court session by a summons pursuant to the procedure provided for in §§ 163-169 of this Code.

(2) A court shall send a copy of an order on prosecution to the accused, the Prosecutor's Office and the counsel together with a summons.

(3) Upon summoning of a witness, a qualified person or an expert the court shall take into account the course of judicial hearing determined in a preliminary hearing.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 265[1]. Continuation of preliminary hearing by judicial hearing

(1) The judicial hearing of a criminal matter referred to court under general procedure may be conducted immediately after the preliminary hearing if all the persons connected to the court proceedings are able to appear in court by the time of the preliminary hearing, if this would ensure the conduct of judicial proceedings without interruption and delay and if the parties to judicial proceedings and the court consent thereto.

(2) The parties to judicial proceedings and the court may, before or during the preliminary hearing, agree to proceed to judicial hearing immediately after the preliminary hearing.

(3) In the case specified in this section, the victim, civil defendant, third party, their representatives and the accused shall be shall be summoned to court by the Prosecutor's Office pursuant to the procedure provided for in §§ 163-169 of this Code.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

Subchapter 2
General Conditions for Judicial Hearing

§ 266. Chairing of and order in court sessions

(1) A court session shall be chaired by a judge. In the criminal matters specified in subsections 18 (1) and (3) of this Code, the session shall be chaired by a presiding judge.

(2) The parties to judicial proceedings and other persons present in the courtroom shall unconditionally comply with the orders of the judge. When the court panel enters or leaves the courtroom, the persons present in the room shall rise.

(3) All persons shall rise when addressing the court. With the permission of the judge, a person may sit when addressing the court.

(4) A judge has the right to limit the number of the persons present in the courtroom if the room is overcrowded.

(5) Witnesses, qualified persons and experts not yet interrogated or heard in judicial examination may stay in the courtroom only with the permission of the court. The court may issue orders in order to prevent communication between persons who have been heard or interrogated and who have not been heard or interrogated.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 267. Measures applicable to persons who violate order in court session

(1) If an accused violates order in a court session and fails to comply with the orders of a judge or a court security guard, the following measures may be applied on the basis of a court order:
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]
1) removal of the accused from the courtroom temporarily or for the duration of the whole session;
2) imposition of detention for up to ten days or a fine on the accused.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) When an accused is asked to return to the courtroom, he or she shall be notified of the court activities performed in his or her absence.

(3) If an accused is removed from the courtroom for the duration of a whole session due to violation of order, a copy of the court judgment or, in the case provided for in subsection 315 (4) of this Code, of the conclusion of the court judgment shall be served on the accused immediately after pronouncement of the court judgment.

(4) If a prosecutor, representative or counsel violates order in a court session, fails to comply with the orders of a judge or court security guard, acts in contempt of the court, a fine may be imposed on him or her based on a court order.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(4[1]) A court may remove a counsel, representative or prosecutor from proceedings, if the person is not able to act in accordance with the requirements in court or, in the course of judicial proceedings, has shown himself

or herself as dishonest, incompetent or irresponsible, and if he or she obstructs, in bad faith, the just and expeditious conduct of proceedings in the matter or repeatedly fails to comply with the direction of the court.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4^2) Upon application of the provisions of subsections (4) and (4^1) of this section, a court shall immediately propose to the party to judicial proceedings to select a new representative or counsel or to the Prosecutor's Office to appoint a new prosecutor by the date determined by the court. The court shall inform respectively the leadership of the Bar Association or the Prosecutor's Office of application of the provisions of subsections (4) and (4^1) of this section to an attorney and prosecutor.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) If any other participant in proceedings or a person present in a courtroom violates order in a court session, fails to comply with the orders of a judge or court security guard or acts in contempt of court, he or she may be removed from the courtroom, or a fine or detention for up to five days may be imposed on him or her on the basis of a court order.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(6) If there are elements of a criminal offence in the conduct of a person who violates order at the session, the prosecutor shall commence criminal proceedings with regard to him or her, or the court shall send a report on the criminal offence to the police. If necessary, the court shall detain such person as a suspect on the basis of the minutes.

(7) A judge performing his or her functions in the court outside a court session may, by a court order, impose detention for up to five days or a fine on a person who fails to comply with the orders of the judge or a court security guard or acts in contempt of court.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(8) At the request of a person who has violated order, the court order in the form of an excerpt from the minutes of the court session shall be submitted to him or her.

§ 268. Scope of judicial hearing

(1) Judicial hearing of the criminal matter with regard to the accused shall proceed strictly within the scope of the statement of charges, unless otherwise provided for in this section.

(2) A prosecutor may amend or supplement the charges until the completion of judicial examination in judicial hearing by submitting the changes and amendments to a court and other parties to judicial proceedings in writing. If the text of the charges or the statement of charges proves to lack clarity due to changes or amendment of the charges, the court may require, on its own if, or at the request of a party to judicial proceedings a new consolidated text of the charges or the statement of charges.

(3) Amendment of charges for the purposes of subsection (2) of this section is not the amendment or correction of presented factual or judicial allegations without amending the main facts which constitute the charges or the legal assessment of the criminal offence or partial withdrawal of charges.

(4) In the case of amendment or supplementation of the charges, the court shall call a recess or adjourn judicial hearing at the request of the accused or the counsel in order to ensure the right of defence. If this is necessary for ensuring the right of defence, the court may, at the request of the accused or the counsel, call a recess or adjourn judicial hearing even in the case of making the amendments and corrections specified in subsection (3) of this section.

(5) In convicting the accused, the court shall not rely on facts which substantially differ from the facts relating to the subject of proof described in the charges or changed or amended charges. In making a judgment, the court shall not rely on facts which have not been the subject of hearing during the proceedings.

(6) A court may amend the legal assessment of a criminal offence based on the facts established during judicial examination, if the accused has been sufficiently able to defend himself or herself against such legal assessment. If necessary, the court shall propose to the parties to judicial proceedings to state their positions on the legal assessment not contained in the statement of charges. The court shall also give the parties an opportunity to present their positions in the case aggravating circumstances not specified in the statement of charges or circumstances which cause the application of non-punitive sanctions become evident. At the request of the accused or the counsel, the court shall call a recess in order to ensure the right of defence.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 268^1. Integrity of hearing criminal matter under general procedure

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

(1) The court panel of a county court, which hears a criminal matter pursuant to general procedure, shall adhere in the planning of the hearing of the matter to the principles of integrity, sequentiality and uninterruptedness of the hearing, and aim at speedily reaching a judicial decision.

(2) On the basis of the schedule prepared for hearing criminal matters under general procedure, the court shall find an opportunity to hear in parallel a criminal matter referred to the court for hearing under general procedure if:
1) a person is accused in the criminal matter of having committed a criminal offence at the time when he or she was a minor;
2) in the criminal matter, taking into custody is applied with regard to the accused as a preventive measure and the court deems it necessary to continue the application of the above-mentioned preventive measure.

(3) Upon inevitable adjournment of judicial hearing of a criminal matter heard under general procedure or due to empty slots appearing in the time schedule of judicial proceedings, the court has the right to commence the hearing of another criminal matter referred to the court for hearing under general procedure, if this does not jeopardize the time schedule of judicial hearing of the previous matter. In the case of inevitable adjournments of judicial proceedings in a criminal matter being heard by the court, the court also has the right to commence the hearing of the following criminal case planned to be heard under general procedure according to the time schedule of that case.

(4) The court may conduct judicial hearing of another criminal matter commenced due to the reasons provided for in subsection (3) of this section in parallel to the judicial hearing of a previously commenced criminal matter, and aim at reaching a fast judicial decision in all the criminal matters heard.

(5) A court is not bound by the sequence of receipt of criminal matters by the court but for the purpose of integral hearing of a criminal matter and reaching a judicial decision without any delay, the court has the right to commence the hearing of a criminal matter regardless of the sequence of receipt thereof, taking into consideration the extent of the criminal matter to be heard.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 269. Participation of accused in judicial hearing

(1) A criminal matter shall be heard in the presence of the accused, taking into account the exceptions specified in this section and § 276^1 of this Code. If the accused fails to appear, judicial hearing shall be adjourned. Participation of the accused in the pronouncement of the court judgment is not mandatory.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) As an exception, a criminal matter may be heard in the absence of the accused if:
1) he or she has been removed from the courtroom on the basis and pursuant to the procedure provided for in subsection 267 (1) of this Code;
2) he or she has received the summons, his or her whereabouts cannot be established, there is sufficient reason to believe that he or she absconds court proceedings, reasonable efforts have been made for finding him or her, and the court hearing is possible without him or her;
[RT I, 20.12.2019, 1 – entry into force 30.12.2019]
3) after his or her interrogation at a court session, the accused has caused himself or herself to be in a state which precludes his or her participation in judicial hearing, and judicial hearing is possible without him or her;
4) it is complicated to take him or her to the court, and the accused can participate in the court hearing by means of any technical solutions which comply with the requirements specified in clause 69 (2) 1) of this Code, and the court is convinced that the right of defence of the accused is ensured;
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]
5) he or she has submitted a reasoned request to the court to hear the matter without his or her participation and the court is convinced that it is possible to defend the rights of the accused without his or her participation in judicial hearing and the absence of the accused from a court session is not contrary to the public interests;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
6) he or she is unable to participate in judicial hearing over an extended period due to illness but he or she was informed of the time and place of the court session, he or she agrees to hearing of the matter without his or her participation and with the participation of his or her counsel and the court is convinced that it is possible to defend the rights of the accused without his or her participation in judicial hearing.
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

(2^1) When granting the request of the accused on the basis specified in clause (2) 5) of this subsection, the court shall determine in which part of judicial hearing the participation of the accused is not mandatory. Participation of the accused in the acts specified in §§ 285 and 298-304 of this Code is mandatory.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) If the accused absconds judicial proceedings or if the hearing of the criminal matter is hindered by a serious illness of the accused due to which he or she is not able to appear in court, the court may make an order on the conduct of separate proceedings concerning his or her charges, adjourn the hearing of the severed charges until apprehension or recovery of the accused, and continue judicial hearing of the criminal matters concerning the other accused.

(4) In judicial hearing of a criminal matter involving several accused persons, the hearing of those criminal offences included in the criminal matter which do not involve a specific accused may be conducted without the presence of such accused and his or her criminal defence counsel.
[RT I 2004, 54, 387 – entry into force 01.07.2004]

§ 270. Participation of prosecutors and counsels in court sessions

(1) The participation of a prosecutor in a court session is mandatory. If a prosecutor fails to appear, judicial hearing shall be adjourned and the Prosecutor's Office shall be notified of such failure.

(2) If a counsel fails to appear at the court session, judicial hearing shall be adjourned. If the counsel is an attorney, the leadership of the Bar Association shall be notified of the counsel's failure to appear.

§ 271. Judicial hearing in absence of witness, victim, qualified person or expert

(1) If a witness, victim, qualified person or expert fails to appear in a court session, the court shall hear the opinions of the parties to judicial proceedings and thereafter make an order on the continuation or adjournment of judicial hearing.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) If the court finds that a civil action or proof of claim in public law cannot be considered in the absence of the victim, the civil action or proof of claim in public law shall be dismissed in criminal proceedings, and the victim shall be explained that dismissal of a civil action or proof of claim in public law does not exclude filing the same action under civil or administrative court procedure or recovery of the obligation which was the basis for the proof of claim in public law in administrative proceedings.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

§ 272. Judicial hearing in absence of civil defendant

(1) The failure of a civil defendant to appear in a court session shall hinder neither the judicial hearing nor consideration of the civil action.

(2) If a court finds that a civil action cannot be considered in the absence of the civil defendant, the civil action shall be dismissed in criminal proceedings.

§ 273. Adjournment of judicial hearing

(1) Judicial hearing of a criminal matter shall be adjourned by an order if:
1) a person not specified in §§ 269-271 of this Code has failed to appear in the court session and the participation of such person is necessary;
2) it is necessary to take additional evidence;
2^1) comprehensive, thorough and objective hearing of the criminal matter is complicated due to suspicion of another criminal offence which became evident in the court session;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
3) continuation of the court session is impossible for another reason.

(2) Before the adjournment of judicial hearing, the witnesses, victims, qualified persons, experts and civil defendants who have appeared in the court session may be heard and they need not be summoned to another court session.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) If judicial hearing of a criminal matter is adjourned due to the failure of a participant in proceedings or another person to appear and the court does not establish any of the good reasons specified in subsection 170 (2) of this Code, the court shall apply the measures provided for in § 138 of this Code. A court may decide not to apply the measures provided for in § 138 if it deems necessary to apply the measures provided for in § 139 or 140 of this Code.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

(4) If a counsel is not familiar with the criminal matter, the court may adjourn the court session for up to ten days, order that the expenses relating to the criminal proceedings due to the adjournment of the session be paid by the counsel, and notify the leadership of the Bar Association of such conduct of the counsel.

(5) In the case specified in subsection (1) of this section, the court shall, if possible, without delay set the time for continuation of judicial hearing. Judicial hearing of a criminal matter shall be adjourned for as short term as possible and the hearing of the adjourned criminal matter shall be continued in compliance with the principle of uninterrupted proceedings.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

§ 274. Termination of criminal proceedings at court session

(1) If circumstances which pursuant to clauses 199 (1) 2)-8) of this Code preclude criminal proceedings are ascertained during judicial hearing of the criminal matter, if criminal proceedings must be terminated in

connection with expiry of reasonable time of proceedings on the grounds provided in § 274[2] of this Code or if, in the case specified in clause 199 (1) 1) of this Code, the actions of the accused fulfil the elements of a misdemeanour, the court shall, by order, terminate criminal proceedings. In other cases, on the ground specified in subsection 199 (1) 1) of this Code, a judgment of acquittal shall be made.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(2) Criminal proceedings shall not be terminated if, for the purposes of rehabilitation, continuation of the proceedings is requested by:
1) the accused in the cases provided for in clause 199 (1) 2), 3) or 6) of this Code;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
2) a person close to the accused, in the case provided for in clause 199 (1) 4) of this Code.

(3) If criminal proceedings are terminated with regard to a minor who at the time of commission of the unlawful act was not capable of guilt on the grounds of age or who can be influenced without the imposition of a punishment or the application of a sanction prescribed in § 87 of the Penal Code, subsection 201 (1) or (2) of this Code is applied respectively.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(4) If the civil action is dismissed due to termination of the criminal proceedings, the action may be filed in accordance with the rules provided in the Code of Civil Procedure.

(5) A court may terminate criminal proceedings on the bases provided for in § 202-203[1] of this Code at the request of the prosecutor and the accused.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(6) A court may terminate criminal proceedings on the bases provided for in § 204 of this Code at the request of the prosecutor.

§ 274[1]. Request to expedite judicial proceedings

(1) If proceedings have been conducted by a court in a criminal matter for at least nine months and the court fails to perform a necessary procedural operation without a good reason, and also fails to appoint a session in due time to ensure the conduct of judicial proceedings within a reasonable period of time, or if it is evident that the time planned for hearing the matter does not ensure the hearing without interruptions, a party to judicial proceedings may request that the court implement a suitable measure in order to expedite the conclusion of judicial proceedings.

(2) If a court considers the request to be justified, the court shall rule within thirty days as of receipt of the request on implementation of such measure which presumably allows to conclude judicial proceedings within a reasonable period of time. The court shall not be bound by the request in choosing the measure.

(3) Denial of the request or implementation of a measure which is different from the one set out in the request to expedite judicial proceedings shall be formalized by reasoned order within the term specified in subsection (2) of this section. The order by which implementation of the measures set out in the request to expedite judicial proceedings is decided need not be reasoned.

(4) A new request may be submitted six months after the entry into force of a court order made concerning the previous request, except in the case the request is submitted for the reason that the court conducting proceedings in the matter failed to implement on time the measures prescribed in the order.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 274[2]. Termination of criminal proceedings at court session in connection with expiry of reasonable time for proceedings

(1) If it is established at judicial hearing that a criminal matter cannot be resolved within a reasonable time and violation of the right of the accused to hearing of the criminal matter within a reasonable time cannot be cured in any other manner, the court may, with the consent of the accused, terminate the criminal proceedings, taking into account the circumstances provided for in § 205[2] of this Code.

(2) The chairman of the court shall be informed of the order specified in subsection (1) of this section by which criminal proceedings are terminated due to expiry of the reasonable time for proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 275. Decision concerning application of preventive measures

(1) In judicial hearing of a criminal matter, the court has the right to choose, by an order, a preventive measure or alter or annul the preventive measures previously chosen with regard to the suspect or accused.

(2) If the accused is held in custody pending proceedings before the county court, the court shall verify the reasons for holding in custody on its own initiative at least once within six months and prepare a written order on it.

(3) When verifying the reasons for holding in custody on its own initiative, the court shall ascertain, before making an order, in a court session or by written procedure, the positions of the prosecutor, counsel and, if necessary, the accused.

(4) The chairman of the court shall be informed of the order specified in subsection (2) of this section by which the holding in custody of the accused is declared to continue to be justified.

(5) If a court has chosen, during judicial hearing, holding in custody as a preventive measure with regard to a person who has been declared a fugitive or with regard to the accused who stays outside the territory of the Republic of Estonia, without questioning the person, the person held in custody shall be taken immediately and not later than within 72 hours from the apprehension of the fugitive or bringing of the accused to Estonia for questioning before the court hearing the matter or, if this is impossible, before a preliminary investigation judge.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 276. Formalisation of court orders

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

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

(2) A court shall formalise the termination of criminal proceedings, compelled attendance, the choice, alteration or annulment of preventive measures, petitions of challenge, ordering of expert assessments and removal of the accused from the courtroom by an order made in accordance with the provisions of § 145 of this Code.
[RT I 2004, 54, 387 – entry into force 01.07.2004]

(3) Other court orders shall be formalised as procedural documents and included in the criminal file, or shall be made orally and recorded in the minutes of the court session.
[RT I 2004, 54, 387 – entry into force 01.07.2004]

§ 276[1]. Case management hearing

A court may hold, in order to decide on alteration or annulment of preventive measures, to consider a request for application of preventive measures, to consider a request to expedite judicial proceedings, to decide on other organisational issues of judicial proceedings or to resolve a request of a party to judicial proceedings, a preliminary hearing in accordance with the provisions in this Code concerning preliminary hearings, if such issues cannot be resolved within a reasonable period of time at the court session in the course of judicial hearing.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 276[2]. Deposition of testimony after sending statement of charges to court

(1) If circumstances become evident, after sending to court the statement of charges which allow to conclude that later hearing of a witness in judicial hearing of a criminal matter may be impossible or the witness may be influenced to give false testimony, the prosecutor, counsel or accused may request from the court deposition of the testimony of the witness before judicial examination or during recess of court sessions.

(2) The testimony shall be deposited at judicial hearing of the matter in accordance with the rules provided in subsections 69[1](2)-(6) of this Code.

(3) If a party to judicial proceedings wishes to deposit the testimony of a witness who is not specified in the statement of charges or statement of defence as the person summoned to court or questioned in pre-court procedure, the court may grant the request under the conditions specified in § 286[1] of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 276[3]. Preparation for cross-examination

A party to judicial proceedings, when preparing for cross-examination, may communicate with the person whom such party wants to examine at the court session provided the person consents to such communication.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

Subchapter 3
Application of Court Session

§ 277. Opening of court session

(1) After opening a court session, the judge shall:

1) announce the title of the criminal matter to be heard;
2) ascertain who of the parties to judicial proceedings have appeared at the session;
3) ascertain whether the persons absent have received their summonses and why they have failed to appear.

(2) The clerk of the court session shall report to the court on whether the witnesses, experts, qualified persons, translators and interpreters summoned have appeared in the court session.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) A court may request that a party to judicial proceedings submit the documents specified in subsection 165 (5) of this Code in order to prove the service of a summons. The service of a summons may be also proved by an oral or written confirmation of a person who is not the party who served the summons.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

§ 278. Translators and interpreters in court sessions

(1) If an interpreter or translator participates in a court session, the court shall announce his or her name. In the case of a staff interpreter or translator, it shall be explained that he or she has taken the oath of office and is aware of a criminal punishment for a knowingly false interpretation or translation.

(2) The judge shall explain the rights provided for in subsection 161 (5) of this Code to a non-staff interpreter or translator.

(3) Before a non-staff interpreter or translator commences interpretation or translation, he or she shall be warned about a criminal punishment for a knowingly false interpretation or translation.

§ 279. Identification of accused and explanation of rights and obligations to accused

(1) A judge shall identify the accused and ascertain whether he or she has received a copy of the statement of charges.

(2) If the accused has not received a copy of the statement of charges or of the order on prosecution, the court shall serve such documents on the accused and, at the request of the accused or the counsel, grant a term for examination of the documents or, if necessary, adjourn the court session.

(3) The rights and obligations provided for in subsection 35 (2) of this section shall be explained to the accused.

§ 280. [Repealed – RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 280^{1}. Identification of civil defendant and third party

A judge shall identify a civil defendant and third party and ascertain their relationships with the accused and victim.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 281. Explanation of rights and obligations to victims, civil defendants and third parties

A judge shall explain the rights and obligations provided for in §§ 38, 40 and 40^{2}of this Code to victims, civil defendants and third parties.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 282. Verification of authority of counsels and representatives

A judge shall verify the authority of counsels and representatives participating in judicial hearing.

§ 283. Explanation of rights and obligations to experts

If an expert assessment is arranged outside a state forensic institution, the judge shall explain the rights and obligations provided for in subsections 98 (1) and (2) of this Code to the expert. An expert who has not been sworn in shall be warned about a criminal punishment for rendering a knowingly false expert opinion and his or her signature shall be obtained in proof thereof unless this has been done already in the same criminal matter.

§ 284. Announcing composition of court, explanation of right to file petitions of challenge, and resolution of requests

(1) A judge shall announce the composition of the panel of the court and the names of the prosecutor, counsels, representatives, experts, qualified persons, translators, interpreters and the clerk of the court session and explain

the right to file petitions of challenge on the bases and in accordance with the rules provided in §§ 49-59, 97, 157 and 162 of this Code to the parties to judicial proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) After resolving any petitions of challenge, a judge shall ask whether the parties have other requests before judicial examination.

(3) The court shall resolve the requests by an order.

Subchapter 4
Judicial Examination

§ 285. Commencement of judicial examination

(1) A judge announces the commencement of judicial examination and makes a proposal to the prosecutor to make an opening speech.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

(2) The prosecutor gives an overview of the charges and the evidence which corroborates the charges and which the prosecutor requests to be examined by the court.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) After the presentation of the prosecutor, the judge shall ask whether the accused has understood the charges and whether he or she confesses thereto. Thereafter, the judge shall make a proposal to the counsel to present his or her opinion as to whether the charges are justified.

(4) Where a civil action or a proof of claim in public law was filed in a criminal matter, the judge shall make a proposal to the victim or the representative thereof to provide an overview of the civil action or the proof of claim in public law and the evidence which corroborates it but which were not discussed by the prosecutor in his or her opening speech, or open the civil action or the proof of claim in public law himself or herself.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(5) After the speech of the victim or the representative of the victim or opening of the civil action or the proof of claim in public law by the court, the judge shall make a proposal to the accused, counsel, civil defendant and representative of civil defendant to submit his or her opinion as to whether the civil action or the proof of claim in public law is justified.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

§ 286. Order of examination of evidence

(1) Examination of evidence is commenced by examination of the evidence submitted by the prosecutor, followed by the evidence submitted by the counsel and other parties to judicial proceedings.

(2) The parties to judicial proceedings may agree between themselves that evidence is examined in a different order than the order prescribed in subsection (1) of this section. In such case, the court shall determine the order of examination of evidence according to the agreement of the parties to judicial proceedings by an order which shall be recorded in the minutes of the court session.

§ 286[1]. General conditions for acceptance of evidence

(1) The court shall accept and organise the taking of only such evidence which has relevance to the matter.

(2) In addition to the cases provided for in subsection (1) of this section, the court may refuse to accept evidence and return the evidence, or refuse to take evidence, if:
1) the evidence is not accessible and, above all, if the witness's data or location of a document is unknown, or if the relevance of the evidence is disproportionate to the time necessary for taking the evidence or other difficulties related thereto;
2) the evidence is not listed in the statement of charges or statement of defence and the party to judicial proceedings fails to state a good reason why the person was unable to submit the request earlier;
3) the need for the presenting or taking of evidence is not substantiated;
4) any of the bases for refusal to accept evidence specified in this section exists.

(3) A court makes an order on refusal to accept evidence or refusal to take evidence which shall be recorded in the minutes of the court session.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 286[2]. Earlier cross-examination in this or another criminal matter

(1) Testimony given by a person during an earlier judicial hearing in the same criminal matter is admissible as evidence under the same circumstances as testimony that the person would give at the court session held as part of the proceedings in the criminal matter.

(2) Testimony given by a person during judicial hearing in another criminal matter is admissible as evidence under the same circumstances as deposited testimony or in the case specified in § 294 of this Code.

(3) Testimony given during earlier cross-examination is admissible as evidence, except in the case a higher court has excluded it due to violations of cross-examination or other procedural rules.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 287. Hearing of witnesses

(1) Section 288 of this Code applies to the hearing of witnesses.

(2) A witness shall be heard in the absence of the witnesses who have not been heard.

(3) [Repealed – RT I 2008, 32, 198 – entry into force 15.07.2008]

(4) A witness bearing a fictitious name shall be heard by telephone pursuant to the procedure provided for in subsection 67 (5) and clause 69 (2) 2) of this Code. The participants in proceedings shall submit their questions to the person bearing a fictitious name through the judge.

(5) At the request of a party or on its own initiative, the court may allow a telehearing to be conducted pursuant to the procedure provided for in § 69 of this Code or use a partition to hide the witness form the accused. Telehearing by phone is permitted only with the consent of the accused, except for the case provided for in subsection (4) of this section.
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

(6) Witnesses who have been heard shall leave the courtroom only with the permission of the court.

§ 287[1]. Application of hearing

(1) A judge shall identify a witness and ascertain the relationship between the witness and the accused and the victim and the relationship between the victim and the accused.

(2) The personal data of a witness shall not be disclosed if the witness has been declared anonymous pursuant to § 67 of this Code in order to ensure the safety of the witness.

(3) At the beginning of hearing a witness, the court explains to the witness the legal bases for refusal to give testimony, the obligation to speak the truth in court, and obtains the signature of the witness to this effect.

(4) A judge shall warn a witness of at least fourteen years of age that he or she shall be punished pursuant to criminal procedure for his or her for refusal to give testimony without any legal basis or for giving knowingly false testimony.

(5) A witness who has been acquitted or convicted in the same criminal offence as a joint principal offender or an accomplice shall not be warned about a criminal punishment and he or she shall be explained his or her right to refuse to give testimony.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 288. Cross-examination

(1) In a cross-examination, the party to judicial proceedings at whose request the witness has been summoned to the court is the first to examine the witness. If several participants in proceedings have requested a witness to be summoned and they fail to reach an agreement concerning the right of first examination, the court shall determine who is the first to examine the witness.

(2) It is prohibited to pose leading questions during a first examination without the permission of the court. A first examination is followed by the second examination by the counter-party.

(3) Leading questions may be posed in the second examination in order to verify the testimony given in the first examination. In the second examination, leading questions shall not be posed concerning new facts without the permission of the court.

(4) The person who was the first to examine a witness may examine the witness again in order to clarify the answers given in the second examination. Leading questions may be posed without the permission of the court only concerning the new facts treated in the second examination.

(5) A court may, at the request of a party to judicial proceedings, overrule prohibited or irrelevant questions posed to a witness during cross-examination. The court may, on its own initiative, overrule questions which harm the witness' dignity.

(5^1) The provisions of § 288^1 of this Code shall be taken into account upon asking leading questions in a cross-examination and granting of permission by court.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(6) The court has the right to pose questions to a witness who has been cross-examined.

(7) Taking into consideration the mental or physical condition of a witness, the court may prohibit cross-examination and examine the witness on its own initiative or on the basis of the written questions prepared by the parties to judicial proceedings.

(8) § 66 and subsections 68 (3) and (6) of this Code apply to cross-examination.

(9) During cross-examination, a party to judicial proceedings may:
1) use visual aids which are not evidence but help to present the testimony of the witness without being misleading;
2) submit evidence and documents to the court and question the witness about their authenticity, origin and interconnection thereof;
3) allow the witness who does not remember the facts relating to a subject of proof to examine a document or another object which may help the witness to recall the facts regardless of the admissibility of such documents or objects as evidence.

(10) If a witness refuses during cross-examination to answer the question of a party to judicial proceedings, with the exception of the case prescribed in subsection (5) of this section, the court interrupts the cross-examination and decides on the use of the earlier testimony given by the witness as evidence at the request of the party on the basis of clause 291 (1) 2) of this Code regardless of the content of the testimony hitherto given in the cross-examination. In the case specified in this subsection, testimonies obtained in interrupted cross-examinations are evidence only with the consent of the parties.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 288^1. Leading questions

(1) A court may allow to pose leading questions during the first examination if the witness is clearly hostile with respect to the person who examines the witness first, clearly ties to hide the truth or absconds from replying to questions.

(2) For the purpose of a smoother progress of the hearing of a witness, a court may allow to pose leading questions in other cases if:
1) the parties consent to thereto;
2) the question pertains to a fact or contains a statement which is not contested;
3) the question is necessary to for making an introduction to the object of questioning;
4) due to the age or state of health of the witness it is difficult for him or her to understand questions which are not leading;
5) the witness states that he or she does not remember well the circumstances which are the object of the questioning.

(3) If a party has not applied from the court the exclusion of a question before commencement of replying to it, the party shall be deemed to have agreed to the question and the court need not give a separate permission for leading questions.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 288^2. Rights of victims, civil defendants, third parties and accused in cross-examination

(1) A victim, civil defendant, third party and accused are the first to examine a witness requested by them if the prosecutor or a counsel has not requested the summoning of the same person.

(2) In the cases not specified in this section, a victim, civil defendant, third party and accused may pose questions to a witness after the cross-examination with the permission of the court, if denial of the request would significantly damage the interests of the participant in proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 289. Verification of credibility of witnesses

(1) In order to verify the credibility of the testimony of a witness, the court may, at the request of a party to judicial proceedings, order that the testimony given by the witness in pre-court procedure be disclosed during cross-examination if such testimony is in conflict with the testimony given in the cross-examination.

(2) Testimony given by a witness in pre-court procedure concerning which the witness has already given testimony in cross-examination may be disclosed.

(3) In order to verify credibility, other documents or data recordings which contain earlier statements of the witness and which are in conflict with the testimony given during cross-examination may be also disclosed during cross-examination.

(4) For verification of credibility of a witness, persons to whom the witness has previously made a statement which is in conflict with the testimony given in cross-examination may be heard or interrogated.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 289[1]. Earlier testimony of witness in court as evidence with possibility of cross-examination

(1) A court may accept the earlier testimony of a witness used on the basis specified in subsection 288 (9) of this Code for proving the facts relating to the subject of proof, if:
1) the testimony is deposited; or
2) the testimony concerns the damage caused to the witness by the criminal offence that is the subject of the proceedings, the testimony was given immediately after the commission of the criminal offence and there is reason to believe that the person remembered such facts considerably better at the time of giving the testimony than during judicial proceedings.

(2) A court shall accept the earlier testimony disclosed on the basis specified in § 289 of this Code for establishment of the facts relating to a subject of proof, if such testimony has been deposited.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 290. Specifications concerning hearing of witnesses who are minors

(1) In the hearing of a witness under fourteen years of age, he or she shall not be cross-examined.

(2) A court may involve a child protection official, social worker, teacher or psychologist in the hearing of a witness under fourteen years of age who may question the witness with the permission of the judge.
[RT I, 11.07.2013, 1 – entry into force 01.09.2013]

(3) A judge shall make a proposal to a witness who is a minor of less than fourteen years of age to tell the court everything he or she knows concerning the criminal matter.

(4) After a witness who is a minor of less than fourteen years of age has given testimony, he or she shall be examined by the prosecutor and counsel in the order determined by the court. The accused may pose questions to the witness through the counsel.

(5) The court shall overrule inadmissible and irrelevant questions. With the permission of the court, leading questions may be posed to a witness.

(6) Taking into consideration the mental or physical condition and the age of a witness, the court may suspend the questioning by the parties and examine the witness on its own initiative or on the basis of the written questions prepared by the parties to judicial proceedings.

(7) If the presence of a minor is not necessary after he or she has been heard, the court shall ask him or her to leave the courtroom.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 290[1]. Specifications concerning testimony given in pre-court proceedings by witnesses who are minors

(1) A court may not summon a minor at the request of a party to judicial proceedings and allow to submit the testimony given by the minor in pre-court proceedings as evidence, provided the testimony was video recorded, and the counsel has had the opportunity to pose questions to the witness in pre-court proceedings about the facts relating to the subject of proof, if:
1) the witness is up to ten years of age and repeated hearing may have a harmful effect on the mind of a minor;
2) the witness is up to fourteen years of age and the hearing is related to domestic violence or sexual abuse;
3) the witness is with speech impairments, sensory or learning disabilities or mental disorders.

(2) If a court finds after examination of the evidence specified in subsection (1) of this section that it is necessary to question a minor about additional circumstances, the court may question the witness on its own initiative or on the basis of a written questions prepared by the parties to judicial proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 291. Earlier testimony of witness in court without possibility of cross-examination

(1) At the request of a party to judicial proceedings, a court may accept the testimony earlier given by a witness as evidence if the witness:
1) has died;
2) refuses to give testimony in the course of judicial examination;
3) is unable to give testimony due to his or her state of health;
4) the whereabouts of the witness cannot be ascertained regardless of reasonable efforts;
5) fails to appear in court due to other impediment which is permanent or which elimination costs would be disproportionately large, and the party which submitted the request has made all reasonable efforts for taking him or her to court.

(2) In the case provided for in subsection (1) of this section, a court allows to submit earlier testimony as evidence, if the testimony is deposited pursuant to the procedure provided for in § 69^1 of this Code or if the earlier hearing was conducted by a competent authority of a foreign state on the basis of a request for assistance and the person cannot be heard by way of telehearing.

(3) In the cases provided for in clauses (1) 1)-3) of this section, a court may accept, as an exception, a person's earlier testimony which are not deposited, if all of the following criteria are met:
1) the circumstances relating to giving of testimony and the witness do not give any reason to doubt the credibility of evidence;
2) a party to judicial proceedings has requested the acceptance of testimony as evidence for proving a fact relevant to the criminal matter as a whole;
3) the opposing party of the person who requests the evidence has had sufficient opportunity to submit objections to such testimony;
4) the testimony was obtained during direct or audio-video recorded telehearing.
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

§ 292. Disclosure of expert's report and hearing of expert

(1) A party to judicial proceedings may request a court to accept an expert's report as evidence. The expert's report is submitted as evidence pursuant to subsections 296 (2)-(4) of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) At the request of a party to judicial proceedings, the court may order the hearing of an expert in order to clarify or amend the content of the expert's report.

(3) An expert is heard in court pursuant to §§ 286^2-289^1 and 291 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 292^1. Hearing of qualified persons

(1) A qualified person is heard in court pursuant to §§ 286^2-289^1 and 291 of this Code.

(2) If the same person gives testimony in the criminal matter both as a qualified person as well as a witness, he or she shall be heard, if possible, in the course of one procedural operation.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 293. Interrogation of accused

(1) An accused shall be interrogated in court pursuant to § 286^2 and §§ 288-289^1 of this Code.

(2) Upon use of the interrogation of the accused, the court establishes the identity of the accused, explains to the accused the legal bases for refusal to give testimony, the obligation to speak the truth in court, and obtains the signature of the accused to this effect.

(3) The counsel is the first to interrogate the accused, unless the parties agree otherwise. After the counsel and the prosecutor have questioned the accused, the other accused and the counsels thereof may pose questions to the accused.

(4) The court may question the accused after the cross-examination.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 294. Earlier testimony of accused without possibility of cross-examination

If the accused cannot be cross-examined in a court session, a court may, at the request of a party to judicial proceedings, allow to submit as evidence the testimony given by the accused in pre-court procedure or earlier judicial hearing of this or another criminal matter, if:
1) the accused refuses to give testimony in the course of judicial examination;
2) judicial hearing takes place in the absence of the accused.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 295. Expert assessment in court

(1) A court may order an expert assessment at the request of a party to judicial proceedings or on its own initiative.

(2) The parties to judicial proceedings shall pose questions to an expert through the court and in writing. The court shall consider the questions, overrule the questions which are irrelevant or outside the specific expertise of the expert, and prepare the final questions to be submitted to the expert.

(3) The court shall disclose the final questions to be submitted to the expert and prepare an order on the expert assessment pursuant to § 106 of this Code.

(4) An expert may participate in the examination of the evidence relating to the object of an expert assessment in court and, with the permission of the court, pose questions to the participants in proceedings with regard to the facts relevant to the conduct of the expert assessment.

(5) An expert assessment shall be conducted in accordance with §§ 99-104 and 107-108 of this Code.

§ 296. Submission of data recordings, physical evidence or documents as evidence

(1) A party to judicial proceedings may request a court to accept data recordings, physical evidence or documents as evidence, taking into account the restrictions provided for in §§ 289^1, 290^1, 291, 292 and 294 of this Code.

(2) For disclosure of the minutes of investigative activities or any other documents of a criminal file, a prosecutor shall submit it to the court on his or her initiative or at the request of the other party to judicial proceedings.

(3) If the court accepts the evidence specified in subsection (1), the party to judicial proceedings which submitted the evidence shall read it out in full or in part or disclose it in another way, taking into account the nature of the specific evidence and the purpose of using thereof. Non-disclosure of evidence is allowed by agreement of parties, if the court finds that this is not contrary to the principle of public access to court sessions.

(4) A party to judicial proceedings may use, in the course of disclosure of evidence, visual aids which are not evidence but help to present the evidence without being misleading. A party may also submit physical evidence and documents to the court in the course of disclosure of evidence.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 296^1. Submission of evidence in proceedings on civil action and proof of claim in public law

(1) For adjudication of the civil action or proof of claim in public law, a participant in proceedings may additionally provide evidence which is irrelevant to adjudication of the issue of guilt.

(2) A court may propose to a participant in proceedings to provide additional evidence for adjudication of a civil action or proof of claim in public law if these do not affect resolution of the issues provided in clauses 306 (1) 1) and 2) of this Code.

(3) When providing evidence, a participant in proceedings must show which facts relevant to the matter the participant intends to prove by that evidence.

(4) Evidence must be submitted within the term determined by the court.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

§ 296^2. Dismissal of civil action and proof of claim in public law

(1) The court may dismiss a civil action or proof of claim in public law if:

1) the person in whose interests or against whom the civil action or the proof of claim in public law was filed, or the claim therein does not comply with the terms and conditions provided for in subsection 38^1(1) or (2), § 37^1or subsection 39 (1) of this Code;
2) the victim has withdrawn the civil action;
3) the victim has not paid the state fee, if payment of the state fee is mandatory pursuant to law;
4) criminal proceedings are terminated;
5) there is any other basis specified by law.

(2) Dismissal of the civil action and proof of claim in public law shall be formalised by a court order.

(3) The court shall explain to the victim that dismissal of a civil action or proof of claim in public law shall not exclude filing of the same action by way of civil or administrative court proceedings or issue in administrative proceedings of an administrative act concerning the obligation which was the basis for the proof of claim in public law.

(4) A victim may withdraw a civil action without the consent of the accused or defendant until the commencement of judicial hearing. With the consent of the accused or defendant, the victim may withdraw the civil action before the court withdraws to the chambers. The victim may withdraw the civil action without the consent of the accused or defendant before the court withdraws to the chambers, if the court finds that it is necessary for making a decision on the action within a reasonable period of time.

(5) The victim may withdraw a proof of claim in public law until the commencement of judicial hearing.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

§ 297. Taking of additional evidence in judicial examination

(1) After examination of the evidence submitted by the parties to judicial proceedings, the court may order the taking of additional evidence at the request of a party to judicial proceedings or on its own initiative.

(2) In the request, a party to judicial proceedings shall set out the reasons for the need to take additional evidence and for the failure to request taking of additional evidence earlier. The court shall resolve the taking of additional evidence by an order.

(3) The court may deny a request for the taking of additional evidence on the bases provided for in § $286^1$of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 298. Completion of judicial examination

(1) At the end of judicial examination, the judge shall ask the parties to judicial proceedings whether they would like to submit requests to supplement the judicial examination of the matter. The court shall resolve the requests by an order.

(2) After performance of additional court activities, judicial examination shall be completed and the summations shall be commenced.

(3) At the request of a party to judicial proceedings, the court shall call a recess before the summations.

Subchapter 5
Summations and Final Statement of Accused

§ 299. Procedure for summations

(1) The summations commence by the prosecution speech of the prosecutor. The victims, civil defendants and counsels shall be given the floor in the summations.

(2) The parties to judicial proceedings have the right to rebut. The counsel or the accused has the right to the final rebuttal.

§ 300. Content of summations

(1) In summations, the parties to judicial proceedings may rely only on evidence examined in the course of judicial examination.

(2) The duration of the arguments is not limited. The judge may interrupt the closing arguments if the arguments refer to circumstances outside the limits of the criminal matter.

(3) Before the court withdraws to the chambers, the parties to judicial proceedings may submit the texts of their closing arguments for appending to the minutes of the court session.

§ 301. Withdrawal of charges by prosecutor

If a prosecutor withdraws the charges during the summations, the court shall make a judgment of acquittal without continuing the proceedings.

§ 302. Resumption of judicial examination

(1) If, during the summations, it is necessary to submit new evidence which may have a material effect on resolving the criminal matter, the court may resume judicial examination by an order at the request of a party or on its own initiative.

(2) After completion of resumed judicial examination, the summations shall be recommenced.

§ 303. Final statement of accused

(1) After the summations, the judge shall give the floor to the accused for his or her final statement.

(2) The duration of the final statement is not limited. The judge may interrupt the speech of the accused if the final statement refers to circumstances outside the limits of the criminal matter.

(3) Questions shall not be posed to the accused during his or her final statement.

(4) If in his or her final statement the accused reveals new facts relevant to the criminal matter, the court shall resume judicial examination. After completion of the resumed judicial examination and the new summations, the accused has again the right to the final statement.

(5) In the case specified in subsection 267 (3) of this Code, the accused does not have the right to the final statement.

§ 304. Withdrawal of court to chambers

After the final statement of the accused, the court announces the time of pronouncement of the court judgment and withdraws to the chambers.

Subchapter 6
Making of Court Judgment

§ 305. Confidentiality of deliberations by court

(1) During the making of a court judgment, only the court panel which heard the criminal matter and the court official who is to formalise the court judgment may be present in the chambers.

(2) The deliberations held in the chambers during the making of a court judgment shall not be disclosed.

§ 305^{1}. Lawful and reasoned court judgment

(1) A court judgment shall be lawful and reasoned.

(2) The court shall base its judgment exclusively on the evidence which was the object of judicial examination, which the parties could examine and on circumstances concerning which the parties could submit their opinion.

(3) Acceptance of evidence shall not preclude declaration of the evidence inadmissible upon making the court judgment.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 306. Issues to be resolved when giving judgment and the signing of judgment

(1) When giving judgment, the court shall resolve the following issues:
1) whether the act of which the accused is accused occurred;
2) whether the act was committed by the accused;
3) whether the act is a criminal offence and on which section, subsection and clause of the Penal Code the legal assessment of the act shall be based;
4) whether the accused is guilty of the commission of the criminal offence;
5) whether mitigating or aggravating circumstances exist;
6) the punishment to be imposed on the accused;
6^{1}) whether commutation shall be granted due to exceeding of the reasonable time of proceedings;

[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
7) whether the accused is to be released from punishment or whether a substitutive punishment is to be imposed;

(7^1) [Repealed – RT I, 05.07.2013, 2 – entry into force 15.07.2013]
8) whether the accused who is a minor is to be punished for the criminal offence committed or whether non-punitive sanctions are to be applied against him or her;
9) whether new preventive measures are to be chosen or the valid preventive measure is to be maintained, altered or annulled in the case of conviction;
10) the measures to be applied with regard to the minor children of the accused who are left unsupervised, and to his or her property, if he or she is convicted and sentenced to imprisonment;
11) whether and to which extent to grant the civil action or the proof of claim in public law or compensate for the damage caused by the criminal offence;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
12) whether it is necessary to take measures for securing a civil action or proof of claim in public law, confiscation or substitution thereof;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
12^1) whether the amount ordered to be paid under substitution of confiscation is payable at one time or in parts, whereas taking into account the financial situation and chances of re-socialisation of a convicted offender, a court may extend the term for the payment of the amount ordered to be paid in full or in part for up to two years or order payment thereof in instalments on specified dates;
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]
13) how to proceed with regard to physical evidence and other objects taken, seized or subject to confiscation in the criminal procedure;
[RT I 2007, 2, 7 – entry into force 01.02.2007]
14) the expenses relating to criminal proceedings and the person who is to bear the expenses;
15) whether the document which contains the data required for payment of the claim and specified in subsection 145 (4^1) or subsection 159 (3) constitutes an annex to the decision;
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]
16) whether and to what extent to grant the request of the person to compensate for harm caused in offence proceedings pursuant to the Compensation for Harm caused in offence proceedings Act.
[RT I, 20.11.2014, 1 – entry into force 01.05.2015]

(2) The issues listed in subsection (1) of this section shall be resolved separately with respect to each accused and each criminal offence.

(3) After resolving the issues listed in subsection (1) of this section, a court judgment or the conclusion thereof shall be prepared and all the members of the court panel shall sign the judgment digitally. The assistance of a court official may be used in the formalisation of a court judgment.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(3^1) A court may make and sign a judgment on paper if compliance with the requirements provided for in subsection (3) of this section is impossible due to reasons independent of the court or members of the panel.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(4) A judge who maintains a minority position shall submit his or her dissenting opinion in writing and the opinion shall be included in the file but shall not be disclosed upon the pronouncement of the court judgment.

(5) After signing a court judgment, a court may, on its own initiative or at the request of a party to judicial proceedings, correct spelling or calculation mistakes or obvious inaccuracies in the court judgment if such corrections do not affect the content of the judgment. The mistakes shall be corrected by an order the copy of which is sent to persons to whom a copy of the judgment containing mistakes was issued.

§ 307. Resumption of judicial hearing

(1) When making a court judgment, a court may resume judicial examination or the summations by an order, if:
1) a need arises to further ascertain facts relevant for resolving the criminal matter;
2) the bases provided for in subsection 268 (6) of this Code become evident;
3) the court identifies an error in the proceedings which is relevant to the making of the court judgment and the error can be corrected.

(2) In the case specified in clause (1) 2) of this section, a court may conduct resumed proceedings by written procedure by granting a reasonable term to the parties to judicial proceedings for responding to the questions of the court. A court hearing shall be held at the request of the accused or counsel.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 308. Imposition of sanctions on minors and young adults

[RT I, 05.12.2017, 1 – entry into force 01.01.2018]
If a court finds as a result of the hearing of a criminal matter that a person who committed a criminal offence as a minor or under the conditions provided for in subsection 87 (7) of the Penal Code when the person was under

the age of twenty-one can be influenced without imposing a punishment, the court shall impose the sanctions provided for in § 87 of the Penal Code.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

§ 309. Types and preparation of court judgment

(1) A court judgment is either a judgment of acquittal or a judgment of conviction.

(2) A judgment of acquittal is made if a criminal act or a criminal offence is not established in judicial hearing, commission of the criminal offence by the accused is not proved or the prosecutor withdraws the charges.

(3) A judgment of conviction is made if the court finds as a result of judicial hearing that commission of the criminal offence by the accused is proved.

§ 310. Decision concerning civil action and proof of claim in public law

[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(1) If a court makes a judgment of conviction, the court shall grant the civil action or proof of claim in public law in full or in part or deny or dismiss it.

(2) If a court makes a judgment of acquittal or terminates criminal proceedings, the civil action or proof of claim in public law shall be dismissed.

(3) If adjudication of a civil action or proof of claim in public law cannot be ensured without unreasonable adjournment of the hearing of the criminal matter, the court may rule until making of the judgment that the civil action or proof of claim shall be adjudicated in part or in full by a separate judgment. In this case the court may make at first a partial judgment whereby the issues provided in clauses 306 (1) 1)-10) and 12)-14) are resolved.

(4) In the case provided for in subsection (3) of this section, the court shall continue conducting the proceedings on the civil action or proof of claim in public law with the same or, by a decision of the chairman of the court, with a different panel after entry into force of partial judgment of conviction. The factual circumstances established in the partial judgment of conviction are deemed to be proved upon adjudication of the civil action or proof of claim.

(5) Parties to judicial proceedings provided for in subsection (4) of this section include victims, accused, defendants and third parties whose rights or obligations may be adjudicated in the proceedings, and the Prosecutor's Office, if the victim is the state, local authority or another public authority and the Prosecutor's Office has filed the civil action or proof of claim in public law instead of the representative thereof in accordance with subsection $38^{1}(3^{1})$, (3^{2}) or (3^{3}) of this Code.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

(6) If a partial judgment of conviction is annulled as a result of appellate or cassation proceedings and the criminal matter is referred for a new hearing with regard to the issue of quilt of the person to a lower court which is conducting proceedings on the separated civil action or proof of claim in public law, the hearing of the civil action or proof of claim and the criminal matter shall again be joined in single proceedings.

(7) If the court makes the judgment provided by subsection (3) of this section, the victim may withdraw the civil action or proof of claim in public law until separate proceedings on these are commenced.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

§ 310^{1}. Decision concerning restraining order

(1) At the request of the victim, the court may apply, for protection of private life or other personality rights of the victim on the basis of § 1055 of the Law of Obligation Act, a restraining order with a term of up to three years to an offender convicted of a crime against the person or against a minor.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

(1^{1}) A court may apply a restraining order together with the electronic surveillance provided for in § $75^{1}$of the Penal Code with the consent of the suspect or accused. The term of the electronic surveillance may be up to twelve months.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(2) A court shall resolve a request for restraining order in accordance with the rules provided in § 310 of this Code.

§ 311. Introduction of court judgment

The introduction of a court judgment shall set out:
1) that the court judgment is made on behalf of the Republic of Estonia;
2) the date and place of making the court judgment;
3) the name of the court which made the judgment, the composition of the panel of the court and the given names and surnames of the prosecutor, counsels, interpreters, translators and the clerk of the court session;
4) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth and the place of work or educational institution of the accused;
5) the criminal record of the accused;
6) the section, subsection or clause of the Penal Code which provides for the criminal offence for which the accused has been prosecuted or of which he or she is accused according to the charges amended pursuant to § 268 of this Code.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 312. Main part of court judgment

The main part of a court judgment shall set out:
1) the facts found to be proved in the court hearing, and the evidence relied upon;
2) the evidence which the court deems to be unreliable and the reasons therefor;
3) the facts which the court has deemed to be a matter of common knowledge and on which the court relied when making the judgment;
4) the mitigating and aggravating circumstances;
5) the reasons for the punishment imposed on the accused;
6) the reasons for the amendment of the charges, release from punishment, imposition of a substitutive punishment, imposition of a punishment lesser than the minimum rate or term provided for in the Penal Code or for deferral of the execution of the court judgment;

(6^1) [Repealed – RT I, 05.07.2013, 2 – entry into force 15.07.2013]
7) the reasons for application, alteration or annulment of preventive measures;
8) the decision made on the civil action or proof of claim in public law;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
8^1) a decision on a request to compensate for harm caused in offence proceedings pursuant to the Compensation for Harm caused in offence proceedings Act;
[RT I, 20.11.2014, 1 – entry into force 01.05.2015]
9) the provisions of procedural law pursuant to which the judgment was made.

§ 313. Conclusion of judgment of conviction

(1) The conclusion of a judgment of conviction shall set out:
1) the name of the accused;
2) the conviction of the accused pursuant to the corresponding section, subsection or clause of the Penal Code;
3) the categories and the rates or terms of the punishments imposed on the accused for each of the criminal offences, and the aggregate punishment to be served;
4) in the case of probation, the duration of the period of probation and a list of the duties imposed on the accused;
5) reduction of the imposed punishment by one-third pursuant to subsection 238 (2) of this Code in the event of application of alternative procedure;
5^1) reduction of the punishment in the case of a criminal offence related to competition pursuant to subsection 205^1(3) of this Code, if applicable;
[RT I 2010, 8, 34 – entry into force 27.02.2010]
6) the time of commencement of the service of the sentence;
6^1) [Repealed – RT I, 05.07.2013, 2 – entry into force 15.07.2013]
7) circumstances relating to the execution of the court judgment;
8) the preventive measures chosen by the court, or alteration or annulment of the preventive measures applied previously;
9) the measures to be applied with regard to the unsupervised children and property of the convicted offender;
10) the decision resolving the civil action or proof of claim in public law and measures to secure the civil action or proof of claim in public law;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
10^1) a notation with regard to whether the victim has filed the request provided for in clause 38 (5) 2) or 4) of this Code;
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]
11) the measures to be applied with regard to the physical evidence and other objects confiscated or seized in the criminal proceedings;
12) the decision concerning the expenses relating to the criminal proceedings;
12^1) a decision on a request to compensate for harm caused in offence proceedings pursuant to the Compensation for Harm caused in offence proceedings Act;
[RT I, 20.11.2014, 1 – entry into force 01.05.2015]
13) the rules governing appeals and term for appeals against the court judgment.

(2) If charges have been brought against the accused for several criminal offences or pursuant to several sections of the Penal Code, the conclusion of the court judgment shall set out the charges on which the accused is acquitted and the charges on which he or she is convicted.

§ 314. Conclusion of judgment of acquittal

The conclusion of a judgment of acquittal shall set out:
1) the name of the person acquitted;
2) the acquittal of the accused pursuant to the relevant section, subsection and clause of the Penal Code;
3) annulment of the preventive measures;
4) annulment of the measures to secure civil action or proof of claim in public law;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
5) the measures to be applied with regard to the physical evidence and other objects confiscated or seized in criminal proceedings;
5^{1}) removal of the data contained in the National Fingerprint Database, the ABIS Database and the National DNA Database;
[RT I, 08.07.2021, 1 – entry into force 15.07.2021]
6) a decision on a request to compensate for harm caused in offence proceedings pursuant to the Compensation for Harm caused in offence proceedings Act;
[RT I, 20.11.2014, 1 – entry into force 01.05.2015]
7) the procedure and term for appeal against the court judgment.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 315. Pronouncement of court judgment and explanation of right of appeal

(1) A judge or, in the case specified in subsection 18 (1) or (3) of this Code, a presiding judge shall pronounce a court judgment at the time announced pursuant to § 304 of this Code.

(2) If the accused is not proficient in the language of criminal proceedings, the court judgment shall be interpreted or translated for him or her after the pronouncement of the judgment.

(3) The judge shall ask whether the person acquitted or convicted understands the court judgment and explain the content of the judgment to him or her if necessary.

(4) A court may decide to pronounce only the conclusion of the judgment, in which case the court shall explain the main reasons for the court judgment orally upon the pronouncement of the judgment.

(5) After the pronouncement of a court judgment or the conclusion thereof the judge or presiding judge shall:
1) upon the pronouncement of the conclusion of the court judgment, give notification of the date on which the court judgment will be accessible in court for examination by the parties to judicial proceedings and shall make a corresponding notation in the minutes of the court session;
2) give notification of the term for appeal against the court judgment and explain the procedure for appeal provided for in § 318 of this Code and the possibility to waive the right of appeal;
3) explain that the county court must be notified of the intention to exercise the right of appeal in writing within seven days as of the pronouncement of the conclusion of the court judgment, and explain the consequences of notification of the intention to exercise this right pursuant to the second sentence of subsection 319 (1) of this Code.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(6) Waiver of the right of appeal shall be recorded in the minutes of the court session. A counsel may waive the right of appeal only with the written consent of the person defended.

(7) If all parties to judicial proceedings waive the right of appeal or if during the term provided for in clause (5) 2) of this section none of the parties to judicial proceedings gives notification of the intention to exercise the right of appeal, only the information provided for in § 311, 313 or 314 of this Code shall be set out in the court judgment.

(8) If the parties to judicial proceedings do not waive the right of appeal, the full court judgment shall be prepared within fifteen days as of the date on which the county court is notified of an intention to exercise the right of appeal.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

§ 315^{1}. Publication and postponement of time of pronouncement of court judgment and making thereof accessible

(1) The time of publication of the conclusion of a court judgment and making the court judgment accessible to the parties and the changes thereto shall be published immediately after the determination thereof on the

website of a court indicating the number of the criminal matter, the name of the accused who is an adult and the initials of the accused who is a minor and the legal assessment of the criminal offence in which the person is accused pursuant to the relevant section, subsection and clause of the Penal Code. In the case of a judgment made in closed proceedings, the time when the judgment is made public and the changes thereto, the number of the criminal matter and a reference to the fact that the proceedings were conducted as closed proceedings shall be published. The time of making the judgment public shall be removed from the website when 30 days have passed as of making the judgment public.

(2) Amendment of the time of pronouncement of a court judgment or the conclusion thereof and of making the court judgment accessible to the parties shall be formalised by an order which sets out the new time of pronouncement of a court judgment or the conclusion thereof or of making the court judgment accessible to the parties. The order shall be accessible to the parties to judicial proceedings for examination in court not later than on the date for which the pronouncement of a court judgment or the conclusion thereof or of making the court judgment accessible to the parties was initially determined.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 316. Release of accused held in custody upon making of court judgment

The accused who is held in custody shall be released immediately in the courtroom if he or she is:
1) acquitted;
2) released from punishment;
3) he or she is not sentenced to imprisonment.

§ 317. Issue of copies and printout of judgments

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

(1) A court judgment may be examined in court after the judgment has been pronounced or made public. At the request of a party to judicial proceedings, a copy or printout of the court judgment shall be submitted to him or her. A court shall send a copy of the decision to a party to judicial proceedings who did not participate in the pronouncement of the judgment.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) If the accused is held in custody, a copy or printout of the court judgment shall be sent to or served on him or her immediately after the court judgment has been pronounced or communicated through the court.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

Chapter 11
PROCEDURE FOR APPEALS

Subchapter 1
Appealing to Circuit Court

§ 318. Right of appeal

(1) If a party to judicial proceedings does not consent to the judgment of the court of first instance, the party has the right to file an appeal. The party to judicial proceedings who files an appeal is the appellant in proceedings on that appeal.

(2) A defendant may file an appeal concerning the civil action or proof of claim in public law.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(2^1) The third party may file an appeal against a court judgment with regard to his or her rights or freedoms which are protected by law.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

(2^2) A person may file an appeal even if he or she finds that he or she should have been involved in the proceedings as a victim or a third party. In this case a circuit court shall decide in preliminary proceedings by an order whether the person has to be involved in the proceedings as a victim or a third party.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(3) An appeal may not be filed:
1) by the accused against a judgment of acquittal made by alternative procedure or expedited procedure;
2) by the Prosecutor's Office against a judgment of conviction made by alternative procedure or expedited procedure, except in the part where a civil action or claim of proof in public law is denied or it is granted partially, if the victim is the state, local authority or another public authority and the Prosecutor's Office has filed the civil action or proof of claim in public law instead of the representative thereof in accordance with subsection $38^1(3^1)$, (3^2) or (3^3) of this Code;

[RT I, 05.02.2019, 2 – entry into force 15.02.2019]
3) against a judgment made by summary procedure;
4) against a judgment made by settlement procedure, except in the cases specified in subsection (4) of this section;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
5) by the Prosecutor's Office against a judgment of acquittal made on a basis provided for in § 301 of this Code.

(4) A party to judicial proceedings may file an appeal against a judgment made by settlement procedure in the case of a violation of the provisions of Subchapter 2 of Chapter 9 or subsection 339 (1) of this Code. The accused and the counsel may also file an appeal against a judgment made by settlement procedure in the case the act described in the settlement is not a criminal offence, the legal assessment thereof according to the Penal Code is incorrect or if a punishment which is not prescribed by law is imposed on the accused.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 319. Term for appeal

(1) The court which made the conclusion of a judgment shall be notified in writing of a wish to exercise the right of appeal within seven days as of the pronunciation of the judgment. If a party to judicial proceedings gives notification of the intention to exercise the right of appeal during the specified term and does not waive it, the remaining parties to judicial proceedings have the right of appeal regardless of whether they themselves have given notification of the intention to exercise the right of appeal. Notice of the intention to exercise the right of appeal may be also given by electronic means.

(2) An appeal is submitted to a circuit court in writing within 15 days as of making the judgment public.

(3) The accused under arrest or his or her counsel may file an appeal within 15 days as of the date following the date of service of a copy of the court judgment on the accused.

(4) The appeal shall be dismissed and returned on the basis of a court order if the term for appeal has expired.

(5) A term for appeal shall suspend upon submission of an application for state legal aid. In such case the term of appeal shall recommence as of the service of the order on adjudication of an application for state legal aid on the counsel or as of refusal to grant state legal aid.

(6) If the court, when resolving a criminal matter, declares in the conclusion of its judgment the legislation of general application subject to application to be in conflict with the Constitution and refuses to apply the legislation of general application, the term for appeal against the legislation of general application which is not applied shall be calculated as of pronunciation of the decision made by way of constitutional review of the Supreme Court.

(7) A circuit court may restore a term for appeal at the request of the appellant if the court finds that the term was allowed to expire for good reason. The circuit court shall make an order on the restoration of or refusal to restore the term.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 320. Requirement to submit court 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 court file. After receipt of a request to submit a court file, the county court shall immediately send it to the circuit court.

(2) The accused has the right to examine the court file through his or her counsel.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 321. Appeal

(1) Appeals shall be prepared in typewritten form. The accused held in custody may also prepare an appeal in clearly legible handwriting. Appeals prepared by the Prosecutor's Office or a counsel shall be also forwarded to a court by electronic means.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(2) An appeal shall set out:
1) the name of the circuit court with which the appeal is filed;
2) the name, status in the proceedings, residence or seat and address and telephone number of the appellant;
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

3) the name of the court which made the judgment, the date of the judgment, and the name of the accused with regard to whom the judgment is contested;
4) which part of the court judgment is contested, the content of and reasons for the claims of the appellant, and the requests of the appellant;
5) the evidence to be examined in the circuit court at the request of the appellant, and the name and residence or seat and address of the person requested to be summoned to a session of the court of appeal;
5^1) whether the appellant requests an oral procedure;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
6) whether the accused wishes to participate in the hearing of the criminal matter in the circuit court or requests that the criminal matter be heard without his or her participation;
7) whether the accused chooses his or her counsel in the appeal proceedings himself or herself or requests the court to appoint a counsel;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
8) a list of the documents appended to the appeal.

(3) An appeal shall be signed and dated by the appellant.

(4) If the accused chooses his or her counsel himself or herself, the address and the telephone number of the counsel shall be indicated in the appeal.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(5) Copies of an appeal for the accused whose interests are concerned by the appeal shall be appended to the appeal. The accused held in custody is not required to append copies of the appeal.

(6) In an appeal, the appellant may rely on evidence not examined in the county court only if he or she submitted the evidence to the county court and it was not accepted or if he or she was unable to submit the evidence to the county court for a good reason not depending on him or her.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 321[1]. Amendments to appeals

(1) An appellant may amend and supplement a submitted appeal until the end of the term for appeal, and also extend the appeal to the parts of the court judgment which were initially not appealed. Upon amendments to appeals, the provisions concerning appeals shall be observed.

(2) The provisions of subsection (1) of this section do not preclude or restrict the appellant's right to submit allegations concerning the interpretation of law, objections against the submissions of the other party to appeal proceedings in those proceedings, or the right to submit new facts or circumstances which arose or became known to the appellant after the expiry of the term for appeal.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 322. Notification of appeal

(1) A circuit court shall give notification of the filing of an appeal to such parties to judicial proceedings whose interests are concerned by the appeal within three days as of the receipt of the appeal.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) Together with the notice, a copy of the appeal shall be sent to the accused whose interests are concerned by the appeal.

(3) A party to judicial proceedings has the right to submit written explanations and objections concerning an appeal to the circuit court within seven days as of the receipt of a notice concerning the filing of the appeal.

(4) An objection of a party to judicial proceedings shall set out whether oral procedure is requested.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 323. Refusal to proceed with or dismissal of appeal by court which made judgment

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

§ 324. Referral of court file to circuit court

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

Subchapter 2
Preliminary Proceedings in Circuit Court

§ 325. Preparation for judicial hearing in the circuit court

(1) In the course of preparations for the judicial hearing of a criminal matter, the court shall:

1) verify the jurisdiction over the criminal matter and compliance with the requirements provided for in §§ 318, 319, 321 and 322 of this Code;
2) hold a preliminary hearing if the grounds provided for in § 327 of this Code become evident.

(2) If the requirements provided for in §§ 318, 319, 321 and 322 of this Code are complied with and there are no bases for holding a preliminary hearing, the judge shall determine the time of the court session and perform the acts provided for in §§ 329 and 330 of this Code.

§ 326. Refusal to proceed with appeal or dismissal of appeal

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

(1) If an appeal is not in compliance with the requirements provided for in § 321 of this Code, the judge shall, by an order, refuse to proceed with the appeal and set a term for the elimination of deficiencies.

(2) A judge shall prepare an order on dismissal of the appeal and return the appeal to the appellant if:
1) the appeal was filed after the expiry of the term for appeal provided for in § 319 of this Code and a request for restoration of the term has not been filed or the court has refused to restore the term;
2) the appellant fails to notify the court which made a judgment in writing of the intention to exercise the right of appeal during the term provided for in subsection 319 (1) of this Code, if notification is mandatory;
3) the appeal was filed by a person who, pursuant to § 318 of this Code, does not have the right of appeal;
4) the appellant has failed to eliminate the deficiencies contained in the appeal within the term or to substantiate such failure;
5) the appeal is discontinued before the beginning of the court session.

(3) A circuit court may also dismiss an appeal if the court panel hearing the criminal matter unanimously finds that the appeal is clearly unfounded.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 327. Grounds for holding preliminary hearings in circuit court

(1) A preliminary hearing shall be held:
1) if a material violation of criminal procedural law provided for in subsection 339 of this Code is established which cannot be eliminated in appeal proceedings;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
2) in other cases where the judge considers the holding of a preliminary hearing necessary.

(2) Preliminary hearings shall be held pursuant to subsections 259 (2)-(4) and §§ 260 and 261 of this Code by a panel of at least three judges.

§ 328. Jurisdiction of court in preliminary proceedings

(1) A judge or, in a preliminary hearing, a court shall:
1) make an order directing the criminal matter to be heard under the procedure for appeals if there are no circumstances which may hinder proceedings or if such circumstances can be eliminated;
2) annul the court judgment by an order and send the criminal matter for a new hearing to the court of first instance on the grounds provided for in § 339 of this Code;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
3) resolve other issues relating to preparations for the judicial hearing by an order.

(2) Within three days after a court order is made, a copy of the order shall be sent to the parties to the judicial proceedings whose interests are concerned by the order.

§ 329. Ordering of hearing of criminal matter in circuit court

(1) An order directing the criminal matter to be heard under the procedure for appeals shall set out:
1) the date and place of the court session;
2) the names of the persons summoned to the court session;
3) whether the criminal matter is to be heard in a public court session or in camera.

(2) An order shall set out any requests that were denied. Appeals may not be filed against the denial of a request but the request may be re-submitted at judicial hearing.

§ 330. Summoning to court session

The parties to judicial proceedings shall be summoned to a session by a summons pursuant to §§ 163-169 of this Code.

Subchapter 3
Judicial Hearing in Circuit Court

§ 331. Rules for and scope of hearing of criminal matter under procedure for appeals

(1) A circuit court shall hear a criminal matter under the procedure for appeals pursuant to the provisions of Chapter 10 of this Code, taking into account the specifications provided for in this Subchapter. The provisions of §§ 163^1 and 268^1 of this Code do not apply at judicial hearing in the circuit court.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

(1^1) Generally, a circuit court shall consider a criminal matter by written procedure. In this case, the circuit court shall determine and announce to the parties to appeal proceedings:
1) the court panel;
2) the term during which the parties to appeal proceedings may submit their written positions and petitions of challenge and other requests to the court, and the method for submission thereof;
3) the time and method for making the judgment public;
4) other circumstances which the circuit court deems necessary.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(1^2) A criminal matter shall be considered by oral procedure if this has been requested by a party to appeal proceedings or if this is deemed necessary by the circuit court.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(1^3) If a summons cannot be served on the appellant using the contact details of the appellant as indicated in the appeal, a court may dismiss the appeal or consider the appeal by written procedure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) A circuit court shall hear a criminal matter within the limits of the appeal filed.

(3) A circuit court shall extend the limits of hearing a criminal matter to all the persons accused regardless of whether an appeal has been filed with regard to them, if a material violation of criminal procedural law or incorrect application of substantive law which has aggravated the situation of the accused becomes evident.

(4) An appellant or the other parties to judicial proceedings do not have the right to exceed the scope of the appeal at judicial hearing of the criminal matter.

§ 332. Court sessions in circuit court

(1) Upon application of a court session in a circuit court, the presiding judge shall:
1) open the court session and announce the criminal matter to be heard and the name of the person who filed the appeal;
2) ascertain whether the persons summoned have appeared in the session;
3) ascertain the reasons for failure to appear when summoned;
4) involve an interpreter or translator, if necessary, pursuant to subsection 161 (1) of this Code;
5) identify the accused and explain the rights prescribed in § 35 of this Code to him or her and verify whether the accused and his or her counsel have had enough time to prepare for the court session following their receipt of a copy of the appeal;
6) perform the procedural operations listed in §§ 280^1-284 of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(2) The presiding judge or a member of the court panel shall present the content of the appealed part of the court judgment, the reasons for the appeal, and the requests, and give an overview of the documents received.

(3) After the presentation, the presiding judge shall explain the right to discontinue the appeal and the consequences of discontinuance to the appellant pursuant to § 333 of this Code and ask whether the appellant will proceed with the appeal or discontinue the appeal in full or in part.

§ 333. Discontinuance of appeal

(1) An appellant has the right to discontinue the appeal in full or in part before the end of the summations. Discontinuance of the appeal is binding on the circuit court, except in the cases provided for in subsection (6) of this section.

(2) A counsel may discontinue an appeal of the accused only with the written consent of the person being defended.

(3) An authorised representative may discontinue an appeal only at the written request of the principal.

(4) The accused may discontinue an appeal of the counsel, except in the cases where the participation of a counsel in criminal proceedings is mandatory pursuant to subsection 45 (2) of this Code.

(5) If an appeal is discontinued before the beginning of the court session, the appeal shall be dismissed by a court order. If an appeal is discontinued during judicial hearing, appeal proceedings shall be terminated by a court order.

(6) If a circuit court ascertains that a court of first instance has incorrectly applied substantive law when resolving the criminal matter and has thereby aggravated the situation of the accused or that a court of first instance has materially violated criminal procedural law, the hearing of the criminal matter shall be continued regardless of discontinuance of the appeal.

(7) If the appeal is dismissed or appeal proceedings are terminated due to discontinuance of the appeal, the judgment of the court of first instance shall, in the absence of other appeals, enter into force as of the making of the court order.

(8) An appellant who has discontinued the appeal does not have the right to contest the judgment of the circuit court by way of cassation proceedings unless the circuit court has extended the limits of the hearing of the criminal matter pursuant to subsection 331 (3) of this Code.

§ 334. Participation of accused and other parties to judicial proceedings in circuit court sessions

(1) A circuit court may hear a criminal matter in the absence of the accused with regard to whom the court judgment has been contested if:
1) the accused has received the summons and a copy of the appeal and notified the court that he or she does not wish to participate in the court session;
2) the accused has received the summons and a copy of the appeal and requested adjournment of judicial hearing for a reason which the court does not deem to be good reason;
3) the accused has received the summons and a copy of the appeal and has failed to appear at the court session;
4) the accused has been removed from the courtroom on the basis of subsection 267 (1) of this Code;
5) [Repealed – RT I, 20.12.2019, 1 – entry into force 30.12.2019]

(2) Participation of the other parties to judicial proceedings in a circuit court session shall be decided by the court pursuant to the procedure provided for in §§ 270-273 of this Code.

(3) A circuit court may organise the participation of the parties to the court proceeding in a circuit court session by means of any technical solutions which comply with the requirements specified in clause 69 (2) 1) of this Code.
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

(4) If an appellant fails to appear at a court session without giving the court a good reason for failure to appear or has not substantiated it, the court may dismiss the appeal by an order or hear the criminal matter in the absence of the appellant.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 335. Judicial examination in circuit court

(1) In a circuit court, judicial examination shall be conducted pursuant to the provisions of §§ 286-298 of this Code.

(2) In the course of judicial examination, a circuit court may disclose the minutes of a session of the court of first instance.

§ 336. Summations

(1) The summations commence by the arguments of the appellant. Thereafter, the other parties to judicial proceedings shall be given the floor in the order determined by the court. The parties to judicial proceedings have the right to rebut. The counsel or the accused has the right to the final rebuttal.

(2) The duration of the arguments is not limited. The presiding judge may interrupt the arguments if the limits of the appeal are exceeded.

(3) After the summations, the court shall announce the date when the decision will be accessible to the parties to judicial proceedings in the circuit court. The court may pronounce the judgment or the conclusion of the judgment immediately after deliberations.

§ 337. Jurisdiction of circuit court in making of decision

(1) A circuit court may, by a judgment:
1) refuse to amend a judgment of a court of first instance, and deny the appeal;
2) refuse to make substantive amendments to a judgment of a court of first instance and make corrections thereto;
3) amend the main part of a judgment of a court of first instance and exclude facts presented therein;
4) annul a judgment of a court of first instance in full or in part and make a new judgment.

(2) A circuit court may, by an order:
1) annul a court judgment and terminate criminal proceedings on the grounds precluding criminal procedure pursuant to clauses 199 (1) 2)-6) of this Code;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
2) annul a court judgment in full or in part and return the criminal matter to the court of first instance for a new hearing;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
3) annul the court judgment made by settlement procedure in full and send the criminal file to the Prosecutor's Office.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 338. Grounds for annulment of court judgment under procedure for appeals

The grounds for the annulment of a court judgment under the procedure for appeals are:
1) one-sidedness or insufficiency of judicial examination;
2) incorrect application of substantive law;
3) material violation of criminal procedural law;
4) non-conformity of the imposed punishment or any other sanction with the degree of the criminal offence or the person of the convicted offender.

§ 339. Material violation of criminal procedural law

(1) Violation of criminal procedural law is material if:
1) the decision is made in a criminal matter by an unlawful court panel;
2) the criminal matter is heard in the absence of the accused although the participation of the accused in the hearing of the matter is mandatory;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
3) judicial proceedings were conducted without the participation of a counsel although the participation of the counsel is mandatory;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
4) judicial proceedings were conducted without the participation of a prosecutor although the participation of the prosecutor is mandatory;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
5) the confidentiality of deliberations is violated in the making of a court judgment;
6) a court judgment is not signed by all members of the court panel;
7) a court judgment does not contain the reasons for the judgment;
8) the conclusions presented in the conclusion of a court judgment do not correspond to the facts established with regard to the subject of proof;
9) a criminal matter is heard without the participation of an interpreter or translator in a language in which the accused is not proficient;
10) minutes are not taken of a court session, with the exception of the matters heard by summary procedure;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
11) [Repealed – RT I, 19.03.2015, 1 – entry into force 29.03.2015]
12) the principle of fair and equitable judicial procedure was violated at judicial hearing.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) A court may declare any other violation of criminal procedural law to be material if such violation results or may result in an unlawful or unfounded court judgment.

§ 340. Making of new judgment in circuit court

(1) A circuit court shall make a new judgment on the basis of a request submitted in an appeal or regardless of such request if the court ascertains incorrect application of substantive law or material violation of criminal procedural law which has aggravated the situation of the accused.

(2) If a circuit court makes a new judgment, the court may:
1) acquit the accused with regard to all the criminal offences;
2) acquit the accused with regard to some of the criminal offences and impose a lesser punishment or refuse to amend the punishment;
3) convict the accused of a lesser criminal offence and impose a lesser punishment or refuse to amend the punishment;
4) annul the judgment of the court of first instance as regards imposition of the punishment and impose a lesser punishment on the accused;

5) annul the court judgment with regard to the civil action or proof of claim in public law;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
6) annul the court judgment with regard to issues provided for in §§ 313 and 314 of this Code.

(3) If incorrect application of the provisions of substantive law is ascertained, the court shall apply the provisions of subsection (1) of this section also with regard to the other accused persons regardless of whether they have filed an appeal.

(4) On the basis of an appeal filed by the Prosecutor's Office or a victim, a circuit court may:
1) convict the accused of a more serious criminal offence and impose a more severe punishment or refuse to amend the punishment;
2) annul the judgment of acquittal and make a judgment of conviction;
3) convict the accused of a criminal offence with regard to which he or she has been acquitted, and impose a punishment on him or her;
4) annul the judgment of the court of first instance in the part of the punishment and impose a more severe punishment;
5) annul the court judgment with regard to issues provided for in §§ 313 and 314 of this Code.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 341. Return of criminal matters to the court of first instance to be heard anew

(1) If a circuit court establishes material violation of criminal procedural law pursuant to clauses 339 (1) 1)-5) or 9)-10) of this Code, its shall annul the court judgment and return the criminal matter to the county court to be heard anew by a different court panel.

(2) If a circuit court establishes material violation of criminal procedural law pursuant to clauses 339 (1) 6)-8) or 11) of this Code, its shall annul the court judgment and return the criminal matter to the county court to be heard anew by the same or a different court panel.

(3) If a circuit court establishes material violation of criminal procedural law specified in clause 339 (1) 12) or subsection (2) of this Code which cannot be eliminated in appeal proceedings, it shall annul the court judgment and return the criminal matter to the county court to be heard anew by the same or a different court panel.

(4) The circuit court shall determine in which part the judicial proceedings are to be supplemented or repeated at the county court when it sends the criminal matter to be heard anew by the same court panel. If the material violation of criminal procedural law only concerns the making of a court judgment, the circuit court shall send the criminal matter to the circuit court for making a new court judgment. Regardless of what is indicated in the order of the circuit court, the county court shall perform, when hearing the criminal matter anew, additional procedural operations which are necessary, in the opinion of the court, for dealing with the criminal matter justly.

(5) If a circuit court annulled a court judgment only on the basis of an appeal of the accused or counsel, the court of first instance may, when hearing the criminal matter anew, convict the accused of a more serious criminal offence but shall not impose a more severe punishment on the accused than the punishment imposed by the annulled judgment of the court of first instance. In the case specified in the previous sentence, the court shall not apply any other legal consequences to the accused which would aggravate the situation of the accused in comparison with the annulled judgment of the court of first instance.

(6) If one of the bases for the annulment of a court judgment by a circuit court was the appeal of the Prosecutor's Office or a victim which applied for aggravation of the situation of the accused, the courts of first instance may aggravate the situation of the accused when re-haring the criminal matter. The court of first instance may, in a new hearing of the criminal matter, aggravate the situation of the accused even in the case this was applied for in the appeal of the Prosecutor's Office or the victim and which reasons the circuit court was unable to assess upon referral of the criminal matter for hew hearing.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 341[1]. Annulment of court judgments made by settlement procedure and return of criminal files to Prosecutor's Office

A circuit court shall annul a court judgment made by settlement procedure and return the criminal file to the Prosecutor's Office if it establishes that:
1) the act described in the settlement is not a criminal offence or the legal assessment thereof according to the Penal Code is incorrect;
2) a punishment which is not prescribed by law is imposed on the accused;
3) the provisions of Subchapter 2 of Chapter 9 or subsection 339 (1) of this Code have been violated and such violation cannot be eliminated in judicial proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 342. Judgment of circuit court

(1) A judgment of a circuit court shall be made pursuant to §§ 305-314 of this Code, taking into account the specifications provided for in this section.

(2) The introduction of a judgment of a circuit court shall set out:
1) the appealed court judgment;
2) the content of the appealed part of the judgment of the court of first instance and the content of the requests of the appellant.

(3) If a circuit court refuses to amend a judgment of a court of first instance pursuant to clauses 337 (1) 1) and 2) of this Code, the court:
1) need not repeat the facts set out in the main part of the judgment of the court of first instance in the judgment of the circuit court and may, if necessary, add the reasoning of the circuit court;
2) may limit the judgment thereof to the introduction, conclusion and the provisions of procedural law pursuant to which the judgment was made.

§ 342[1]. Obligation to comply with decision of circuit court

The positions of a circuit court concerning the interpretation and application of a provision of law contained in the decision of the circuit court whereby a judgment of a county court is annulled are mandatory to the court which made the annulled judgment in the new hearing of the matter.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 343. Pronouncement of judgment of circuit court and service of copies of judgment

(1) After the summations, the circuit court shall announce the time when the court judgment is pronounced or the day when the decision will be accessible to the parties to judicial proceedings at circuit court.

(2) If a circuit court pronounces a court judgment or the conclusion of the judgment immediately after deliberations, provisions of §§ 315 and 316 of this Code apply.

(3) Copies of a judgment of a circuit court shall be served in accordance with § 317 of this Code.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 343[1]. Return of criminal file on referring the criminal matter to be heard anew under general procedure by the court of first instance

(1) When a circuit court refers a criminal matter heard under general procedure to the court of first instance to be heard anew by a different panel of the court, the circuit court shall send to the county court, together with its order, only the materials of the criminal matter specified in § 226 and subsection 268 (2) of this Code. The remainder of the court file shall be returned to the Prosecutor's Office which shall append it to the criminal file.

(2) The parties to judicial proceedings have the right to examine the materials of the court file appended to the criminal file pursuant to the procedure provided for in § 224 of this Code.

(3) In the cases not specified in subsection (1) of this section, the whole court file shall be sent to the county court upon entry into force of the order of the circuit court.

(4) If it becomes evident in the county court that the criminal matter cannot be re-heard by the same court panel, the county court shall return the materials of the criminal matter not specified in the first sentence of subsection (1) of this section to the Prosecutor's Office.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

Chapter 12
CASSATION PROCEDURE

Subchapter 1
Appeal to Supreme Court

§ 344. Right of appeal in cassation

(1) A party to judicial proceedings has the right of appeal in cassation on the grounds provided for in § 346 of this Code, if:
1) the right of appeal has been exercised in the interests or against the party;
2) a circuit court has amended or annulled the judgment of a county court.

(2) The person who files a civil action and proof of claim in public law and defendants have the right of appeal in cassation as concerns a civil action or proof of claim in public law.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

(2^1) A third party may file an appeal in cassation against a court judgment with regard to his or her rights or freedoms which are protected by law.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

(2^2) A person may file an appeal in cassation also when if he or she finds that he or she should have been involved in the proceedings as a victim or a third party. In this case the Supreme Court, when deciding on the acceptance of the appeal, shall also decide whether the person is to be joined to proceedings as a victim or as a third party.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(3) The following have the right to file an appeal in cassation:
1) the Prosecutor's Office;
2) an attorney who is a criminal defence counsel;
3) other parties to judicial proceedings, enlisting the assistance of an attorney to file the appeal.

(4) An appellant in cassation is the prosecutor or attorney who filed the appeal in cassation or supports the appeal at a session of the Supreme Court.

(5) An appellant in cassation, the Prosecutor's Office and a counsel or representative who is an attorney of the party to judicial proceedings whose interests are concerned by the appeal in cassation are parties to cassation proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) The Republic of Estonia may also file an appeal in cassation and participate in cassation proceedings as a victim, civil defendant or third party without the assistance of a representative who is an attorney.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 345. Term for cassation

(1) A circuit court shall be notified in writing of a wish to exercise the right of appeal in cassation within seven days after the conclusion of a court judgment is pronounced or communicated through the court office. If a party to judicial proceedings gives notification of the intention to exercise the right of appeal in cassation during the specified term and does not waive it, the remaining parties to the proceedings have the right of cassation regardless of whether they themselves have given notification of the intention to exercise that right. Notice of the intention to exercise the right of appeal in cassation may be also given by electronic means.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) 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]

(3) The appeal in cassation shall be dismissed and the appeal shall be returned by a conclusion of the Supreme Court if the term for filing an appeal in cassation has been allowed to expire.

(3^1) 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 service of the order resolving the application for state legal aid on the counsel or as of refusal to grant state legal aid.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) If the circuit court, when resolving a criminal matter, declares in the conclusion of its judgment the legislation of general application subject to application to be in conflict with the Constitution and refuses to apply the legislation of general application, the term for cassation against the legislation of general application which is not applied shall be calculated as of pronunciation of the decision made by way of constitutional review of the Supreme Court.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(5) At the request of an appellant in cassation, the Supreme Court may restore the term for cassation if the Court finds that the term was allowed to expire for good reason.

(6) Restoration of the term or refusal to restore the term shall be formalised by an order of the Supreme Court.

§ 346. Bases for appeal in cassation

The bases for an appeal in cassation are:
1) incorrect application of substantive law;
2) material violation of criminal procedural law in the case specified in § 339 of this Code.

§ 347. Appeal in cassation

(1) Appeals in cassation shall be in typewritten form. An electronic copy of an appeal in cassation shall be added to the appeal.

(2) An appeal in cassation shall set out:
1) the name, status in proceedings, address of the seat, phone number and other telecommunications numbers of the appellant in cassation;
2) the name of the court which made the contested decision, and the date of the decision;
3) the name of the party to judicial proceedings in whose interests or against whom the appeal in cassation is filed, the address of the residence or seat, phone number and other telecommunications numbers of the party;
4) bases for the appeal in cassation according to § 346 of this Code and a reference to the relevant provisions of substantive law or criminal procedural law;
5) the facts which were established by the court judgment or the evidence examined by the court on the basis of which the appellant in cassation proves that substantive law has been applied incorrectly or criminal procedural law has been materially violated;
6) a list of documents which the appellant in cassation considers necessary to submit additionally in cassation proceedings in order to establish a material violation of criminal procedural law;
7) the content of and reason for the request of the appellant in cassation;
8) [Repealed – RT I, 23.02.2011, 1 – entry into force 01.09.2011]
9) justification of the necessity of oral procedure if the appellant in cassation applies for oral procedure;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
10) a list of the documents appended to the appeal in cassation.

(3) A document certifying the authority of the appellant in cassation shall be appended to the appeal in cassation if the appellant in cassation is an attorney and such the corresponding authorisation document does not appear in the court file.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) An appeal in cassation shall be signed and dated by the appellant in cassation.

§ 347[1]. Amendments to appeal in cassation

(1) An appellant in cassation may amend and supplement a submitted appeal in cassation until the end of the term for cassation, and also extend the appeal in cassation to the parts of the court judgment which were initially not appealed. Upon amendments to appeal in cassation, the provisions concerning appeals in cassation shall be observed.

(2) The provisions of subsection (1) of this section do not preclude or restrict the right of the appellant in cassation to submit allegations concerning the interpretation of law and objections against the submissions of the other party to cassation proceedings made in the cassation proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 348. Requirement to submit court file and examination of file

[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(1) Immediately after receipt of an appeal in cassation, the Supreme Court shall require the circuit court which conducted proceedings in the matter to submit the court file. After receipt of a request to submit a court file, the circuit court shall immediately send it to the Supreme Court.

(2) Persons who have the right to file an appeal in cassation have the right to examine the court file.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

Subchapter 2
Preliminary proceedings in the Supreme Court

§ 348[1]. Giving notice of appeal in cassation and response to appeal in cassation

(1) After receipt of an appeal in cassation which meets the requirements, the Supreme Court shall send a copy thereof to the person specified in subsection 344 (3) of this Code whose interests are concerned by the appeal in cassation, and inform such person of the following circumstances:
1) the time of receipt of the appeal in cassation by the Court;
2) the obligation of the person to respond to the appeal in cassation within the term set by the court;

3) the mandatory contents of the response.

(2) A response to an appeal in cassation shall, inter alia, indicate the following:
1) whether any circumstances exist which prevent proceedings on the appeal in cassation;
2) whether or not the appeal in cassation should be accepted;
3) whether the party to the cassation proceedings considers the appeal in cassation to be justified or intends to contest it;
4) objections to the appeal in cassation;
5) justification of the necessity of oral procedure if the person submitting the response to the appeal in cassation applies for oral procedure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 349. Decision on acceptance or rejection of appeal in cassation

(1) Within a reasonable period of time after the expiry of the term for giving response to an appeal in cassation, the Supreme Court shall, by order, decide to accept or reject the appeal.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) If an appeal in cassation is clearly justified or clearly unjustified, acceptance or rejection of the appeal in cassation may be resolved without sending the appeal in cassation to the other persons or before the expiry of the term specified in subsection (1) of this section.

(3) An appeal in cassation shall be accepted if at least one justice of the Supreme Court finds that:
1) the allegations made in the appeal in cassation give reason to believe that the circuit court has applied substantive law incorrectly or has materially violated criminal procedural law;
2) the appeal in cassation contests the correctness of application of substantive law or requests annulment of the judgment of a circuit court due to material violation of criminal procedural law, and a judgment of the Supreme Court is essential for the uniform application of law or for development of the law.

(4) Acceptance or rejection of an appeal in cassation shall be formalised by order of the Supreme Court without setting out the reasons for the acceptance or rejection.

(5) The results of resolution of requests for acceptance of appeals in cassation shall be immediately published on the website of the Supreme Court indicating the number of the court case, names of the participants in proceedings and the legal assessment of the criminal offence which form the content of the charges. In the case of resolution of requests for acceptance of appeals in cassation submitted in closed proceedings, only the result of resolving the request and the number of the court case together with a reference to closed proceedings shall be published on the website. Rejection of the appeal in cassation on the ground that the appeal did not comply with the requirements provided by law and was therefore returned shall not be published on the website. The data concerning resolution of requests for acceptance of appeals in cassation shall be removed from the website when 30 days have expired from the communication of the resolution concerning the request.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 350. Refusal to proceed with or dismissal of appeal in cassation

(1) If an omission hindering 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]

(2) The Supreme Court shall prepare an order dismissing an appeal in cassation and return the appeal to the appellant in cassation if:
1) the appeal in cassation was filed after the expiry of the term for cassation provided for in § 345 of this Code and the appellant in cassation has not requested restoration of the term or the Supreme Court has refused to restore the term;
2) the appeal in cassation is submitted by a person who pursuant to subsection 344 (3) of this Code does not have the corresponding right;
3) the appellant in cassation fails to eliminate deficiencies in the appeal in cassation within the specified term;
3^1) the appellant in cassation fails to notify the circuit court in writing of the intention to exercise the right of cassation during the term provided for in subsection 345 (1) of this Code, if notification is mandatory;
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]
4) the appeal in cassation is discontinued before the beginning of the court session.

§ 351. [Repealed – RT I, 23.02.2011, 1 – entry into force 01.09.2011]

Subchapter 3

Consideration of criminal matters by the Supreme Court

§ 352. Rules for consideration of criminal matters under cassation procedure

(1) The Supreme Court shall take guidance in cassation procedure from the provisions of Chapter 10 of this Code, unless other provisions apply to cassation procedure and provided the provisions of Chapter 10 are not incompatible with the nature of cassation procedure.

(2) Generally, the Supreme Court shall consider a criminal matter by written procedure. In this case, the Supreme Court shall determine and announce to the parties to cassation proceedings:
1) the court panel;
2) the term during which the parties to cassation proceedings may submit their written positions and petitions of challenge and other requests to the court, and the method for submission thereof;
3) the time and method for making the judgment public;
4) other circumstances which the Supreme Court deems necessary.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2^1) If a copy of the appeal in cassation has not been sent to the parties to cassation proceedings in accordance with the rules provided in subsection 348^1(1) of this Code, it shall be appended to the notice.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(3) A criminal matter shall be considered by oral procedure in the case the Supreme Court deems this necessary. If the Supreme Court is to consider the appeal in cassation by oral procedure, it shall summons the parties to the cassation proceedings. The Supreme Court may also summons a party to judicial proceedings who is not a party to cassation proceedings to the court session if the Supreme Court deems this necessary. The failure of a party to cassation proceedings or another party to judicial proceedings who has received the summons to appear at the court session shall not preclude the hearing of the matter, unless the Supreme Court decides otherwise.

(4) Parties to cassation proceedings have the right to examine the court file in the Supreme Court and make copies of the file at their own expense.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 352^1. Submission of request to the European Court of Human Rights

(1) The Supreme Court may, in a case pending before it, 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 case pending before the Supreme Court.

(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 in an issue relating to a 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 pursuant to subsection (4) of this section on receipt of an advisory opinion about the request, on becoming aware of denial of the request or on withdrawing the request. The Supreme Court may also resume the proceedings earlier if the conduct of proceedings on the request specified in subsection (1) of this section is disproportionately delayed.

(6) In the case of suspension of proceedings, the running of the procedural term provided for in subsection 363 (7) of the Code of Criminal Procedure is suspended and, upon the expiry of the suspension of proceedings, 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, § 352^1 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.]

§ 353. Court panel to consider criminal matter under cassation procedure

In the Supreme Court, a criminal matter shall be considered under cassation procedure:
1) by a three-member panel of the Criminal Chamber;
2) by the full panel of the Criminal Chamber;

[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
3) by a Special Panel of the Supreme Court;
4) by the Supreme Court *en banc*.

§ 354. Consideration of criminal matter by full panel of Criminal Chamber

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

(1) If fundamentally different opinions arise as to the application of the law in a three-member panel of the Criminal Chamber of the Supreme Court or if there is reason to believe that a need arises to amend a position regarding application of the law maintained by the Criminal Chamber in an earlier decision, a criminal 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 criminal matter is considered by the full panel of the Criminal Chamber, the presiding judge is the chairman of the Criminal chamber, in his or her absence the member of the Criminal chamber who is senior in office, and 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]

§ 355. Consideration of criminal matter by Special Panel of Supreme Court

(1) If the Criminal Chamber of the Supreme Court finds when considering a criminal matter that it is necessary to interpret the law so as to amend a position of another chamber of the Supreme Court or a position maintained in the most recent decision of the Special Panel or this is necessary for ensuring uniform application of law, the criminal matter shall be referred for consideration by a Special Panel of the Supreme Court on the basis of a court order.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) A Special Panel of the Supreme Court shall be formed by the Chief Justice of the Supreme Court.

(3) The members of a Special Panel of the Supreme Court are:
1) the Chief Justice of the Supreme Court as the presiding judge;
2) two justices of the Criminal Chamber of the Supreme Court;
3) two justices from such chamber of the Supreme Court whose position concerning application of the law is contested by the Criminal Chamber.

(4) At the sessions of a Special Panel, materials shall be presented by a member of the Criminal Chamber.

§ 356. Consideration of criminal matter by Supreme Court *en banc*

A criminal matter is referred for resolution to the Supreme Court *en banc*if:
1) the majority of the full panel of the Criminal Chamber reaches a different opinion than the legal principle or position hitherto held by the Supreme Court *en banc*on the application of law;
2) the majority of the full panel of the Criminal Chamber considers resolution of the criminal matter by the Supreme Court *en banc*to be essential for the uniform application of the law;
3) resolution of the criminal matter requires resolution of an issue to be considered in accordance with the Constitutional Review Court Procedure Act.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 356[1]. Referral of criminal matter in Supreme Court

(1) A court order directing a criminal matter for resolution to the full panel of the Criminal Chamber, to the Special Panel of the Supreme Court or the Supreme Court *en banc*shall be transmitted to the parties to cassation proceedings.

(2) If a matter is to be considered at a court session, the participants in cassation proceedings shall be notified of the time and place of the session of the full panel of the Criminal Chamber, Special Panel of the Supreme Court or the Supreme Court *en banc*.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 357. Opening of Supreme Court session

(1) Upon application of a court session in the Supreme Court, the presiding judge shall:
1) open the court session and announce the criminal matter to be considered and the name of the person who filed the appeal in cassation;
2) ascertain which of the parties to cassation proceedings and other persons summoned have appeared at the court session and verify their authority;
3) involve an interpreter or translator, if necessary;

4) announce the composition of the panel of the court and ask the appellant in cassation and the other parties to cassation proceedings whether they wish to submit petitions of challenge or other requests;
5) ask the appellant in cassation whether he or she will proceed with the appeal in cassation or discontinue the appeal. Discontinuance of an appeal in cassation shall be certified by the signature of the appellant on the appeal.

(2) Any requests shall be dealt with in accordance with the rules provided in subsection 284 (3) of this Code.

(3) If circumstances hindering consideration of a criminal matter become evident during a court session, the court shall adjourn consideration of the matter by an order.

§ 358. Discontinuance of appeal in cassation

(1) An appellant in cassation may discontinue an appeal in cassation in part or in full before the Supreme Court withdraws from the courtroom to make the judgment, and in the case of written procedure until the expiry of the term granted to the parties to cassation proceedings for submission of their positions.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) A criminal defence counsel or representative may discontinue an appeal in cassation if the person being defended or the principal has agreed to this in writing.

(3) On the basis of a written request, a party to cassation proceedings has the right to discontinue an appeal in cassation filed in the interests of the party. The accused may discontinue an appeal in cassation filed by the counsel, unless the participation of a counsel in criminal proceedings is mandatory pursuant to subsection 45 (2) of this Code.

(4) If an appellant in cassation discontinues the appeal in cassation, the appeal shall be dismissed by court order and cassation proceedings shall be terminated with regard to that appeal.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) If the Supreme Court ascertains that the circuit court has incorrectly applied substantive law when resolving the criminal matter and thereby aggravated the situation of the accused or that the circuit court has materially violated criminal procedural law, consideration of the criminal matter shall proceed regardless of discontinuance of the appeal in cassation.

§ 359. Report on materials of criminal matter

(1) After opening a court session, the presiding judge or a justice of the Supreme Court shall present the materials of the criminal matter.

(2) A presentation shall give an overview of:
1) the facts relating to the criminal matter;
2) the content of and reasons for the appeal in cassation;
3) the requests of the appellant in cassation;
4) the explanations and objections set out in the response to the appeal in cassation.

§ 360. Hearing of opinions of parties to cassation proceedings and closing of court session

(1) After presentation of the materials of a criminal matter, the court shall hear the opinions of the parties to cassation proceedings who have appeared at the court session in the order determined by the court, whereas the appellant in cassation shall be heard first. The criminal defence counsel of the accused shall be the last to be heard even if he or she had already spoken as the appellant in cassation.

(2) The presiding judge has the right to interrupt the statement of a party to cassation proceedings if he or she exceeds the limits of the appeal in cassation.

(3) The court has the right to question the parties to the cassation proceedings and the parties to judicial proceedings who are not parties to cassation proceedings and who have been summoned to the court session.

(4) After hearing the parties to cassation proceedings, the presiding judge shall close the court session and announce the date when the court judgment will be accessible in the Office of the Supreme Court. The judgment of the Supreme Court shall be published on the website of the Supreme Court.
[RT I 2010, 19, 101 – entry into force 01.06.2010]

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

§ 360[1]. Written questions of Supreme Court

(1) For ensuring legal hearing, the Supreme Court shall have the right, during the entire cassation proceedings, to pose written questions to a party to cassation proceedings and a party to corresponding judicial proceedings who is not a party to cassation 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 judicial proceedings to whom the questions are addressed.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 360[2]. Limits of hearing criminal matters by way of cassation proceedings

(1) A criminal matter shall be considered within the limits of the appeal in cassation. In the consideration of a criminal matter, the appellant in cassation does not have the right to exceed the limits of the appeal in cassation. The provisions in the first sentence of this subsection do not preclude or restrict the right of the appellant in cassation to submit allegations concerning the interpretation of law and objections against the positions of the opposing party.

(2) The Supreme Court is not bound by the legal grounds of an appeal in cassation.

(3) The Supreme Court shall extend the limits of consideration of the criminal matter to all the accused and all the criminal offences they are accused of regardless of whether an appeal in cassation has been filed with regard to them if incorrect application of substantive law which has aggravated the situation of the accused or a material violation of criminal procedural law becomes evident.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 361. Competence of Supreme Court upon making of judgment

(1) The Supreme Court may, by judgment:
1) refuse to amend a judgment made by a circuit court and deny the appeal in cassation;
2) refuse to make substantive amendments to the judgment of a circuit court and make corrections thereto which do not aggravate the situation of the convicted offender;
3) amend the main part of a court judgment by replacing the legal reasons therein by the reasons of the Supreme Court or excluding the facts presented in the main part of the court judgment;
4) annul a court judgment and terminate criminal proceedings on the grounds prescribed in clauses 199 (1) 2)-6) of this Code;
5) annul a judgment of a circuit court and enforce the judgment of the county court;
6) annul a court judgment in full or in part and refer the criminal matter for a new hearing by the court which applied substantive law incorrectly or materially violated criminal procedural law;
7) annul a court judgment made in a criminal matter in full or in part and, without collecting any additional evidence, make a new judgment which does not aggravate the situation of the convicted offender;
8) annul the court judgment made in settlement proceedings in full and send the criminal file to the Prosecutor's Office.

(2) Upon referral of criminal matters to circuit courts or county courts for new hearing or return of criminal files to Prosecutor's Offices, the Supreme Court shall observe the provisions of §§ 341, 341[1] and 343[1] of this Code, taking into consideration the specifications of cassation proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 362. Grounds for annulment of court judgment under cassation procedure

The grounds for annulment of a court judgment under cassation procedure are:
1) incorrect application of substantive law;
2) material violation of criminal procedural law.

§ 363. Judgment of Supreme Court

(1) The introduction of a judgment of the Supreme Court shall set out:
1) the number of the case;
2) the date of the judgment of the Supreme Court;
2[1]) the court panel;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
3) the name of the case considered;
4) the contested decision;
5) the date of considering the case;
6) whether the case was considered by written or oral procedure;
7) the official title and name of the appellant in cassation;
8) the official titles and names of the parties to cassation proceedings and the names of the parties to judicial proceedings and the name of the interpreter or translator who participated in the session of the Supreme Court.

(2) The statement of reasons of a judgment of the Supreme Court shall set out the following:
1) a short summary of judicial proceedings to date;
2) the part of the court judgment which the appellant in cassation contests, and the requests of the appellant;
3) the explanations and objections submitted in the response to the appeal in cassation;
4) the opinions of the parties to cassation proceedings presented during the court session;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
5) the reasons for the conclusions of the Supreme Court;
6) the legal basis for the conclusions of the Supreme Court.

(3) The conclusion of a judgment of the Supreme Court shall set out the conclusions of the court.

(4) If the Supreme Court refuses to amend a judgment of a circuit court pursuant to clauses 361 1) or 2) of this Code, the Supreme Court:
1) is not required to repeat in its judgment the reasons for the judgment of the circuit court and, if necessary, may add the motives of the Supreme Court;
2) may limit the judgment thereof to the introduction, conclusion and the provisions of procedural law pursuant to which the judgment was made.

(5) The Supreme Court shall not establish facts.

(6) Judgments of the Supreme Court enter into force as of the date they are made public and are not subject to appeal.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(7) A judgment of the Supreme Court shall be accessible in the Office of the Supreme Court not later than thirty days after the session of the Supreme Court or the term granted to the parties to cassation proceedings for submission of their positions under written procedure. If necessary, this term may be extended by order to up to 60 days.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 364. Obligation to comply with judgment of Supreme Court

The positions set out in a judgment of the Supreme Court on the interpretation and application of a provision of law are mandatory for the court conducting considering the same matter anew.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

Chapter 13
REVIEW PROCEDURE FOR JUDICIAL DECISIONS

§ 365. Definition of review procedure

(1) Review procedure means consideration of a petition for review by the Supreme Court in order to decide on the resumption of proceedings in a criminal matter in which the decision has entered into force.

(2) A criminal matter under review is the criminal matter in which the decision has entered into force and in respect of which resumption of proceedings is requested.

§ 366. Grounds for review

[RT I, 17.04.2012, 4 – entry into force 10.04.2012 - The decision of the Supreme Court *en banc*declares § 366 of the Code of Criminal Procedure to be in conflict with the Constitution to the extent that this does not prescribe, as a ground for review, the entry into force of a court judgment, made pursuant to general procedure, which establishes the absence of a criminal act, if a punishment of imprisonment was imposed for participation in such criminal act on a person by court judgment made pursuant to general procedure in the criminal matter under review.]
The grounds for review are:
1) the unlawfulness or unfoundedness of a court judgment or order arising from the false testimony of a witness, knowingly wrong opinion of an expert, knowingly false interpretation or translation, or falsification of documents, or fabrication of evidence, as established by another court judgment which has entered into force;
2) a criminal offence which is committed by a judge in the consideration of the criminal matter under review and which is established by a court judgment;
3) a criminal offence which is committed by an official of the body that conducted proceedings or a prosecutor in the proceedings of a criminal matter and which is established by a court judgment, if the criminal offence could have had an effect on the court judgment made in the criminal matter under review;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
4) annulment of a court judgment or order which was one of the bases for making a court judgment or order in the criminal matter subject to review, if this may result in the making of a judgment of acquittal in the criminal matter subject to review, or in mitigation of the situation of the convicted offender;
5) any other facts which are relevant to the dealing with the criminal matter justly but which the court was not aware of while making the court judgment or a court order in the criminal matter subject to review and

which independently or together with the facts previously established may result in a judgment of acquittal or in mitigation of the situation of the convicted offender or in mitigation of the situation of a third party whose property has been confiscated on the basis of a court judgment or order;
[RT I 2007, 2, 7 – entry into force 01.02.2007]
6) the Supreme Court, under constitutional review procedure, declaring the legislation of general application or a provision thereof on which the court judgment or order in the criminal matter under review is based to be in conflict with the Constitution;
7) the granting, due to violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms or a Protocol belonging thereto, of an individual appeal filed with the European Court of Human Rights against a court judgment or order in the criminal matter subject to review, if the violation may have affected the resolution of the matter and cannot be eliminated, or if the damage caused thereby cannot be compensated, in a manner other than by review;
8) entry into force of a court judgment by which the accused is acquitted of the criminal offence of which a joint principal offender or an accomplice was convicted under simplified procedure in the criminal matter under review;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
9) judgment made under general procedure, which establishes the absence of a criminal act if the person was convicted in the matter under review for participation in this criminal act.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]
10) confiscation of assets by a decision from a person who was not joined to criminal proceedings.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

§ 367. Right to submit petition for review

(1) Persons specified in subsection 344 (3) of this Code and, through an attorney, persons from whom assets were confiscated by a judgment but who were not properly joined in the criminal proceedings have the right to submit petitions for review.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(2) On the basis provided for in clause 366 7) of this Code, the criminal defence counsel, who is an attorney, of the person who filed an individual appeal with the European Court of Human Rights, and the Office of the Prosecutor General, as well as the criminal defence counsel of such person, who is an attorney who has filed an individual appeal with the European Court of Human Rights in a similar matter and on the same legal basis or who has the right to file such appeal in a similar matter and on the same legal basis, taking into account the terms provided for in Article 35(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms have the right to submit petitions for review.
[RT I 2006, 48, 360 – entry into force 18.11.2006]

§ 368. Terms for submission of petitions for review

A petition for review may be submitted within six months after the bases for provided for in § 366 of this Code become evident.

§ 369. Petition for review

(1) A petition for review submitted to the Criminal Chamber of the Supreme Court shall be prepared in typewritten form. The petition for review shall be also sent to the court by electronic means.

(2) A petition for review shall set out:
1) the name, official title, address of the seat, phone number and other telecommunications numbers of the petitioner;
2) the name of the court whose decision is requested to be reviewed, and the date of the decision subject to review;
3) the name of the convicted offender with regard to whom review of the criminal matter is requested;
4) the grounds for review according to § 366 of this Code and the reasons therefor;
5) materials which should be examined and persons who should be questioned in the Supreme Court in order to ascertain the existence of the grounds for review;
6) whether the petitioner requests an oral procedure;
7) a list of the documents appended to the petition for review.

(3) The following shall be appended to a petition for review:
1) a document certifying the authority of the petitioner if the petition is submitted by an attorney;
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]
2) copies of the petition for review for the convicted offender who is serving a prison sentence and whose interests are concerned by the petition and for the Prosecutor's Office;
3) materials which should be examined in the Supreme Court in order to ascertain the existence of the grounds for review;

4) addresses of the residence or seat and phone numbers and other telecommunications numbers of persons who should be questioned in the Supreme Court in order to ascertain the existence of the grounds for review.

(4) If review of a criminal matter is requested on the basis of the grounds provided for in clauses 366 1)-4) and 7) of this Code, a copy of the court judgment on which the request for review is based shall be appended to the petition for review.

(5) A person submitting a petition for review shall sign the petition and indicate the date of preparation of the petition.
[RT I 2006, 48, 360 – entry into force 18.11.2006]

§ 370. Decision on acceptance of petition for review

(1) The Supreme Court shall decide on acceptance of a petition for review pursuant to the provisions of subsection 349 (1)-(3) of this Code.

(2) A petition for review shall be accepted if at least one justice of the Supreme Court finds that the allegations made in the petition give reason to presume the presence of a ground for review. Upon acceptance of a petition for review, the Supreme Court may suspend, in full or in part, if necessary, the execution of a court judgment or order in the criminal matter subject to review.
[RT I 2006, 48, 360 – entry into force 18.11.2006]

(3) If a petition for review is rejected, the petition and the order of the Supreme Court shall be included in the court file which shall be returned to the court of first instance. Copies of the order of the Supreme Court shall be sent to the person who submitted the petition for review and the person who responded to the petition for review.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) If necessary, the Supreme Court shall send copies of a petition for review and relevant materials to the Office of the Prosecutor General for verification. The Prosecutor's Office shall organise verification directly or through the body that conducted pre-court proceedings and observe the requirements of pre-court procedure.

§ 371. Refusal to proceed with or dismissal of petition for review

The court shall refuse to proceed with a petition for review or shall dismiss such petition following the provisions of § 350 of this Code.

§ 372. Review procedure

Review procedure shall be conducted in compliance with the provisions of §§ 352-$360^2$and 363 of this Code, taking into account the specifications provided for in this Chapter.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 373. Jurisdiction of Supreme Court in review procedure

(1) In the absence of the grounds for review, the Supreme Court shall deny the petition for review.

(2) If a petition for review is justified, the Supreme Court shall annul the contested decision by a judgment and send the criminal matter for a new hearing by the court which made the annulled decision or to the Office of the Prosecutor General for pre-court proceedings to be conducted anew.

(2^1) If a petition for review is justified only to the extent of the determination on confiscation, the Supreme Court may grant the petition for review and annul the contested decision only to this extent, and not to review the remaining part of the judgment. In this case, the Supreme Court may send the annulled determination on confiscation to the court which made the decision or the Office of the Prosecutor General for confiscation proceedings to be conducted anew pursuant to the procedure of Chapter $16^1$of this Code.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(3) If there is no need to ascertain new facts in the criminal matter subject to review, the Supreme Court may make a new judgment after the review of the criminal matter without aggravating the situation of the convicted offender.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

§ 374. Criminal proceedings after review of criminal matter

(1) After review of a criminal matter, criminal proceedings shall be conducted pursuant to the general procedure, except in the situation prescribed in the second sentence of subsection 373 (2^1) of this Code.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(2) A person may be acquitted without judicial hearing if:
1) the person is dead;
2) the facts are explicit and the Prosecutor's Office does not request judicial hearing.

Chapter 14
SPECIAL RULES FOR THE PREPARATION OF STATEMENT OF CHARGES AND PERFORMANCE OF CERTAIN PROCEDURAL OPERATIONS WITH REGARD TO THE PRESIDENT OF THE REPUBLIC, MEMBERS OF THE GOVERNMENT OF THE REPUBLIC, THE AUDITOR GENERAL, THE CHANCELLOR OF JUSTICE, THE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT

[RT I, 22.12.2014, 9 - entry into force 01.01.2015]

§ 375. Scope of application of this Chapter

(1) The provisions of this Chapter apply to the preparation of a statement of charges and the performance of procedural operations specified in § 377 of this Code with regard to the President of the Republic, members of the Government of the Republic, the Auditor General, the Chancellor of Justice, the Chief Justice of the Supreme Court and judges.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

(2) The provisions of this Chapter apply to the preparation of a statement of charges and the performance of procedural operations specified in § 377 of this Code with regard to persons who held an office specified in subsection (1) of this section at the time when a resolution concerning the grant of consent provided for in § 381 of this Code was adopted, regardless of whether the act was committed prior to assuming office or during the term of office.

(3) [Repealed – RT I, 22.12.2014, 9 – entry into force 01.01.2015]

(4) The provisions of this Chapter concerning the President of the Republic also apply to the President of the *Riigikogu* who is temporarily performing the duties of the President of the Republic pursuant to subsection 83 (1) of the Constitution. The provisions of this Chapter concerning members of the Government of the Republic also apply to any member of the *Riigikogu* whose authority is suspended due to his or her appointment as a member of the Government of the Republic.

(5) In a criminal case dealt with under Council Regulation (EU) 2017/1939, the provisions of this Chapter concerning the Prosecutor General apply to the European Chief Prosecutor.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

§ 376. Special rules for preparation of statement of charges

(1) A statement of charges with regard to the President of the Republic, members of the Government of the Republic, the Auditor General, or the Chief Justice and justices of the Supreme Court can be prepared only on the proposal of the Chancellor of Justice and with the consent of the majority of the membership of the *Riigikogu*.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

(2) A statement of charges with regard to the Chancellor of Justice can be prepared only on the proposal of the President of the Republic and with the consent of the majority of the membership of the *Riigikogu*.

(3) A statement of charges with regard to a judge can be prepared only on the proposal of the Supreme Court and with the consent of the President of the Republic.

§ 377. Special rules for performance of procedural operations

(1) The President of the Republic, a member of the Government of the Republic, the Auditor General, the Chief Justice or a justice of the Supreme Court may be detained as a suspect and preventive measures may be applied with regard to him or her, seizure and physical examinations of property may be conducted with regard to him or her, if the Chancellor of Justice has granted consent thereto at the request of the Prosecutor General.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

(2) A judge or the Chancellor of Justice may be detained as a suspect and preventive measures may be applied with regard to him or her, seizure and physical examinations of property may be conducted with regard to him or her if the President of the Republic has granted consent thereto at the request of the Prosecutor General.

(3) A person specified in subsection (1) or (2) of this section may be detained as a suspect and preventive measures may be applied with regard to him or her, seizure and physical examinations of property may be conducted with regard to him or her without the consent of respectively the Chancellor of Justice or the President of the Republic if the person was apprehended in the act of commission of a criminal offence in the first degree.

(4) The Prosecutor General shall be notified of performance of the procedural operations referred to in subsection (3) of this section.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

(5) If necessary, the President of the Republic or the Chancellor of Justice shall examine the materials of the criminal file upon grant of consent for the procedural operation.

(6) The President of the Republic or the Chancellor of Justice shall grant his or her consent for the performance of the procedural operation or return the petition within 10 days as of receipt of the request. If the request is returned, the reasons shall be provided.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 378. Request of Prosecutor General for preparation of statement of charges and the conduct of proceedings concerning the statement of charges

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

(1) On the basis of a request of the Prosecutor General, the Chancellor of Justice shall make a proposal to the *Riigikogu*for the preparation of a statement of charges with regard to the President of the Republic, a member of the Government of the Republic, the Auditor General, the Chief Justice or a justice of the Supreme Court.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

(2) The President of the Republic shall make a proposal for the preparation of a statement of charges with regard to the Chancellor of Justice on the basis of a request from the Prosecutor General.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) The Supreme Court shall make a proposal for the preparation of a statement of charges with regard to a judge on the basis of a request of the Prosecutor General.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

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

(5) If necessary, the Chancellor of Justice, the President of the Republic or the Supreme Court shall examine the materials of the criminal file but shall not verify or assess the collected evidence.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) The Chancellor of Justice or the President of the Republic shall make a written proposal to the *Riigikogu*or the Supreme Court to the Presidents of the Republic to grant consent for the preparation of a statement of charges with regard to the person specified in the request of the Prosecutor General, except in the case the bringing of charges would be politically impartial or clearly unjustified for any other reason.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(7) The Chancellor of Justice, the President of the Republic or the Supreme Court shall make a proposal or return the request within one month as of the receipt of the request. If the request is returned, the reasons shall be provided.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 379. Submission of proposal for preparation of statement of charges

(1) A proposal to grant consent for the preparation of a statement of charges with regard to the President of the Republic, a member of the Government of the Republic, the Auditor General, the Chancellor of Justice, the Chief Justice or a justice of the Supreme Court shall be submitted to the *Riigikogu*in writing by the Chancellor of Justice or the President of the Republic.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

(2) A proposal to grant consent for the preparation of a statement of charges with regard to a judge shall be submitted to the President of the Republic in writing by the Supreme Court.

(3) A proposal shall be reasoned and it shall set out:
1) the name of the person with regard to whom consent for the preparation of a statement of charges is requested from the *Riigikogu*or the President of the Republic;
2) the facts relating to the criminal offence;
3) the content of the suspicion and legal assessment of the criminal offence;
4) the circumstances set out in a request of the Prosecutor General;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
5) other facts on which the proposal is based.

(4) The Chancellor of Justice, the President of the Republic or the Supreme Court shall limit the content of the proposal submitted to the *Riigikogu*or the President of the Republic, as appropriate, to the content of the suspicion.

(5) A request of the Prosecutor General shall be appended to the proposal of the Chancellor of Justice, the President of the Republic or the Supreme Court.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 380. Proceedings in the *Riigikogu*concerning proposal for preparation of statement of charges

(1) In the *Riigikogu*, proceedings concerning a proposal of the Chancellor of Justice or the President of the Republic provided for in subsection 379 (1) of this Code shall be conducted pursuant to the *Riigikogu*Rules of Procedure and Internal Rules Act.
[RT I 2007, 44, 316 – entry into force 14.07.2007]

(2) A report presented by the Chancellor of Justice or the President of the Republic to the *Riigikogu*in order to obtain consent for the preparation of a statement of charges with regard to the President of the Republic, a member of the Government of the Republic, the Auditor General, the Chancellor of Justice, the Chief Justice of the Supreme Court or a judge shall set out the information contained in the proposal specified in subsection 379 (1) of this Code and annexes thereto.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

(3) [Repealed – RT I, 22.12.2014, 9 – entry into force 01.01.2015]

(4) Questions posed by the members of the *Riigikogu*and the responses of the Chancellor of Justice or the President of the Republic must remain within the limits of the material presented to the *Riigikogu*.

(5) [Repealed – RT I, 22.12.2014, 9 – entry into force 01.01.2015]

§ 381. Consent of *Riigikogu*or President of Republic and consequences thereof

(1) A resolution of the *Riigikogu*to grant consent for the preparation of a statement of charges with regard to the President of the Republic, a member of the Government of the Republic, the Auditor General, the Chancellor of Justice, the Chief Justice or a justice of the Supreme Court enters into force as of the adoption thereof. The resolution shall be immediately sent to the person who made the proposal, to the Prosecutor General and to the person whom it concerns.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

(2) A resolution of the President of the Republic to grant consent for the preparation of a statement of charges with regard to a judge enters into force upon signature thereof.

(3) A resolution of the *Riigikogu*or the President of the Republic to grant consent for the preparation of a statement of charges with regard to a person specified in subsection (1) or (2) of this section shall suspend the performance of the official duties of the person concerned until entry into force of a court judgment.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

(4) If, by a resolution, the *Riigikogu*or the President of the Republic grants consent for the preparation of a statement of charges with regard to a person specified in subsection (1) or (2) of this section, proceedings in the criminal matter shall be conducted pursuant to the general procedure prescribed by this Code.

§ 382. Preparation of statement of charges in other criminal offence

(1) If it is necessary to prepare a statement of charges with regard to a person specified in subsection 375 (1) of this Code concerning a criminal offence other than the criminal offence indicated in the proposal of the Chancellor of Justice, the President of the Republic or the Supreme Court, new consent of the *Riigikogu*or the President of the Republic is required.

(2) The *Riigikogu*or the President of the Republic shall grant the consent specified in subsection (1) of this section by a resolution on the basis of a proposal of the Chancellor of Justice, the President of the Republic or the Supreme Court, as appropriate, and pursuant to the procedure provided for in this Chapter.

(3) New consent of the *Riigikogu*or the President of the Republic is not required for amendment of the legal assessment of the criminal offence or the statement of charges or preparation of a new statement of charges.

Chapter 14[1]

SPECIAL RULES FOR PERFORMANCE OF CERTAIN PROCEDURAL OPERATIONS AND PREPARATION OF STATEMENTS OF CHARGES WITH RESPECT TO MEMBERS OF THE RIIGIKOGU

[RT I, 22.12.2014, 9 - entry into force 01.01.2015]

§ 382[1]. Scope of application of Chapter

(1) The provisions of this Chapter shall be complied with upon performance of the procedural operations provided for in § 382[2] of this Code and preparation of statements of charges with respect to members of the *Riigikogu*.

(2) The provisions of this Chapter shall be complied with upon performance of the procedural operations provided for in § 382[2] of this Code and preparations of statements of charges with respect to the persons who have the status of a member of the *Riigikogu* at the time of making a decision on grant of the consent provided for in §§ 382[2] and 382[9] of this Code regardless of whether the act was committed before becoming a member of the *Riigikogu* or during the time of serving as a member of the *Riigikogu*.

(3) The provisions of this Chapter concerning members of the *Riigikogu* also apply to alternate members of the *Riigikogu* who perform the functions of a member of the *Riigikogu*.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

(4) In a criminal case dealt with under Council Regulation (EU) 2017/1939, the provisions of this Chapter concerning the Prosecutor General apply to the European Chief Prosecutor.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

§ 382[2]. Special rules for procedural operations to be performed before preparation of the statement of charges

(1) Preventive measures, with the exception of taking into custody, may be applied to a member of the *Riigikogu* before obtaining consent for preparation of a statement of charges, conduct a search, physical examination and seizure of property, and conduct surveillance activities, if the Chairman of the Tallinn Circuit Court has granted his or her consent thereto on the basis of a reasoned written request of the Prosecutor General.

(2) Consent granted by the Chairman of the Tallinn Circuit Court for search shall not extend to searches in the buildings of the *Riigikogu* and taking along of evidence, documents and means of communication found there or delivery thereof in the case delivery thereof is demanded.

(3) A member of the *Riigikogu* can be detained as a suspect or subjected to compulsory placement in a medical institution before obtaining consent for the preparation of a statement of charges for the conduct of an expert assessment, or taking into custody, compelled attendance or detention can be applied to him or her as a preventive measure, if the Constitutional Committee of the *Riigikogu* has granted its consent thereto on the basis of a reasoned written request of the Prosecutor General.

(4) Consent of the Chancellor of Justice granted on the basis of a reasoned written request of the Prosecutor General is required for searches in the buildings of the *Riigikogu* and taking along of the evidence, documents and means of communication found there and disclosure of work-related correspondence of a member of the *Riigikogu* stored on the servers of the *Riigikogu*. A person appointed by the President of the *Riigikogu* shall be present upon performance of the specified acts.

(5) The consent specified in subsection (1), (3) or (4) of this section is not required for detention of a member of the *Riigikogu* as a suspect or application, as a preventive measure, of taking into custody, compelled attendance, compulsory placement in a medical institution for conduct of an expert assessment, conduct of searches and examination, seizure of property, and conduct of procedural operations and disclosure of work-related correspondence of a member of the *Riigikogu* stored on the servers of the *Riigikogu*, if he or she was apprehended in the act of commission of a criminal offence in the first degree.

(6) The Prosecutor General and the Chairman of the *Riigikogu* shall be immediately informed of performance of the procedural operations referred to in subsection (5) of this section.

(7) The consent specified in subsection (1), 3) or (4) of this section need not be re-applied for the performance or continuation of procedural operations or application of preventive measures of the same type, if the member of the *Riigikogu* with respect to whom consent was already previously granted commences performance of his or her functions as a member of the *Riigikogu* in the next composition of the *Riigikogu*.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

§ 382[3]. Request of Prosecutor General for performance of procedural operations before preparation of statement of charges and the conduct of proceedings on that request

(1) The following shall be indicated in a reasoned written request of the Prosecutor General to the Chairman of the Tallinn Circuit Court, the Constitutional Committee of the *Riigikogu* or the Chancellor of Justice specified in subsections 382[2](1), (3) and (4):
1) the name of the person in the case of whom consent is requested for performance of procedural operations;
2) the facts relating to the criminal offence;
3) the content and legal assessment of the suspicion;
4) the circumstances why the objective of the procedural operations applied for cannot be achieved by other less restrictive measures.

(2) The Chairman of the Tallinn Circuit Court, the Constitutional Committee of the *Riigikogu* or the Chancellor of Justice shall grant consent for performance of the procedural operations respectively provided for in subsection 382[2](1), (3) or (4) of this Code with respect to the person specified in the request, except in the case performance of the procedural operations would be clearly unjustified.

(3) The Chairman of the Tallinn Circuit Court, the Constitutional Committee of the *Riigikogu* or the Chancellor of Justice shall decide on grant of consent or return of request as soon as possible after receipt of the request of the Prosecutor General. If the request is returned, the reasons shall be provided.

(4) If the consent specified in subsection 382[2](3) of this Code is applied for with respect to a member of the Constitutional Committee, the specified member shall not participate in the discussion of such agenda item at the sitting of the Constitutional Committee or participate in voting.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

§ 382[4]. Consent of Chairman of Tallinn Circuit Court, Constitutional Committee of *Riigikogu* or Chancellor of Justice for performance of certain procedural operations and consequences thereof

(1) An order of the Chairman of the Tallinn Circuit Court by which consent is granted for performance of the procedural operations specified in subsection 382[2](1) of this Code with respect to members of the *Riigikogu* before preparation of a statement of charges enters into force upon signature. The specified order shall be immediately sent to the Prosecutor General. The order by which consent is granted for performance of procedural operations shall be presented to the person with respect to whom the procedural operation is performed before the performance of the procedural operation. The order by which consent is granted for conduct of surveillance activities shall not be presented to the person with respect to whom the surveillance activities are conducted.

(2) A resolution of the Constitutional Committee of the *Riigikogu* on grant of consent for conduct of the procedural operations specified in subsection 382[2](3) of this Code with respect to a member of the Riigikogu before the preparation of a statement of charges enters into force upon passage thereof. An extract of the recorded resolution of the Constitutional Committee shall be immediately sent to the Prosecutor General who shall present it to the person with respect to whom the procedural operations are performed before the performance of the procedural operation.

(3) A resolution of the Chancellor of Justice on grant of consent for conduct of the procedural operations specified in subsection 382[2](4) of this Code with respect to a member of the *Riigikogu* before the preparation of a statement of charges enters into force upon signature. The Chancellor of Justice shall immediately notify the Prosecutor General of his or her resolution and the latter shall present it to the person with respect to whom the procedural operations are performed before the performance of the procedural operation.

(4) If the Chairman of the Tallinn Circuit Court, the Constitutional Committee of the *Riigikogu* or the Chancellor of Justice have granted consent by their order or resolution for performance of procedural operations with respect to a member of the *Riigikogu* before the preparation of a statement of charges, proceedings in the criminal matter shall be conducted pursuant to the general procedure prescribed by this Code.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

§ 382[5]. Special rules for preparation of statement of charges with respect to member of *Riigikogu*

A statement of charges with regard to a member of the *Riigikogu* can be prepared only on the proposal of the Chancellor of Justice and with the consent of the majority of the membership of the *Riigikogu*.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

§ 382[6]. Proposal of Chancellor of Justice for preparation of statement of charges

(1) A proposal to grant consent for the preparation of a statement of charges with respect to a member of the *Riigikogu*shall be submitted to the *Riigikogu*by the Chancellor of Justice on the basis of a reasoned written request of the Prosecutor General.

(2) If necessary, the Chancellor of Justice shall examine the materials of the criminal file and form his or her opinion while avoiding evaluation of evidence.

(3) The Chancellor of Justice shall submit a written proposal to the *Riigikogu*to grant consent for preparation of a statement of charges with respect to the person indicated in the request of the Prosecutor General, except in the case the bringing of charges would be clearly unjustified.

(4) The Chancellor of Justice shall submit a proposal to the *Riigikogu*or return the request to the Prosecutor General within one month as of the receipt of the request. If the request is returned, the reasons shall be provided.

(5) No new consent of the *Riigikogu*is required with respect to the member of the *Riigikogu*with respect to whom the previous membership of the *Riigikogu*already granted consent for preparation of a statement of charges and who commences performance of his or her functions as a member of the *Riigikogu*in the next membership of the *Riigikogu*.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

§ 382[7]. Submission of proposal for preparation of statement of charges

(1) The proposal of the Chancellor of Justice to grant consent for the preparation of a statement of charges with respect to a member of the Riigikogu shall be substantiated and indicate:
1) the name of the person with regard to whom consent for the preparation of a statement of charges is requested from the *Riigikogu*;
2) the facts relating to the criminal offence;
3) the content and legal assessment of the suspicion;
4) the circumstances set out in a request of the Prosecutor General;
5) other facts on which the proposal is based.

(2) The Chancellor of Justice shall not exceed the contents of the charges in the proposal submitted to the *Riigikogu*.

(3) A request of the Prosecutor General shall be appended to the proposal of the Chancellor of Justice.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

§ 382[8]. Proceedings in the *Riigikogu*concerning proposal for preparation of statement of charges

(1) The *Riigikogu*shall conduct the proceedings concerning the proposal of the Chancellor of Justice provided for in subsection 382[7](1) of this Code pursuant to the *Riigikogu*Rules of Procedure and Internal Rules Act.

(2) A report of the Chancellor of Justice to the *Riigikogu*in order to obtain consent for preparation of a statement of charges with respect to a member of the *Riigikogu*shall include the proposal specified in subsection 382[7](1) of this Code and annexes thereto.

(3) The President or Vice-President of the *Riigikogu*with regard to whom consent for preparation of a statement of charges is requested shall not chair the session of the *Riigikogu*during the conduct of the proceedings concerning the corresponding proposal.

(4) Questions posed by the members of the *Riigikogu*and the responses of the Chancellor of Justice shall remain within the limits of the material presented to the *Riigikogu*.

(5) No questions shall be posed to the member of the *Riigikogu*with respect to whom consent is requested for preparation of a statement of charges and he or she shall not participate in voting. If the specified member of the *Riigikogu*so wishes, he or she may present a speech of up to five minutes.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

§ 382[9]. Consent of *Riigikogu*for preparation of statement of charges with respect to member of *Riigikogu*and consequences thereof

(1) A resolution of the *Riigikogu*to grant consent for preparation of a statement of charges with respect to a member of the *Riigikogu*enters into force upon passage thereof. The resolution shall be immediately sent to the person who made the proposal, to the Prosecutor General and to the person whom it concerns.

(2) A resolution of the *Riigikogu*to grant consent for preparation of a statement of charges with respect to a member of the *Riigikogu*shall not suspend the authority of the member of the *Riigikogu*.

(3) If the *Riigikogu* granted consent by its resolution for preparation of a statement of charges with respect to a member of the *Riigikogu*, proceedings in the criminal matter shall be conducted pursuant to the general procedure prescribed by this Code.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

§ 382[10]. Preparation of statement of charges in other criminal offence

(1) If the circumstances require preparation of a statement of charges in a criminal offence other than the criminal offence indicated in the proposal of the Chancellor of Justice, new consent of the *Riigikogu* is required.

(2) The *Riigikogu* shall grant the consent specified in subsection (1) of this section by a resolution on the basis of a proposal of the Chancellor of Justice and pursuant to the procedure provided for in this Chapter.

(3) No new consent of the *Riigikogu* is required in the case of specification of the legal assessment of the criminal offence and for amendment of the statement of charges and preparation of a new statement of charges pursuant to this.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

Chapter 15
PROCEDURE FOR RESOLUTION OF APPEALS AGAINST COURT ORDERS

§ 383. Definition of appeal against court order

(1) An appeal against a court order may be filed in order to contest a court order prepared in pre-court proceedings, in judicial proceedings of first instance or on appeal or in enforcement proceedings unless contestation of the order is precluded under § 385 of this Code.

(2) A court order which cannot be contested by way of an appeal against the order may be contested by an appeal or appeal in cassation filed against the court judgment.

§ 384. Right to file appeals against orders

(1) The parties to judicial proceedings and persons not subject to proceedings have the right to file an appeal against the order of a county court if the order restricts their rights or lawful interests.

(2) The persons listed in subsection 3 of section 344 of this Code have the right to file an appeal against the order of a circuit court and persons not participating in the proceedings have the right to file appeals against the order of the circuit court through an attorney if the order restricts their rights or lawful interests.

(3) The filing of appeals against court orders shall comply with the provisions of Chapters 11 or 12 of this Code, taking into account the specifications provided for in this Chapter.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 385. Court orders not subject to contestation under the procedure for resolution of appeals against court orders

Appeals shall not be filed against the following court orders:
1) [Repealed – RT I, 07.12.2018, 2 – entry into force 17.12.2018]
2) an order on the involvement of a reserve judge or reserve lay judge;
3) an order on the referral of a criminal matter to a court with appropriate jurisdiction;
4) an order on removal, the order denying a petition of challenge and the order on removal of a person from proceedings;
5) an order authorizing a procedural operation, except an order by which a person is committed in custody or their committal in custody is refused, by which the duration of a person's committal in custody is extended on an application of the Prosecutor General or, under subsection 2 of § 131[1], subsection 7 of § 395[1] or subsection 7 of § 447 of this Code, on that of a European Prosecutor or of a European Delegated Prosecutor, or by which the corresponding extension is refused, by which extradition custody is authorized, by which compulsory placement of a person in a medical institution is authorized, by which property is seized, by which a postal or telegraphic item is seized, by which a person is suspended from office, by which a temporary restraining order is imposed or by which a court authorizes a surveillance activity;
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]
6) [Repealed – RT I, 19.03.2015, 1 – entry into force 01.09.2016]
7) an order on verification of the reasons for the bail;
8) an order on verification of the reasons for the exclusion from office;

9) an order on verification of reasons for temporary restraining order, except in the case the conditions of the temporary restraining order are amended;
10) an order on termination and resumption of criminal proceedings on the basis of §§ 201-203[1] of this Code, which does not preclude the right of a victim to appeal the order on termination of criminal proceedings on the bases provided for in § 203[1] of this Code;
11) an order on refusal to commence or continue criminal proceedings on the basis of § 208 of this Code, except an order by which an appeal filed on the basis of § 205[2] of this Code was denied;
12) an order on compelled attendance;
13) the order on declaring a person a fugitive;
14) the order made concerning contestation of the activities of an investigative body or Prosecutor's Office on the basis of § 231 of this Code, except orders made to deal with appeals filed against the course of surveillance activities, failure to give notice thereof and failure to submit information collected thereby;
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]
15) an order on the return of a criminal file to the Prosecutor's Office;
16) an order for the accused to answer the charges against them;
17) an order on acceptance of a civil action or proof of claim in public law and grant of term for elimination of deficiencies therein;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
17[1]) an order on separate adjudication of a civil action or proof of claim in public law;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
18) an order on the adjournment of judicial hearing;
19) an order on the joinder or severance of criminal matters;
20) an order made in the course of judicial proceedings to resolve a request of a party to those proceedings, except orders which resolve requests to expedite judicial proceedings and orders which resolve requests for termination of criminal proceedings in connection with expiry of reasonable time for proceedings;
21) an order providing for the collection of additional evidence during judicial proceedings, or an order – entered under § 307 of this Code – to resume trial proceedings in the case;
Correction: manifest error rectified – the text of clause 21 has been reinstated by virtue of Supreme Court order no. 1-22-607 of 24.11.2022 and under subsections 1 and 4 of § 10 of the Riigi Teataja Act.
22) an order on an expert assessment;
23) an order on alteration of the time of pronouncement of a court judgment or the conclusion thereof and of making the court judgment accessible to the parties;
24) an order refusing to proceed with an appeal;
25) an order directing the criminal matter to be heard by the circuit court;
26) [Repealed – RT I, 21.06.2014, 11 – entry into force 01.07.2014]
27) [Repealed – RT I, 21.06.2014, 11 – entry into force 01.07.2014]
28) an arrest warrant in surrender proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 386. Appeals against orders

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

(1) An appeal against a court order shall be prepared in writing and shall set out:
1) the name of the court with which the appeal is filed;
2) the name, status in the proceedings, residence or seat and address of the appellant;
3) the name of the court whose order is contested, the date of making the order and the name of the party to judicial proceedings with regard to whom the order is contested;
4) which part of the order is contested;
5) the content of and reasons for the requests submitted in the appeal;
6) a list of documents appended to the appeal.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

(2) An appeal against a court order shall be signed and dated by the appellant.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

(3) An appeal against a court order shall be appended to the court file.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 387. Rules and term for submission of appeals against court orders

(1) An appeal against an order shall be filed with the court which made the contested court order within 15 days as of the day when the person became or should have become aware of the contested court order unless otherwise provided for in subsection (2) of this section.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) An appeal against an order by which a person is committed in custody or their committal in custody is refused, by which the duration of a person's committal in custody is extended on an application of the Prosecutor General or, under subsection 2 of § 131[1], subsection 7 of § 395[1] or subsection 7 of § 447 of this Code, on that of a European Prosecutor or of a European Delegated Prosecutor, or by which the corresponding extension is refused, by which extradition custody is authorized, by which compulsory placement of a person in

a medical institution is authorized, by which property is seized, by which a postal or telegraphic item is seized, by which a person is suspended from office, by which a temporary restraining order is imposed or by which a court authorizes a surveillance activity is filed within ten days as of the date when the person became or should have become aware of the contested order:
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]
1) with a circuit court through the county court which made the contested court order, if the contested court order was made by a county court;
2) with the Supreme Court, if the contested court order was made by a circuit court.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(3) If, by an order made in a criminal matter, a court declares legislation of general application subject to application to be in conflict with the Constitution and refuses to apply the legislation of general application, the term for filing an appeal against an order concerning the legislation of general application which is not applied shall be calculated as of pronunciation of the decision made by way of constitutional review of the Supreme Court.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 388. [Repealed – RT I 2006, 21, 160 – entry into force 25.05.2006]

§ 389. Consideration of appeal against court order by court which made the order

(1) An appeal against a court order shall be considered pursuant to the provisions of Chapters 10 or 11 of this Code, taking into account the specifications provided for in this Chapter.

(2) The panel of a court which made the order shall consider the appeal against that order in written procedure within five days as of the filing of the appeal, within the scope of the appeal and only with regard to the person in respect of whom the appeal was filed.

(3) If the court which made a contested court order considers the appeal against the order well-founded, the panel shall, by order, annul the contested order and, if necessary, make a new order, and shall immediately notify this to the appellant and any participants in proceedings whose interests are concerned.

(4) If the court which made the contested court order considers the appeal against the order unfounded, the panel shall forward the contested court order and the appeal against the order immediately to the court with appropriate jurisdiction.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

§ 390. Consideration of appeal against court order by higher court

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

(1) An appeal against a court order shall be considered by a higher court pursuant to the provisions of Chapters 11 or 12 of this Code, taking into account the specifications provided for in this Chapter.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

(2) An appeal against a court order shall be considered within the scope of the appeal and only with regard to the person in respect of whom the appeal was filed.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

(3) A circuit court shall consider an appeal against a court order in written procedure within ten days as of the receipt of the appeal unless otherwise provided for in subsection (4) or (4^1) of this section.
[RT I 2009, 39, 261 – entry into force 24.07.2009]

(4) The counsel of the suspect or accused, or the representative of the minor, and the prosecutor shall be summoned to a circuit court to the hearing of an appeal filed against a ruling on taking into custody or refusal to take into custody, extension of the term for holding in custody or refusal to extend the term for holding in custody, provisional custody, compulsory placement of a person in a medical institution, seizure of property, seizure of a postal or telegraphic item, exclusion from office. The failure of such persons to appear shall not hinder the hearing of the appeal. A circuit court may organise the participation of the specified persons in the hearing of an appeal against court ruling by means of any technical solutions which comply with the requirements specified in clause 69 (2) 1) of this Code.
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

(4^1) [Repealed – RT I, 05.07.2013, 2 – entry into force 15.07.2013]

(4^2) In the case of granting an appeal against a court order denying a request to expedite judicial proceedings or against an order that applied a measure which is different from the measure set out in the request to expedite

judicial proceedings, the higher court decides on measures which can be presumed to allow judicial proceedings to be concluded within a reasonable period of time. The court shall not be bound by the scope of the appeal in choosing the measure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) The Supreme Court shall decide on acceptance of an appeal against an order of a circuit court pursuant to the provisions of § 349 of this Code. Acceptance of a court order specified in subsection (4) of this section shall be decided within 10 days. The Supreme Court shall accept an appeal against an order made by the circuit court as a result of consideration of an appeal against an order if the decision of the Supreme Court in this matter is essential for uniform application of the law or development of the law.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 391. [Repealed – RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 392. Suspension of execution of contested order

A court which receives an appeal against a court order may suspend the execution of the contested order if the further execution of the order may result in grave and irreversible violation of the rights of the person.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

Chapter 16
PROCEDURE FOR ADMINISTRATION OF COERCIVE PSYCHIATRIC TREATMENT

§ 393. Grounds for administration of coercive psychiatric treatment

If a person commits an unlawful act in a state of mental incompetence or if he or she becomes mentally ill or feeble-minded or suffers from any other severe mental disorder after the court judgment is made but before he or she has served the full sentence or if it is established during pre-court proceedings or judicial proceedings that the person suffers from one of the aforementioned conditions, poses a danger to himself or herself and to the society and is in need of coercive psychiatric treatment, criminal proceedings with regard to the person shall be conducted pursuant to the provisions of this Chapter.
[RT I, 05.07.2013, 2 – entry into force 15.07.2013]

§ 394. Facts relating to subject of proof

In the case of a person specified in § 393 of this Code, the facts relating to a subject of proof are as follows:
1) an unlawful act;
2) state of mental incompetence at the time of commission of the unlawful act, developing an illness or disorder after the court judgment is made but before the person has served the full sentence or developing an illness or disorder during pre-court proceedings or during judicial proceedings;
[RT I, 05.07.2013, 2 – entry into force 15.07.2013]
3) mental state during criminal proceedings;
4) whether the person's subsequent behaviour may be harmful to the person himself or herself or to society;
5) the need for administration of coercive psychiatric treatment.

§ 395. Participation in procedural operations

A person subject to proceedings for the administration of coercive psychiatric treatment shall participate in procedural operations and exercise the rights of the suspect or the accused provided for in §§ 34 and 35 of this Code if the mental state of the person allows for it.

§ 395^{1}. Taking into custody of person with regard to whom the procedure for administration of coercive psychiatric treatment is applied

(1) Taking into custody a person with regard to whom the procedure for the administration of coercive psychiatric treatment is applied is a preventive measure which means deprivation of a person of his or her liberty on the basis of a court order and detention of the person on the basis thereof in a medical prison ward or a hospital providing psychiatric health services until the order on the administration of coercive psychiatric treatment enters into force with respect to the person or until the bases for taking into custody specified in subsection (2) of this section cease to exist.

(2) A person with regard to whom the procedure for the administration of coercive psychiatric treatment is applied may be taken into custody at the request of the Prosecutor’s Office and on the basis of an order of a preliminary investigation judge or on the basis of a court order if the person is or may become, during the proceedings, dangerous to himself or herself or others or if he or she may abscond criminal proceedings or continue to commit criminal offences.

(3) Other circumstances relevant to the application of preventive measures shall be also taken into consideration when taking into custody a person with regard to whom the procedure for the administration of coercive psychiatric treatment is applied.

(4) The taking into custody a person with regard to whom the procedure for the administration of coercive psychiatric treatment is performed in accordance with the rules provided in § 131 of this Code and taking into consideration the mental state of the person.

(5) A court may take into custody a person in respect of whom the matter involving the application of procedure for coercive psychiatric treatment has been referred to the court or a person who is already subject to coercive psychiatric treatment but at large on the basis of an order of a county court or circuit court if he or she has failed to appear when summoned by the court and may continue evading judicial proceedings or the execution of the order on administration of coercive treatment.

(6) A person with regard to whom the procedure for the administration of coercive psychiatric treatment is applied shall not be held in custody for more than six months. If such a person was held in custody in the same criminal matter in accordance with § 130 of this Code, that period of custody shall be included in the custodial period provided in this section.

(7) Where a criminal case is particularly complex or voluminous or under exceptional circumstances linked to international cooperation in criminal proceedings, a preliminary investigation judge or a court may, on an application of the Prosecutor General or, in a criminal case dealt with under Council Regulation (EU) 2017/1939, of a European Prosecutor or of a European Delegated Prosecutor, extend the six-month duration of custody to up to one year.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

(8) Taking into custody a person with regard to whom the procedure for the administration of coercive psychiatric treatment is applied, notification and contestation of the taking into custody and verification of the well-foundedness of taking into custody shall be conducted in accordance with the provisions of Subchapter 1 of Chapter 4 of this Code and taking into consideration the mental state of the person.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 395^{2}. Conditions of detention of persons held in custody under the procedure for administration of coercive psychiatric treatment

(1) Persons held in custody under the procedure for administration of coercive psychiatric treatment shall be placed in a medical prison ward where they are held in custody or a hospital ward for coercive psychiatric treatment with intensified supervision, taking into consideration the mental state of the person and the specifications provided for in this Subchapter.

(2) The age, sex, state of health and characteristics of persons shall be taken into account upon placement of the persons in a ward for coercive psychiatric treatment.

(3) Persons taken into custody under the procedure for administration of coercive psychiatric treatment are placed in a medical prison ward pursuant to the procedure provided for serving of custody pending trial in the Imprisonment Act.

(4) Persons taken into custody under the procedure for administration of coercive psychiatric treatment are placed in a hospital pursuant to the procedure for the administration of coercive psychiatric treatment.

(5) Upon arrival in a hospital, persons are required to undergo medical examination performed by a medical officer.

(6) No health services shall be provided to persons taken into custody under the procedure for administration of coercive psychiatric treatment, except if the person has granted permission himself or herself for it or if it is necessary to provide emergency care to the person for the purposes of the Health Care Services Organisation Act. Persons shall not be subjected to clinical trials, testing of new medicinal products or treatment methods.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 395^{3}. Respect for human dignity of persons held in custody under the procedure for administration of coercive psychiatric treatment

(1) Persons held in custody under the procedure for administration of coercive psychiatric treatment are treated in a manner that respects their human dignity and ensures that their holding in custody does not cause them more suffering or inconvenience than that inevitable associated with detention of persons.

(2) The liberty of persons held in custody under the procedure for administration of coercive psychiatric treatment shall be subject to restrictions provided by law. The restrictions shall comply with their objective of execution and the principle of human dignity and shall not distort the nature of other rights and liberties provided by law.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 395[4]. Rights of persons held in custody under the procedure for administration of coercive psychiatric treatmentand restriction of such rights

(1) Persons held in custody under the procedure for administration of coercive psychiatric treatment have the rights equivalent to those of persons held in custody pursuant to the procedure provided for in § 130 of this Code, and the rights provided for in the Imprisonment Act, taking into consideration the mental state of the person and the specifications of a hospital and prison.

(2) The same additional restrictions may be applied to persons held in custody under the procedure for administration of coercive psychiatric treatment as are permitted to be applied under the rules provided in § 130 of this Code to persons held in custody on the basis of an order of the Prosecutor's Office or a court order on the bases of and pursuant to the procedure provided for in this Code.

(3) Disciplinary issues concerning persons held in custody under the procedure for administration of coercive psychiatric treatment are dealt with in accordance with the rules that apply to dealing with such issues concerning persons held in custody who are suffering from a mental disorder or persons receiving coercive treatment, taking in particular into consideration the mental state of the person.

(4) The measures provided in the Imprisonment Act for ensuring security in prisons may be applied with respect to persons held in custody under the procedure for administration of coercive psychiatric treatment.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 396. Summary of pre-court proceedings for administration of coercive psychiatric treatment

(1) If the competent official of the investigative body is convinced that the evidentiary information necessary for the criminal matter has been collected, he or she shall immediately prepare a summary of pre-court proceedings pursuant to § 153 of this Code setting out the facts relating to the subject of proof in accordance with § 394 of this Code.

(2) The summary of pre-court proceedings shall be included in the criminal file which shall be sent to the Prosecutor's Office.

§ 397. Acts performed by Prosecutor's Office upon receipt of criminal file

(1) If the Prosecutor's Office receives a criminal file for the administration of coercive psychiatric treatment, the Prosecutor's Office shall act in accordance with the provisions of subsections 223 (1)-(3) of this Code.

(1[1]) A counsel may submit a request to the Prosecutor's Office to send the criminal matter to a court within the term specified in § 225 of this Code for hearing pursuant to the general procedure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) If the Prosecutor's Office declares pre-court proceedings completed, the Prosecutor's Office shall make an order on the sending of the criminal matter to a court for the administration of coercive psychiatric treatment provided for in the Penal Code.

§ 398. Order on sending criminal matter to court

(1) The introduction of the order on sending a criminal matter to a court shall set out:
1) the date and place of preparation of the order;
2) the official title and name of the prosecutor;
3) the title of the criminal matter;
4) the name of the person who committed the unlawful act and his or her personal identification code or, in the absence thereof, date of birth, nationality, education, residence, place of work or educational institution, native tongue.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(2) The main part of the order shall set out:
1) facts relating to the unlawful act;
2) evidence that proves commission of the unlawful act;
3) reasons for the administration of coercive psychiatric treatment;
4) statements made by the counsel or other participants in proceedings who have contested the need for administration of coercive psychiatric treatment.

(3) The final part of the order shall set out the proposal of the prosecutor concerning the administration of coercive psychiatric treatment and indicate whether or not the counsel or prosecutor requests the court hearing of the criminal matter pursuant to the general procedure. The order shall be included in the criminal file.

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

(4) The criminal file shall be sent to the court.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 399. Preparation for judicial hearing

Preparations for judicial hearing shall be carried out in accordance with subsection 257 (1) of this Code.

§ 400. Judicial hearing

(1) The provisions of this Code regulating alternative proceedings shall be applicable to judicial hearings, taking into account the specifications provided for in this Chapter. If a counsel or Prosecutor's Office has requested it, the provisions of the general procedure shall be observed in judicial hearing, taking into account the specifications provided for in this Chapter.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) A judge sitting alone shall decide on the administration of coercive psychiatric treatment.

(3) Judicial examination begins with the publication of the order on sending a criminal matter to the court.

(4) The person with regard to whom administration of coercive psychiatric treatment is requested is summoned to a court session. A person need not be summoned to the court session, if the mental state of the person does not allow him or her to participate in court sessions. The court shall reason the failure to summon a person and the reasons therefor shall be recorded in the minutes of the court session.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 401. Issues to be resolved in chambers

(1) A court shall resolve the criminal matter by an order made in chambers.

(2) When giving its order, the court shall resolve the following issues:
1) whether an unlawful act has been committed;
2) whether the act was committed by the person with regard to whom administration of coercive psychiatric treatment is requested;
3) whether the person committed the unlawful act in a state of mental incompetence or whether he or she developed an illness or disorder after the court judgment was made but before he or she had served the sentence or whether he or she developed the illness or disorder during pre-court proceedings or during judicial proceedings;
[RT I, 05.07.2013, 2 – entry into force 15.07.2013]
4) whether to administer coercive psychiatric treatment.

§ 402. Order on administration of coercive psychiatric treatment

(1) If a court deems it to be proved that an unlawful act was committed by a person specified in § 393 of this Code, the court shall prepare an order on termination of the criminal proceedings on the basis of clause 199 (1) 1) of this Code and, if necessary, order coercive psychiatric treatment prescribed in the Penal Code to be administered to the person concerned.

(2) If a court finds that the mental incompetence of a person has not been established or that the nature of the illness or disorder of the person who committed an unlawful act is such that he or she is able to understand the unlawfulness of his or her act and to act according to such understanding, the court shall, by order, return the criminal matter to the Prosecutor's Office for continuation of the proceedings under general procedure.

§ 402[1]. Alteration of administration of coercive psychiatric treatment

(1) Taking into consideration the opinion of a psychiatrist or medical committee having examined the person subject to coercive treatment, coercive in-patient treatment may be replaced by out-patient treatment or coercive out-patient treatment by in-patient treatment, if such request is submitted by a person close to the person being treated for the purposes of subsection 71 (1) of this Code, a legal representative, health care provider or counsel of such person, taking into account the specifications specified in subsection (4) of this section.

(2) A health care provider which administers coercive out-patient treatment is required to immediately submit a request to a court for replacement of coercive out-patient treatment by in-patient treatment if the harmfulness of the person subjected to treatment to the person himself or herself or to society has increased, he or she does not comply with the requirements relating to the treatment or if the subjection of the person to in-patient treatment is necessary for the achievement of the objectives of the treatment.

(3) Alteration of the administration of coercive psychiatric treatment shall be decided by an order of the court of the location of the health care provider in the presence of a prosecutor and a criminal defence counsel. When coercive in-patient treatment is replaced by coercive out-patient treatment, the person subject to treatment and his or her guardian shall be also summoned to the session, but their failure to appear shall not hinder the hearing of the matter. If necessary, the court may involve other persons or order an expert assessment upon deciding on alteration of administration of coercive psychiatric treatment.

(4) If a person subject to coercive out-patient treatment is admitted to the psychiatric department of a hospital for emergency psychiatric care and a court has made the decision specified in subsection 11 (2) of the Mental Health Act, the coercive treatment of the person shall continue in the form of in-patient treatment.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 403. Termination of administration of coercive psychiatric treatment

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

(1) If a person recovers as a result of coercive psychiatric treatment administered to him or her or, according to the opinion of a psychiatrist or medical committee having examined the person subjected to coercive treatment, there is no need for further administration of coercive treatment, a court shall terminate the administration of coercive psychiatric treatment on the proposal of the health care provider.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) If the administration of coercive psychiatric treatment is terminated with regard to a person who developed an illness or disorder after the court judgment was made but before the person had served the full sentence, a court shall decide on the subsequent serving of the sentence at the request of the Prosecutor's Office.
[RT I, 05.07.2013, 2 – entry into force 15.07.2013]

(3) If the administration of coercive psychiatric treatment is terminated with regard to a person who developed the illness or disorder during pre-court proceedings or during judicial proceedings, the Prosecutor's Office shall decide whether or not to continue criminal proceedings under general procedure.

(4) Taking into consideration the opinion of the psychiatrist or medical committee having examined the person subjected to treatment, a court may terminate the administration of coercive treatment if such request is submitted by a person close to the person being treated for the purposes of subsection 71 (1) of this Code, his or her legal representative or counsel.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) Termination of the administration of coercive psychiatric treatment shall be decided by an order of the court of the location of the health care provider in the presence of a prosecutor and a criminal defence counsel. The person subject to treatment and his or her guardian shall be also summoned to a court session, but their failure to appear shall not hinder the hearing of the matter. If necessary, the court may involve other persons or order an expert assessment upon deciding on termination of the administration of coercive psychiatric treatment.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

Chapter 16[1]
PROCEDURE FOR CONFISCATION OF INSTRUMENTS BY WHICH CRIMINAL OFFENCE WAS COMMITTED, OF DIRECT OBJECTS OF CRIMINAL OFFENCE AND OF PROPERTY OBTAINED BY CRIMINAL OFFENCE

[RT I, 31.12.2016, 2 - entry into force 10.01.2017]

§ 403[1]. Commencement of procedure for confiscation of instruments by which criminal offence was committed, of direct objects of criminal offence and of property obtained by criminal offence

[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

(1) In the case of particular complexity or extent of circumstances relating to confiscation, the Prosecutor's Office may conduct preparation of a confiscation request on the basis of §§ 83, 83[1] and 83[2] of the Penal Code in separate proceedings pursuant to the provisions of this Chapter.
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

(2) Severance of confiscation proceedings into a new file shall be formalised by an order of the Prosecutor's Office. A copy of an order or order on the severance shall be included in the new file.

(3) A request for decision on confiscation shall be submitted to the court not later than within two years after the entry into force of a court judgment in criminal proceedings conducted with regard to the criminal offence which is the basis for confiscation.

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

§ 403[2]. Facts relating to subject of proof in confiscation proceedings

In confiscation proceedings, facts of subject of proof are the facts which correspond to the prerequisites for confiscation.
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

§ 403[3]. Pre-court proceedings under confiscation procedure

(1) Pre-court proceedings under confiscation procedure shall be conducted pursuant to the provisions of this Code unless otherwise provided for in this Chapter.

(2) [Repealed – RT I, 29.06.2012, 2 – entry into force 01.01.2013]

(3) It is prohibited to apply a preventive measure in order to secure confiscation proceedings.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

§ 403[4]. Acts performed by investigative body upon completion of pre-court proceedings under confiscation procedure

[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

(1) If the competent official of the investigative body is convinced that the evidentiary information required under the confiscation procedure has been collected, he or she shall send a file of the confiscation proceedings together with the evidence to the Prosecutor's Office.

(2) If the Prosecutor's Office so directs, the official shall submit to the Prosecutor's Office a summary of the confiscation proceedings which shall set out:
1) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth of the accused or the convicted offender;
2) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth of the third party;
3) a reference to the title of the criminal matter and the court judgment of the criminal offence which is the basis for confiscation if a court judgment has been made in the criminal matter which is the basis for confiscation;
4) information concerning seizure of the property to be confiscated or other measures securing confiscation or replacement thereof;
5) a description and location of the property to be confiscated;
6) a list of evidence.
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

§ 403[5]. Activities of Prosecutor's Office upon receipt of file of confiscation proceedings

[RT I, 31.12.2016, 2 – entry into force 10.01.2017]
The Prosecutor's Office which receives a file of confiscation proceedings shall prepare a confiscation request, require the investigative body to perform additional acts or terminate the confiscation proceedings by an order in accordance with the rules provided in subsection 206 (1) of this Code due to the absence of the grounds for confiscation or confiscation being impossible.
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

§ 403[6]. Sending of confiscation request to court

(1) A confiscation request shall set out:
1) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth of the accused or the convicted offender;
2) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth of the third party;
3) a reference to the title of the criminal matter and the court judgment of the criminal offence which is the basis for confiscation;
4) information concerning seizure of the property to be confiscated or other measures securing confiscation or replacement thereof;
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]
5) a description and location of the property to be confiscated;
6) whether substitution of confiscation is applied for pursuant to § 84 of the Penal Code;
7) a list of evidence.

(2) A copy of the application shall be sent to the accused or the convicted offender, his or her counsel and the third party and the application shall be forwarded to the court. The confiscation request shall be also delivered to the court by electronic means.

(3) If necessary, the Prosecutor's Office shall perform the acts provided for in § 240 of this Code for the application of settlement procedure, taking into account the specifications of the confiscation proceedings. The third party shall grant his or her consent to the application of settlement procedure pursuant to the procedure provided for in § 243 of this Code. If the Prosecutor's Office and the accused or the convicted offender reach a settlement concerning the amount of property, the agreement shall be sent to the court.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

§ 403[7]. Confiscation procedure before the court

(1) A court shall decide on confiscation by an order at the request of the Prosecutor's Office after the entry into force of a judgment of conviction of the criminal offence which is the basis for confiscation.

(2) The prosecutor, the accused or the convicted offender, his or her counsel and third party shall be summoned to a court session. The failure of a third party to appear in a court session shall hinder neither the judicial hearing nor the consideration of the confiscation request. If the accused or convicted offender fails to appear, the provisions of § 269 of this Code apply.

(3) Confiscation shall be decided by a judge sitting alone.

(4) Judicial hearing shall be conducted pursuant to the provisions of Subchapter 2 of Chapter 9 or Chapter 10 of this Code, taking into account the specifications of the confiscation proceedings.

(5) If an accused, convicted offender or third party submits a written request to the Prosecutor's Office or court to the effect that he or she has no objections to the confiscation of his or her property, his or her failure to appear shall not preclude consideration of the confiscation request. In such case, the court has the right to resolve the confiscation request by written procedure.

(6) If a confiscation request is submitted to the court before the entry into force of the court judgment and a judgment of acquittal enters into force, the court shall terminate confiscation proceedings by an order.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

§ 403[8]. Issues of confiscation procedure that are to be resolved in chambers

(1) A court shall resolve a confiscation request by an order made in chambers.

(2) When giving the order, a court shall resolve the following issues:
1) whether the property whose confiscation is applied for is connected, under the conditions provided for in § 83, 83[1] or 83[2] of the Penal Code, with the criminal offence which is the basis for confiscation;
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]
2) whether the property has been acquired by the third party in the manner provided for in subsection 83 (3), 83[1](2) or subsection 83[2](2) of the Penal Code;
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]
3) whether and to which part of the property confiscation should be applied;
4) how to proceed with regard to property seized or taken which is not subject to confiscation;
5) the amount of the expenses of confiscation proceedings and the person who is to bear those expenses.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

§ 403[9]. Decision in confiscation proceedings

(1) A court shall make one of the following in chambers:
1) a confiscation order, or
2) an order by which the confiscation request is denied.

(2) A copy of an order shall be submitted to the convicted offender and the third party.

(3) When resolving a confiscation request in the case provided for in subsection 403[7](5) of this Code, a copy of the order is sent to the participant in the proceedings who did not participate in the in judicial hearing.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

§ 403[10]. Contestation of confiscation order

(1) A prosecutor, convicted offender or third party may file an appeal pursuant to the procedure provided for in Chapter 15 of this Code against a confiscation order and an order by which the confiscation request is denied.

(2) A court order made on considering an appeal against a court order may be filed with a higher court.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

Chapter 17
GRANT OF PERMISSION FOR PREMATURE RELEASE OF MINORS FROM CLOSED CHILD CARE INSTITUTIONS

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

§ 404. Grant of permission for placement of minor in school for students who need special treatment due to behavioural problems or for extension of term for his or her stay in school for students who need special treatment due to behavioural problems

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

§ 405. Grant of permission for premature release of minors from closed child care institutions

[RT I, 05.12.2017, 1 – entry into force 01.01.2018]
A judge shall grant a permission for premature release of a minor from a closed child care institution on the basis of a written request of the minor, his or her legal representative or manager of the closed child care institution. The opinion of a child protection official of the local authority of the place of residence of the minor shall be appended to the request.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

§ 406. Rules regarding consideration of requests

(1) A judge shall consider a request specified in § 405 of this Code without delay.

(2) For the resolution of the request, a judge may summon a minor, his or her legal representative, a child protection official, social worker or psychologist of the local authority of the place of residence of the minor to the court and question them in order to ascertain whether the request is well founded.

(3) For the resolution of the request, a court shall make:
1) an order on premature release of a minor from a closed child care institution, or
2) an order by which the request is denied.

(4) An order specified in subsection (3) of this section shall be reasoned.

(5) Copies of an order shall be sent to the person who submitted the request, the minor and his or her legal representative, and the closed child care institution.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

§ 407. Contestation of grant of permission or refusal to grant permission

A minor or his or her legal representative may file an appeal against the order specified in subsection 406 (3) of this Code pursuant to the procedure provided for in Chapter 15 of this Code.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

Chapter 18
ENTRY INTO FORCE AND ENFORCEMENT OF COURT DECISIONS

Subchapter 1
General Provisions

§ 408. Entry into force of court judgments and orders

(1) A court judgment or order enters into force when it can no longer be contested in any other manner except by review procedure.

(2) A court judgment enters into force upon expiry of the term for appeal or appeal in cassation. If an appeal in cassation is filed, the court judgment enters into force as of the date on which the appeal in cassation is rejected or the conclusion of the judgment of the Supreme Court is pronounced. If the term for contestation of a judgment is restored, the judgment is deemed not to have entered into force.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(3) A court judgment made under summary procedure enters into force upon expiry of the term for submission of requests for judicial hearing of such judgment under general procedure.

(4) A court order enters into force upon expiry of the term for appeal against the order. If an appeal is filed against an order, the order enters into force after it has been considered by the court which made the order or by a higher court. If the term for contestation of a court order is restored, the court order is deemed not to have entered into force.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(5) Orders on taking into custody, extension of the term for holding in custody, provisional custody, compulsory placement of a person in a medical institution, seizure of property, seizure of a postal or telegraphic items, exclusion from office and application of temporary restraining order, orders specified in § 12 of this Code and court orders which cannot be contested, enter into force as of the making of the order.
[RT I, 07.12.2018, 2 – entry into force 17.12.2018]

(6) In the case a part of a court judgment is contested, the court judgment shall enter into force to the extent not contested.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 408[1]. Publication of court judgments and court orders which have entered into force

(1) A court judgment and a court order which have entered into force and which terminate proceedings shall be published in the computer network in the place prescribed therefor, except in the case pre-court proceedings continue in the criminal matter in which the court order was made.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) A published decision shall disclose the name and personal identification code or, in the absence of the personal identification code, date of birth of the accused. The personal identification code and name or date of birth of an accused who is a minor are replaced by initials or characters, except in the case the disclosed decision is at least the third one in which the minor in convicted in a criminal offence. A court shall replace the names and other personal data of other persons with initials or characters. A decision shall not disclose the residence of a person.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) If the main part or statement of reasons of a decision contains personal data of specific categories or personal data regarding which another restriction on access prescribed by law applies and the decision allows identification of a person although the names and other personal data have been replaced with initials or characters, the court shall publish, on its own initiative or at the request of the data subject, only the conclusion or final part of a decision.
[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

(4) If the main part or statement of reasons of a decision contains information regarding which another restriction on access prescribed by law applies, the court shall disclose, on its own initiative or at the request of the interested person, only the conclusion or final part of a decision.
[RT I 2007, 12, 66 – entry into force 25.02.2007]

(5) The requests specified in subsections (3) and (4) of this section shall be submitted to a court before a decision is made. The court shall resolve the request by an order. A person who submitted the request may file an appeal against a court order by which the request is denied.
[RT I 2007, 12, 66 – entry into force 25.02.2007]

§ 409. Mandatory nature of court judgments and orders

Compliance with court judgments and court orders which have entered into force is mandatory for all persons within the territory of the Republic of Estonia.

§ 410. Admissibility of execution of court judgment or order

(1) A court judgment or order shall be enforced when it has entered into force unless otherwise provided by law.

(2) If an appeal or appeal in cassation is filed against a court judgment with regard to only one of the accused persons, the court judgment shall neither be enforced with regard to the other accused persons before the entry into force of the judgment.

§ 411. Enforcement of court judgment or order

(1) A judgment or order of a court of first instance which has entered into force shall be enforced by the county court which made the decision.

(2) A court judgment or order of a court of appeal or court of cassation which has entered into force shall be enforced by the county court which made the first decision in the same criminal matter.

(3) In the case provided by § 417 of this Code, the court judgment shall be enforced by the institution designated by the minister responsible for the area.
[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

(4) If a decision is enforced, the county court or the institution designated by a directive of the minister responsible for the area shall send a copy of the decision to the body enforcing the decision. The court shall make a notation concerning the entry into force of the court judgment or order on the copy.
[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

§ 412. Term for enforcement of court judgment or order

(1) A judgment of acquittal or a judgment releasing the accused from punishment shall be enforced immediately after the conclusion of the judgment has been pronounced. If the accused is held in custody, the court shall release him or her from custody in the courtroom.

(2) A judgment of conviction shall be enforced within three days after the entry into force of the judgment or rejection of the criminal matter by the court of appeal or court of cassation.

(3) In the case provided for in subsection 417 (2) of this Code, the court judgment shall be enforced within one month after the entry into force of the judgment.

(4) A court order shall be enforced immediately after the entry into force thereof.

§ 413. Enforcement of several court judgments

If, in the making of a court judgment, a punishment which was imposed on the person by a previous court judgment and which has not been served in full is not added to or deemed to be covered by the punishment imposed on the person by the new court judgment, the court making the most recent judgment or the judge of the court of the place of execution of the court judgment who is in charge of execution of court judgments shall make an order pursuant to § 65 of the Penal Code.

Subchapter 2
Enforcement of Punishments

§ 414. Enforcement of imprisonment

(1) If a convicted offender was not held in custody during judicial proceedings, the county court enforcing the decision shall send a notice prepared according to the treatment plan to the convicted offender, setting out by which time and to which prison the convicted offender must appear for the service of the sentence. The notice shall set out that in the case of failure to appear in the prison at the time specified, compelled attendance shall be applied to the person pursuant to subsection (3) of this section or the person shall be taken into custody at the request of the prison pursuant to the procedure provided for in § 429 of this Code.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) In the case provided for in subsection (1) of this section, the time when the convicted offender arrives in the prison is deemed to be the time of commencement of the service of the sentence of imprisonment.

(3) If a convicted offender fails to appear in the prison for the service of the sentence at the time specified, the prison shall forward a request for the imposition of compelled attendance to the Police and Border Guard Board.
[RT I, 29.12.2011, 1 – entry into force 01.01.2012]

(4) Submission of a request for deferral of execution of imprisonment shall not suspend the enforcement of the execution imprisonment.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 415. Deferral of enforcement of sentence of imprisonment

(1) A judge in charge of execution of court judgments may defer the enforcement of a sentence of imprisonment by an order:
1) by up to six months if the convicted offender suffers from a serious illness and it is impossible to provide medical treatment for him or her in the prison;
2) by up to one year if the convicted offender is pregnant at the time of execution of the court judgment.
3) [omitted - RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(2) If a female convicted offender has a small child, the judge in charge of execution of the court judgment may defer the enforcement of the sentence of imprisonment by an order until the child has attained three years of age.

(3) A judge in charge of execution of court judgments may defer the enforcement of a punishment by an order for up to two months if immediate commencement of the service of the sentence of imprisonment would result in serious consequences for the convicted offender or his or her family members due to extraordinary circumstances.

(4) The judge in charge of execution of court judgments shall decide the deferral of enforcement of the sentence of imprisonment on the basis specified in clause (1) 1) of this section after considering the opinion of the prosecutor and the representative of the prison.

(5) An order on deferral of the enforcement of a sentence of imprisonment shall set out also the information specified in subsection 414 (1) of this Code.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(6) A copy of an order which has entered into force shall be sent to the prison.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

§ 416. Waiver of enforcement of sentence of imprisonment

(1) A judge in charge of execution of court judgments may, by order and at the request of the Office of the Prosecutor General, waive the enforcement of a sentence of imprisonment for a specified term or a sentence of imprisonment imposed in substitution for another punishment pursuant to §§ 70 and 71 of the Penal Code if:
1) the convicted offender is extradited to a foreign state or expelled;
2) the convicted offender who is an alien and who has been punished for a criminal offence in the second degree by imprisonment, has assumed an obligation to depart from the Republic of Estonia to a host country together with prohibition on entry within for the term of five to ten years, and in the estimation of the Police and the Border Guard he or she can return to the host country.

(2) It shall be taken into consideration upon waiver of enforcement of a sentence of imprisonment whether the convicted offender has remedied or has commenced to remedy the damage caused by the criminal offence and paid the costs of criminal proceedings or paid other public law claims.

(3) The Prosecutor's Office shall request an assessment of the possibility of the alien to return to the host country from the Police and Border Guard Board which shall send such assessment to the Prosecutor's Office within 30 days as of receipt of the request.

(4) Waiver of enforcement of a sentence of imprisonment pursuant to clause (1) 2) of this section, the court order shall also include the following:
1) the term of validity of the prohibition on entry imposed on the alien and the scope of application thereof;
2) the obligation of the alien to depart from the Republic of Estonia to the host country by the determined date;
3) the information concerning enforcement of the obligation to depart if the alien is held in custody or in imprisonment in Estonia or if his or her liberty is restricted in any other manner.

(5) A judge in charge of execution of court judgments may enforce, at the request of the Prosecutor's Office, a sentence of imprisonment for a specified term or a sentence of imprisonment imposed in substitution pursuant to §§ 70 and 71 of the Penal Code if the convicted offender who was extradited or expelled pursuant to clause (1) 1) of this section returns to the country before the expiry of ten years as of his or her extradition or expulsion.

(6) A judge in charge of execution of court judgments may, at the request of the Prosecutor's Office, enforce the sentence imposed on an alien to the extent not served, if the convicted offender does not perform the obligation assumed pursuant to clause (1) 2) of this section to depart from the Republic of Estonia to a host country, he or she is suspected of commission of a new criminal offence before the performance of the obligation to depart, or he or she returns to the country before the expiry of term of the prohibition on entry imposed on him or her.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

§ 417. Enforcement and execution of pecuniary punishments

(1) A court judgment ordering pecuniary punishment which has entered into force shall be sent to the institution designated by a directive of the minister responsible for the area.
[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

(2) If a convicted offender has failed to pay the amount of the pecuniary punishment imposed on him or her to the prescribed account in full within one month after the entry into force of the court judgment or by the specified due date or if the terms for the payment of instalments of an amount of pecuniary punishment are not complied with and the term for payment of the amount of pecuniary punishment or a fine to the extent of assets has not been extended or apportioned pursuant to the procedure provided for in this Code, a copy of the court judgment shall be sent to a bailiff within ten days as of the receipt thereof.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(3) If a convicted offender fails to pay the pecuniary punishment or fine to the extent of assets by the designated due date or comply with the terms for payment of an apportioned pecuniary punishment and the term for payment of the amount of pecuniary punishment or a fine to the extent of assets has not been extended or apportioned pursuant to the procedure provided for in § 424 of this Code and a convicted offender has no assets

against which a claim for payment could be made, the bailiff shall give notice to the county court that payment is impossible not later than three years after he or she accepted the pecuniary punishment or fine to the extent of assets for collection and not later than seven years after the entry into force of the court judgment. If there are no circumstances which preclude substitution of punishment, the judge in charge of execution of court judgments shall decide on the substitution of the pecuniary punishment or fine to the extent of assets pursuant to the procedure provided for in §§ 70 and 71 of the Penal Code. The court shall notify the convicted offender and bailiff of substitution of the pecuniary punishment or fine to the extent of assets.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(4) If an amount of pecuniary punishment has been paid in part, the paid part shall be taken into account upon determination of the duration of the substitutive punishment in proportion to the paid amount. A judge in charge of execution of court judgments shall resolve the entry of the substitutive punishment in accordance with the rules provided in subsections 432 (1) and (3) of this Code. A copy of the order shall be sent to participants in proceedings concerned and to the bailiff.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

§ 418. Waiver of enforcement of pecuniary punishment

(1) The judge in charge of execution of court judgments at the county court of the residence of a convicted offender may waive the enforcement of a pecuniary punishment by an order if:
1) a sentence of imprisonment is imposed on the convicted offender in another criminal matter and the sentence is enforced;
2) execution of the pecuniary punishment may endanger the resocialization of the convicted offender;
3) circumstances provided for in § 416 of this Code exist.

(2) On the bases provided for in subsection (1) of this section, a judge in charge of execution of court judgments may also waive collection of the procedure expenses from the convicted offender.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

§ 419. Enforcement and execution of sentence of community service

(1) A sentence of community service is enforced by sending the court judgment or order to the probation supervision department of the residence of the convicted offender.

(2) The head of a probation supervision department which receives a court judgment or order shall appoint a probation supervisor for the convicted offender and the duty of the probation supervisor is to monitor the community service and exercise supervision over compliance with the supervisory requirements and obligations set out in the decision.

(3) If possible, the head of a probation supervision department shall appoint the probation officer who prepared the pre-court report as the probation officer for the convicted offender.

(4) Community service specified in clause 201 (2) 1) or 202 (2) 3) of this Code is applied on the basis of the provisions of this section. If a person evades community service, the probation supervisor shall immediately submit to the Prosecutor's Office a report on failure to perform his or her obligations.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

(5) The procedure for preparation, execution and supervision of community service shall be established by a regulation of the minister responsible for the area.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 419[1]. Enforcement and execution of electronic surveillance

(1) A sentence of electronic surveillance is enforced by sending the decision to the probation supervision department of the residence of the convicted offender.
[RT I 2010, 44, 258 – entry into force 01.01.2011]

(2) The head of a probation supervision department which receives a decision shall appoint a probation supervisor for the convicted offender and the duty of the probation supervisor is to exercise supervision over compliance with the obligations set out in the decision.
[RT I 2010, 44, 258 – entry into force 01.01.2011]

(3) If possible, the head of a probation supervision department shall appoint the probation officer who prepared the opinion concerning release before the prescribed time.

(4) If a person violates the conditions of electronic surveillance, the probation supervisor shall immediately submit a report on failure to perform the obligations to a court.

(5) The procedure for execution of electronic surveillance and supervision over it shall be established by a regulation of the minister responsible for the area.
[RT I 2006, 46, 333 – entry into force 01.01.2007]

§ 419[2]. Enforcement of treatment

(1) For the enforcement of the addiction treatment of drug addicts and complex treatment of sex offenders, the court judgment or order shall be sent to the probation supervision department of the residence of a convicted offender which makes preparations for the administrator of the treatment and refers the convicted offender to a health care provider.

(2) If a convicted offender agrees to undertake, upon release on probation or parole in accordance with § 74, 76 or 76[1] of the Penal Code, to submit to the addiction treatment of drug addicts or complex treatment of sex offenders in accordance with clause 75 (2) 5) of the Penal Code during the period of probation, the procedure provided for in subsection (1) of this section shall apply.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(3) The procedure for preparation, execution of and supervision over addiction treatment of drug addicts and complex treatment of sex offenders shall be established by a regulation of the minister responsible for the area.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(4) The health care provider specified in subsection 6 (2) of the Mental Health Act provides the addiction treatment of drug addicts and complex treatment of sex offenders.
[RT I, 15.06.2012, 2 – entry into force 01.06.2013]

§ 420. Enforcement, deferral or waiver of enforcement of prohibition on activities or prohibition on business

(1) A prohibition on activities or prohibition on business is enforced when the judgment has entered into force and the convicted offender has been notified thereof and if the prohibition on activities or prohibition on business has not been deferred and enforcement of the prohibition has not been waived on the basis specified in subsection (2) of this section.

(2) The judge in charge of execution of court judgments at the county court of the residence of a convicted offender may, at the request of the offender, defer enforcement of a prohibition on activities or prohibition on business imposed as a supplementary punishment for up to six months by an order or waive enforcement of the prohibition if execution of the punishment may result in serious consequences for the convicted offender or his or her family members.

(3) Upon the application of a prohibition on business, the court shall send a copy of the judgment which has entered into force to the registrar for entering the information concerning the prohibition on business in the relevant database. If enforcement of a prohibition on business imposed as a supplementary punishment is deferred or enforcement of the prohibition is waived, the court shall send also a copy of the relevant order to the registrar for making the corresponding entry in the database.
[RT I 2008, 52, 288 – entry into force 22.12.2008]

§ 421. Enforcement of other supplementary punishments

[RT I 2007, 23, 119 – entry into force 02.01.2008]

(1) A supplementary punishment not specified in § 420 of this Code is enforced by sending the court judgment or order to the appropriate agency who shall deprive the convicted offender of the rights specified in the decision or restrict such rights and revoke or deposit the documents issued to the convicted offender for exercising such rights or apply the prohibition set out in the court decision on the convicted offender.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(2) A fine to the extent of assets shall be enforced pursuant to the provisions of this Code concerning enforcement of pecuniary punishments.

(3) Expulsion shall be enforced pursuant to the procedure provided for in the Obligation to Leave and Prohibition on Entry Act.

§ 421[1]. Rules for transfer of confiscated property

[RT I, 31.12.2016, 2 – entry into force 01.02.2017]

(1) Unless otherwise provided by law, a copy of the court judgment or order and of the procedural document concerning the confiscated property shall be sent to the to the agency authorised to administer confiscated property.

(2) The cost of transfer and destruction of confiscated property shall be paid by the convicted offender or the third party.

(3) The procedure for transfer of confiscated property shall be established by a regulation of the Government of the Republic.
[RT I, 31.12.2016, 2 – entry into force 01.02.2017]

Subchapter 3
Return of Objects and Collection of Expenses Relating to Criminal Proceedings

§ 422. Return of things and release of property from seizure

(1) If documents or things were taken over or property was seized from a person who is acquitted or with regard to whom criminal proceedings are terminated, the judge in charge of execution of court judgments at the county court enforcing the court judgment shall send the court judgment or order which has entered into force to the appropriate agency and order return of such documents or things or release of the property from seizure.

(2) The agency executing a court judgment or order shall immediately notify the court of the execution of the decision.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

§ 423. Collection of expenses relating to criminal proceedings

The expenses relating to criminal proceedings and other claims for payment shall be collected pursuant to the provisions of this Code concerning enforcement of pecuniary punishments.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

Subchapter 4
Resolution of Issues Arising in Execution of Decisions

§ 424. Extension of term for payment of pecuniary punishment and deferral thereof

With good reason, the judge in charge of execution of court judgments at the county court of the residence of a convicted offender may, by an order made at the request of the convicted offender, extend the term for the payment of a pecuniary punishment in full or in part or defer such term for up to one year, or order payment of the pecuniary punishment in instalments on specified dates.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

§ 424[1]. Settlement of issues arising in execution of imprisonment

(1) The judge in charge of execution of court judgments at the county court of the location of service of the sentence may, at the request of the prison, by order exempt the convicted offender from serving the rest of the sentence on the grounds provided in clauses 416 (1) 1) and 2) of this Code and taking into consideration the provisions of 416 (2).

(2) Where a convicted offender is exempted from serving the rest of the sentence on the grounds provided in clause 416 (1) 2) of this Code, the court order shall also set out the information listed in subsection 416 (4).

(3) The judge in charge of execution of court judgments may, at the request of the Prosecutor's Office, enforce the part of the sentence of imprisonment which was not served if the convicted offender who was extradited or expelled pursuant to clause 416 (1) 1) of this Code returns to the country before the expiry of ten years as of his or her extradition or expulsion.

(4) The judge in charge of execution of court judgments may, at the request of the Prosecutor's Office, enforce the sentence imposed to the extent not served, if the convicted offender does not perform the obligation assumed pursuant to clause 416 (1) 2) of this Code section to depart from the Republic of Estonia to a host country, he or she is suspected of commission of a new criminal offence before the performance of the obligation to depart, or he or she returns to the country before the expiry of term of the prohibition on entry imposed on him or her.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

§ 425. Premature release of convicted offender from service of punishment due to illness

(1) If a convicted offender becomes terminally ill during the service of his or her punishment, the judge in charge of execution of court judgments at the county court of the place of execution of the punishment shall, on the basis of a proposal of the head of the agency executing the punishment and the decision of the medical committee, make an order on the release of the convicted offender from the service of the rest of the punishment pursuant to § 79 of the Penal Code.

(2) If a convicted offender becomes mentally ill or feeble-minded or develops any other severe mental disorder after the making of the court judgment but before the punishment has been served in full, the judge in charge of execution of court judgments at the county court of the place of execution of the punishment shall make an order on the waiver of enforcement of the punishment or the release of the offender from the service of the punishment. In such case, the judge in charge of execution of court judgments shall apply coercive psychiatric treatment with regard to the convicted offender pursuant to § 86 of the Penal Code.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

§ 426. Release on parole

(1) The judge in charge of execution of court judgments at the county court of the place of execution of a punishment may release a convicted offender on parole after the convicted offender has served the term of punishment provided for in § 76, subsection § 76^1(1) or § 77 of the Penal Code. The judge in charge of execution of court judgments shall release on parole a convicted offender who was younger than eighteen years of age at the time of commission of the criminal offence after serving the term of the sentence provided for in subsection 76^1(2) of the Penal Code.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(2) If the judge in charge of execution of court judgments refuses to release a convicted offender on parole, the judge may, taking into account the requirements provided in subsection 76 (3) of the Penal Code, determine a new term for hearing the matter of release which is:
1) longer or shorter than the six-month term provided for in subsection 76 (3) of the Imprisonment Act;
2) longer or shorter than the one-year term provided for in subsection 76 (4) of the Imprisonment Act; or
3) shorter than the two-year term provided for in subsection 76 (4^1) of the of the Imprisonment Act.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(3) A judge in charge of execution of court judgments may, by an order, waive the application of supervision of conduct with regard to a convicted offender on the basis of § 76, 76^1or 77 of the Penal Code if the convicted offender is extradited to a foreign state or expelled.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(4) A judge in charge of execution of court judgments may enforce the unserved part of the sentence if the convicted offender who has been extradited or expelled returns to the state earlier than ten years after his or her extradition or expulsion.
[RT I 2006, 46, 333 – entry into force 01.01.2007]

§ 426^1. Application of supervision of conduct after service of sentence

The judge in charge of execution of court judgments at the county court of the place of execution of the punishment shall decide on the application of supervision of conduct after service of the sentence within one month as of the receipt of the file by the court. In order to apply supervision of conduct after service of the sentence, the court shall consider the bases for the application of supervision of conduct after service of the sentence provided for in § $87^1$of the Penal Code and the conduct of the person during the service of the sentence.
[RT I 2009, 39, 261 – entry into force 24.07.2009]

§ 426^2. Verification of reasons for and termination of application of detention after service of sentence

[Repealed – RT I, 05.07.2013, 2 – entry into force 15.07.2013]

§ 427. Resolution of issues arising in execution of probation supervision

(1) In the case of an offender convicted under subsections 74 (4), 75 (3), 76 (7) or 77 (3^1) or 87^1(4) or (5) of the Penal Code, the judge in charge of execution of court judgments at the county court that serves the area in which the residence of the convicted offender is located shall, by order, decide whether to assign additional duties to or mitigate or annul the existing duties of the convicted offender or whether to extend his or her probationary period or enforce the sentence.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(2) The judge in charge of execution of court judgments at the county court that serves the area in which the residence of the convicted offender is located shall, by order, decide whether to annul the probation applied with

regard to the convicted offender and send him or her to serve the sentence imposed by court judgment under subsection 74 (4), (5) or (6), 76 (7) or (8) or subsection 77 (3^1) or (4) of the Penal Code.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(3) A judge in charge of execution of court judgments shall scrutinize a special report of a probation officer within ten days as of the receipt of the report by the court.

(4) [Repealed – RT I 2007, 11, 51 – entry into force 18.02.2007]

(5) A judge in charge of execution of court judgments may, by an order, waive the enforcement or execution of the supervision of conduct imposed pursuant to § 74 of the Penal Code if the convicted offender is extradited to a foreign state or expelled.

(6) A judge in charge of execution of court judgments may enforce the sentence of imprisonment which was suspended pursuant to § 74 of the Penal Code if the convicted offender who has been extradited or expelled returns to the state earlier than ten years after his or her extradition or expulsion.
[RT I 2006, 46, 333 – entry into force 01.01.2007]

§ 427^1. Resolution of issues arising in performance of obligations

If circumstances become evident, after the termination of the criminal proceedings and the assignment of an obligation to a person on the basis of subsection 201 (2), subsection 202 (2) or subsection 203^1(3) of this Code, which aggravate the performance of the obligation, the Prosecutor's Office or court may, with the consent of the person, change the obligation imposed on a person or to free him or her from the obligation by an order. The consent of the victim is necessary in the case of amendment of or release from an obligation imposed on the bases provided for in subsection 203^1(3) of this Code, except for the obligation to compensate for procedural expenses.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

§ 427^2. Performance of obligation to depart from the Republic of Estonia

(2) A departure obligation shall be subject to compulsory enforcement in accordance with the rules provided in § $20^2$of the Obligation to Leave and Prohibition on Entry Act if the convicted offender who is an alien is held in custody or imprisonment in Estonia or if his or her liberty is restricted in any other manner.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

§ 428. Resolution of issues arising in execution of sentence of community service

(1) If a convicted offender evades community service, fails to comply with supervisory requirements or perform the duties imposed on him or her, the probation officer shall submit a special report to the court for imposition of additional obligations on the convicted offender pursuant to subsection 75 (2) of the Penal Code or extension of the term for community service or enforcement of the sentence of imprisonment imposed on the convicted offender.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(2) The judge in charge of execution of court judgments at the county court of the residence of a convicted 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 him or her by the court judgment pursuant to subsection 69 (6) or (7) of the Penal Code.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

§ 428^1. Resolution of issues arising in execution of decisions

(1) If a convicted offender absconds or waives the treatment of drug addicts or complex treatment of sex offenders imposed on him or her, the person administering the treatment shall immediately submit an application to the probation supervisor in which the probation supervisor is informed of non-subjection of the convicted offender to the treatment.

(2) A probation supervisor has the right to access the information concerning the treatment and diagnosis.

(3) A probation supervisor who establishes the violation provided for in subsection (1) of this section shall make a special report to the court which contains information about the circumstances of the violation, duration of the treatment administered, summary of the explanations of the convicted offender and proposal to assign additional obligations or discontinue the treatment and to enforce the punishment. The special report shall be also submitted in the case the convicted offender fails to comply with the supervisory requirements or perform the obligations assigned to him or her.

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

(4) If a convicted offender fails to submit to the addiction treatment of drug addicts imposed on him or her due to an illness or family situation, a probation supervisor shall submit a request to the court for suspension of the running of the term of the addiction treatment of drug addicts. The request shall contain information on the bases of suspension and a proposal for the term of suspension. Upon suspension of the running of the term and upon determination of a new term, the court shall take into account the general restrictions on the term of addiction treatment of drug addicts imposed for the respective offence.
[RT I, 15.06.2012, 2 – entry into force 01.06.2013]

§ 428[2]. Verification of reasons for prohibition on entry of aliens

The court which imposed the prohibition on entry on a foreign citizen, may revoke the prohibition on entry, shorten the period of validity of the prohibition on entry or suspend the prohibition on entry by its order at the request of the foreign citizen, if the stay of the foreign citizen in Estonia is justified to ensure the protection of the fundamental rights of the person and public order or national security are not endangered thereby.
[RT I, 17.12.2015, 3 – entry into force 27.12.2015]

§ 429. Grounds and rules for taking convicted offender into custody

(1) At the request of a probation officer or bailiff or upon receipt of information from the judicial authorities competent to engage in international cooperation in criminal proceedings that the person is abroad, a judge in charge of execution of court judgments may take into custody a convicted offender if the offender evades or may evade execution of the judgment of conviction and the court has sufficient reason to believe that:
1) the conditional imprisonment will be enforced;
2) the part of the punishment which was not served due to release on parole will be enforced;
3) the sentence of imprisonment substituted by community service will be enforced;
4) the pecuniary punishment will be substituted by detention, imprisonment or community service;
5) the fine to extent of assets will be substituted by imprisonment; or
6) the convicted offender sentenced to imprisonment is outside the territory of the Republic of Estonia.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) In the cases provided for in subsection (1) of this section, a convicted offender may be held in custody until the entry into force of an order on the enforcement or substitution of the punishment.

(3) Convicted offenders are taken into custody pursuant to the provisions of §§ 131-136 of this Code.

§ 430. Amendment of type, conditions or term of sanctions against minors

[RT I, 05.12.2017, 1 – entry into force 01.01.2018]
Amendment of the type, conditions and term of the sanction imposed pursuant to subsection 87 (8) of the Penal Code or assignment of additional obligations of supervision of conduct according to subsection 75 (2) of the Penal Code shall be decided by an order of the judge in charge of execution of court judgments at the county court of the residence of the convicted offender if a probation supervisor, head of the agency applying the sanction or the agency which conducted the proceedings concerning the offence which constitutes the basis for the sanction has transmitted a notification to the judge in charge of the execution of court judgment concerning failure to comply with any obligation assigned as a sanction.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

§ 431. Resolution of Issues Arising in Execution of Decisions

(1) Issues not regulated by §§ 424-428[1]and 430 of this Code and other doubts and ambiguities arising in the execution of a decision shall be resolved by an order of the court which made the decision or the judge in charge of execution of court judgments at the county court enforcing the decision.
[RT I, 23.02.2011, 2 – entry into force 05.04.2011]

(2) The provisions of subsection (1) of this section shall also apply on the basis of the provisions of subsection 5 (2) of the Penal Code.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(3) The prison in which the person specified in subsection 5 (2) of the Penal Code is serving a sentence shall inform the person of the retroactive effect of the Act within 15 days as of the entry into force of the mitigating Act and submit data to the judge in charge of execution of court judgments for a decision on release of the person.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(4) The person specified in subsection 5 (2) of the Penal Code shall have no right to file a claim for compensation for the sentence served and reversal thereof.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

§ 432. Rules for consideration of issues arising in execution of decisions

(1) A judge in charge of execution of court judgments shall resolve issues relating to the execution of a decision by order made in written procedure without summoning the parties to judicial proceedings to court unless otherwise provided for in subsection (3) of this section.

(2) If an issue pertains to the execution of a judgment in the part which concerns the civil action or proof of claim in public law, the judge in charge of execution of court judgments shall inform the victim and civil defendant of the issue beforehand and they have the right to submit their opinions in writing within the term specified by the court. If an application for amendment of or release from an obligation imposed on the bases provided for in subsection 203^1(3) of this Code is submitted, the judge in charge of execution of court judgments shall inform the victim of the issue and the victim shall submit his or her opinion in writing by the term determined by the court.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(3) A judge in charge of execution of court judgments shall resolve the issues provided in §§ 425-$426^1$of this Code and the issues relating to the deprivation of the liberty of a convicted offender in his or her presence. A prosecutor shall be summoned before the judge in charge of execution of court judgments, except in the case provided for in subsections 417 (3), 427 (1) and (2) and § 428 of this Code, and a counsel at the request of the convicted offender, and their opinions shall be heard. The health care professional who has rendered an opinion concerning the premature release of a convicted offender from punishment due to his or her illness is required to participate at the resolution of the corresponding issue. If necessary, the court may involve other persons or order an expert assessment upon deciding an issue concerning application of supervision of conduct.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(3^1) If a convicted offender who stays outside the territory of the Republic of Estonia has been declared a fugitive, the enforcement of a sentence of imprisonment on the bases provided for in § 427 or § 428 of this Code and taking into custody on the bases provided for in subsection 131 (4) of this Code may be decided upon by written procedure without summoning the parties to judicial proceedings to court. Not later than on the second day following the date of bringing the person into Estonia, the convicted offender shall be taken to the judge in charge of execution of court judgments for interrogation.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(3^2) The judge in charge of execution of court judgments may organise the participation of the persons specified in subsections (2) and (3) of this section in the consideration of the issues arising in the execution of decisions by means of a technical solution, which complies with the requirements specified in clause 69 (2) 1) of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3^3) The issues specified in §§ 425 and 426 of this Code may be considered before a judge in charge of execution of court judgments without the participation of a prosecutor if the Prosecutor's Office had delivered the positions thereof to the judge in charge of execution of court judgments in writing or by electronic means and declared that they do not wish to participate in the consideration of the issue.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3^4) If a new Act shortens the imprisonment prescribed for an act after the entry into force of a court judgment in the case of which the judge in charge of execution of court judgments resolves an issue arisen upon execution thereof, the judge in charge of execution of court judgments shall shorten the imprisonment pursuant to subsection 5 (2) of the Penal Code to the maximum rate prescribed for a similar act in the new Act, or if the act is no longer punishable as a criminal offence or punishable by imprisonment, the judge in charge of execution of court judgments shall not enforce the imprisonment or releases the person from imprisonment.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(3^5) If a person has been imposed an aggregate punishment by a judgment which has entered into force and the new Act precludes the punishability of one or more of the criminal offences which were the basis for imposition of the aggregate punishment, imposition of imprisonment or shortens the imprisonment, the judge in charge of execution of court judgments shall impose a new aggregate punishment on the basis of subsection 5 (2) of the Penal Code.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(4) A court shall send a copy of an order made pursuant to subsection (1) of this section to the participants in proceedings who are concerned by the order.

Chapter 19

INTERNATIONAL COOPERATION IN CRIMINAL PROCEEDINGS

Subchapter 1 General Provisions

§ 433. General principles

(1) International cooperation in criminal proceedings comprises extradition of persons to foreign states, mutual assistance between states in criminal matters, execution of the judgments of foreign courts, taking over and transfer of criminal proceedings commenced, cooperation with the International Criminal Court and Eurojust and extradition to Member States of the European Union.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(2) International cooperation in criminal proceedings shall be effected pursuant to the provisions of this Chapter unless otherwise prescribed by the international agreements of the Republic of Estonia, the European Union legislation or the generally recognised principles of international law.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(3) International cooperation in criminal proceedings shall be effected pursuant to the provisions of the other chapters of this Code in so far as this is not in conflict with the provisions of this Chapter.

(4) The requirement of confidentiality shall be complied with in the course of international cooperation in criminal proceedings to the extent necessary for the purposes of cooperation. If compliance with the confidentiality requirement is refused, the requesting state shall be immediately notified of such refusal.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

(5) Transmission of personal data to third countries and international organisations in the course of co-operation in criminal proceedings has to comply with the procedure provided for in Subchapter 7 of Chapter 4 of the Personal Data Protection Act.
[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

§ 434. Requesting state and executing state

(1) A state which submits a request for international cooperation in criminal proceedings to another state is the requesting state.

(2) A state to which a requesting state has submitted a request for international cooperation in criminal proceedings is the executing state.

§ 435. Judicial authorities competent to engage in international cooperation in criminal proceedings

(1) The central authority for international cooperation in criminal proceedings is the Ministry of Justice, unless otherwise provided by law or international legislation binding on the Republic of Estonia.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(2) Within the scope provided by the relevant statute or the relevant international legal instrument binding on the Republic of Estonia, the judicial authorities vested with the competence to conduct international cooperation in criminal proceedings are the courts, the Prosecutor's Office, the Police and Border Guard Board, the Internal Security Service, the Tax and Customs Board, the Environment Board, the Competition Board and the Military Police.
[RT I, 10.07.2020, 2 – entry into force 01.01.2021]

(3) If the Penal Code of Estonia is applied to criminal offences which are committed outside the territory of the Republic of Estonia, the Office of the Prosecutor General, which initiates criminal proceedings or verifies the legality and justification of commencement of the criminal proceedings, shall be immediately informed thereof.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 436. Prohibition on international cooperation in criminal proceedings

(1) The Republic of Estonia refuses to engage in international cooperation if:
1) it may endanger the security, public order or other essential interests of the Republic of Estonia;
2) it is in conflict with the general principles of Estonian law;
3) there is reason to believe that the assistance is requested for the purpose of bringing charges against or punishing a person on account of his or her race, nationality or religious or political beliefs, or if the situation of the person may deteriorate for any of such reasons.

(1^1) The Republic of Estonia shall not refuse to engage in international cooperation with a Member State of the European Union on the ground that the offence is regarded as a political offence, as an offence connected with a political offence or an offence inspired by political motives unless otherwise provided by law or an international agreement.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(1^2) The Republic of Estonia shall not refuse to engage in international cooperation with a Member State of the European Union on the ground that the same kind of tax or duty is not imposed or the same type of taxes, customs or exchange arrangements have not been established in Estonia as in the requesting state.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(1^3) The Republic of Estonia may not refuse international cooperation on the basis of national economic interests, foreign policy interests or other considerations, if this is contrary to an international agreement binding on Estonia.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(2) If a witness or expert is requested to be summoned to a foreign court, the request shall not be complied with if the requesting state fails to ensure compliance with the requirement of immunity on the bases provided for in § 465 of this Code.

(3) The Republic of Estonia may refuse international cooperation if it is obvious that a non-European Union state does not ensure adequate level of data protection. The respective decision is made by the Ministry of Justice in co-ordination with the Ministry of Foreign Affairs, the Data Protection Inspectorate and the Office of the Prosecutor General.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 436^1. Prohibition on parallel proceedings of criminal offences

(1) Conduct of criminal proceedings with respect to same persons and same circumstances relating to a criminal offence in several Member States of the European Union shall be avoided.

(2) If the Prosecutor's Office or a court becomes aware that criminal proceedings are conducted with respect to the same persons and same circumstances related to a criminal offence in another state, they are obliged to contact the competent judicial authorities of the respective state in a format which can be reproduced in writing in order to concentrate the criminal proceedings in one state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 436^2. Obligation to contact

(1) If Estonia is the contacting country in the case of parallel criminal proceedings, the Prosecutor's Office or court shall submit the following information in writing upon the first contact:
1) the name and contact details of the competent judicial authority;
2) the description of the facts which is the object of the criminal proceedings;
3) the name, place of residence or registered office and address of the suspect or accused and, if necessary, the name, place of residence or registered office and address, date of birth, nationality, name and number of identity document and mother tongue of the victim;
4) the information on detention or taking into custody of the suspect or accused;
5) the stage of proceedings in the criminal proceedings.

(2) The term for giving response shall be indicated upon the first contact. If the suspect or accused is held in custody, an urgent response shall be requested.

(3) If Estonia is unaware of the competent judicial authority of the country conducting parallel criminal proceedings, the Prosecutor's Office or a court in court proceedings shall contact the Eurojust's National Member for Estonia or the contact persons on the European Judicial Network for determining the competent judicial authority.

(4) In the case of parallel criminal proceedings, Estonia shall establish the contact and submit the information specified in subsections (1) and (2) of this section in a language accepted by the Member State.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 436^3. Obligation to respond to information inquiries

(1) The Prosecutor's Office or a court in court proceedings is obliged to respond to information inquires received by Estonia in writing in order to confirm the conduct of criminal proceedings which is the object of the information inquiry or notify of absence of criminal proceedings.

(2) If the criminal proceedings which is the object of the information inquiry are conducted in Estonia, the following information shall be submitted in the response concerning the criminal proceedings:
1) the name and contact details of the competent judicial authority;
2) whether the criminal proceedings are conducted with respect to a part or all the acts with respect to which the information inquiry was submitted or whether the criminal proceedings have been conducted;
3) the name, date of birth, place of residence or registered office and address, nationality, name and number of identity document and mother tongue of the person with respect to whom the criminal proceedings are conducted or have been conducted;
4) the stage of the criminal proceedings and, in the case of a final procedural decision, the nature of the final decision and the date of making thereof;
5) other information relating to the criminal proceedings, if the disclosure thereof does not have an adverse effect on further conduct of the criminal proceedings.

(3) If the suspect or accused related to the criminal proceedings indicated in the information inquiry received by Estonia is held in custody, the Prosecutor's Office or a court in court proceedings shall immediately respond to the information inquiry.

(4) If it is impossible to respond immediately or during the term established to the information inquiry received due to specification of the necessary circumstances of the criminal proceedings or circumstances related to identification of the person, the competent judicial authority of the state which communicated the information inquiry shall be notified thereof and the term during which the information is provided shall be indicated.

(5) Responses containing the information specified in subsection (2) of this section shall be prepared to information inquiries received by Estonia in a language accepted by the Member State.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 436[4]. Consultations for deciding on country of location to continue proceedings

(1) If it becomes evident as a result of information exchange that criminal proceedings are conducted against the same person with respect to the same circumstances of a criminal offence in Estonia and another Member State of the European Union, the Prosecutor's Office or a court in court proceedings shall commence consultations with a competent authority of the other state in order to decide on concentration of the criminal proceedings in one state.

(2) The following shall be taken into consideration during consultations upon deciding on the country of location for conduct of criminal proceedings:
1) the place of commission of the criminal offence or most of the criminal offences;
2) the place of arise of damage or major part of the damage;
3) the place of stay of the suspect or accused held in custody;
4) the need for extradition or surrender of the suspect or accused in connection with other possible criminal proceedings;
5) the nationality and place of residence of the suspect or accused;
6) the place of location of the victims or witnesses and other relevant interests;
7) admissibility of evidence and other potential delays in continuation of criminal proceedings.

(3) Upon failure to agree upon the country of location for continuation of criminal proceedings, the managers of the competent authorities of the countries holding consultations shall address Eurojust for making the decision.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 436[5]. Proceedings in case of consultations

(1) During consultations, conduct of criminal proceedings shall be continued.

(2) During consultations, the competent authorities of the countries related to the consultations shall submit relevant information to each other relating to the criminal proceedings concerning the procedural operations performed, except for the information which is classified as a state secret.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 436[6]. Continuation of criminal proceedings upon resolution of procedural conflict

(1) If it is decided to concentrate in Estonia the continuation of criminal proceedings conducted in parallel, the Prosecutor's Office has the right to request the evidence which are required for continuation and completion of the criminal proceedings in Estonia from the criminal proceedings of the state that conducted the criminal proceedings in parallel.

(2) If conduct of parallel criminal proceedings are concentrated in another state, the Prosecutor's Office or a court in court proceedings shall communicate the evidence collected in the criminal proceedings in Estonia to the competent authorities of the state which continues the criminal proceedings at the request thereof.

(3) If criminal proceedings conducted in parallel in Estonia are concentrated in another state, the criminal proceedings shall be terminated in Estonia.

[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 436[7]. Competence of Eurojust upon resolution of procedural conflict

(1) The provisions of §§ 436[1]-436[6] of this Code do not restrict the opportunities of Eurojust to participate in the resolution of procedural conflicts.

(2) In the case provided for in subsection 436[4](3) of this Code, the decision of Eurojust shall be the basis for concentration in one state conducting the criminal proceedings of the criminal proceedings conducted in parallel in two or more states, taking into consideration the provisions of subsection 436[4](2) of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 437. Division of expenses relating to international cooperation in criminal proceedings

(1) The Republic of Estonia as a requesting and executing state shall bear all the costs arising on its territory from international agreements or other legislation binding on the Republic of Estonia, unless otherwise resolved by agreement with a foreign state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(2) The Republic of Estonia as the executing state shall claim the following expenses from the requesting state:
1) expenses relating to the involvement of experts in Estonia;
2) expenses relating to the organisation of a telehearing in Estonia and to the attendance of the persons to be heard and the translators and interpreters unless otherwise agreed upon with the requesting state;
3) other essential or unavoidable expenses incurred by Estonia, to the extent agreed upon with the requesting state.

(3) On the basis of the request of a requesting state, the Estonian state may grant an advance to the experts and witnesses involved in international cooperation in criminal proceedings.

(4) The Republic of Estonia as the requesting state shall bear all expenses incurred in the executing state if the expenses:
1) have arisen on the bases and pursuant to the procedure provided for in subsection (2) of this section;
2) are related to the transfer of a person in custody.
[RT I 2004, 54, 387 – entry into force 01.07.2004]

Subchapter 2
Extradition

Division 1
Extradition of Persons to Foreign States

§ 438. Admissibility of extradition

Estonia as the executing state is entitled to extradite a person on the basis of a request for extradition if criminal proceedings have been initiated and an arrest warrant has been issued with regard to the person in the requesting state or if the person has been sentenced to imprisonment by a judgment of conviction which has entered into force.

§ 439. General conditions for extradition of persons to foreign states

(1) Extradition of a person for the purposes of continuation of the criminal proceedings concerning him or her in a foreign state is permitted if the person is suspected or accused of a criminal offence which is punishable by at least one year of imprisonment according to both the penal law of the requesting state and the Penal Code of Estonia.

(2) Extradition of a person for the purposes of execution of a judgment of conviction made with regard to him or her is permitted under the conditions provided for in subsection (1) of this section if at least four months of the sentence of imprisonment have not yet been served.

(3) If a person whose extradition is requested has committed several criminal offences and extradition is permitted for some of the criminal offences, extradition may be granted also for the other offences which do not meet the requirements specified in subsections (1) and (2) of this section.

§ 440. Circumstances precluding or restricting extradition of persons to foreign states

(1) In addition to the cases provided for in § 436 of this Code, extradition of a person to a foreign state is prohibited if:
1) the request for extradition is based on a political offence within the meaning of the Additional Protocols to the European Convention on Extradition, except in the case provided for in subsection 436 (1^1) of this Code; [RT I 2008, 19, 132 – entry into force 23.05.2008]
2) the person has been finally convicted or acquitted on the same charges in Estonia;
3) according to the laws of the requesting state or Estonia, the limitation period for the criminal offence has expired or an amnesty precludes application of a punishment.

(2) Extradition of an Estonian citizen is not permitted if the request for extradition is based on a military offence within the meaning of the provisions of the European Convention on Extradition and the Additional Protocols thereto.

(3) If death penalty may be imposed in a requesting state as punishment for a criminal offence which is the basis for the request for extradition, the person may be extradited only on the condition that the competent authority of the requesting state has assured that death penalty will not be imposed on the person to be extradited or, if death penalty was imposed before the submission of the request for extradition, the penalty will not be carried out.

(4) A request for the extradition of a person to a foreign state may be denied if initiation of criminal proceedings on the same charges has been refused with regard to the person or if the proceedings have been terminated.

§ 441. Conflicting requests for extradition

If extradition of a person is requested by several states, the state to which the person is to be extradited shall be determined having regard, primarily, to the seriousness and place of commission of the criminal offences committed by the person, the order in which the requests were submitted, the nationality of the person claimed and the possibility of his or her subsequent extradition to a third state.

§ 442. Requirements for request for extradition of person from Republic of Estonia

(1) A request for extradition shall be prepared by the competent judicial authority of the requesting state and it shall be addressed to the Ministry of Justice of the Republic of Estonia.

(2) The following shall be appended to a request for extradition:
1) information concerning the time and place of commission of and other facts relating to the criminal offence on which the request for extradition is based, and the legal assessment of the criminal offence pursuant to the penal law of the requesting state;
2) an extract from the penal law or any other relevant legal act of the requesting state;
3) the original or an authenticated copy of the arrest warrant or judgment of conviction made pursuant to the procedure prescribed in the procedural law of the requesting state;
4) if possible, a description of the person claimed, together with any other information which may enable to establish the identity of the person.

Division 2
Procedure for Extradition of Persons to Foreign States

§ 443. Stages in procedure for extradition of persons to foreign states

The procedure for the extradition of a person to a foreign state is divided into preliminary proceedings in the Ministry of Justice and the Office of the Prosecutor General, verification of the legal admissibility of the extradition in court, and deciding on extradition falling within the competence of the executive power.

§ 444. Acts of Ministry of Justice in preliminary proceedings

(1) The Ministry of Justice shall verify the compliance of a request for extradition with the requirements, and the existence of the necessary supporting documents.

(2) If necessary, the Ministry of Justice may grant a term to a requesting state for submission of additional information.

(3) A request for extradition which meets the requirements, and the supporting documents shall be immediately sent to the Office of the Prosecutor General.

§ 445. Acts of Office of Prosecutor General in preliminary proceedings

(1) If a request for extradition submitted by a foreign state is received directly by the Office of the Prosecutor General, the Ministry of Justice shall be immediately notified of such request.

(2) If a request for extradition is received directly by the Office of the Prosecutor General, additional information may be requested without the mediation of the Ministry of Justice.

(3) The Office of the Prosecutor General shall append an excerpt from the criminal records database and other necessary information to a request for extradition and ascertain whether criminal proceedings have been initiated with regard to the person in Estonia.

(4) The Office of the Prosecutor General shall send a request for extradition which meets the requirements, and the additional materials specified in subsection (3) of this section to the court immediately.

§ 446. Jurisdiction over verification of legal admissibility of extradition

Verification of the legal admissibility of the extradition of a person to a foreign state falls within the jurisdiction of the Harju County Court.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

§ 447. Provisional custody

(1) If the legal admissibility of the extradition of a person to a foreign state is recognised, provisional custody may be applied with regard to the person at the request of the Prosecutor's Office.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(2) In cases of urgency, a preliminary investigation judge may apply provisional custody at the request of the Prosecutor's Office before the arrival of the request for extradition if the requesting state has:
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]
1) assured that an arrest warrant has been issued or a judgment of conviction has entered into force with regard to the person in the requesting state;
2) assumed the obligation to immediately dispatch the request for extradition.

(3) A person may be detained pursuant to the procedure provided for in subsection 217 (1) of this Code before the arrival of the request for extradition on the basis of an application for an arrest warrant submitted through the International Criminal Police Organisation (Interpol) or a notice on a wanted person in the Schengen Information System.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(4) Provisional custody shall not be applied with regard to a person if legal impediments to the extradition have become evident.

(5) A person with regard to whom provisional custody has been applied may be released if the requesting state fails to send the request for extradition within eighteen days as of the application of provisional custody with regard to the person. A person with regard to whom provisional custody has been applied shall be released if the request for extradition does not arrive within forty days as of the application of provisional custody.

(6) Release of a person from provisional custody in the cases provided for in subsection (5) of this section does not preclude application of provisional custody with regard to him or her and his or her extradition upon subsequent arrival of the request for extradition.

(7) A person shall not be kept under provisional custody for more than one year. On an application of the Prosecutor General or, in a criminal case dealt with under Council Regulation (EU) 2017/1939, of a European Prosecutor or of a European Delegated Prosecutor, a preliminary investigation judge may, strictly under exceptional circumstances, extend the one-year duration of custody.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

(8) An order on provisional custody may be contested pursuant to the procedure provided for in Chapter 15 of this Code.

§ 448. Participation of counsel in extradition proceedings

(1) The counsel in extradition proceedings must be an attorney.

(2) Participation of counsel in extradition proceedings is mandatory as of the detention of the person on the basis of subsection 447 (3) of this Code.

§ 449. Simplified extradition procedure

(1) An alien may be extradited to the requesting state pursuant to the simplified procedure without verification of the legal admissibility of the extradition, on the basis of a written consent granted by the alien in the presence of his or her counsel.

(2) A proposal to consent to extradition pursuant to the simplified procedure shall be made to the person claimed upon his or her detention. The consent shall be immediately communicated to the minister responsible for the area who shall decide on the extradition of the person pursuant to the procedure provided for in § 452 of this Code.

(3) A decision of the minister responsible for the area on the extradition of an alien pursuant to the simplified procedure shall be promptly communicated to the Police and Border Guard Board for execution and to the Office of the Prosecutor General for their information. A decision by which extradition pursuant to the simplified procedure is refused shall be sent to the Office of the Prosecutor General who shall decide on the submission of a request to take over criminal proceedings from the foreign state.
[RT I 2009, 27, 165 – entry into force 01.01.2010]

(4) If an alien submits a written request in a court in the presence of a defence counsel that he or she agrees with his or her extradition without extradition proceedings, his or her extradition shall be decided by the minister responsible for the area on the basis of the request without the documents provided for in subsection 442 (2) of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 450. Verification of legal admissibility of extradition in court

(1) In order to verify the legal admissibility of an extradition in court, a court hearing shall be held within ten days as of the receipt of the request for extradition by the court.

(2) Proceedings for the verification of the legal admissibility of extradition shall be conducted by a judge sitting alone.

(3) The following persons are required to participate in a court session:
1) the prosecutor;
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]
2) the Estonian citizen or the alien whose extradition is requested, if he or she has not consented to the simplified extradition procedure or if a proposal to consent to extradition pursuant to the simplified procedure has not been made to him or her upon his or her detention;
3) the counsel of the person claimed.

(4) In a court session, the court shall:
1) explain the request for extradition and the rules governing extradition proceedings, inter alia that the circumstances concerning the legal admissibility of the extradition shall be submitted to the Harju County Court or a circuit court and upon failure to submit thereof on time they shall not be considered in the extradition proceedings;
[RT I, 23.02.2011, 3 – entry into force 01.01.2012]
2) hear the person claimed, his or her counsel and the prosecutor concerning the legal admissibility of the extradition.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(5) A court may grant a term to a requesting state through the Ministry of Justice for submission of additional information.

§ 451. Decisions made upon verification of legal admissibility of extradition in court

(1) When resolving a request for the extradition of a person to a foreign state, a court shall make one of the following orders:
1) to declare the extradition legally admissible;
2) to declare the extradition legally inadmissible.

(2) An order shall set out:
1) the name, personal identification code or, in the absence thereof, date of birth and place of birth of the person subject to extradition proceedings;
2) the content of the request considered;
3) the opinions of the persons who participated in the court session;
4) the determination of the court concerning the legal admissibility of the extradition, and the reasons therefor;
5) the determination of the court concerning provisional custody, and the reasons therefor.

(3) A copy of an order shall be immediately sent to the person subject to extradition proceedings, his or her counsel, the Office of the Prosecutor General and the Minister of Justice.

(4) If a court declares the extradition of a person legally admissible, the request for extradition together with the other materials of the extradition proceedings shall be sent to the Minister of Justice in addition to a copy of the order.

(5) If a court declares the extradition of a person legally inadmissible, a copy of the order together with the request for extradition and the supporting materials shall be sent to the Ministry of Justice who shall inform the requesting state thereof.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(6) If a foreign competent judicial authority terminates international search and waives the request for extradition or notifies of annulment of the request for extradition, the court shall terminate extradition proceedings by its order.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 451[1]. Contestation of order made on verification of legal admissibility of extradition

(1) An appeal may be filed against an order on declaring extradition legally admissible or inadmissible pursuant to the procedure provided for in § 386 of this Code within ten days as of after the receipt of the order.

(2) An appeal against an order shall be submitted to the Tallinn Circuit Court through the Harju County Court.

(3) An appeal against an order shall be considered by written procedure in a circuit court within ten days as of arrival of the matter to the circuit court.

(4) An order of the Supreme Court is final and not subject to appeal.
[RT I, 23.02.2011, 3 – entry into force 01.01.2012]

§ 452. Extradition decision

(1) The extradition of an Estonian citizen shall be decided by the Government of the Republic. Draft extradition decisions shall be prepared and submitted to the Government of the Republic by the Ministry of Justice.

(2) The issue of extradition of an alien shall be decided by the minister responsible for the area.

(3) A reasoned decision to grant or refuse to grant extradition shall be made immediately.

(4) A copy of a decision shall be sent to the custodial institution where the person claimed is kept under provisional custody and the decision is made known to him or her against signature.

(5) A decision on the extradition of a person enters into force unless this is appealed in accordance with § 452[1] of this Code or amended as a result of judicial proceedings and the decision has entered into force. A decision to refuse to extradite a person enters into force as of the making of the decision.
[RT I, 23.02.2011, 3 – entry into force 01.01.2012]

(6) A decision on the extradition of a person which has entered into force shall be immediately sent to the Police and Border Guard Board who shall organise the execution of the decision.
[RT I 2009, 27, 165 – entry into force 01.01.2010]

(7) If extradition is refused, the person shall be released from provisional custody.

(8) The Ministry of Justice shall immediately notify a requesting state of a decision to grant or refuse to grant extradition.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 452[1]. Contestation of extradition decision

(1) An action against a decision on extradition of a person to a foreign state shall be filed with an administrative court within ten days after the communication of the decision.

(2) A court shall consider an appeal submitted according to the requirements concerning extradition within thirty days after the receipt thereof.

(3) When dealing with an appeal, an administrative court shall not consider circumstances concerning the legal admissibility of extradition, except in the case such circumstances could not be filed with the Harju County Court or a circuit court.

(4) An appeal against a judgment of an administrative court shall be filed with the Tallinn Circuit Court through the Harju County Court within ten days after the court judgment is made public.

(5) A circuit court shall consider an appeal submitted according to the requirements within thirty days after the receipt thereof.

(6) An appeal in cassation against a judgment of a circuit court shall be filed to the Supreme Court within ten days after the court judgment is made public.

(7) The Supreme Court shall consider an appeal in cassation submitted according to the requirements within thirty days after the receipt thereof.
[RT I, 23.02.2011, 3 – entry into force 01.01.2012]

§ 453. Postponement of extradition and temporary extradition

(1) The Ministry of Justice may, on the proposal of the Office of the Prosecutor General, postpone the execution of an extradition decision which has entered into force if postponement is necessary for the purposes of criminal proceedings conducted in Estonia with regard to the person claimed or for the purposes of execution of a court judgment made with regard to him or her.

(2) By agreement with a requesting state, a person whose extradition has been postponed may be temporarily extradited to the requesting state.

§ 454. Surrender of person claimed

(1) An extradition decision which has entered into force shall be sent to the Police and Border Guard Board who shall notify the requesting state of the time and place of surrender of the person claimed and organise the surrender of the person.
[RT I 2009, 27, 165 – entry into force 01.01.2010]

(2) A person claimed may be released from provisional custody if the requesting state fails to take the person over within fifteen days after the due date for the surrender. A person claimed shall be released from provisional custody if the requesting state fails to take the person over within thirty days after the due date for the surrender.

§ 455. Extension of extradition

(1) If a state to whom a person has been extradited requests performance of procedural operations or execution of a court judgment regarding the person for an offence other than that for which he or she was extradited, such request shall be resolved having regard to the provisions of §§ 438-452 of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(2) A court hearing shall be held for extension of extradition in which a prosecutor and a defence counsel shall participate.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(3) The provisions of subsections (1) and (2) of this section also apply if a request to extradite a person to a third state is submitted.

§ 456. Permission for transit of extradited person

(1) Permission for the transit of persons extradited by third states through the territory of the Republic of Estonia shall be granted by the minister responsible for the area.

(2) A request for transit shall meet the requirements of § 442 of this Code.

(3) Permission for transit shall not be granted if:
1) the act for which the person is extradited is not punishable pursuant to the Penal Code of Estonia;
2) Estonia considers the act which is the basis for extradition to be a political offence or a military offence;
3) death penalty may be imposed on the extradited person in the requesting state and the state has not given assurance that death penalty will not be imposed or carried out.

Division 3
Request for Extradition by Foreign State

§ 457. Initiation of proceedings for request for extradition of person by foreign state

(1) Extradition of a person is requested from a foreign state if the person is a suspect or accused who stays in the foreign state and evades criminal proceedings, and continuation of criminal proceedings without the participation of the suspect or accused is especially complicated or precluded or if extradition of a convicted person is necessary for the execution of a court judgment made with regard to him or her.

(2) The principles provided for in §§ 438-442 of this Code shall be taken into account in requesting the extradition of a person by a foreign state.

(3) A request for the extradition of a person to be submitted to a foreign state shall be prepared in compliance with the requirements provided for in § 458 of this Code by:
1) the Prosecutor's Office in a pre-court proceeding;
[RT I 2008, 19, 132 – entry into force 23.05.2008]
2) the court in judicial proceedings;
3) the Office of the Prosecutor General in the stage of execution of a court judgment.

(4) In a pre-court proceedings, the preliminary investigation judge may apply provisional custody by an order at the request of the Prosecutor's Office before the request for extradition is submitted.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(5) If the extradition of a person by a foreign state is requested in judicial proceedings, the arrest warrant for the person shall be prepared by the court which hears the criminal matter.

(6) [Repealed – RT I 2008, 19, 132 – entry into force 23.05.2008]

(7) A request for extradition shall be communicated to the Ministry of Justice.

§ 458. Requirements for request for extradition of person by foreign state

(1) A request for the extradition of a person by a foreign state shall be addressed to the competent judicial authority of such state.

(2) A request shall set out:
1) the name, personal identification code and citizenship of the person claimed;
2) the facts relating to and the legal assessment of the criminal offence of which the person is suspected, accused or convicted and for which his or her extradition is requested;
3) the date of application of preventive custody with regard to the person;
4) the date of detention of the person in the foreign state;
5) a reference to the European Convention on Extradition or an agreement on legal assistance.

(3) A request for the extradition of a person by a foreign state shall be submitted together with the documents specified in subsection 442 (2) of this Code and a translation of the request and the annexes thereto into the language specified by the executing state.

§ 459. Submission of request for extradition

(1) A request for extradition shall be submitted to an executing state by the minister responsible for the area.

(2) In cases of urgency, a request to apply provisional custody with regard to a person claimed may be submitted to a foreign state through the International Criminal Police Organisation (Interpol) or the central authority responsible for the national section of the Schengen Information System with the consent of the Office of the Prosecutor General before the request for extradition is submitted.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

Subchapter 3
Mutual Assistance in Criminal Matters

§ 460. Requirements for requests for assistance

(1) A request for assistance shall set out:
1) the name of the authority making the request;
2) the content of the request;
3) the name, address and, if possible, other contact details of the person with regard to whom the request is submitted;
4) the facts relating to and the legal assessment of the criminal offence concerning which the request is submitted.

(2) The following shall be appended to a request for assistance:
1) extracts from the relevant legal acts;
2) a translation of the request and the supporting materials into the language of the executing state.

§ 461. Prohibition on compliance with request for assistance

Compliance with a request for assistance is not permitted and shall be refused on the grounds provided for in § 436 of this Code.

§ 462. Processing of requests for assistance received from foreign states

[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(1) The Ministry of Justice shall verify whether a request for assistance received from a foreign state meets the requirements. A request for assistance in compliance with the requirements shall be immediately communicated to the Office of the Prosecutor General.

(2) The Office of the Prosecutor General shall verify whether compliance with the request for assistance is admissible and possible and communicate the request for assistance to the competent judicial authority for execution.

(3) Requests for assistance received by investigative bodies shall be communicated to the Office of the Prosecutor General. In cases of urgency, a request for assistance submitted through the International Criminal Police Organisation (Interpol) or a notice in the Schengen Information System may be complied with before the request for assistance is received by the Ministry of Justice with the consent of the Office of the Prosecutor General.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 463. Compliance with requests for assistance received from foreign states

(1) Requests for assistance are complied with pursuant to this Code. At the request of a foreign state, a request may be complied with pursuant to procedural provisions different from the provisions of this Code unless this is contrary to the principles of Estonian law.

(1^1) If summoning of a person to court is required for compliance with a request for assistance, service of the summons shall be organised by the court.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

(2) The materials received as a result of compliance with a request shall be communicated to the requesting state using the same channel which was used for sending the request, except in the case the requesting state requests the sending of the materials directly to the initiator of the request.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(2^1) If it becomes evident upon compliance with a request that is expedient to perform additional acts which were not requested, the requesting state shall be notified thereof.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(3) The materials received as a result of compliance with a request for assistance from a foreign state submitted through Eurojust shall be sent to the requesting state through Eurojust unless otherwise agreed with Eurojust.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

§ 463^1. Notification of Council of European Union of refusal to comply with request for assistance

In the case of refusal to comply with a request for assistance submitted to the Republic of Estonia on the basis of the Additional Protocol to the European Union Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and the requesting state continues to support the request for assistance, the Office of the Prosecutor General shall submit a reasoned decision on the refusal through the Ministry of Justice to the Council of the European Union for information.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 463^2. Notification of Eurojust of refusal to comply with requests for assistance

In the case of refusal to comply with a request for assistance submitted to the Republic of Estonia on the basis of the Additional Protocol to the European Union Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, the Ministry of Justice or the Office of the Prosecutor General may notify Eurojust in order to obtain a solution.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 463^3. Request for assistance in delivery of court documents

(1) A request of a foreign state in delivery of court documents is sent directly to the county court of the residence or seat of the person.

(2) The county court of the residence or seat of a person arranges compliance with a request for assistance and delivery of court documents to the person indicated in the documents.

(3) The county court of the residence or seat of a person notifies the foreign authority which submitted the request for assistance and sends a confirmation of compliance with or refusal to comply with the request. Reasons for refusal to comply shall be submitted upon failure to comply with the request.

(4) A request for assistance to a foreign state in delivery of court documents shall be prepared and sent to the competent authority of that foreign state by the court which requests the delivery of documents.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 464. Submission of requests for assistance to foreign states

(1) Unless otherwise prescribed by an international agreement or other legislation binding on the Republic of Estonia, a request for assistance shall be submitted to the Office of the Prosecutor General which shall verify whether the request meets the requirements. The Office of the Prosecutor General shall send a request which meets the requirements to the Ministry of Justice or a central authority provided for in an international agreement or other legislation or a competent judicial authority of the foreign state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(2) The Ministry of Justice shall immediately make a decision on the submission of or refusal to submit a request to a foreign state and notify the judicial authority which submitted the request of such decision. Refusal to submit a request shall be reasoned.

(3) In cases of urgency, a request may be submitted also through the International Criminal Police Organisation (Interpol) and communicated concurrently through the judicial authorities specified in subsection (1) of this section. The central authority responsible for the national section of the Schengen Information System has the right to add a notice in the Schengen Information System before preparing a request for assistance in order to ensure application of a measure necessary for compliance with the request for assistance.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) If the protection of a witness is requested, the measures of protection shall be agreed upon separately.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(5) In cases of urgency, a request for assistance in criminal offences listed in subsection 491 (2) of this Code may be submitted to a Member State of the European Union through Eurojust.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(6) In cases of urgency, Eurojust's National Member for Estonia may prepare a request for assistance regarding a criminal offence in respect of which proceedings are to be conducted in Estonia and submit it to a foreign state.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(6^1) In urgent cases, a request for assistance may be submitted to the Tax and Customs Board in the case of customs related offences.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(7) The following are competent to submit a request for assistance to foreign states:
1) in pre-court proceedings, the prosecutor conducting the proceedings;
2) in a case in court proceedings, the court or the prosecutor who represents public prosecution in court.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 465. Immunity of person arriving in Estonia on basis of request for assistance submitted to foreign state

(1) A witness or expert appearing before a judicial authority on a summons set out in a request for assistance shall not be prosecuted, accused, taken into custody or detained as a suspect in connection with any criminal offence which was committed before his or her departure from the territory of the requesting party and which was not expressly specified in the summons.

(2) The accused appearing before a judicial authority on a summons set out in a request shall not be prosecuted, accused, taken into custody or detained as a suspect in connection with any criminal offences or charges which were committed or brought before his or her departure from the territory of the requesting party and were not expressly specified in the summons.

(3) The immunity provided for in subsections (1) and (2) of this section ceases when the witness, expert or accused has been in Estonia for 15 consecutive days after the date when his or her presence was no longer required by the judicial authority although he or she has had the opportunity of leaving or, having left, has returned.

§ 466. Temporary surrender to foreign states of persons whose personal liberty is restricted

(1) If a person has been held in custody or imprisoned or his or her personal liberty has been restricted in any other lawful manner in Estonia, the person may, by a decision of the minister responsible for the area on the basis of a request from a foreign state, be temporarily surrendered to such state for the purposes of hearing the person as a witness or performing any other procedural operation with his or her participation.

(2) A person may be temporarily surrendered if the requesting state has assured that:
1) the person surrendered will not be prosecuted and his or her fundamental rights will not be restricted in connection with any criminal offence which was committed before his or her departure from the territory of the requesting state and was not expressly specified in the summons;
2) the person surrendered shall be sent back to Estonia immediately after the performance of the procedural operations.

(3) A person will not be temporarily surrendered to a foreign state if:
1) he or she does not consent to the surrender;
2) his or her presence is necessary at criminal proceedings being carried out in Estonia;
3) the surrender may prolong the lawful term for the restriction of his or her personal liberty;
4) there is another good reason to refuse to surrender the person.

(4) The conditions for arrest applicable in the requesting state apply to a person surrendered, and the period of his or her stay in the foreign state shall be included in the term of the punishment imposed on him or her in Estonia.

§ 467. Request for temporary transfer of person staying in foreign state whose personal liberty has been restricted

(1) If a person has been taken into custody or imprisoned or his or her personal liberty has been restricted in any other lawful manner in a foreign state and it is necessary to hear the person as a witness or perform any other procedural operations with his or her participation at criminal proceedings being carried out in Estonia, the competent judicial authorities may request temporary transfer of the person, taking into account the requirements provided for in § 465 of this Code.

(2) A request shall set out:
1) the time and place of preparation of the request;
2) the name, personal identification code or, in the absence thereof, date of birth and place of birth of the person to be temporarily transferred;
3) the name of the procedural operation in connection with which the presence of the person in Estonia is required;
4) the basis for the request under procedural law.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 468. Telehearing of persons staying in foreign states

(1) Telehearing of a person staying in a foreign state may be requested on the bases provided for in subsection 69 (1) of this Code. The request shall set out the reasons for telehearing the person, the name of the person to be heard and his or her status in the proceedings, and the official title and name of the person conducting the hearing.

(2) If audio-visual telehearing is requested, the request shall contain an assurance that the suspect or accused to be heard consents to the telehearing of him or her.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(3) If telehearing by telephone is requested, the request shall contain the assurance that the witness or expert to be heard consents to the hearing by telephone.

(4) Telehearing of a suspect or accused by telephone is not permitted.

(5) Telehearings shall be conducted directly by, and under the direction of, a representative of the competent judicial authority of the requesting state pursuant to the procedural law of such state. Summonses to telehearings shall be served pursuant to the procedural law of the executing state. The person to be heard may refuse to give statements also on the basis of the procedural law of the executing state.

(6) The competent judicial authority of an executing state which holds a telehearing shall:
1) determine and give notification of the time of the telehearing;
2) ensure that the person to be heard be summoned to and appear at the hearing;
3) be responsible for the identification of the person to be heard;
4) be responsible for compliance with laws of the state of the authority;
5) ensure participation of an interpreter, if necessary.

(7) A telehearing shall be recorded by the competent judicial authority of the requesting state but may additionally be recorded by the competent judicial authority of the executing state.

(8) The minutes of a telehearing shall be taken by the competent judicial authority of the executing state. The minutes of a telehearing held by telephone shall be taken by the competent judicial authority of the requesting state.

(9) The minutes of a telehearing shall set out:
1) the time and place of the telehearing;
2) the form in which the telehearing was held and the names of the technical devices used;
3) a reference to the request for assistance which is the basis for the telehearing;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
4) the names of the representatives of the competent judicial authorities of the requesting state and executing state participating in the telehearing;
5) the status in the proceedings of the person heard and his or her name, personal identification code or, in the absence thereof, date of birth, residence or seat, address and telecommunications numbers or e-mail address;
6) a notation concerning explanation of the rights of the person heard to him or her;
7) assurance from the person heard that he or she has been warned about the liability for refusal to give statements and for giving knowingly false statements, or that he or she has taken an oath concerning the statements if the procedural law prescribes such obligation.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

§ 469. Reclamation of property from foreign states

(1) A foreign state may be requested to hand over property located in such state if:
1) the property claimed has been acquired by a criminal offence subject to proceedings in the requesting state or if the property is required as physical evidence in criminal proceedings conducted in the requesting state;
2) the act on which the request is based is punishable as a criminal offence pursuant to both the Penal Code of Estonia and the penal law of the executing state.

(2) In Estonia, third party rights to property to be handed over shall be preserved and the property shall be delivered to the entitled person not subject to the proceedings at the request of the person after the entry into force of the court judgment.

(3) The procedural determination which is the basis for reclamation of property or an authenticated copy thereof or assurance from the competent judicial authority of the requesting state that such procedural determination would have been made if the property had been located in Estonia shall be appended to a request to hand over property submitted to a foreign state.

(4) In cases of urgency, seizure of property or the conduct of a search may be requested before submission of a request to hand over property.

§ 470. Handing over of property to foreign states

(1) Handing over of property to a foreign state by Estonia on the bases provided for in § 469 of this Code shall be decided by an order made by a judge of the county court of the location of the property sitting alone.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

(2) An order shall set out:
1) the name and location of the property to be handed over, and, if possible, the name of the owner or possessor of the property;
[RT I 2008, 19, 132 – entry into force 23.05.2008]
2) the content of the request reviewed;
3) the content of and reasons for the order;
4) the basis under procedural law;
5) the determination of the court and the procedure for appeal.

(3) A court shall send a copy of an order which has entered into force to the Ministry of Justice who shall notify the requesting state of compliance with the request or refusal thereof.

(4) Handing of property over to the requesting foreign state shall be organised by the competent judicial authority.

(5) In cases of urgency, property may be seized or a search may be conducted at the request of a foreign state before receipt of the request to hand over property. The above-mentioned acts are recorded in the minutes pursuant to the procedure provided for in this Code.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(6) On the basis of a request submitted through the International Criminal Police Organisation (Interpol) or a notice in the Schengen Information System, a wanted item may be detained and seized. A report shall be prepared on the detention of a wanted item upon detention of the item. The wanted item shall be seized for

the term of two months in accordance with the rules provided in § 142 of this Code. If a foreign state does not submit a request to hand over property during that term, the item shall be released from seizure.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

§ 471. International investigation teams

(1) An international investigation team may be requested to be set up for a specific purpose and a limited period in the interests of efficiency of pre-court investigation of criminal offences. The request shall set out a proposal concerning the composition of the investigation team.

(1^1) In Estonia, the Office of the Prosecutor General and Eurojust's National Member for Estonia are competent to submit a request for setting up a joint investigation team. The Office of the Prosecutor General or Eurojust's National Member for Estonia with the permission of the Office of the Prosecutor General shall make a decision concerning setting up a joint investigation team on the basis of a proposal made to Estonia and enter into a corresponding agreement with the competent judicial authority of a foreign state.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(2) A joint investigation team operates pursuant to the legislation of the state in which it operates. The competent judicial authority of such state shall appoint the leader of the investigation team and ensure the organisational and technical conditions for the operation of the team.

(3) With the knowledge of the leader of a joint investigation team and the consent of the competent judicial authorities of the states participating in the team, members of the team from foreign states may also perform procedural operations.

(4) Where an investigation team needs procedural operations to be performed outside the state where the team operates, a member of the investigation team may request the competent investigative body of a state participating in the team to perform the procedural operation in the territory of and pursuant to the procedural law of such state.

(5) Information which is obtained by a member of a joint investigation team and which is not otherwise accessible to the competent authorities of the participating states may be used:
1) unconditionally for the purposes for which the joint investigation team was set up;
2) with the consent of the state which made the information available, for ascertaining facts relating to other criminal proceedings for the purposes of which the investigation team was set up. Such consent may be withheld if the information would be prejudicial to the joint investigation or if circumstances precluding provision of mutual legal assistance appear;
3) in order to prevent an immediate and serious threat to public security, and where criminal proceedings have already been initiated and use of the information is not contrary to the conditions specified in clause 2) of this subsection;
4) for other purposes by agreement between the states setting up the joint investigation team.

§ 472. Cross-border surveillance

(1) In connection with pre-court proceedings concerning criminal offences for which extradition is possible and where a person is kept under surveillance due to the suspicion of criminal offence or in order to help to identify the person suspected or ascertain his or her whereabouts, surveillance may be continued in the territory of another Member State party to the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders signed at Schengen on 19 June 1990 (hereinafter *Schengen Member State*) where the latter has authorised cross-border surveillance in response to a request for assistance made in advance with supporting reasons. Conditions may be appended to the authorisation.

(2) The Office of the Prosecutor General is competent to submit a request for cross-border surveillance to another Schengen Member State; in cases of urgency a request may be submitted by a district Prosecutor's Office. The Office of the Prosecutor General grants authorisation for compliance with a request for cross-border surveillance submitted to Estonia. The granting of the request may be conditional.

(3) Submission of a request for cross-border surveillance to another Schengen Member State is permitted in pre-court proceedings concerning the criminal offences specified in subsection 126^2(2) of this Code. Estonia as a country of location may not deny the request if the request is submitted in connection with a criminal offence which is punishable by at least one year of imprisonment according to both the law of the requesting state and the Penal Code of Estonia.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

(4) In cases of urgency, cross-border surveillance may be commenced without prior authorisation of the country of location in pre-court proceedings concerning the following criminal offences:
1) murder;
2) manslaughter;
3) serious offence of a sexual nature;
4) arson;
5) counterfeiting and forgery of means of payment;
6) aggravated burglary and robbery and receiving stolen goods;

7) extortion;
8) kidnapping and hostage taking;
9) trafficking in human beings;
10) illicit trafficking in narcotic drugs and psychotropic substances;
11) breach of the laws on arms and explosives;
12) wilful damage through the use of explosives;
13) illicit transportation of toxic and hazardous waste;
14) serious fraud;
15) facilitation of unauthorised entry and residence;
16) money laundering;
17) illicit trafficking in nuclear or radioactive materials;
18) participation in a criminal organisation;
19) terrorism.

(5) If cross-border surveillance has been conducted in cases of urgency in pre-court investigation of a criminal offence specified in subsection (4) of this section without prior authorisation of the country of location:
1) the country of location shall be immediately notified that an employee of the competent judicial authority of the requesting state has crossed the border and has commenced surveillance;
2) a request provided for in subsection (1) of this section which shall set out the reasons for unauthorised crossing of the border shall be immediately submitted to the country of location.

(6) In cross-border surveillance:
1) the law of the country of location and the instructions of the representatives of state authority shall be complied with;
2) a document authorising cross-border surveillance shall be carried, except in the case provided for in subsection (4) of this section;
3) acting for the performance of duties shall be proved at the request of the competent authority of the country of location;
4) service weapons may be carried with the consent of the country of location and used only for self-defence;
5) private property or any other places not intended for public use shall not be entered, and the person under surveillance shall not be stopped, questioned or detained;
6) the competent judicial authority of the country of location shall be notified of each surveillance operation and an officer carrying out surveillance shall appear to give explanations upon the request of the competent judicial authority of the country of location;
7) at the request of the competent judicial authority of the country of location assistance shall be provided upon conducting criminal proceedings in the country of location.

(7) Cross-border surveillance shall be terminated:
1) when the purpose of the surveillance has been achieved;
2) at the request of the country of location;
3) if within five hours as of crossing the border in order to commence cross-border surveillance pursuant to the procedure prescribed in subsection (5) of this section, the country of location has not granted authorisation for cross-border surveillance.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

§ 473. Spontaneous exchange of information

Within the framework of mutual assistance in criminal procedure, a competent judicial authority may forward to a foreign state and, in the case of criminal offences listed in subsection 491 (2) of this Code, to Eurojust information obtained by a procedural operation performed without prior request when such information may be the reason for initiating criminal proceedings in such foreign state or may assist in ascertaining the facts relating to a criminal offence subject to criminal proceedings already initiated.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

Subchapter 4
Transfer and Taking Over of Criminal Proceedings

§ 474. Transfer of criminal proceedings

(1) Transfer of criminal proceedings initiated with regard to a person suspected or accused of a criminal offence to a foreign state may be requested if:
1) the person is a citizen of or permanently lives in the foreign state;
2) the person is serving a sentence of imprisonment in the foreign state;
3) criminal proceedings concerning the same or any other criminal offence have been initiated with regard to the person in the executing state;
4) the evidence or the most relevant pieces of evidence are located in the foreign state;

5) it is considered that the presence of the accused at the time of the hearing of the criminal matter cannot be ensured and his or her presence for the purposes of the hearing of the criminal matter is ensured in the executing state.

(2) A request for transfer shall be sent to the Office of the Prosecutor General together with the criminal file or an authenticated copy thereof, and other relevant materials.

(3) The Office of the Prosecutor General shall verify whether the transfer of criminal proceedings is justified and send the materials to the Ministry of Justice who shall forward them to the foreign state.

(4) After submission of a request for the transfer of criminal proceedings, charges shall not be brought against the person for the criminal offence regarding which transfer of the proceedings was requested, and a court judgment previously made with regard to the person for the same criminal offence shall not be executed.

(5) The right to bring charges and execute a court judgment is regained if:
1) the request for transfer is not granted;
2) the request for transfer is not accepted;
3) the executing state decides not to commence or to terminate the proceedings;
4) the request is withdrawn before the executing state has given notice of its decision to grant the request.

§ 475. Taking over of criminal proceedings

(1) The Ministry of Justice shall forward a request to take over criminal proceedings from a foreign state to the Office of the Prosecutor General who shall decide whether to take over criminal proceedings.

(2) In addition to the cases provided for in § 436 of this Code, acceptance of a request to take over criminal proceedings may be refused in full or in part if:
1) the suspect or accused is not an Estonian citizen or does not live permanently in Estonia;
2) the criminal offence concerning which the request to take over criminal proceedings is submitted is a political offence or a military offence within the meaning of the provisions of the European Convention on Extradition and the Additional Protocols thereto;
3) the criminal offence was committed outside the territory of the requesting state;
4) the request is in conflict with the principles of Estonian criminal procedure.

(3) Proceedings in respect of a criminal matter which has been taken over shall be conducted by the county court of the residence of the accused or, in the absence of a residence, by the court in whose jurisdiction the corresponding pre-court proceedings were completed.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

Subchapter 5
Recognition and Compliance with Judgments of States Not Participating in Cooperation in criminal proceedings among Member States of European Union

[RT I, 21.06.2014, 11 - entry into force 01.01.2015]

§ 475[1]. Cooperation in criminal proceedings outside European Union

The provisions of this Subchapter apply to international cooperation in criminal proceedings which is based on an international agreement and to which the provisions the European Union measures of cooperation in criminal proceedings do not apply.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 476. Assistance in recognition and execution of judgments of foreign courts

Assistance may be provided to a requesting state in the execution of a punishment for an offence if a request together with the court judgment which has entered into force or an authenticated copy thereof has been submitted to the Ministry of Justice.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 477. Scope of assistance

(1) In addition to the provisions of § 436 of this Code, no assistance shall be provided to a requesting state in the execution of a punishment or any other sanction imposed in the requesting state if:
1) the court judgment which is the basis for the request has not entered into force;
2) the judgment was not made by an independent and impartial court;
3) the judgment was made by default;
4) the right of defence was not ensured to the accused or the criminal proceedings were not conducted in a language understandable to him or her;

5) the act for the commission of which a punishment or any other sanction was imposed is not punishable as a criminal offence pursuant to the Penal Code of Estonia or the Penal Code does not prescribe such punishment or sanction;
6) an Estonian court has convicted the person on the same charges, or commencement of criminal proceedings with regard to him or her has been refused or the criminal proceedings have been terminated;
7) pursuant to Estonian law, the limitation period for the execution of the court judgment or the decision of another authority has expired;
8) the judgment was made on a person less than fourteen years of age;
9) the judgment or decision was made with regard to a person who enjoys immunities or privileges on the basis of clause 4 2) of this Code.

(2) If a person has been sentenced to imprisonment in a foreign state, a request for assistance in the execution of the punishment may be granted if the person is a citizen of Estonia and the written consent of the person to his or her surrender in order to continue service of the punishment in Estonia has been appended to the request. The consent shall not be waived after making the final decision on surrender.

(3) If a court judgment made with regard to a citizen of the Republic of Estonia, or an administrative act relating to such judgment contains an order to expel the person from the state immediately after his or her release from imprisonment, the person may be surrendered without his or her consent.

(4) If a judgment on confiscation made in a requesting state concerns a person not subject to the proceedings, the judgment shall not be executed if:
1) such third party has not been given the opportunity to protect his or her interests; or
2) the judgment is in conflict with a decision made in the same matter on the basis of the Code of Civil Procedure pursuant to Estonian law.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 478. Proceedings concerning requests for execution of court judgments submitted by foreign states

(1) The Ministry of Justice shall verify whether a request is in compliance with the requirements and has the required supporting documents and, in the case of compliance, shall immediately forward the request to a court and the Office of the Prosecutor General.

(2) The surrender of or refusal to surrender a person sentenced to imprisonment shall be decided by a court.

(3) Execution of a court judgment by which a person has been sentenced to imprisonment in a requesting state shall be continued without amending the judgment if the term of the imprisonment imposed on the person in the requesting state corresponds to the punishment prescribed for the same criminal offence by the Penal Code of Estonia.

(4) If necessary, additional information is requested from the foreign state through the Ministry of Justice and a term for reply is determined.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 479. Taking into custody and holding in custody for purposes of execution of foreign court judgment

(1) If a request for the execution of a court judgment is received from a foreign state, the person staying in Estonia with regard to whom the execution of the court judgment by which the person has been sentenced to imprisonment is requested may be taken into custody at the request of a prosecutor and on the basis of an order of a preliminary investigation judge if there is reason to believe that the person evades execution of the court judgment.

(2) A person shall not be taken into custody if it is evident that execution of the court judgment is impossible.

(3) A person shall be released from custody if within three months as of his or her taking into custody the court has not made a judgment on the recognition and enforcement of the court judgment of the requesting state.

(4) An arrest warrant may be appealed by the person taken into custody, his or her counsel, or the Prosecutor's Office.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 480. Participation of counsel in recognition and execution of judgments of foreign courts

(1) Participation of a counsel in the proceedings of recognition and execution of judgments of foreign courts is mandatory if the following is decided:
1) recognition of a judgment on confiscation;
2) taking a person into custody and holding a person in custody for the purpose of execution of a foreign court judgment;

3) recognition of a sentence of imprisonment imposed on a person;
4) surrender of a person for service of sentence.

(2) A person has the right to also request the participation of a defence counsel in the cases not specified in subsection (1) of this section.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 481. Jurisdiction over recognition of foreign court judgments

Harju County Court shall decide on the recognition of foreign court judgments.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 482. Court procedure for recognition of foreign court judgments

(1) Recognition of a foreign court judgment shall be decided by a judge sitting alone. A court session where recognition of a foreign court judgment is heard shall be held within thirty days as of the receipt of the request by the court.

(2) If necessary, additional information is requested from a foreign state through the Ministry of Justice and a term for reply is determined.

(3) Persons not subject to the proceedings whose interests are concerned by a court judgment may be summoned to a court session if they are in Estonia. In deciding on confiscation, the participation of a third party or his or her authorised representative is mandatory.

(4) The participation of a prosecutor in a court session is mandatory.

(5) Minutes shall be taken of court sessions.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 483. Court orders made in recognition and enforcement of foreign court judgments

(1) In deciding on the recognition of a foreign court judgment, a court shall make one of the following orders:
1) to declare execution of the foreign court judgment admissible;
2) to declare execution of the foreign court judgment inadmissible, or
3) to terminate the proceedings, if the person has performed his or her obligations before the court session.

(2) If execution of a court judgment is not permitted, the court shall send a copy of the court order to the Ministry of Justice. The Ministry of Justice shall notify the foreign state of the refusal to execute a foreign court judgment.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 484. Specification of punishment imposed in foreign state

(1) If a court declares execution of a foreign court judgment admissible, the court shall determine the punishment to be executed in Estonia. The punishment imposed in the foreign state shall be compared to the punishment prescribed for the same act by the Penal Code of Estonia.

(2) A specified punishment shall by nature as much as possible correspond to the punishment imposed in the foreign state. The court shall take into account the degree of the punishment imposed in the foreign state but the punishment shall not exceed the maximum rate prescribed by the sanction specified in the corresponding section of the Penal Code of Estonia.

(3) If the term of a punishment has not been determined in a foreign state, the court shall determine the punishment in accordance with the principles of the Penal Code of Estonia.

(4) It is not permitted to aggravate a punishment imposed in a foreign state.

(5) If probation is applied with regard to a person or he or she is released on parole in a foreign state, the court shall apply the provisions of the Penal Code of Estonia.

(6) Pecuniary punishments, fines to the extent of assets and amounts subject to confiscation shall be converted into euros on the basis of the exchange rate applicable on the date of specification of the punishment.

(7) In the specification of a punishment, the time spent in imprisonment or held in custody on the basis of § 479 of this Code in a foreign state shall be included in the term of the punishment.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 485. Order on specification of judgment of foreign court

(1) A court shall decide the specification of a foreign court judgment by an order.

(2) An order shall set out the extent to which a foreign court judgment is recognised and specify the punishment to be executed in Estonia.

(3) A court shall send a copy of an order which has entered into force to the criminal records database and the Minister of Justice. The Ministry of Justice shall notify the foreign state of compliance with the request and of the specified punishment.

(4) Appeals may be filed against an order provided for in subsection (1) of this section by the accused, counsel, third parties and the Prosecutor's Office.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 486. Execution of specified punishments

(1) Punishments shall be executed pursuant to the procedure provided by Estonian legislation.

(2) A punishment shall not be enforced if the competent authority of the foreign state gives notification that the circumstances which were the basis for imposition of the punishment have ceased to exist.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 487. Disposal of assets received upon execution of foreign court judgments

(1) Pecuniary punishments and fines to the extent of assets shall be enforced as payments into the revenues of the Estonian state unless the parties have agreed otherwise.

(2) Confiscated property shall be transferred to revenues of Estonia unless the parties have agreed otherwise.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 487[1]. Termination of enforcement of court judgment of foreign state

Enforcement of a court judgment of a foreign state shall be terminated immediately when the requesting state notifies of granting a pardon or amnesty or a request for the conversion of the sentence or any other decision on the basis of which the court judgment cannot be enforced.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Subchapter 6
Requests for Recognition and Execution of Estonian Court Judgments and Decisions of Other Estonian Authorities

[RT I 2008, 33, 201 - entry into force 28.07.2008]

§ 488. Requests for recognition and execution of Estonian court judgments and decisions of other Estonian authorities by foreign states

[RT I 2008, 33, 201 – entry into force 28.07.2008]

(1) Estonia may request a foreign state to execute a punishment or any other sanction imposed on a person on the basis of the Penal Code of Estonia or another Act if:
1) the convicted offender is a citizen or permanent resident of the executing state or if he or she is staying in the executing state and is not extradited;
1[1]) the convicted offender is a legal person whose registered office is in the executing state;
2) execution of the punishment in the foreign state is in the interests of the convicted offender or the public.
[RT I 2008, 33, 201 – entry into force 28.07.2008]

(2) If a convicted offender is staying in Estonia, execution of his or her imprisonment may also be requested from the foreign state if the convicted offender consents to his or her surrender. Consent shall be given in writing and shall not be withdrawn.
[RT I 2008, 33, 201 – entry into force 28.07.2008]

(3) If a court judgment or an administrative act relating thereto made with regard to a convicted offender contains an order to expel the person from the state immediately after his or her release from imprisonment, surrender of the person to a foreign state may be requested without his or her consent.
[RT I 2008, 33, 201 – entry into force 28.07.2008]

(4) A person sentenced to imprisonment may be surrendered for the purposes of continuation of the service of the sentence if at the time of receipt of the request at least six months of the sentence of imprisonment have not yet been served by the person.
[RT I 2008, 33, 201 – entry into force 28.07.2008]

(5) The surrender of or refusal to surrender a person sentenced to imprisonment shall be decided by the minister responsible for the area.
[RT I 2008, 33, 201 – entry into force 28.07.2008]

(6) In order to recognise and execute a court judgment which has entered into force, a request together with the annexed judgment or an authenticated copy thereof and its translation shall be sent to the Ministry of Justice who shall communicate these to the executing state by post, by electronic mail or in another format which can be reproduced in writing.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(7) [Repealed – RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Subchapter 7
International Criminal Court

§ 489. Cooperation with International Criminal Court

(1) Cooperation with the International Criminal Court shall be carried out pursuant to this Code unless otherwise provided by an international agreement.

(2) If the Office of the Prosecutor General receives an application for arrest from the International Criminal Court, the Office of the Prosecutor General shall arrange the detention of the person pursuant to the procedure provided for in § 217 of this Code and the arrest of the person pursuant to the procedure provided for in § 131 of this Code.

(3) The prosecutors of the International Criminal Court performing procedural operations in Estonia have all the rights and obligations of prosecutors prescribed in this Code.

(4) If a request for assistance submitted by the International Criminal Court is in conflict with a request for assistance submitted by a foreign state, the request shall be resolved in accordance with the rules provided in an international agreement.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

Subchapter 7^1
Eurojust

[RT I 2008, 19, 132 - entry into force 23.05.2008]

§ 489^1. Cooperation with Eurojust

(1) Cooperation with the EU Judicial Cooperation Unit Eurojust shall be carried out pursuant to this Code unless otherwise provided by the legislation of the European Union.

(2) A prosecutor appointed Eurojust's National Member for Estonia has all the rights and obligations of a public prosecutor pursuant to this Code in the scope of application of this Code.

(3) In cases of urgency, Eurojust's National Member for Estonia may commence criminal proceedings with regard to a criminal matter in which proceedings are to be conducted in Estonia and after performance of initial procedural operations send the materials of the criminal matter to the Office of the Prosecutor General who shall forward the materials pursuant to investigative jurisdiction.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

Subchapter 8
Cooperation in Criminal Proceedings among Member States of the European Union

[RT I, 21.06.2014, 11 - entry into force 01.01.2015]

Division 1

General Provisions

§ 489[2]. Cooperation in criminal proceedings based on European Union measures

The provisions of this Subchapter apply to international cooperation in criminal proceedings which is based on the European Union measures of cooperation in criminal proceedings and where the other party to the cooperation is a state which has acceded to the European Union measures of cooperation in criminal proceedings.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 489[3]. Protection of personal data in international exchange of data within the framework of cooperation in criminal proceedings

[Repealed – RT I, 13.03.2019, 2 – entry into force 15.03.2019]

§ 489[4]. Transmission of personal data received from Member States within framework of cooperation in criminal proceedings to competent authorities of third states and international organisations

[Repealed – RT I, 13.03.2019, 2 – entry into force 15.03.2019]

§ 489[5]. Transmission of personal data received from Member States within the framework of cooperation in criminal proceedings to private persons

[Repealed – RT I, 13.03.2019, 2 – entry into force 15.03.2019]

§ 489[6]. Scope of assistance

(1) On the basis of the provisions of the European Union cooperation in criminal proceedings, recognition and execution of a court judgment or decision of another authority is permitted regardless of the punishability of the act according to the law of Estonia, if imprisonment of at least three years is prescribed as maximum rate in the requesting state for commission of the following criminal offences:
1) participation in a criminal organisation;
2) terrorism;
3) trafficking in human beings;
4) sexual exploitation of children and child pornography;
5) illicit trafficking in narcotic drugs and psychotropic substances;
6) illicit trafficking in weapons, ammunition and explosives;
7) corruption;
8) fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;
9) money laundering;
10) counterfeiting currency;
11) computer-related crime;
12) environmental crime, including illicit trafficking in endangered animal species and endangered plant species and varieties;
13) facilitation of unauthorised entry and residence;
14) manslaughter, causing serious damage to health;
15) illicit trade in human organs and tissue;
16) kidnapping, unlawful deprivation of liberty and hostage taking;
17) racism and xenophobia;
18) organised or armed theft or robbery;
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]
19) illicit trafficking in cultural goods, including antiques and works of art;
20) swindling;
21) extortion;
22) piracy and counterfeiting of products and trafficking therein;
23) forgery of administrative documents and trafficking therein;
24) counterfeiting and forgery of means of payment;
25) illicit trafficking in hormonal substances and other growth promoters;
26) illicit trafficking in nuclear or radioactive materials;
27) trafficking in stolen vehicles;
28) rape;
29) arson;
30) criminal offences which fall within the jurisdiction of the International Criminal Court;
31) unlawful seizure of aircraft or ships;

32) sabotage.

(2) In the case of criminal offences other than the offences specified in subsection (1) of this section, recognition and execution of a court judgment or decision of other authorities is permitted on the basis of the provisions of the European Union cooperation in criminal proceedings only in the case the respective act is punishable as a criminal offence in Estonia.

(3) On the basis of the provisions of the European Union cooperation in criminal proceedings, recognition and execution of a court judgment or decision of other authorities is permitted if there are no grounds for refusal provided for in § 436 of this Code and the requirements provided for in § 477 are met.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 489[7]. Recognition and execution of judgments by default

(1) Recognition and execution of a judgment by default is permitted if:
1) it is established that the participant in proceedings was notified of the court hearing and of that decisions may be also rendered if the person does not appear at the court hearing;
2) the judgment was delivered to the person and he or she was informed of the right to request a new consideration of the matter or appeal the judgment and his or her right to participate in such hearing which allows new consideration of the matter on the merits and which may result in annulment of the judgment, and the participant in proceedings notified that he or she did not contest the judgment;
3) the person did not request a new consideration of the matter or appeal the judgment during a defined period of time;
4) the person was aware of the court hearing and authorized a counsel chosen or appointed pursuant to the procedure of state legal aid to represent him or her at the court session and this counsel participated in the court session.

(2) Recognition and execution of judgments by default is permitted in addition to the cases specified in subsection (1) of this section only if the provisions of this Subchapter allow it.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 489[8]. Proceedings on requests received from Member States of European Union

(1) The central authority for the European Union cooperation in criminal proceedings is the Ministry of Justice, unless otherwise provided for in this Subchapter.

(2) The Ministry of Justice shall verify whether the request received is in compliance with the requirements and has the required supporting documents and shall immediately communicate the request on the basis of the content thereof to the Office of the Prosecutor General or a court.

(3) If a request for assistance is submitted through Eurojust, the Eurojust's National Member for Estonia shall verify whether the request for assistance meets the requirements and whether compliance with the request for assistance is admissible and possible and communicate the request to the Estonian competent judicial authority for execution. A copy of the request shall be sent to the Office of the Prosecutor General and the Ministry of Justice.

(4) The surrender of or refusal to surrender a person sentenced to imprisonment shall be decided by a court.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 489[9]. Judicial procedure for recognition of judgments and decisions of other authorities of Member States

(1) Recognition of a judgment of a Member State shall be adjudicated by a judge sitting alone. A court session where recognition of a court judgment of a Member State is heard shall be held within thirty days as of the receipt of the request by the court.

(2) If necessary, additional information is requested from a Member State through the Ministry of Justice and a term for reply is determined.

(3) Persons not joined to the proceedings whose interests the judgment affects may be summoned to a court session if they are in Estonia.

(4) The participation of a prosecutor in a court session is mandatory.

(5) Minutes shall be taken of court sessions.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 489[10]. Participation of counsel in recognition and execution of judgments

(1) Participation of a counsel in proceedings on recognition and execution of a judgment of a court of a Member State is mandatory if the following is to be resolved:

1) recognition of a decision on confiscation;
2) taking a person into custody and holding a person in custody for the purpose of execution of a judgment of a Member State;
3) surrender of a person for service of sentence.

(2) A person has the right to also request the participation of a defence counsel in the cases not specified in subsection (1) of this section.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 489[11]. Court orders made in recognition and enforcement of foreign judgments and decisions of other authorities

(1) In deciding on the recognition of a foreign court judgment or a decision of other authorities, a court shall make one of the following orders:
1) to declare execution of the judgment of the Member State admissible;
2) to declare execution of the judgment of the Member State inadmissible;
3) to terminate the proceedings if the person has performed the obligations imposed on him or her by the judgment or other decision.

(2) If execution of a judgment of a Member State is not permitted, the court shall send a copy of the court order to the Ministry of Justice. The Ministry of Justice shall notify the Member State of refusal to comply with the request.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 489[12]. Specification of punishment imposed in Member State

(1) If a court declares execution of a foreign court judgment admissible, the court shall determine the punishment to be executed in Estonia. The punishment imposed in the Member State shall be compared to the punishment prescribed for the same act by the Penal Code of Estonia.

(2) A specified punishment shall by nature correspond to the punishment imposed in the Member State as much as possible. The court shall take into account the degree of the punishment imposed in the Member State but the punishment shall not exceed the maximum rate prescribed by the sanction specified in the corresponding section of the Penal Code.

(3) If the term of a punishment has not been determined in a Member State, the court shall determine the punishment in accordance with the principles of the Penal Code.

(4) It is not permitted to aggravate a punishment imposed in a Member State.

(5) If probation is applied with regard to a person or he or she is released on parole in a Member State, the court shall apply the respective provisions of the Penal Code.

(6) If a convicted offender provides proof of payment of a sum of money in part or in full, the Ministry of Justice shall consult the competent authority of the Member State who made the decision. The part of a pecuniary punishment, fine to the extent of assets or fine paid in another state shall be deducted from the collectable sum of the pecuniary punishment or fine.

(7) Pecuniary punishments, fines to the extent of assets, fines and amounts subject to confiscation shall be converted, if necessary, into euros on the basis of the exchange rate applicable on the date of specification of the punishment.

(8) In the specification of a punishment, the time spent in imprisonment or held in custody on the basis of § 479 of this Code in a Member State shall be included in the term of the punishment.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 489[13]. Substitution of pecuniary punishments and fines imposed in Member States

If a pecuniary punishment or fine imposed in a Member State cannot be executed, a court may substitute it, with the permission of the requesting state, pursuant to the procedure provided for in §§ 70 and 72 of the Penal Code by imprisonment, detention or community service. The term of imprisonment, detention or community service shall not exceed the maximum rate prescribed in the requesting state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 489[14]. Order on specification of judgments of courts of Member States

(1) A court shall decide the specification of a Member State court judgment by an order.

(2) An order shall set out the extent to which a Member State court judgment is recognised and specify the punishment to be executed in Estonia.

(3) A court shall send a copy of an order which has entered into force to the criminal records database and the Minister of Justice. The Ministry of Justice shall notify the foreign state of compliance with the request and of the specified punishment.

(4) Appeals may be filed against an order provided for in subsection (1) of this section by the accused, counsel, third parties and the Prosecutor's Office.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 489[15]. Execution of specified punishments

(1) Punishments shall be executed pursuant to the procedure provided by Estonian legislation.

(2) A punishment shall not be enforced if the competent authority of the Member State gives notification that the circumstances which were the basis for imposition of the punishment have ceased to exist.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 489[16]. Amnesty, pardon and revision of judgments

(1) Both the requesting as well as executing states may grant a pardon or amnesty to persons.

(2) Only requesting states have the right to decide on revision of judgments to be enforced.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 489[17]. Methods of submission of certificates and requests

(1) The certificates and requests specified in this Subchapter shall be communicated to requesting states by post, electronic mail or in another format which can be reproduced in writing.

(2) The certificates and requests specified in this Subchapter are prepared in the Estonian language and they are translated into the languages determined by the executing state by the authority competent to submit the certificates and requests. Judgments shall not be translated into the language determined by the executing state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Division 1[1]
Mutual Recognition and Execution of Decisions Made in Member States of the European Union on Application of Measures Alternative to Arrest Which Are Taken to Secure Criminal Proceedings

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

Subdivision 1
General Provisions

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

§ 489[18]. Certificate of European preventive measures

A certificate of European preventive measures is a request made by a competent judicial authority of a member state of the European Union to another member state of the European Union to recognize a decision whereby a natural person is subjected to one or more preventive measures which ensure criminal proceedings (hereinafter *securing measure*) instead of arrest, and to exercise supervision over compliance with the securing measure.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 489[19]. General conditions

(1) Recognition of a decision on application of securing measures according to the provisions of this Division is permitted in the case the act which is the basis for the decision on application of securing measures is a criminal offence according to the Penal Code of Estonia.

(2) Estonia recognises a decision on application of securing measures regardless of the punishability of the act pursuant to the Penal Code of Estonia in the event of the offences specified in subsection 489[6](1) of this Code.

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

§ 489[20]. Criteria for recognition of decisions on application of securing measures

(1) Estonia recognises a decision on application of securing measures if the decision is made with regard to a person whose lawful and permanent residence is in Estonia and who, having been informed about the securing measures, consents to return to Estonia.

(2) Estonia may recognise a decision on application of securing measures if the decision is made with regard to a person whose lawful and permanent residence is not in Estonia only in the case the person subjected to the securing measures wishes to settle in Estonia and the following conditions are met:
1) he or she has applied for it;
2) there are no circumstances which hinder the settling of the person in Estonia and a residence permit of Estonia can be issued to him or her;
3) he or she has family ties or other compelling connections with the state of Estonia;
4) it is possible to ensure efficient supervision over compliance with the securing measures in Estonia and it does not result in disproportionately high costs.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 489[21]. Types of securing measures

(1) Recognition of decisions on application of securing measures and forwarding of certificates of European preventive measures to competent authorities of the member states of the European Union according to this Division is permitted only with respect to the following securing measures:
1) an obligation to inform the competent authority in the executing state of any change of residence, in particular for the purpose of receiving a summons;
2) an obligation not to enter certain localities, places or defined areas in the requesting or executing state;
3) an obligation to remain at a specified place, where applicable during specified times;
4) an obligation containing limitations on leaving the territory of the executing State;
5) an obligation to report at specified times to specific authority;
6) an obligation to avoid contact with specific persons in relation with the offence allegedly committed.

(2) Forwarding of certificates of European preventive measures to competent authorities of the member states of the European Union according to this Division is also permitted in the case of the securing measures not specified in subsection (1) of this section, if the member state has consented to exercise supervision over compliance with such securing measures.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 489[22]. Bases for refusal to recognise decisions on application of securing measures

(1) Recognition of decisions on application of securing measures is not permitted if:
1) the person subjected to the securing measures is not the person specified in subsection 489[20](1) or (2) of this Code;
2) the criminal offence is statute-barred pursuant to the Penal Code of Estonia and the Estonian penal law applies to it;
3) the act relating to the decision on application of securing measures is not a criminal offence pursuant to the Penal Code of Estonia, except in the case provided for in subsection 489[6](1) of this section;
4) there is a judgment which has entered into force or an order on termination of offence proceedings with respect to the person subjected to securing measures regarding the offence which is the basis for the securing measures;
5) the request was not submitted using the format of the certificate of European preventive measures, it is incomplete or obviously does not correspond to the decision on which it is based and the deficiencies therein are not eliminated within a reasonable period of time;
6) the person subjected to securing measures is less than fourteen years of age;
7) the person subjected to securing measures enjoys immunity in the Republic of Estonia or privileges prescribed by international agreements which do not permit to exercise supervision over compliance with securing measures; or
8) the securing measures applied are not specified in subsection 489[21](1) of this Code.

(2) Recognition of a decision on application of securing measures may be refused if:
1) the person subjected to securing measures has been subjected to securing measures in the Republic of Estonia in connection with the same offence;
2) in the case of any breach of the securing measures, surrender of the person should be refused for the reasons specified in § 492 of this Code; or

3) the securing measures applied are not in compliance with the measures securing criminal proceedings which are applicable in criminal proceedings in Estonia and the application thereof is impossible due to the conditions provided for in subsection 489[27](2) of this Code.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 489[23]. Information and consultation

(1) The Prosecutor's Office or court shall immediately notify the competent authority of the requesting state in a format which can be reproduced in writing:
1) of the fact that there are bases for refusal to recognise the decision on application of securing measures due to the reasons specified in clauses 489[22](1) 1)-4) of this Code and, if necessary, request to supply any additional information;
2) of any change of residence of the person subjected to securing measures;
3) of the maximum length of time provided for in subsection 489[30](4) of this Code during which supervision may be exercised in Estonia over compliance with the securing measures;
4) of the fact that a complaint has been filed against recognition of the decision on application of securing measures;
5) of the fact that it is impossible to exercise supervision over compliance with securing measures for the reason that after forwarding of the certificate of European preventive measures and the decision on application of securing measures to Estonia, the person cannot be found in the territory of Estonia;
6) of any breach of securing measures and other findings which could result in taking any subsequent decision specified in subsection 489[24]of this Code;
7) of the fact that it would be possible to refuse to recognise the decision of application of securing measures on the basis specified in clause 489[22](2) 2) of this Code but Estonia is nevertheless willing to recognise the decision of application of securing measures;
8) of the decision on termination of supervision over compliance with the securing measures.

(2) The format of the notice specified in clause (1) 6) of this section shall be established by a regulation of the minister responsible for the area.

(3) The Prosecutor's Office or court shall immediately notify the competent authority of the executing state in a format which can be reproduced in writing:
1) of making the decision specified in § 489[24]of this Code;
2) of the fact that a complaint has been filed against the decision on application of securing measures;
3) of the fact that supervision over compliance with the securing measures is necessary for a longer term than that indicated in the certificate of European preventive measures.

(4) If possible, the Prosecutor's Office or court shall consult and exchange necessary information with the member state concerned:
1) during the time of preparing the decision on application of securing measures or at least before forwarding of the decision on application of securing measures and the certificate of European preventive measures;
2) before application of securing measures on the basis provided for in subsection 48927 (1) of this Code;
3) to facilitate the smooth and efficient supervision over compliance with securing measures;
4) where the person subjected to securing measures has committed a serious breach of the securing measures.

(5) The Prosecutor's Office or court shall notify the Ministry of Justice of recognition of a decision to apply securing measures or refusal to recognise it, withdrawal of the certificate of European preventive measures and termination of supervision over compliance with securing measures.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 489[24]. Competence to make subsequent decisions

All subsequent decisions relating to decisions on application of securing measures shall be made by the competent authorities of the requesting state. In particular, such decisions include renewal, review and withdrawal of decisions on application of securing measures, modification of securing measures and issuing an arrest warrant or any other enforceable judicial decision having the same effect.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

Subdivision 2
Procedure for Recognition and Execution of Decisions Made in Member States of European Union on Application of Measures Alternative to Arrest Which Are Taken to Secure Criminal Proceedings

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

§ 489[25]. Decision on recognition

(1) The Ministry of Justice is competent to conduct proceedings on certificates of European preventive measures submitted to Estonia, and the competence to decide on the execution thereof lies with:
1) the county court of the residence of the person subjected to securing measures, if the securing measures were applied by a court;
2) the Prosecutor's Office in the cases not specified in clause 1) of this subsection.

(2) The Prosecutor's Office or court shall prepare an order on recognition of a decision on application of securing measures or refusal to recognise it which is immediately forwarded to the competent authorities of the requesting state. In the case of recognition of a decision on application of securing measures, the Prosecutor's Office or court may forward it for execution to competent authorities or commence the execution of the decision itself.

(3) The Prosecutor's Office or court shall decide on the recognition of a decision of application of securing measures within 20 working days after receipt of the decision on application of securing measures and the certificate of European preventive measures.

(4) If the requesting state has notified of a complaint being filed against the decision on application of securing measures, the time limit for recognition of the decision on application of securing measures shall be extended by 20 working days.

(5) If it is impossible to recognise a decision on application of securing measures during the time limit provided for in subsections (3) and (4) of this section due to exceptional circumstances, the Prosecutor's Office or court shall immediately inform the competent authority of the requesting state thereof and state the reasons for the delay and estimated time which is required for making the final decision.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 489[26]. Postponement of recognition of decision on application of securing measures

Recognition of a decision on application of securing measures shall be postponed, if the certificate specified in subsection § 489[18]of this Code is incomplete or obviously does not correspond to the decision on application of securing measures, until a reasonable date determined by the Prosecutor's Office or court for completion and correction of the certificate.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 489[27]. Adaptation of securing measures

(1) Where the securing measures applied to a person in a foreign state are incompatible with the measures securing criminal proceedings applicable under criminal procedure in Estonia, the securing measures applied in the foreign state shall be adapted in such a manner that they would be in compliance with the securing measures applicable in Estonia. The adapted securing measures shall correspond as far as possible to the nature of the securing measures imposed in the requesting state.

(2) Adapted securing measures shall not be more severe than the securing measure applied to the person in the requesting state.

(3) The reasons, method for application of securing measures and the effect of application thereof to supervision over compliance with the securing measures shall be indicated in the order specified in subsection 489[25](2) of this Code.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 489[28]. Law applicable to supervision of compliance with securing measures

Upon recognition of a decision on application of securing measures, supervision over compliance with the securing measures shall be carried out according to the Estonian law.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 489[29]. Contestation of recognition decision

(1) The person subjected to securing measures may file an appeal against the order of the Prosecutor's Office or court specified in subsection 489[25](2) of this Code within three days as of the receipt of the order.

(2) An appeal is filed against the order of the Prosecutor's Office with the preliminary investigation judge of the county court in whose territorial jurisdiction the contested order was made.

(3) An appeal against the order of a court is filed through the court which made the contested court order, with a court which is superior to the court which made the contested court order.

(4) An appeal shall be considered by written procedure within ten days as of arrival of the matter to the court which is competent to resolve the appeal.

(5) Filing of an appeal shall not suspend the execution of the contested order.

(6) An order of the preliminary investigation judge or circuit court is final and not subject to appeal.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 489[30]. Competence of Estonia upon supervision over compliance with securing measures

(1) Estonia is competent and required to supervise over compliance with securing measures as of the recognition of the decision on application of securing measures.

(2) Where securing measures are applied, supervision over compliance therewith shall not commence before ten days have expired from forwarding of the order specified in subsection 489[25](2) of this Code to the requesting state. With the agreement of the requesting state, supervision may also commence earlier but not before the recognition of the decision on application of securing measures.

(3) Where supervision over compliance with securing measures is commenced, the person subjected to securing measures shall immediately sign the order specified in subsection 489[25](2) of this Code to that effect.

(4) In pre-court proceedings, supervision over compliance with securing measures may not be exercised for more than one year. In the case of particular complexity or extent of a criminal matter or in exceptional cases arising from international cooperation in criminal proceedings, the Prosecutor's Office or court may prolong the time limit for exercise of supervision over compliance with securing measure in pre-court proceedings at the request of the requesting state to up to two years.

(5) The competence of Estonia for exercising supervision over compliance with securing measures shall terminate and transfer to the requesting state in the following cases:
1) the person cannot be found in the territory of Estonia after recognition of the decision on application of securing measures;
2) the lawful and permanent residence of the person subjected to securing measures is not in Estonia;
3) the certificate of European preventive measures was withdrawn by the requesting state and Estonia was property informed about it;
4) Estonia has refused to exercise supervision over compliance with securing measures due to the reasons specified in this Division;

(5) the time limit specified in subsection (4) of this section has expired.

(6) The Prosecutor's Office or court may always call the competent authorities of the requesting state through the Ministry of Justice during the supervision over compliance with securing measures to submit information about whether the supervision over compliance with securing measures is still needed.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 489[31]. Competence of Estonia in case of modification of securing measures

Where the competent authorities of a requesting state have modified the type or nature of securing measures, the modified securing measures may be adapted pursuant to the procedure provided for in § 489[27]of this Code or exercise of supervision of compliance with securing measures may be refused on the basis provided for in clause 48922 (1) 8) of this Code.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 489[32]. Termination of supervision over compliance with securing measures in connection with unanswered notices

(1) If several notices specified in clause 489[23](1) 6) of this Code have been submitted to the competent authorities of a requesting state but the competent authorities of the requesting state have made no decisions specified in § 489[24]of this Code on application of securing measures, the Prosecutor's Office or court may give a reasonable time limit to the requesting state for making such decision.

(2) If the competent authorities of the requesting state do not make the decision specified in § 489[24]of this Code during the time limit specified in subsection (1) of this section, the Prosecutor's Office or court may decide to terminate supervision over compliance with the securing measures.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 489[33]. Surrender of person

(1) If the competent authorities of the requesting state have issued an arrest warrant or any other enforceable judicial decision having the same effect, the person subjected to securing measures shall be surrendered in accordance with the provision of Division 2 of this Subchapter.

(2) In the case specified in subsection (1) of this section, subsection 491 (1) of this Code shall not apply.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

Subdivision 3
Submission of Certificates of European Preventive Measures and Decisions on Application of Measures Securing Criminal Proceedings to Member States of the European Union

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

§ 489[34]. Submission of certificates of European preventive measures for recognition and execution

(1) The Prosecutor's Office is competent to prepare certificates of European preventive measures in pre-court proceedings and the court in judicial proceedings. Certificates of European preventive measures shall be forwarded to the executing state through the Ministry of Justice.

(2) Certificates of European preventive measures may be submitted to the competent authorities of the member state of the European Union:
1) which is the lawful and permanent residence of the person subjected to securing measures, if the person subjected to the securing measures and having been informed about the application thereof consents to return to that state; or
2) which is not the lawful and permanent residence of the person if the person subjected to securing measures has applied for it and the authority gas granted its consent to this effect.

(3) Certificates of European preventive measures together with decisions on application of securing measures shall be submitted to only one state at a time.

(4) Certificates of European preventive measures and decisions on application of securing measures shall be prepared in Estonian. The Ministry of Justice shall translate the certificates of European preventive measures into the language of the executing state.

(5) The format of the certificates of European preventive measures shall be established by a regulation of the minister responsible for the area.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 489[35]. Competence for supervision of compliance with securing measures

(1) The competence of Estonia for exercise of supervision over compliance with securing measures shall transfer to the executing state as of the moment when the executing state recognises the decision on application of securing measures and properly notifies Estonia of such recognition.

(2) The competence for supervision over compliance with securing measures shall transfer to Estonia if:
1) Estonia has withdrawn a certificate of European preventive measures and properly notified the executing state thereof; or
2) the executing state has terminated supervision over compliance with securing measures for any reason.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 489[36]. Application for extension of supervision over compliance with securing measures

If the maximum period of time during which the executing state exercises supervision over compliance with securing measures starts to expire, the Prosecutor's Office or court which prepared the certificate of European preventive measures may submit an application to the competent authorities of the executing state through the Ministry of Justice to extend supervision over compliance with securing measures.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

Division 1[2]
European Investigation Order

[RT I, 26.06.2017, 70 - entry into force 06.07.2017, Division 1² is applied only to the Member States of the European Union which have transposed Directive 2014/41/EU of the European Parliament and of the Council into their national law]]

Subdivision 1
General Provisions

[RT I, 26.06.2017, 70 - entry into force 06.07.2017]

§ 489[37]. European Investigation Order

(1) A European Investigation Order is a request which is issued or validated by a judicial authority of a Member State of the European Union for performance of a procedural operation in another Member State to obtain evidence or transfer or deposit the evidence located in another Member State in order to prevent the destruction, transformation, moving, transfer or disposal of the evidence.

(2) This Section does not apply to:
1) activities of interstate investigation teams set up pursuant to § 471 of this Code and gathering of evidence within the framework thereof;
2) co-operation in criminal proceedings with the Kingdom of Denmark and the Republic of Ireland.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

§ 489[38]. Breakdown of costs

(1) Estonia as a requesting and executing state shall bear all the costs which are related to the execution of an European Investigation Order on its territory, unless otherwise provided for in this section.

(2) As an executing state and in the case the costs associated with the execution of a European Investigation Order are exceptionally high, Estonia may send information about the costs to the issuing authority and consult it on whether and how the costs could be shared or the European Investigation Order modified. An issuing authority may decide to:
1) bear the share of the costs which are deemed to be exceptionally high by the executing State; or
2) withdraw the European Investigation Order in part or in whole.

(3) Estonia as the requesting state shall bear the costs, if these costs:
1) are related to transfer or surrender of persons whose personal liberty is restricted in the cases specified in §§ 489[39]and 489[40]of this Code;
2) are the costs of transcription, decoding or decrypting of messages sent through intercepted telecommunication networks and incurred in the case specified in subsection 489[43](4) of this Code.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

§ 489[39]. Temporary surrender of persons whose personal liberty is restricted

(1) Where a European Investigation Order is issued for the purpose of temporary surrender to a requesting state, for performance of a procedural operation, of a person who is kept in custody, imprisonment or whose personal liberty has been restricted in any other lawful manner in the executing Member State, the person may be temporarily surrendered provided that the person is returned within the term determined by the executing state. In order to interrogate a suspect or accused, the person is surrendered pursuant to the procedure provided for in Division 2 of Subchapter 8 of Chapter 19 of this Code.

(2) In addition to the grounds for refusal provided for in § 489[51]of this Code, a person shall not be surrendered to a requesting state if:
1) the person does not give consent to the surrender;
2) the surrender may prolong the lawful term for the restriction of his or her personal liberty.
3) A temporarily surrendered person may not be prosecuted, taken into custody or detained as a suspect and or his or her fundamental rights may not be restricted in any other manner in connection with any offences which were committed before his or her departure from the territory of the executing state and were not specified in the European Investigation Order. The immunity provided for in this subsection ceases if a temporarily surrendered person has been in Estonia for 15 consecutive days after the date when his or her presence was no longer required by the judicial authority and he or she has had the opportunity of leaving or he or she has returned to Estonia after having left.

(4) If travelling trough a third Member State is required for surrender of a person, a competent authority of the requesting state shall submit an application to the third Member State for obtaining an authorisation and append all the necessary documents to it.

(5) The exact procedure and terms and conditions of surrender of persons shall be agreed between the competent authorities of the requesting state and executing state. The restriction of personal liberty of a temporarily surrendered person shall remain in force in the requesting Member State, except in the case where a competent authority of an executing Member State requests the release of a temporarily surrendered person. The period during which a temporarily surrendered person is held in custody in a requesting state shall be included in the term of the punishment imposed on him or her in the executing State.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

§ 489[40]. Temporary transfer of persons whose personal liberty is restricted

If a European Investigation Order is issued for the purpose of temporary transfer to an executing State, for performance of a procedural operation for which it is required that the person stays on the territory of the executing state, of a person who is held in custody, imprisonment in a requesting state or whose personal liberty is restricted in any other lawful manner, the provisions of § 489[39] of this Code apply.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

§ 489[41]. Telehearing of persons staying in foreign states

(1) If a European Investigation Order is issued for telehearing of a person staying in a foreign country as a witness, expert, suspect or accused by means of an audiovisual technical solution and for hearing of a person as a witness or expert by telephone, the provisions of § 69 of this Code apply with the specifications provided for in this Division.

(2) Audiovisual telehearing of a suspect and accused is permitted only with their consent. If a suspect or accused does not give his or her consent for audiovisual telehearing, execution of the European Investigation Order specified in subsection (1) of this section may be refused.

(3) The exact procedure for telehearing of persons and, as appropriate, measures required for the protection of the person heard shall be agreed between the competent authorities of the requesting state and executing state. A competent authority of an executing state is obliged to:
1) notify the witness or expert concerned of the time and place of hearing pursuant to the law of its state;
2) summon the suspect and accused to telehearing pursuant to the procedural provisions of the requesting state and notify the suspect and accused in due time of the rights they have pursuant to the law of the requesting state;
3) ensure identification of the person to be heard;
4) ensure participation of an interpreter in the hearing, if necessary;
5) ensure that the fundamental principles of the law of the executing state are not violated during the telehearing and, upon establishment of a violation, immediately take measures to eliminate the violation.

(4) Telehearing shall be conduced by or under the management of a competent authority of a requesting state pursuant to the procedural provisions of the requesting state. A representative of the competent authority of the executing state shall also be present at the telehearing.

(5) Prior to telehearing, a suspect and accused shall be notified of the rights they have either pursuant to the law of the executing state or requesting state. A witness and expert shall be notified prior to telehearing of their right to refuse to give testimony which they have either pursuant to the law or the executing state or requesting state. If the teleheard person is required to give testimony but he or she refuses to give testimony or gives false testimony, the executing state shall apply the procedural provisions thereof.

(6) A representative of a competent authority of an executing state shall record the following information in the telehearing record:
1) the time and place of the telehearing;
2) the status in the proceedings of the person teleheard and his or her name, personal identification code or in the absence thereof the date of birth, residence or seat, address and telecommunications numbers or e-mail address;
3) the details and position of the representative(s) of the competent authority of the executing state who was (were) present at the telehearing;
4) the form in which the telehearing was held and the names of the technical devices used;
5) assurance from the person heard that he or she was warned about the liability for refusal to give testimony and for knowingly giving false testimony, or that he or she took an oath concerning the statements if the procedural law prescribes such obligation.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

§ 489[42]. Cross-border surveillance

If a European Investigation Order is issued for cross-border surveillance, the provisions of § 472 of this Code apply with the specifications provided for in this Division.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

§ 489[43]. Interception or covert observation of information

(1) If a European Investigation Order is issued for interception or covert observation of messages transmitted using public electronic communications networks or information communicated by any other means, the provisions of § 126[7] of this Code apply.

(2) If an European Investigation Order is issued for interception or covert observation of messages transmitted using public electronic communications networks with the technical assistance of another Member State and if several Member States of the European Union are able to provide all the technical assistance required for interception or covert observation, Estonia shall issue the European Investigation Order only to one Member State, preferring the Member State on which territory the person to be intercepted or covertly observed stays currently or will stay in the future.

(3) A an European Investigation Order shall indicate why the information specified in subsection (1) of this section is relevant in criminal proceedings. If a European Investigation Order is issued for interception or covert observation of messages transmitted using public electronic communications networks with the technical assistance of another Member State, the European Investigation Order shall also specify the following:
1) information needed to identify the person to be intercepted or covertly observed;
2) requested duration of interception or covert observation;
3) other technical information required for execution of the European Investigation Order.

(4) The exact procedure for interception or covert observation shall be agreed between the competent authorities of the requesting state and executing state. An European Investigation Order issued for interception or covert observation of messages transmitted using public electronic communications networks may be executed according to an agreement in the following manner:
1) by forwarding the messages transmitted using public electronic communications networks immediately to the requesting state; or
2) by recording the messages transmitted using public electronic communications networks and intercepted or covertly observed and by forwarding the recorded information to the requesting state.

(5) A requesting authority may request, during the issue or execution of a European Investigation Order, transcription, decoding or decrypting of recordings of messages transmitted using public electronic communications networks, if it has good reasons therefor and if the executive authority agrees to this.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

§ 489[44]. Notification of interception and covert observation of messages transmitted using public electronic communications networks

(1) Where, during the execution of a European Investigation Order, a preliminary investigation judge authorises, on the bases of § 126[7] of this Code, interception or covert observation of messages transmitted using public electronic communications networks with respect to a person or device who or which is located on the territory of another Member State (hereinafter *notified Member State*) from which no technical assistance is needed to carry out the interception or covert observation, the Prosecutor's Office shall notify the competent authorities of the notified Member State of interception or covert observation:
1) prior to the interception or covert observation in the cases where the Prosecutor's Office knows at the time of applying for an authorisation for interception or covert observation that the person or device subject to interception or covert observation is or will be at that moment or at the time of interception or covert observation on the territory of the notified Member State;
2) during the interception or covert observation or after the interception or covert observation when the Prosecutor's Office has obtained information about that the person or device subject to interception or covert observation is or has been during the interception or covert observation on the territory of the notified Member State.

(2) Where a competent authority of the notified Member State notifies the Prosecutor's Office that interception or covert observation would not be authorised in the notified Member State in a similar domestic case, the Prosecutor's Office shall:
1) terminate the interception or covert observation on the territory of the notified Member State; and
2) not use as evidence the information which was obtained as a result of interception or covert observation during the time the person or device subject to interception or covert observation was on the territory of the notified Member State, except under the conditions specified by the competent authority of the Member State which have been justified by the notified Member State.

(3) When another Member State has notified the Prosecutor's Office of interception or covert observation of messages transmitted using public electronic communications networks with respect to a person or device who or which is located on the territory of Estonia interception or covert observation and interception or covert observation would not be authorised in Estonia in a similar domestic case, the Prosecutor's Office shall notify the submitting Member State immediately but at the latest 96 hours after receipt of the notification of that:
1) the interception or covert observation may not be carried out or shall be terminated; and
2) the information obtained as a result of the interception or covert observation while the person or device subject to interception or covert observation was on the territory of Estonia may not be used or may be used under the conditions specified by the Prosecutor's Office, and justify those conditions.

(4) The format of the notification specified in subsection (1) of this section shall be established by a regulation of the minister responsible for the area.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

§ 489[45]. Use of police agents

(1) If a European Investigation Order is issued for the purpose of requesting from an executing State the use of a person with changed identity in criminal proceedings for collection of information concerning a criminal offence, the provisions of § 126[9] of this Code apply.

(2) A European Investigation Order shall set out why the information specified in subsection (1) of this section is relevant in criminal proceedings.

(3) The exact procedure for use of undercover police officers shall be agreed between the competent authorities of the requesting state and executing state.

(4) In addition to the grounds for refusal to execute a European Investigation Order specified in this Division, Estonia as an executing state may refuse to execute a European Investigation Order if it was impossible to agree upon the exact procedure for use of undercover police officers.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

Subdivision 2
Procedure for Recognition and Execution of European Investigation Orders

[RT I, 26.06.2017, 70 - entry into force 06.07.2017]

§ 489[46]. Recognition and Execution of European Investigation Orders

(1) The Prosecutor's Office is competent to recognise, conduct proceedings in and ensure the execution of, a European Investigation Order. The Prosecutor's Office may obligate an investigative body to execute a European Investigation Order or refer a European Investigation Order for execution to another competent law enforcement authority.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(2) Within seven days after receipt of a European Investigation Order, the Prosecutor’s Office shall notify the competent authority of the requesting Member State thereof.

(3) The format of the notification specified in subsection (2) of this section shall be established by a regulation of the minister responsible for the area.

(4) Unless a European Investigation Order was issued or confirmed by a judge, court, preliminary investigation judge or prosecutor of a requesting Member State, the Prosecutor’s Office shall return the European Investigation Order to the requesting Member State. If deficiencies or obvious inaccuracies are found in a European Investigation Order, the Prosecutor’s Office shall consult the requesting state about elimination of the deficiencies.

(5) Execution of a European Investigation Order shall be based on the instructions described by the requesting state in the European Investigation Order, except to the extent compliance with the instructions would be in conflict with the general principles of Estonian law.

(6) A procedural operation requested in a European Investigation Order shall be performed on the same bases and as quickly as a procedural operation performed on the same grounds under domestic procedure and the deadlines provided for in § 489[47] of this Code apply.

(7) If performance of a procedural operation is requested by a European Investigation Order for depositing evidence, the Prosecutor’s Office may shorten the duration of depositing of the evidence prescribed in the European Investigation Order, if necessary, after consulting the competent authorities of the requesting Member State. The Prosecutor’s Office shall notify the competent authority of the requesting state before termination of depositing of the evidence.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

§ 489[47]. Terms for recognition and execution of European Investigation Orders

(1) A decision on the recognition of the European Investigation Order must be made immediately but not later than 30 days after receipt of the European Investigation Order. If the European Investigation Order was issued for depositing of evidence, the decision on recognition of the European Investigation Order must be made, if possible, within 24 hours after receipt of the European Investigation Order.

(2) If it is impossible to decide on recognition during the term provided for in subsection (1) of this section, the Prosecutor's Office shall immediately inform the competent authority of the requesting state thereof and state the reasons for the delay and the additional time required for making the final decision which may not be longer than 30 days.

(3) If none of the circumstances provided for in § 489[49] of this Code for postponement exist, the procedural operation requested in the European Investigation Order must be performed and the evidence received thereby must be transferred to the requesting state immediately but not later than 90 days after making the decision on the basis of subsections (1) and (2) of this section on recognition of the European Investigation Order.

(4) If it is impossible to perform the procedural operation requested in the European Investigation Order during the term provided for in subsection (3) of this section, the Prosecutor's Office shall immediately notify the competent authorities of the requesting state thereof and state the reasons for the delay and consult the competent authorities of the requesting state about the time of execution of the European Investigation Order.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

§ 489[48]. Transfer of evidence

(1) The Prosecutor's Office shall immediately transfer to the requesting Member State the evidence obtained on the basis of the European Investigation Order which are in the possession of the Prosecutor's Office or investigative body, and the evidence which have been obtained as a result of execution of the European Investigation Order.

(2) Transfer of evidence may be suspended until the end of the proceedings on appeal if the procedural operation by which the evidence was obtained has been contested pursuant to this Code. Transfer of evidence shall not be suspended if sufficient reasons are stated in the European Investigation Order about that immediate transfer of evidence is essential for proper performance of the procedural operation or protection of the rights of individuals, except in the case transfer of evidence may result in serious and irreversible violation of the rights of persons.

(3) In agreement with the competent authorities of the requesting Member State, the Prosecutor's Office may temporarily transfer the evidence requested provided that the evidence shall be returned to Estonia as soon as these are no longer required in the requesting Member State, or at any other time which is agreed upon between the Prosecutor's Office and the competent authorities of the requesting Member State.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

§ 489[49]. Postponement of execution of European Investigation Orders

(1) The Prosecutor's Office may postpone the execution of a European Investigation Order if:
1) the execution of the European Investigation Order may prejudice ongoing criminal proceedings in Estonia;
2) the objects, documents or information required for performance of a procedural operation on the basis of the European Investigation Order are already used in other proceedings.

(2) The Prosecutor's Office shall notify the competent authorities of the requesting state on the basis of subsection (1) of this section of postponement of the execution of a European Investigation Order and the duration thereof.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

§ 489[50]. Adjustment of execution of European Investigation Orders

(1) Instead of the procedural operation requested in the European Investigation Order, a procedural operation of another type may be performed, if this is suitable for achieving the objective pursued, and:
1) the procedural operation stated in the European Investigation Order is not prescribed in this Code; or
2) performance of the procedural operation requested in the European Investigation Order is not permitted pursuant to Estonian law in the case of the offence specified in the European Investigation Order.

(2) It is not permitted to perform a procedural operation of another type instead of the procedural operation requested in the European Investigation Order if performance of the following procedural operations was requested:
1) forwarding of such information or evidence which are in the possession of the Prosecutor's Office or investigative body and the obtaining of which would have been possible within the framework of criminal proceedings or the European Investigation Order pursuant to subsection 32 (2) of this Code;
2) questioning of a witness, expert, specialist, victim, suspect, accused or third person on the territory of Estonia;

3) a procedural operation provided for in subsection 90^1(1) of this Code;
4) a procedural operation the performance of which does not prejudice the fundamental rights of persons.

(3) Before adjustment of the execution of an European Investigation Order pursuant to this section, the Prosecutor's Office shall consult the competent authorities of the requesting Member State and notify the requesting Member State of the need to perform a procedural operation of another type.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

§ 489^{51}. Refusal to execute European Investigation Order

(1) Execution of a European Investigation Order may be refused in part or in full in addition to the provisions of § 436 of this Code if:
1) a person with respect to whom performance of a procedural operation is requested enjoys immunity in the Republic of Estonia or privileges prescribed by an international agreement;
2) it is evident on the basis of a European Investigation Order that execution of the Investigation Order is not permitted because the person has been finally convicted or acquitted on the same charges or, in the case of a judgment of conviction, the imposed punishment has been served or execution of the punishment cannot be ordered pursuant to the legislation of the state which issued the European Investigation Order;
3) the procedural operation requested in the European Investigation Order is not permitted pursuant to Estonian law in the case of the offence on the basis of which the European Investigation Order was issued, except for the procedural operations provided for in subsection 489^{50}(2) of this Code, if the European Investigation Order was issued within the framework of criminal proceedings conducted in the requesting state;
4) the European Investigation Order is related to an offence which was allegedly committed outside the territory of the requesting state and, in part or in full, on the territory of the Republic of Estonia, and the act on the basis of which the European Investigation Order was issued is not punishable in Estonia;
5) the act on the basis of which the European Investigation Order was issued is not punishable in Estonia, except in the case of an offence specified in subsection 489^6(1) of this Code or if performance of the procedural operations specified in subsection 489^{50}(2) of this Code is requested in the European Investigation Order.

(2) Before refusal to execute an European Investigation Order on the basis of subsection (1) of this section, the Prosecutor's Office shall consult the competent authorities of the requesting state and notify the requesting Member State of refusal to execute the European Investigation Order.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

Subdivision 3
Issue of European Investigation Orders to Member States of the European Union

[RT I, 26.06.2017, 70 - entry into force 06.07.2017]

§ 489^{52}. Issue and submission of European Investigation Orders

(1) The Prosecutor's Office in pre-court proceedings and the court in the case of judicial proceedings is competent to issue an European Investigation Order.

(2) The European Investigation Order is issued and submitted only in the case:
1) the issue of a European Investigation Order is necessary for the achievement of the purpose of criminal proceedings and proportionate taking into account the rights of the suspects and accused;
2) the procedural operation requested by the European Investigation Order could be performed under the same terms and conditions in domestic criminal proceedings.

(3) If the European Investigation Order is issued for depositing of evidence, the European Investigation Order shall indicate whether the evidence shall be returned to Estonia or they stay in the possession of the executing state, and the duration of depositing of evidence or the estimated date of submission of a request for transfer of evidence.

(4) If a European Investigation Order delivered for execution is annulled, the competent authority of the executing state shall be immediately notified thereof.

(5) The format of an European Investigation Order shall be established by a regulation of the minister responsible for the area.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

Division 1[3]
Mutual Recognition of Freezing Orders and of Confiscation Orders

[RT I, 29.12.2020, 1 - entry into force 08.01.2021]

§ 489[53]. Implementation of Regulation (EU) 2018/1805 of the European Parliament and of the Council

In relation to the mutual recognition of freezing orders or confiscation orders of a Member State of the European Union, the provisions of this Code apply insofar as Regulation (EU) 2018/1805 of the European Parliament and of the Council on the mutual recognition of freezing orders and confiscation orders (OJ L 303, 28.11.2018, pp. 1–38) does not provide for the contrary.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

§ 489[54]. Recognizing, executing and transmitting a freezing order

(1) Competence to deal with and execute a freezing order transmitted to Estonia by means of a freezing certificate under Regulation (EU) 2018/1805 of the European Parliament and of the Council is vested in the Prosecutor's Office; competence to recognize such an order is vested in the courts. The Prosecutor's Office may direct an investigative authority to execute a freezing order.

(2) When recognizing a freezing order transmitted by means of a freezing certificate, the freezing of property according to the rules provided in § 142 of this Code is decided by a court order. Competence to recognize a freezing order and to order the freezing of property is vested in Harju District Court. In a situation of urgency, the freezing of property may be ordered by the Prosecutor's Office according to the rules provided in subsection 3 of § 142 of this Code.

(3) The Prosecutor's Office notifies the competent authority of the requesting Member State of having recognized and executed a freezing order, of having decided not to recognize and not to execute a freezing order, of postponing the execution of a freezing order or of the impossibility of executing a freezing order.

(4) When it has executed a freezing order, the Prosecutor's Office notifies the fact that the order has been recognized and executed to any persons that are known to it to be affected by that order. Any appeals against a court order that served as a basis for recognition or any complaints against the actions of an investigative authority in relation to the execution of the order are filed, according to the rules provided in subsection 2 of § 387 of this Code and within ten days following reception of the order, with the district court that serves the area in which the contested order was made or the contested procedural operation performed,. The court may dispose of such an appeal in written procedure.

(5) In pre-trial proceedings, competence to draw up a freezing certificate required to transmit a freezing order, and to transmit such a certificate, is vested in the Prosecutor's Office; in proceedings before a court, that competence is vested in the court.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

§ 489[55]. Recognizing, executing and transmitting a confiscation order

(1) Competence to deal with a confiscation order transmitted to Estonia by means of a confiscation certificate under Regulation (EU) 2018/1805 of the European Parliament and of the Council is vested in the Ministryof Justice; competence to recognize such an order and to impose measures of interim protection with a view to its execution is vested in the courts. Execution of a confiscation order takes place according to the rules provided in Chapter 18 of his Code.

(2) When recognizing a confiscation order transmitted by means of a confiscation certificate, the confiscation of property is decided by a court order. Competence to recognize a confiscation order and to order the confiscation of property is vested in the court that serves the locality of residence of the person whose property is the subject matter of the order or, where there is no such residence, in Harju District Court. The execution of a confiscation order is decided in written procedure unless the defence counsel of the convicted offender, or a third party or their representative requests an oral procedure. A judicial hearing held to decide on the recognition and execution of a confiscation order is attended by a prosecutor, a defence counsel for the convicted offender and any third party or their representative.

(3) The court transmits its order together with information concerning execution of the confiscation order to the Ministry of Justice, which notifies the competent authority of the requesting Member State of having recognized and executed the order, of having decided not to recognize and not to execute it, of postponing its execution or of the impossibility of its execution.

(4) When it has recognized a freezing order, a court notifies its recognition to any persons that the court knows to be affected by the order. Any appeals against a court order that served as a basis for recognition are filed, according to the rules provided in subsection 2 of § 387 of this Code and within ten days following reception

of the order, with the district court that serves the area in which the contested order was made or the contested procedural operation performed. The court may dispose of such an appeal in written procedure.

(5) Competence to transmit a confiscation order by means of a confiscation certificate is vested in the district court that entered the first judicial disposition in the given criminal case. The court draws up and transmits a confiscation certificate of its own motion or on an application of the Prosecutor's Office.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

Division 2
Surrender

Subdivision 1
General Provisions

§ 490. European arrest warrant

A European arrest warrant is a request submitted by a competent judicial authority of a Member State of the European Union to another Member State of the European Union for the detention, arrest and surrender of a person in order to continue criminal proceedings or execute imprisonment imposed by a decision which has entered into force.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 491. General conditions for surrender

(1) A person may be surrendered for continuation of criminal proceedings with regard to him or her in a requesting state if the person is suspected or accused of a criminal offence which is punishable by at least one year of imprisonment in the requesting state.

(2) A person may be surrendered regardless of the punishability of the act pursuant to the Penal Code of Estonia in the case of the criminal offences provided for in subsection 489^6(1) of this Code.

(3) Surrender of a person for the purposes of execution of a judgment of conviction made with regard to him or her is permitted under the conditions provided for in subsections (1) and (2) of this section if at least four months of the sentence of imprisonment have not yet been served.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 492. Circumstances precluding or restricting surrender of persons

(1) In addition to the cases provided for in § 436 of this Code, surrender of a person to a foreign state is not allowed if:
1) the Penal Code may be applied to the criminal offence and an amnesty precludes imposition of a punishment in Estonia for the criminal offence which is the basis for an arrest warrant;
2) the person has been finally convicted or acquitted on the same charges in another Member State or, in the case of a judgment of conviction, the imposed punishment has been served or is served or the execution of the punishment cannot be ordered pursuant to the legislation of the state which made the judgment;
3) the person with regard to whom an arrest warrant has been issued is under fourteen years of age;
4) an arrest warrant has been issued with regard to an Estonian citizen for the execution of imprisonment and the person applies for enforcement of the punishment in Estonia.

(2) Surrender of a person may be refused if:
1) an act which is the basis for the arrest warrant and which is not specified in subsection 489^6(1) of this Code is not a criminal offence pursuant to the Penal Code of Estonia, except in the case provided for in § 436 of this Code;
2) criminal proceedings concerning a criminal offence which is the basis for the arrest warrant have been commenced with regard to the person in Estonia;
3) criminal proceedings concerning a criminal offence which is the basis for the arrest warrant have not been commenced or have been terminated with regard to the person in Estonia;
4) the Penal Code may be applied to the criminal offence and the criminal offence which is the basis for the arrest warrant has expired pursuant to the Penal Code;
5) the person has been finally convicted or acquitted on the same charges in a non-EU Member State or, in the case of a judgment of conviction, the imposed punishment has been served or execution of the punishment cannot be ordered pursuant to the legislation of the state which made the judgment;

6) the criminal offence which is the basis for the arrest warrant was committed outside the territory of the requesting state and the Penal Code cannot be applied to criminal offences committed outside the territory of the Republic of Estonia under the same circumstances;
7) in the case provided for in subsection 502 (5) of this Code, additional information has not been submitted by the due date determined by the court.

(3) Estonia surrenders its citizens who reside permanently in Estonia on the basis of a European arrest warrant for the duration of criminal proceedings provided that the punishment imposed on a person in a Member State is enforced in the Republic of Estonia.

(4) [Repealed – RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(5) If life imprisonment may be imposed in a requesting state as punishment for a criminal offence which is the basis for an arrest warrant, the person may be surrendered on the condition that the competent authority of the requesting state has assured that release of the person before the prescribed time is possible.

(6) If the person whose surrender is requested enjoys immunity or privileges in the Republic of Estonia prescribed by an international agreement, execution of the European arrest warrant shall be suspended until receipt of a notice from a competent authority concerning deprivation of the person of the immunity or privileges prescribed by an international agreement.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 493. Extension of surrender

(1) Criminal proceedings shall not be commenced, measures which restrict freedom shall not be applied and a court judgment for a criminal offence committed before surrender, except the criminal offence in connection with which the person was surrendered, shall not be enforced with regard to a person surrendered to Estonia.

(2) The provisions of subsection (1) of this section do not apply if:
1) the surrendered person had the opportunity to leave Estonia within forty-five days as of his or her final release, or if he or she has returned to Estonia after leaving;
2) the criminal offence is not punishable by imprisonment;
3) the criminal proceedings are not accompanied by measures which restrict freedom;
4) punishment does not bring about deprivation of liberty, except substitutive punishment which restricts freedom;
5) a person voluntarily consents to surrender and non-application of subsection (1) of this section in respect of him or her or, after entry into force of a surrender decision, has consented to the non-application of subsection (1) of this section in respect of him or her;
6) a Member State which surrenders a person has granted its consent for the bringing of additional charges.

(3) A request for the extension of surrender shall be submitted to the competent judicial authority of the requesting state.

(4) A request for the extension of surrender submitted to Estonia may be granted if the request is based on a criminal offence to which a European arrest warrant may be applied.

(5) A court session shall be held for consideration a request for extension of surrender within five days as of the receipt of a European arrest warrant by the court.

(6) The following persons are required to participate in a court session for extension of surrender:
1) the prosecutor;
2) the person whose surrender is sought, unless the person is handed over to a foreign country and he or she is staying in the Republic of Estonia;
3) the counsel of the person claimed.

(7) If the state requesting extension of surrender waives or annuls it after receipt of the request by the court but before adjudication of extension of surrender, the proceedings shall be terminated by a court order.

(8) An appeal against an order on extension of surrender or an order on refusal to extend surrender may be filed pursuant to the procedure provided for in subsection 387 (2) of this Code within three days as of receipt of the order.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 494. Surrender and extradition to third country

(1) A person surrendered to Estonia cannot be re-surrendered to another Member State of the European Union or extradited to a non-EU state, unless:
1) the surrendered person had the opportunity to leave Estonia within forty-five days as of his or her final release, or if he or she has returned to Estonia after leaving;
2) the person consents to the surrender or extradition;
3) the Member State which surrenders the person grants its consent for the re-surrender or extradition.

(2) A citizen of the Republic of Estonia who is surrendered to a Member State of the European Union cannot be re-surrendered to another Member State of the European Union, or extradited to a non-EU state without the authorisation of the minister responsible for the area.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 495. Plurality of requests

(1) If several states request the surrender of a person, a court shall decide which European arrest warrant is executed. The decision shall be based, primarily, on the seriousness and time and place of commission of the criminal offences committed by the person, the order in which the European arrest warrants were submitted and whether the warrants have been issued for conduct of pre-court proceedings or for enforcement of a court judgment which has entered into force.

(2) If necessary, a court may ask the advice of Eurojust.

(3) If a European arrest warrant and a request for extradition have been submitted in respect of the same person, the minister responsible for the area shall decide which request is executed, taking account of the circumstances specified in subsection (1) of this section.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 496. Permission for transit of surrendered person

(1) Permission for the transit of a person surrendered by another Member State through the territory of the Republic of Estonia shall be granted by the Ministry of Justice.

(2) A request for transit shall set out:
1) the personal data and the citizenship of the person concerned;
2) a notation that a European arrest warrant has been issued with regard to the person;
3) information on the facts relating to and the legal assessment of the criminal offence.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 497. Relinquishment of property

(1) Relinquishment of property located in an executing state may be requested by a European arrest warrant if the property claimed has been acquired by a criminal offence which is the basis for the European arrest warrant or the property is required as physical evidence in criminal proceedings.

(2) Property may be relinquished or relinquishment of property may be requested also if a European arrest warrant cannot be submitted because the person has died or fled from the requesting state.

(3) In Estonia, third party rights to property to be relinquished shall be preserved and the property to be relinquished shall be returned to the entitled person not party to the proceedings after the entry into force of the court judgment.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Subdivision 2
Surrender Procedure

§ 498. Authorities competent to execute European arrest warrant

(1) The following authorities are competent to conduct proceedings regarding a European arrest warrant and adopt a surrender decision:
1) the Harju County Court Liivalaia Courthouse, if a person is detained in Tallinn or in Harju County, Rapla County, Lääne-Viru County, Ida-Viru County, Järva County, Lääne County, Hiiu County, Saare County or Pärnu County;
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]
2) the Tartu County Court Tartu Courthouse, if a person is detained in Jõgeva, Viljandi, Tartu, Põlva, Võru or Valga county.

(2) The central authority for cooperation in surrender proceedings is the Ministry of Justice.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 499. Arrest for surrender

(1) In order to ensure execution of a European arrest warrant, a person may be arrested pursuant to the procedure provided for in subsection 217 (8) of this Code. A preliminary investigation judge shall decide on an arrest for surrender at the request of the Prosecutor's Office.

(2) A person may be detained pursuant to the procedure provided for in subsection 217 (1) of this Code before the arrival of the European arrest warrant on the basis of a request for an arrest warrant submitted through the International Criminal Police Organisation (Interpol) or a notice on a wanted person in the Schengen Information System if the request contains a confirmation on submission of the warrant.

(3) Upon arrest of a person, his or her rights and the grounds for arrest shall be explained to him or her and the person shall be informed of the opportunity to consent to surrender. The consent shall not be withdrawn.
[RT I, 20.12.2019, 1 – entry into force 30.12.2019]

(4) A person has, as of his or her arrest, the right to receive state legal aid and the assistance of an interpreter or translator. The rights of a suspect or accused who is a minor shall apply to a minor, except for the provisions of clause 34 (1^1) 3) of this Code.
[RT I, 20.12.2019, 1 – entry into force 30.12.2019]

(5) If a European arrest warrant has not been sent within a term provided for in subsection 500 (1) of this Code, the person shall be immediately released.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 500. Channels for communication of European arrest warrant

(1) A European arrest warrant shall be addressed to the Ministry of Justice within three working days after the person is taken into custody in Estonia. The Ministry of Justice shall immediately communicate the European arrest warrant to a competent court and the Office of the Prosecutor General.

(2) A European arrest warrant received through the International Criminal Police Organisation (Interpol) or Schengen Information System shall be sent to the Ministry of Justice immediately after the arrest of a person and the Ministry of Justice shall forward it to the competent court and the Office of the Prosecutor General.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 501. Participation of counsel in surrender proceedings

Participation of a counsel in surrender proceedings is mandatory starting from consideration of a request for the arrest of a person.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 502. Judicial surrender procedure

(1) In order to hear a European arrest warrant and decide on the surrender of a person, a court session shall be held within ten days after the receipt of the European arrest warrant by a court. If a person has given notification of his or her consent to the surrender, a court session shall be held within five days as of the receipt of the European arrest warrant by a court.

(2) Surrender procedure shall be conducted by a judge sitting alone.

(3) The following persons are required to participate in a court session:
1) the prosecutor;
2) the person whose surrender is requested;
3) the counsel of the person whose surrender is requested.

(4) In a court session, the court shall:
1) verify whether the person consents to surrender;
2) inform the person of the provisions of §§ 493 and 494 of this Code;
3) hear the opinions of the person claimed, his or her counsel and the prosecutor.

(5) A court may grant a term to a competent judicial authority of a requesting state for the submission of additional information.

(6) A court shall make an order provided for in § 503 of this Code immediately after a court session held for the surrender of a person.

(7) If a surrender decision cannot be made within a prescribed term, the term for the making of the surrender decision shall be extended by thirty days. The person who submitted the request and Eurojust shall be immediately informed of such extension of surrender procedure.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 503. Court decisions under surrender procedure

(1) When deciding on surrender of a person to a foreign state, a court shall make one of the following orders:
1) to grant a European arrest warrant and consent to the surrender of the person;
2) to deny a European arrest warrant and refuse to consent to the surrender of the person;
3) to terminate the proceedings if the requesting state has annulled the issued European arrest warrant before the decision on surrender is made.

(2) An order shall set out:
1) the name, personal identification code or date of birth, and place of birth of the person subject to surrender procedure;
2) the content of the European arrest warrant considered;
3) the opinions of the persons who participated in the court session and, if the person consents to his or her surrender, the consent of the person;
4) the determination of the court and reasons for the consent or refusal to consent to surrender;
5) the terms and conditions of surrender provided for in subsections 492 (3) and (5) and subsection 489^7(1) of this Code;
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]
6) the period during which a person subject to surrender procedure was held in custody;
7) the procedure for appeal.

(3) If a European arrest warrant contains a request for the confiscation of assets, the court shall decide on confiscation of the assets in surrender proceedings.

(4) If a court decides to grant a European arrest warrant and surrender a person, a court applies arrest for surrender to the person until the person is surrendered.

(5) If a court decides to refuse surrender, arrest for surrender is applied to the person until an order on surrender or order on refusal to surrender enters into force.

(6) A copy of the order shall be communicated to the custodial institution where the person to be surrendered is held in custody for surrender, the prosecutor and the person subject to the surrender proceedings and his or her counsel.

(7) A copy of an order which has entered into force and is issued in surrender proceedings shall be immediately sent to the Ministry of Justice who shall communicate it to the requesting state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 504. Contestation of order made in surrender proceedings

(1) An appeal against an order on surrender made in surrender proceedings or an appeal against an order on refusal to surrender may be filed in accordance with the rules provided in subsection 387 (2) of this Code within three days of receiving the order.

(2) An appeal against an order of the Harju County Court shall be filed with the Tallinn Circuit Court and an appeal against an order of the Tartu County Court shall be filed with the Tartu Circuit Court.

(3) An appeal against an order shall be considered by written procedure in a circuit court within ten days as of arrival of the matter to the circuit court.

(4) A judgment of a circuit court is final.

(5) A person whom a court has decided to surrender to a foreign state may waive his or her right of appeal by making a corresponding written application. In such case the court order shall enter into force on the day of waiver of the right of appeal.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 505. Surrender of person

(1) A copy of an order on surrender which has entered into force shall be sent by the Ministry of Justice to the Police and Border Guard Board who shall notify the requesting state of the time and place of surrender of the person to be surrendered and organise the surrender of the person.

(2) A surrendered person shall be surrendered within ten days as of entry into force of the order on surrender.

(3) If surrender is prevented by circumstances beyond the control of the requested and requesting state, the person shall be surrendered within ten days as of the new agreed date.

(4) The surrender may be temporarily postponed if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist and the person shall be surrendered within ten days as of the new agreed date.

(5) If a person is not surrendered with a term specified in subsections (2)-(4) of this section, he or she shall be released.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 506. Postponement of surrender and temporary surrender

(1) The Ministry of Justice may postpone execution of an order on surrender which has entered into force if criminal proceedings are conducted against the person or a court judgment made with regard to him or her is executed in Estonia.

(2) By a written agreement with a requesting state, a person whose surrender has been postponed may be temporarily surrendered to the requesting state.

(3) If criminal proceedings against a person temporarily surrendered to Estonia are terminated or the person is acquitted and criminal proceedings are conducted against the person in the state which surrendered him or her to the Republic of Estonia or a prison sentence is imposed on him or her, the person shall be held in custody until he or she is surrendered to the state which temporary surrendered him or her to the Republic of Estonia.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Subdivision 3
Submission of Arrest Warrants to Member States of European Union

§ 507. Submission of European arrest warrants

(1) In pre-court proceedings the Prosecutor’s Office and in judicial proceedings the court which conducts proceedings regarding a criminal offence which is the basis for a European arrest warrant is competent to prepare the European arrest warrant.

(2) For execution of a decision which has entered into force, the county court enforcing the decision is competent to submit a European arrest warrant.

(3) In pre-court proceedings, a preliminary investigation judge may, at the request of the Prosecutor’s Office, apply arrest for surrender before preparation of a European arrest warrant in order to ensure surrender.

(4) If surrender of a person is requested in judicial proceedings, the arrest for surrender of the person shall be applied by the court which conducts proceedings regarding the criminal offence.

(5) The authority which prepared a European arrest warrant is competent to annul it.

(6) A European arrest warrant shall be prepared in the Estonian language and it shall be translated by the Ministry of Justice into the language determined by the requesting state.

(7) A European arrest warrant shall be communicated to the requesting state by the Ministry of Justice.

(8) In cases of urgency, a request for application of arrest for surrender with regard to a person to be surrendered may be submitted to a Member State of the European Union through the International Criminal Police Organisation (Interpol) or the central authority responsible for the national section of the Schengen Information System with the consent of the Prosecutor’s Office before a European arrest warrant is submitted.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508. Content, format and manner of communication of European arrest warrants

(1) A European arrest warrant shall set out:
1) the identity and nationality of the person concerned;
2) the name and contact details of the issuing judicial authority;
3) a notation concerning a court judgment which has entered into force on an arrest warrant;
4) facts relating to and classification of the criminal offence;
5) the penalty imposed in the case of a court judgment which has entered into force or the prescribed scale of penalties for the criminal offence which forms the content of the warrant under the law of the issuing state.

(2) The format of an European arrest warrant shall be established by a regulation of the minister responsible for the area.

(3) An arrest warrant shall be communicated to a requesting state by post, by electronic mail or in another format which can be reproduced in writing.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Division 3
Recognition and Enforcement of Restraining Orders

Subdivision 1
General Provisions

§ 508[1]. European Protection Order Certificates

The European protection order certificate is a request submitted by a competent authority of a Member State of the European Union to another Member State of the European Union to apply one or more of the following restrictions to persons causing danger:
1) prohibition to stay in a fixed location where the protected person resides or where he or she often goes;
2) prohibition on contact with the protected person;
3) prohibition on approaching the protected person.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Subdivision 2
Procedure for Application of European Protection Orders

§ 508[2]. Authorities competent to apply European protection orders

(1) County courts of the residence of protected persons are the authorities competent to decide on application of the European protection order.

(2) The central authority for deciding on application of the European protection order is the Ministry of Justice.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[3]. Decision on application of European protection orders

(1) Application of an European protection order is decided on the basis of a European protection order certificate delivered by a requesting state or at the request of a person requesting the application of the European protection order.

(2) A European protection order is applied in the case the protected person resides or stays in Estonia.

(3) Application of a European protection order shall be decided immediately.

(4) When deciding on application of a protection order, a court shall assess the length of the period of stay of the protected person in Estonia and whether the protection need is justified.

(5) Upon application of a European protection order, the same protection measures are implemented for the protection of the protected person which would be implemented in similar circumstances upon application of a restraining order in Estonia.

(6) Upon deciding on application of a European protection order, the person with respect to whom the application of the protection order is decided shall be involved in the proceedings, if he or she was not involved in the proceedings for application of a restraining order in the requesting state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[4]. Refusal to apply European protection orders

(1) A court may refuse to apply a European protection order if:
1) the European protection order certificate is incomplete or has not been amended within the time limit set for such purposes;
2) the European protection order relates to a criminal offence which is not a criminal offence pursuant to the Penal Code of Estonia;
3) there is no respective protection measure in the state which issued the European protection order certificate.

(2) If a court refuses to apply a European protection order, the court shall immediately inform the protected person and the competent authority of the state which made the decision on the initial protection order thereof and of the reasons for the refusal. In such case the court shall also inform the protected person of the opportunity to apply for a restraining order pursuant to civil procedure.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[5]. Notification of application of European protection orders

A court shall immediately notify the person for the protection of whom the protection was applied and the person who is subject to the protection order, and the competent authority of the state which made the decision on application of the initial protection order of the order on application of a European protection order and potential consequences of violations thereof.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[6]. Notification of violation of European protection orders

(1) A court shall notify the competent authority of the state which applied the initial protection order of any violations of the protection measures applied by the European protection order.

(2) The format of the notice specified in subsection (1) of this section shall be established by a regulation of the minister responsible for the area.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[7]. Amendment and annulment of European protection orders

(1) A court may amend the conditions of application of a protection order if the competent authority of the state which applied the initial protection order has amended the conditions of application of the protection order.

(2) A court shall annul a protection order if the competent authority of the Member State of the European Union which made a decision on application of the initial protection order has annulled the protection order established.

(3) A court may annul a European protection order if there is sufficient reason to believe that the protected person does not stay in Estonia or has finally left the territory of Estonia or if three years have expired from the beginning of the application of the protection order.

(4) A court shall immediately notify the person for whose protection the protection order was applied and the person who is subject to the protection order and the competent authority of the state which made the decision on application of the initial protection order of annulment of the application of the European protection order.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Subdivision 3
Submission of European Protection Order Certificates to Member States of European Union

§ 508[8]. Submission of European protection order certificates and format of European protection orders

(1) Preparation and submission of a European protection order certificate is permitted only in the case a decision was previously made in the same matter on application of protection order pursuant to Estonian law.

(2) A person who requests application of a European protection order shall submit a respective request to a county court of his or her residence or to the competent authority of the Member State of the European Union on which territory the application of protection order is requested.

(3) A county court of the residence of the protected person shall prepare a European protection order certificate and communicate it to the Ministry of Justice.

(4) The Ministry of Justice shall translate the certificate into the language determined by the executing state and communicate it to a competent authority of the executing state.

(5) The format of the European protection order certificate shall be established by a regulation of the minister responsible for the area.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Division 4

Recognition and Execution of Property Freezing or Evidence Depositing Orders

Subdivision 1 General Provisions

§ 508[9]. European certificates of freezing property or depositing evidence

(1) A European certificate of freezing property or depositing evidence (hereinafter *European freezing certificate*) is a request submitted by a competent judicial authority of a Member State of the European Union to another Member State of the European Union in order to ensure confiscation of property or to prevent destruction, transformation, moving, transfer or disposal of property.

(2) The following may be frozen or deposited on the basis of a European freezing certificate:
1) the property which was obtained by a criminal offence or property the value of which corresponds to the property which was obtained by a criminal offence;
2) an instrument by which a criminal offence was committed;
3) a direct object of a criminal offence;
4) other physical evidence, documents or data recordings which can be produced as evidence in criminal proceedings.

(3) A copy of a decision on freezing property or depositing evidence issued by the competent judicial authority of the requesting state shall be appended to a European freezing certificate.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(4) This Division applies to the freezing of property and to the deposition of evidence only in the co-operation conducted in criminal matters with the Kingdom of Denmark and the Republic of Ireland.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

§ 508[10]. Request accompanying European freezing certificates

A state executing a European freezing certificate shall be submitted a request together with the certificate for:
1) transferring the evidence to the requesting state; or
2) confiscation of property.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[11]. Circumstances precluding or restricting execution of European freezing certificates

(1) Execution of a European freezing certificate may be refused if:
1) an act which is the basis for the European freezing certificate is not punishable pursuant to the Penal Code of Estonia, except in the case provided for in § 489[6] of this Code;
2) a person the freezing or deposit of whose property is requested enjoys immunity in the Republic of Estonia or privileges prescribed by an international agreement;
3) it is evident on the basis of a European freezing certificate that compliance with the request specified in § 508[10] of this Code is not permitted because the person has been finally convicted or acquitted on the same charges or, in the case of a judgment of conviction, the imposed punishment has been served or execution of the punishment cannot be ordered pursuant to the legislation of the state which issued the European freezing certificate;
4) the European freezing certificate was not submitted by using the format provided for in § 508[20], it is incomplete, does not correspond to the order of the competent judicial authority of the requesting state on which it is based or the order of the competent judicial authority of the requesting state on which it is based or a copy thereof is not appended to the European freezing certificate.

(2) The competent judicial authority of the requesting state shall be notified of refusal to execute a European freezing certificate.

(3) In the case specified in clause (1) 4) of this section, the Office of the Prosecutor General may grant a term to the competent judicial authority of the requesting state for elimination of deficiencies or for submission of additional information.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[12]. Compensation for damage

(1) Estonia as a requesting state shall bear all the expenses incurred by the executing state pursuant to the law of that state in connection with damage caused to a third party by execution of a European freezing certificate provided that the damage was not caused by wrongful acts of the executing state. Compensation for damage shall be decided by the Ministry of Justice on the proposal of the Office of the Prosecutor General.

(2) Estonia as the executing state has the right to require compensation from the requesting state for the expenses which Estonia compensated for to a third party in connection with damage caused by the execution of a European freezing certificate provided that the damage was not caused only by wrongful acts of Estonia. The Ministry of Justice shall decide on submission of a request for compensation of expenses to the requesting state at the request of the Office of the Prosecutor General.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[13]. Notification

The obligation to notify a competent judicial authority of the requesting state of the circumstances relating to execution or refusal to execute a European freezing certificate or other circumstances shall be performed immediately and a notice shall be submitted by post, electronic mail or in other format which can be reproduced in writing.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Subdivision 2
Execution of European freezing certificates

§ 508[14]. Authority competent to conduct proceedings on European freezing certificates

(1) The Office of the Prosecutor General is competent to conduct proceedings on European freezing certificates issued to Estonia and to decide on execution of European freezing certificates. If necessary, the Office of the Prosecutor General shall involve a district Prosecutor's Office in the execution of the decision.

(2) If a European freezing certificate includes a request specified in clause 508[10]1) or 2) of this Code, the Office of the Prosecutor General shall communicate a copy of the European freezing certificate to the Ministry of Justice.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[15]. Deciding of execution of European freezing certificates

A European freezing certificate shall be considered immediately and execution of the order, refusal to execute the order, postponement of the order or requesting of additional information from the requesting state, if necessary, shall be decided upon within 24 hours as of the receipt of the European freezing certificate.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[16]. Execution of European freezing certificates

(1) Estonian law shall apply to execution of European freezing certificates. At the request of a foreign state, a request for depositing evidence may be complied with pursuant to procedural provisions different from the provisions of this Code unless this is contrary to the principles of Estonian law.

(2) In order to execute a European freezing certificate pursuant to the procedure provided for in § 142 of this Code, freezing of property shall be decided upon at the request of the Prosecutor's Office by an order of a preliminary investigation judge.

(3) The Harju County Court is competent to decide on the freezing of property on the basis of a European freezing certificate.

(4) The Office of the Prosecutor General shall notify the competent judicial authority of the requesting state of execution of a European freezing certificate.

(5) Property shall be frozen and evidence shall be deposited until a decision is made concerning compliance with a request provided for in § 508[10]of this Code.

(6) If the competent judicial authority of the requesting state gives notice of annulment of a European freezing certificate, the frozen property shall be released and the confiscated evidence shall be immediately returned.

(7) In the case it is impossible to execute a European freezing certificate for the reason that the property or evidence have disappeared, have been destroyed, the location thereof cannot be identified even after

consultation with the requesting state, the competent judicial authority of the requesting state shall be notified thereof.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[17]. Postponement of execution of European freezing certificates

(1) The Prosecutor's Office may postpone execution of a European freezing certificate:
1) if the execution thereof may prejudice ongoing criminal proceedings in Estonia;
2) if the property or evidence indicated in the European freezing certificate has already been frozen or deposited in connection with criminal proceedings ongoing in Estonia.

(2) The Prosecutor's Office shall notify the competent judicial authority of the requesting state of postponement of execution of a European freezing certificate. In addition to the reasons for postponement, the estimated duration of the postponement shall be notified of, if possible.

(3) If the reasons for postponement cease to exist, the Prosecutor's Office shall take immediate measures for execution of the European freezing certificate and notify the competent judicial authority of the requesting state thereof.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[18]. Contestation of decision made and act performed upon execution of European freezing certificates

(1) In Estonia, third party rights to property which is the object of a European freezing certificate shall be preserved. An appeal against an order of the Prosecutor's Office or activities of an investigative body in connection with the execution of a European freezing certificate shall be filed with the county court in whose territorial jurisdiction the contested order was prepared or the contested procedural operation was performed. An appeal against an order on the freezing of property may be filed pursuant to the procedure provided for in subsection 387 (2) of this Code within three days as of receipt of the order.

(2) A European freezing certificate issued to Estonia and the order of the competent judicial authority of the requesting state which is the basis for the freezing certificate cannot be contested in Estonia. If a person so requests, the Office of the Prosecutor General shall communicate to him or her the contact details which allow the person to examine the procedure for contesting a European freezing certificate in the requesting state.

(3) Filing of an appeal shall not suspend the execution of a contested order unless otherwise decided by the person resolving the dispute.

(4) The Prosecutor's Office shall notify the competent judicial authority of the requesting state of an appeal being filed in connection with the execution of a European freezing certificate and of the decision made to resolve the appeal.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Subdivision 3
Issue of European Freezing Certificates to Member States of European Union

§ 508[19]. Preparation of European freezing certificates

(1) The authority competent to prepare a European freezing certificate is the Prosecutor's Office in pre-court proceedings and the court in judicial proceedings.

(2) The Prosecutor's Office or the court which conducts proceedings regarding a criminal offence which is the basis for a European freezing certificate shall prepare a European freezing certificate and communicate it together with a copy of the decision specified in subsection 508[9](3) of this Code to the competent judicial authority of the country of location of the property or evidence. The European freezing certificate prepared by the Prosecutor's Office shall be communicated to the executing state through the Office of the Prosecutor General.

(3) If a European freezing certificate delivered for execution is annulled, the competent judicial authority of the executing state shall be immediately notified thereof.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[20]. Format of European freezing certificates

The format of European freezing certificates shall be established by a regulation of the minister responsible for the area.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Division 5
Recognition and Execution of Confiscation Orders of Members States of European Union

Subdivision 1
General Provisions

§ 508[21]. European certificate of confiscation

(1) A European certificate of confiscation is a request issued by a competent judicial authority of a Member State of the European Union to another Member State of the European Union for final deprivation of property which is based on a court judgment concerning confiscation of property.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(2) In relation to a confiscation certificate, this Division only applies in the co-operation conducted in criminal matters with the Kingdom of Denmark and the Republic of Ireland.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

§ 508[22]. General conditions of execution of confiscation orders

(1) Execution of a confiscation order is permitted if a person is convicted of an offence which is punishable as a criminal offence under the Penal Code of Estonia and in the case of which application of confiscation is permitted pursuant to Estonian law.

(2) Execution of a confiscation order is permitted regardless of punishability of the act pursuant to the Penal Code of Estonia in the case of criminal offences provided for in subsection 489[6](1) of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[23]. Circumstances precluding or restricting execution of confiscation orders

Recognition and execution of confiscation orders may be refused in addition to the provision of § 436 of this Code if:
1) a European certificate of confiscation has not been submitted or it is incomplete or does not clearly correspond to the order;
2) a confiscation order has been made and executed for the same offence in Estonia or any other state;
3) the judgment or decision was made with regard to a person who enjoys immunities or privileges on the basis of clause 4 2) of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[24]. Disposal of confiscated property

(1) The money received from execution of a confiscation order is used as follows:
1) if the amount received is 10,000 euros or less, the confiscated property shall be transferred to the state budget revenues;
2) if the amount received is larger than 10,000 euros, one-half of the property received upon execution of the confiscation order shall be transferred to the requesting state.

(2) Other property received from execution of a confiscation order and which is not money shall be sold or transferred to the requesting state. In the case of sale, the proceeds from the sale of property shall be used in accordance with subsection (1) of this section. If a confiscation order prescribes confiscation of an amount of money, the requesting state may transfer the property only if the given state has given its consent for such purpose.

(3) If non-monetary disposal of property in the manner specified in subsection (2) of this section is impossible, the provisions of § 126 of this Code apply to the confiscated property.

(4) Subsection (3) of this section shall not apply to cultural objects or items of cultural heritage of the executing state. Demanding of sale or return of such objects or items is prohibited.

(5) The confiscated amount of money is calculated into euros based on the exchange rate of the day of making the confiscation order.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[25]. Compensation for damage

(1) Estonia as a requesting state shall bear all the expenses incurred by the executing state, pursuant to the law of that state, in connection with damage caused to a third party by execution of a European certificate of confiscation provided that the damage was not caused by wrongful acts of the executing state. Compensation for damage shall be decided by the Ministry of Justice on the proposal of the Office of the Prosecutor General.

(2) Estonia as the executing state has the right to require compensation from the requesting state for the expenses which Estonia has compensated for to a third party in connection with damage caused by the execution of a European certificate of confiscation provided that the damage was not caused only by wrongful acts of Estonia. The Ministry of Justice shall decide on submission of a request for compensation of expenses to the requesting state at the request of the Office of the Prosecutor General.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Subdivision 2
Recognition and Execution of European Certificates of Confiscation

§ 508[26]. Authorities competent to conduct proceedings on European certificates of confiscation

The Office of the Prosecutor General is competent to conduct proceedings on European certificates of confiscation submitted to Estonia and the Harju County Court is competent to decide on the execution thereof. The Office of the Prosecutor General shall involve district Prosecutor's Offices, if necessary.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[27]. Deciding of execution of European certificates of confiscation

Permissibility of execution of European certificates of confiscation, refusal to execute thereof, postponement of execution thereof or requesting of additional information from the requesting state shall be decided immediately.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[28]. Execution of European certificates of confiscation

(1) Estonian law shall apply to execution of European certificates of confiscation.

(2) Confiscation of property on the basis of a European certificate of confiscation shall be decided by an order of the Harju County Court on the proposal of the Office of the Prosecutor General.

(3) Confiscation of property on the basis of a European certificate of confiscation shall be decided by a judge sitting alone.

(4) A court session held for deciding on the confiscation proceedings shall be attended by a prosecutor and counsel of the convicted offender.

(5) Participation of a third person or his or her authorized representative in a court session is mandatory.

(6) The Office of the Prosecutor General shall notify a competent judicial authority of the requesting state of execution of a European certificate of confiscation.

(7) Execution of a European certificate of confiscation shall be terminated immediately if a competent judicial authority of the requesting state notifies of annulment of the European certificate of confiscation.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[29]. Postponement of execution of confiscation orders

(1) Estonia may postpone the execution of a confiscation order if:
1) Estonia considers it possible that the amount of money received upon execution of the confiscation order can exceed the amount determined in the confiscation order because the confiscation order is executed at the same time in several countries;
2) execution of a confiscation order is contested pursuant to § 508[30] of this Code;

3) execution of a confiscation order may prejudice proceedings conducted in Estonia;
4) translation of a confiscation order into Estonian is required;
5) the property specified in the confiscation order is already subject to confiscation in Estonia.

(2) If execution of a confiscation order is postponed, preservation of the property subject to confiscation shall be ensured.

(3) If execution of a confiscation order is postponed, the Office of the Prosecutor General shall notify the competent authority of the requesting state immediately thereof and indicate the reasons for the postponement and expected duration of the postponement.

(4) If the reasons for postponement cease to exist, the confiscation order shall be executed immediately.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[30]. Contestation of decisions made and acts performed upon execution of European certificates of confiscation

(1) Estonia shall ensure preservation of third party rights to property which is the object of a European certificate of confiscation. An appeal against an order of the Prosecutor's Office or activities of an investigative body in connection with execution of a European certificate of confiscation shall be filed with the Harju County Court pursuant to the procedure provided for in subsection 387 (2) of this Code within three days as of receipt of the order.

(2) A European certificate of confiscation submitted to Estonia and the decision or order of the competent judicial authority of the requesting state which is the basis for the certificate of confiscation cannot be contested in Estonia. If a person so requests, the Office of the Prosecutor General shall communicate to him or her the contact details which allow the person to examine the procedure for contesting a European certificate of confiscation in the requesting state.

(3) Filing of an appeal shall not suspend the execution of a contested order unless otherwise decided by the person resolving the dispute.

(4) The Prosecutor's Office shall notify the competent judicial authority of the requesting state of an appeal being filed in connection with the execution of a European certificate of confiscation and of the decision made to resolve the appeal.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Subdivision 3
Submission of European certificates of confiscation

§ 508[31]. Preparation and submission of European certificates of confiscation

(1) The Prosecutor's Office or a court which conducts proceedings regarding a criminal offence which is the basis for a European certificate of confiscation shall prepare a European certificate of confiscation and send it together with a copy of the order constituting the basis thereof to the competent judicial authority of the country of location of the property.

(2) A European certificate of confiscation is sent to the state in the case of which Estonia has reason to believe that the person with respect to whom the confiscation order was made has property or income in it.

(3) If Estonia is unable to determine the state specified in subsection (2) of this section, the European certificate of confiscation shall be sent to a competent judicial authority of the Member State where the person with respect to whom the confiscation order was made mainly resides or has its registered office.

(4) A European certificate of confiscation may be submitted to only one Member State at a time, unless otherwise provided for in § 508[32] of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[32]. Submission of European certificates of confiscation to several states

(1) In justified cases, a European certificate of confiscation concerning an amount of money may be submitted to several states at a time.

(2) A European certificate of confiscation concerning non-monetary assets may be submitted to several states at a time only in the following cases:
1) Estonia has reason to believe that the assets covered by the confiscation order are located in different countries;
2) confiscation of the assets covered by a European certificate of confiscation requires adoption of measures in several states; or

3) Estonia has reason to believe that the property covered by the confiscation order is located in the Member State but the exact location thereof is unknown.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[33]. Format of submission of European certificates of confiscation

The format of European certificates of confiscation shall be established by a regulation of the minister responsible for the area.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Division 6
Mutual Recognition and Execution of Judgments Imposing Custodial Sentences or Measures Involving Deprivation of Liberty in Member States of European Union

Subdivision 1
General Provisions

§ 508[34]. Certificates of custodial sentence

A certificates of custodial sentence of a Member State of the European Union (hereinafter *certificate of custodial sentence*) is a request submitted by a competent authority of the Member State to another Member State of the European Union to recognise judgments imposing custodial sentences or other measures involving deprivation of liberty and execute these.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[35]. General conditions

(1) Recognition of judgments and execution of punishments imposed pursuant to the provisions of this Division is permitted only in the case the act which is the basis for the judgment is a criminal offence pursuant to the law of the executing state regardless of the necessary element of offence.

(2) Estonia recognises and executes punishments imposed regardless of their punishability pursuant to the Penal Code of Estonia in the event of offences specified in § 489[6] of this Code.

(3) Communication of judgments for recognition and execution on the basis of the provisions of this Division is permitted only in the case a custodial sentence was imposed on a person on the basis of a court judgment and surrender of the convicted offender to another Member State of the European Union for service of his or her sentence is required in order to facilitate the person's social rehabilitation.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[36]. Criteria for recognition of judgments

(1) Estonia recognises and executes the punishments imposed if the convicted offender is:
1) a citizen of the Republic of Estonia and his or her permanent residence is in the Republic of Estonia; or
2) a citizen of the Republic of Estonia whose actual permanent residence is not in the Republic of Estonia but who is expelled from the requesting state to the Republic of Estonia on the basis of a judgment of conviction or a decision of another competent authority.

(2) Estonia may recognise or execute a punishment imposed if the convicted offender is a citizen of the Republic of Estonia whose actual permanent residence is not in the Republic of Estonia but who has family ties or other compelling connections with the Republic of Estonia and in the case of whom the serving of the sentence in Estonia is consistent with the interests of the person and other persons connected with him or her and he or she has given his or her consent pursuant to § 508[38] of this Code.

(3) A court shall each time make a reasoned decision on recognition of the judgment of conviction of the person specified in subsection (2) of this section and execution of the punishment imposed on the person considering the conditions laid down and taking other relevant circumstances into account.

(4) An appeal for contestation of the judgment specified in subsection (3) of this section may be filed pursuant to the procedure provided for in subsection 387 (1) of this Code.

[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[37]. Request for communication of judgment for recognition

(1) Estonia may request communication by a foreign state of a judgment and certificate of custodial sentence for recognition and execution thereof if serving of the sentence by the person in Estonia is reasonable, consistent with the interests of the person and other persons connected with him or her, or in other cases.

(2) A convicted offender may request communication by a foreign state or the Ministry of Justice of a judgment and certificate of custodial sentence for commencement of proceedings pursuant to this Division.

(3) The request of a convicted offender specified in subsection (2) of this section shall be resolved by the Ministry of Justice taking into account the provisions of this Division and deciding on whether the request is reasoned or not, and taking into consideration the interests of the person and other persons connected with him or her, the opportunities of Estonia for execution, and other circumstances.

(4) The Ministry of Justice shall made the decision specified in subsection (3) of this section within 30 days as of the receipt of the request of the person. The person may file an appeal against the decision of the Ministry of Justice in accordance with the rules provided in the Code of Administrative Court Procedure.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[38]. Consent and notification of convicted offender

(1) Consent of a convicted offender is not required for deciding on recognition of the judgment and execution of the punishment imposed if the convicted offender is the person specified in subsection 508[36](1) of this Code or has fled to Estonia or returned in another manner in connection with the criminal proceedings commenced against him or her in the foreign state or after being convicted in this foreign state.

(2) Consent of a convicted offender for communication of a judgment for recognition and execution of the punishment imposed is mandatory if the convicted offender is not the person specified in subsection (1) of this section.

(3) Regardless of whether consent is required or not, the convicted offender shall be notified in a language understandable to him or her that it was decided to communicate the judgment for recognition and execution thereof.

(4) The format of notification of the convicted offender specified in subsection (3) of this section shall be established by a regulation of the minister responsible for the area.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[39]. Circumstances precluding or restricting recognition of judgments and execution of punishments imposed

Recognition of judgments or execution of punishments imposed to persons is not permitted if:
1) an act which is the basis for the judgment of conviction is not a criminal offence pursuant to the Penal Code of Estonia, except in the case provided for in § 489[6] of this Code;
2) the request was not submitted using the format of the certificate specified in § 508[34], it is incomplete, it does not correspond to the judgment of the requesting state which is the basis for it or the judgment of the requesting state or a copy thereof is not appended to it;
3) the convicted offender is not the person specified in subsection 508[36](1) or (2) of this Code;
4) the limitation period for execution of the punishment has expired pursuant to the Penal Code of Estonia;
5) the convicted offender enjoys immunity in the Republic of Estonia or privileges prescribed by an international agreement;
6) the convicted offender is less than fourteen years of age;
7) the convicted offender has less than six months of the term of his or her punishment to serve at the moment of arrival of the judgment in Estonia;
8) the judgment was rendered by default, except in the cases provided for in § 489[7] of this Code;
9) the punishment imposed includes psychiatric care or treatment or other measures involving deprivation of liberty which cannot be executed in Estonia regardless of the provisions of § 508[44] of this Code in accordance with current law or on the basis of the organisation of the health care system in Estonia;
10) the judgment relates to a criminal offence which, pursuant to the Penal Code of Estonia, is considered to be a criminal offence which was committed in full or mostly or in an essential part on the territory of Estonia or in a place equivalent to the territory of Estonia.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[40]. Permission for transit of surrendered persons

(1) Permission for the transit of persons surrendered to other Member States through the territory of the Republic of Estonia shall be granted by the Ministry of Justice. Permission for the transit of persons shall be granted within seven days as of the receipt of the request specified in subsection (2) of this section.

(2) A respective request shall be submitted for permission of transit and a copy of the certificate of custodial sentence specified in § 508[34] of this Code shall be annexed to it.

(3) After receipt of a request for permission of transit, Estonia shall give notice if it is unable to ensure that the convicted offender is not brought to justice, taken into custody on its territory or his or her liberty is not restricted in another manner for a criminal offence committed or a punishment imposed prior to the departure of the person concerned from the territory of the requesting state.

(4) Estonia may hold a convicted offender in custody only during the time period which is required for transit.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[41]. Notification

The Ministry of Justice shall immediately notify a competent authority of the requesting state in any format which can be reproduced in writing of:
1) communication of a judgment and certificate of custodial sentence to the competent authority responsible for recognition of the judgment;
2) the fact that in practice it is impossible to execute a punishment because the convicted offender cannot be found on the territory of Estonia after the communication of the judgment and certificate of custodial sentence to Estonia and in such case Estonia shall have no obligation to execute the punishment;
3) the final decision to recognise the judgment and execute the punishment together with the date of the decision;
4) the decision to refuse to recognise the judgment and execute the punishment pursuant to the provisions of § 508[39] of this Code together with the reasons for the refusal to recognise;
5) the decision to adjust a punishment pursuant to subsection 508[44](2) or (3) of this Code together with the reasons for the decision;
6) the decision to refuse to execute a punishment due to the reasons specified in subsection 489[7](1) of this Code together with the reasons for the decision;
7) beginning and end of the period of release on probation or parole;
8) escape of a convicted offender from custodial institution;
9) termination of execution of the punishment as soon as it is completed.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Subdivision 2
Procedure for Mutual Recognition and Execution of Judgments Imposing Custodial Sentences or Measures Involving Deprivation of Liberty Made in Member States of European Union

§ 508[42]. Deciding on recognition and execution

(1) The Ministry of Justice is competent to conduct proceedings in certificates of custodial sentences of a Member State of the European Union communicated to Estonia and the Harju County Court is competent to decide on the execution thereof.

(2) A final decision on recognition of a judgment and execution of a punishment shall be made within 90 days after the Harju County Court has received the judgment and the certificate.

(3) If it is impossible to decide on recognition and execution of a judgment during the term provided for in subsection (1) of this section, the Ministry of Justice shall immediately inform the competent authority of the requesting state thereof and state the reasons for the delay and estimated time which is required for making the final decision.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[43]. Postponement of recognition of judgments

Estonia may postpone recognition of a judgment if the certificate specified in subsection § 508[34] of this Code is incomplete or does not correspond to the judgment until a reasonable date determined by the Ministry of Justice for completion and correction of the certificate.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[44]. Execution of punishments

(1) Upon recognition of a court judgment, it shall be immediately enforced pursuant to Estonian law.

(2) If the punishment imposed on a person in a foreign state exceeds the maximum rate of the punishment provided for in the Penal Code of Estonia for an act of the same type, the punishment is revised and brought into conformity with the punishment provided for in the Penal Code of Estonia. A revised punishment shall not be less than the maximum rate of the punishment provided for an act of the same type in the Penal Code of Estonia.

(3) If the punishment imposed on a person in a foreign state is in conflict with Estonia law, it shall be brought into conformity with the punishment or other sanction prescribed for an act of the same type in the Penal Code of Estonia. In this case, the applicable punishment or sanction shall correspond as precisely as possible to the punishment imposed on the person in the requesting state and it shall not be revised into a pecuniary punishment.

(4) The revised punishment shall in no case aggravate the nature and duration of the punishment imposed on the person in the requesting state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[45]. Law applicable to execution of punishments

(1) Estonian law applies to execution of punishments, including release on parole or probation.

(2) Upon execution of punishments, already served deprivation of liberty which is related to the criminal offence which forms the content of the judgment shall be deducted from the total length of imprisonment.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[46]. Special obligation

(1) A person surrendered to Estonia for serving a sentence shall not be prosecuted, convicted or deprived of liberty in another manner for a criminal offence which was committed before his or her surrender but which is not the act which was the basis for the surrender.

(2) The provisions of subsection (1) of this section do not apply if:
1) the convicted offender has an opportunity to leave the territory of Estonia but he or she did not do so within 45 days after his or her final release, or he or she has returned to Estonia after his or her departure;
2) no imprisonment or measures restricting liberty can be imposed for the criminal offence;
3) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;
4) a pecuniary punishment or a measure other than that restricting freedom may be imposed on the convicted offender, particularly a fine or a measure in lieu thereof, even if the punishment or measure may give rise to restriction of his or her personal liberty;
5) the convicted offender has agreed to the surrender;
6) the convicted offender has expressly waived the application of the special obligations provided for in subsection (1) of this section after the surrender in connection with the specific criminal offences committed before the surrender;
7) the requesting state has granted consent pursuant to subsection (3) of this section.

(3) The consent specified in clause (2) 7) of this section is granted only in the case the surrender of the person is mandatory.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[47]. Taking of convicted offender into custody for the duration of proceedings on recognition of judgment

(1) If a convicted offender stays in Estonia, Estonia may take the convicted offender into custody or apply other preventive measures at the request of a requesting state before the arrival of the judgment and certificate of custodial sentence or the decision on recognition of the judgment and execution of the punishment in order to ensure that the convicted offender stays in Estonia until a decision is made on recognition of the judgment and execution of the punishment.

(2) The time of holding in custody applied pursuant to subsection (1) of this section shall be included in the term of punishment of the convicted offender.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[48]. Termination of execution of punishment

Execution of a punishment shall be immediately terminated when a competent authority of a requesting state notifies Estonia of a decision or measure as a result of which the punishments is no longer subject to execution.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Subdivision 3
Submission of judgments involving imprisonment and measures which restrict freedom to Member States of European Union

§ 508[49]. Submission of judgments for recognition and execution

(1) The prison in which a person serves his or her punishment shall prepare the certificate of custodial sentence of the Member State of the European Union.

(2) The Ministry of Justice shall communicate a judgment or a copy thereof and the certificate of custodial sentence to a competent authority of a Member State of the European Union.

(3) A judgments together with a certificate of custodial sentence shall be submitted to only one state at a time.

(4) A certificate of custodial sentence shall be prepared in the Estonian language. The Ministry of Justice shall translate it into the language determined by the executing state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(5) The format of certificates of custodial sentence shall be established by a regulation of the minister responsible for the area.
[RT I, 23.12.2014, 14 – entry into force 01.01.2015]

§ 508[50]. Withdrawal of certificate of custodial sentence

A certificate of custodial sentence may be withdrawn from an executing state by stating the reasons therefor in the case the execution of the punishment has not commenced in the executing state. Upon withdrawal of the certificate, the executing state shall not enforce the punishment.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[51]. Surrender of person

(1) A copy of the decision on recognition of a judgment shall be sent to the Ministry of Justice who shall organise the surrender of the person.

(2) A person is surrendered within 30 days as of making the final decision on recognition of the judgment.

(3) If surrender is hindered by circumstances beyond the control of the Republic of Estonia or the requesting state, the person shall be surrendered immediately after the hindering circumstances cease to exist. In such case, the surrender shall take place within ten days as of the new date agreed.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[52]. Notification of termination of execution of punishment

The Ministry of Justice shall immediately notify the competent authority of an executing state of any decisions or measures as a result of which the punishment is no longer subject to execution immediately or after a certain period of time.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[53]. Consequences of surrender of convicted offender

(1) If execution of a punishment has commenced in an executing state, Estonia is no longer allowed to interfere in the execution of the punishment.

(2) The right to execute a punishment shall be re-transferred to Estonia in the case the executing state notifies Estonia of the escape of the convicted offender from a custodial institution.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Division 7
Mutual Recognition and Execution of Judgments made in Member States of European Union on Conditional Non-imposition of Prison Sentences and Supervision over Conditional Measures and Alternative Sanctions

Subdivision 1
General Provisions

§ 508[54]. Certificate of supervision

The certificate of a Member State of the European Union of conditional non-imposition of prison sentences and supervision over conditional measures and alternative sanctions (hereinafter *certificate of supervision*) is a request made by a competent judicial authority of a Member State to another Member State of the European Union to recognise a judgment of conditional non-imposition of a prison sentence or application of conditional measures and alternative sanctions and exercise supervision over conditional measures and alternative sanctions.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[55]. General conditions

(1) Recognition of a judgment and supervision prescribed in the judgment pursuant to the provisions of this Division is permitted only in the case the act which is the basis for the judgment is a criminal offence pursuant to the law of the executing state regardless of the necessary element of the act.

(2) Estonia recognises and executes punishments imposed regardless of their punishability pursuant to the Penal Code of Estonia in the event of the offences specified in subsection 489[6](1) of this Code.

(3) Recognition of a judgment and supervision prescribed in the judgment pursuant to the provisions of this Division is permitted only in the case of such conditional measures or alternative sanctions which are specified in § 508[57]of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[56]. Criteria for recognition of judgments

(1) Estonia shall recognise a judgment and exercise imposed supervision if the permanent legal residence of the convicted offender is in Estonia, if the convicted offender has returned to Estonia or wishes to return.

(2) Estonia may recognise a judgment and exercise imposed supervision if the permanent legal residence of the convicted offender is not in Estonia only in the case the convicted offender wishes to settle in Estonia and:
1) if there are no circumstances hindering the settling of the convicted offender in Estonia;
2) if a residence permit of Estonia can be issued to the convicted offender;
3) the convicted offender has family ties or other compelling connections with the state of Estonia;
4) the settling of the convicted offender in Estonia is in compliance with the interests of the person and other persons connected with him or her.

(3) A court shall make a reasoned decision on recognition of a judgment of conviction of the person specified in subsection (2) of this section and exercise of supervision imposed, considering the conditions specified in subsections (2) of this section and taking other relevant circumstances into account.

(4) An appeal may be filed against the judgment specified in subsection (3) of this section pursuant to the procedure provided for in subsection 387 (1) of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[57]. Types of conditional measures and alternative sanctions

Recognition of judgments and exercise of imposed supervision pursuant to this Division is permitted only with respect to the following conditional measures or alternative sanctions:
1) obligation of the convicted offender to notify specific authorities of a change of place of residence or work;
2) obligation not to go into certain places or determined areas in the state which made the decision or in Estonia;
3) obligation which includes restriction on departure from the territory of Estonia;
4) instructions relating to behaviour, place of residence, education and training and leisure activities or which include restrictions on or methods of professional operation;
5) an obligation to report at specified times to specific authority;
6) obligation to avoid contacts with specific persons;

7) obligation to avoid contacts with specific objects which were used or which the convicted offender may probably use for commission of a criminal offence;
8) obligation to compensate financially for the damage caused by the criminal offence and obligation to provide evidence on compliance with this obligation;
9) obligation to engage in public work;
10) obligation to co-operate with a probation officer or representative of a social welfare institution whose functions are connected with convicted offenders;
11) obligation to undergo treatment or aversion therapy.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[58]. Circumstances precluding or restricting recognition of judgments and execution of supervision imposed

Recognition of judgments or execution of imposed supervision may be refused if:
1) the act which is the basis for the judgment of conviction is not a criminal offence pursuant to the Penal Code of Estonia, except in the case provided for in subsection 489[6](1) of this section;
2) the request was not submitted using the format of a certificate of supervision, it is incomplete, it does not correspond to the judgment which is the basis for it or the judgment of the requesting state or a copy thereof is not appended to it and deficiencies therein are not eliminated within a reasonable period of time;
3) the convicted offender is not the person specified in subsection 508[56](1) or (2) of this Code;
4) the limitation period for enforcement of the punishment has expired pursuant to the Penal Code of Estonia and is related to an act which is in the competence of Estonia pursuant to its national legislation;
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]
5) the convicted offender enjoys immunity in the Republic of Estonia or privileges prescribed by international agreements which do not permit to exercise the supervision determined in § 508[54];
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]
6) the convicted offender is less than fourteen years of age;
7) the judgment was rendered by default, except in the cases provided for in § 489[7]of this Code;
8) the punishment imposed includes treatment which cannot be provided in Estonia regardless of § 508[62]of this Code in accordance with current law or on the basis of the organisation of the health care system in Estonia;
9) the judgment relates to a criminal offence which, pursuant to the Penal Code of Estonia, is considered to be a criminal offence which was committed in full or mostly or in an essential part on the territory of Estonia or in a place equivalent to the territory of Estonia; or
10) the duration of a conditional measure or alternative sanction is less than six months;
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]
11) there is a judgment which has entered into force or an order on termination of offence proceedings with respect to the person in connection with the offence which is the basis for the conviction.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 508[59]. Notification of issuing state

The Ministry of Justice shall immediately notify a competent authority of the requesting state in any format which can be reproduced in writing of:
1) communication of a judgment and certificate to a responsible competent authority for the recognition thereof;
2) the fact that in practice it is impossible to exercise supervision because the convicted offender cannot be found on the territory of Estonia after communication of the judgment and certificate of supervision to Estonia, and Estonia has no obligation to execute the punishment;
3) the final decision on recognition of a decision on conditional non-imposition of a judgment or, if necessary, prison sentence and a decision to assume responsibility for supervision over conditional measures or alternative sanctions;
4) the decision on refusal to recognise a judgment and exercise supervision pursuant to § 508[58]of this Code together with the reasons for the refusal to recognise;
5) the decision on adjustment of a punishment pursuant to subsection 508[62](2) or (3) of this Code together with the reasons for the decision;
6) the decision on refusal to execute a punishment due to the reasons specified in subsection 489[7](1) of this Code together with the reasons for the decision.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Subdivision 2
Procedure for Recognition and Execution of Judgments made in Member States of European Union on Conditional

§ 508[60]. Deciding on recognition and execution

(1) The Ministry of Justice is competent to conduct proceedings in certificates of supervision communicated to Estonia and the Harju County Court is competent to decide on the execution thereof.

(2) A final decision on recognition of a judgment and exercise of supervision shall be made within 60 days after the Ministry of Justice has received the judgment and the certificate of supervision.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(3) If it is impossible to decide on recognition of a judgment and exercise of supervision during the term provided in subsection (2) of this section, the Ministry of Justice shall immediately inform the competent authority of the requesting state thereof and state the reasons for the delay and estimated time which is required for making the final decision.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

§ 508[61]. Postponement of recognition of judgments

Estonia may postpone recognition of a judgment if the certificate of supervision specified in subsection § 508[54]of this Code is incomplete or does not correspond to the judgment, until the reasonable date determined by the Ministry of Justice for completion and correction of the certificate.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[62]. Deciding on nature of conditional measures and alternative sanctions and duration of conditional sentence

(1) If the nature or duration of a conditional measure or alternative sanction or a conditional sentence imposed on a person in a foreign state is in conflict with Estonian law, these measures are applied pursuant to the Penal Code of Estonia in such a manner that they would be in compliance with the conditional measures or alternative sanctions imposed on the basis of the Penal Code of Estonia for an equivalent criminal offence. A revised conditional measure or alternative sanction shall correspond as precisely as possible to the measure, sanction or duration of the conditional punishment imposed in the issuing state.

(2) If the conditional measure, alternative sanction or duration of a conditional sentence imposed on a person in a foreign state was revised pursuant to subsection (1) of this section due to the reason that it exceeds the maximum rate permitted in Estonia, the measure applied shall not be applied for a term shorter than the maximum term of the measure applied for an equivalent criminal offence pursuant to the Penal Code of Estonia.

(3) In no case shall the revised conditional measure, alternative sanction or duration of a conditional sentence be more severe than the measure, sanction or duration of the conditional sentence imposed on a person in the issuing state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[63]. Recognition of judgments and exercise of supervision

(1) Upon recognition of a court judgment, it shall be immediately enforced pursuant to Estonian law.

(2) Estonian law shall apply to supervision imposed on a person, enforcement of a punishment imposed, duration of an alternative sanction and other decisions relating to exercise of supervision.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[64]. Expiry of competence of Estonia upon exercise of supervision

Estonia shall transfer the competence relating to making all further decisions on supervision over conditional measures and alternative sanctions and judgments back to the issuing state in the case the convicted offender is hiding himself or herself or if he or she no longer has a legal and permanent residence in the Republic of in Estonia.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Subdivision 3

Communication of judgments on probation and supervision to Member States of European Union

§ 508[65]. Submission of certificates of supervision for recognition and execution

(1) A certificate of supervision is prepared by the probation officer or authority applying alternative sanctions.

(2) The Ministry of Justice shall communicate a judgment or a copy thereof and certificate of supervision to a competent authority of a Member State of the European Union.

(3) A judgment together with certificate of supervision shall be submitted to only one state at a time.

(4) A certificate of supervision shall be prepared in the Estonian language. The Ministry of Justice shall translate it into the language determined by the executing state.

(5) The format of certificates of supervision shall be established by a regulation of the minister responsible for the area.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[66]. Withdrawal of certificates of supervision

Certificates of supervision may be withdrawn from an executing state by stating the reasons therefor in the case the exercise of supervision has not commenced in the executing state. Where the certificate is withdrawn, the executing state shall not enforce the judgment or exercise supervision.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[67]. Notification of termination of execution of punishment

The Ministry of Justice shall immediately notify the competent authority of an executing state of any decisions or measures as a result of which the punishment is no longer subject to execution immediately or after a certain period of time.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[68]. Expiry of competence of Estonia for recognition of judgments and communication thereof for execution

The competence of Estonia for exercise of supervision over conditional measures or alternative sanctions shall expire as soon as the executing state has recognised the judgment communicated to it by Estonia and notified the Ministry of Justice thereof.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Division 8
Recognition and Execution of Pecuniary Punishments and Fines of Member States of European Union

Subdivision 1
General Provisions

§ 508[69]. Certificates of imposition of pecuniary punishments and fines

(1) Certificates of imposition of pecuniary punishments and fines are the requests made to other Member States of the European Union by a competent judicial authority of a Member State which require payment by natural or legal persons of the amounts specified in judgments or decisions of other competent authorities.

(1[1]) A certificate of imposition of pecuniary punishments or fines may be issued for recognition of the following pecuniary obligations:
1) a sum of money imposed by a judgment of conviction for an offence;
2) a compensation imposed by a judgment of conviction for an offence to the benefit of the victim in the case the victim has not filed a civil action;

3) a sum of money imposed to indemnify for the costs related to judicial or administrative proceedings leading to the judgment of conviction;
4) a sum of money imposed by a judgment on conviction for an offence to be paid to public funds or a victim support organisation.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

(2) The format of certificates of imposition of pecuniary punishments and fines shall be established by a regulation of the minister responsible for the area.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[70]. Scope of assistance

Recognition of and compliance with pecuniary punishments and fines is permitted in the case of all the offences punishable pursuant to Estonian law, and irrespective of punishability of the act pursuant to Estonian law, if a punishment is prescribed in the issuing state for the following offences:
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]
1) criminal offences specified in subsection 489[6](1) of this Code;
2) offences against traffic regulations, including offences relating to the requirements for working and rest time and safety requirements for road transport and driving time;
3) smuggling of goods;
4) offences against intellectual property;
5) offences against health;
6) offences of damage to property specified in Division 2 of Subchapter 1 of Chapter 13 of the Penal Code;
7) theft;
8) offences established by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the EC Treaty or under Title VI of the EU Treaty.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[71]. Circumstances which restrict and preclude recognition

Recognition and execution of judgments is prohibited if:
1) the request was not submitted using the format of a certificate of imposition of pecuniary punishments and fines provided for in § 508[69] of this Code, it is incomplete, it does not correspond to the judgment which is the basis for it or the judgment of the requesting state or a copy thereof is not appended to it and deficiencies therein are not eliminated within a reasonable period of time;
2) a judgment has been made and enforced for the same offence with regard to the person sentenced in Estonia or other state, with the exception of the issuing state;
3) the judgment was made with respect to another act other than the act specified in § 508[70] of this Code;
4) the limitation period for enforcement of the punishment has expired pursuant to the Penal Code of Estonia or is related to an act which is in the competence of Estonia pursuant to its national legislation;
5) the convicted offender enjoys immunity in the Republic of Estonia or privileges prescribed by an international agreement;
6) the convicted offender is less than fourteen years of age;
7) the judgment was rendered by default, except in the cases provided for in § 4897 of this Code;
8) the judgment relates to a criminal offence which, pursuant to the Penal Code of Estonia, is considered to be a criminal offence which was committed in full or mostly or in an essential part on the territory of Estonia or in a place equivalent to the territory of Estonia; or
9) the pecuniary punishment imposed is equivalent to or less than 70 euros.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Subdivision 2
Recognition and Execution of Certificates of Imposition of Pecuniary Punishments and Fines

§ 508[72]. Procedure for recognition and execution of pecuniary punishments and fines imposed if foreign states

(1) Recognition and execution of fines or pecuniary punishments shall comply with the procedure provided for in §§ 489[6]-489[11] with the following specifications:
1) recognition of the judgment is decided by the county court of the residence of the convicted offender or in the absence of a residence by the Harju County Court;
2) the court shall adjudicate the recognition of a judgment of a foreign state by written procedure within 30 days as of the arrival of the request at the court;
3) the amount of the fine or pecuniary punishment shall be calculated into euros on the basis of the exchange rate of the day of making the decision;
4) the executing state may reduce the amount of the pecuniary punishment or fine claimed to the maximum amount of the pecuniary punishment or fine provided for the acts of the same type pursuant to its national law.

(2) If a pecuniary punishment imposed in a foreign state cannot be executed, the court may substitute the punishment with the permission of the issuing state pursuant to the procedure provided for in § 70 of the Penal Code taking into account that the term of prison sentence or community service shall not exceed the maximum rate prescribed in the issuing state.

(3) If a convicted offender submits a certificate concerning payment of the amount of money in part or in full, the part paid shall be deducted from the amount of the pecuniary punishment or fine claimed.

(4) If a convicted person has paid the pecuniary punishment or fine in full before the court session, the court shall terminate the proceedings of the matter by an order.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[73]. Substitution of pecuniary punishment upon failure to pay

(1) If a decision cannot be fully or partially complied with, it shall be substituted by prison sentence, detention or community service in accordance with the Penal Code of Estonia. Substitution is permitted only if the requesting state has permitted such substitution. The respective permission shall be indicated on the certificate of imposition of pecuniary punishments and fines.

(2) Determination of the duration of substitution shall be based on the Penal Code of Estonia but it shall not exceed the maximum rate indicated in the certificate of imposition of pecuniary punishments and fines communicated by the requesting state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[74]. Money received upon execution of certificates of imposition of pecuniary punishments and fines

The money received upon execution of certificates of imposition of pecuniary punishments and fines shall be transferred into the public revenues of Estonia, unless Estonia and the requesting state have agreed otherwise.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Subdivision 3
Submission of Certificates of Imposition of Pecuniary Punishments and Fines

§ 508[75]. Submission of certificates of imposition of pecuniary punishments and fines for recognition and execution

(1) Certificates of imposition of pecuniary punishments and fines are prepared by the court which imposed the pecuniary punishment or the extra-judicial body which imposed the fine.

(2) The Ministry of Justice shall communicate the judgments or decisions made by other authorities or copies thereof and certificates of imposition of pecuniary punishments and fines for recognition and execution of the judgments to competent authorities of the Member States of the European Union.

(3) A judgment together with a certificate of imposition of pecuniary punishments and fines are submitted to only one state at a time.

(4) Certificates of imposition of pecuniary punishments and fines are prepared in the Estonian language. The Ministry of Justice shall translate it into the language determined by the executing state.

(5) The format of certificates of imposition of pecuniary punishments and fines shall be established by a regulation of the minister responsible for the area.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[76]. Notification of termination of execution of punishment

The Ministry of Justice shall immediately notify the competent authority of the executing state of any decisions or measures as a result of which the punishment can no longer be enforced.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[77]. Expiry of competence of Estonia for recognition of judgments and communication thereof for execution

The competence of Estonia to conduct enforcement proceedings shall terminate as soon as the executing state recognises the judgment communicated to it by Estonia and notifies the Ministry of Justice thereof.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Division 9
Exchange of Information and of Information Collected by Surveillance Activities between Member States of European Union

§ 508[78]. Exchange of information and of information collected by surveillance activities

(1) For the purpose of detection, prevention of offences and conduct of criminal proceedings, information and information collected by surveillance activities may be exchanged with Member States of the European Union, taking into consideration the requirements provided for in this Code.

(2) To the extent provided by law, the surveillance agencies provided for in subsection 1262 (1) of this Code are competent judicial authorities to exchange of information and information collected by surveillance activities (hereinafter *information*) for international cooperation between the Member States of the European Union.

(3) The central authority of international cooperation provided for in this Division is the Police and Border Guard Board. The Tax and Customs Board participates in international cooperation independently within the limits of their competence.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[79]. Request format

(1) Information requests submitted to foreign states shall include:
1) reasons for submission of the request;
2) reasons for requesting the information;
3) connection between the reason for submission of the request and the person with regard to whom the information is requested.

(2) The format of the requests shall be established by a regulation of the minister responsible for the area.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[80]. Conditions for compliance with requests

(1) Compliance with requests is not permitted and shall be refused if:
1) the grounds for refusal provided for in § 436 of this Code exist;
2) compliance with the request would prejudice ongoing criminal proceedings or surveillance activities or safety of persons;
3) the request is clearly disproportionate or irrelevant compared to the objective to be achieved.

(2) Disclosure of information relating to pre-court proceedings shall be based on the provisions of § 214 of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[81]. Compliance with requests received from foreign states

(1) The Police and Customs Board shall verify whether the requests received from Member States comply with the requirements, are admissible and can be complied with and communicate them to the authority competent for compliance therewith.

(2) Requests are complied with pursuant to this Code. At the request of a Member State, a request may be complied with pursuant to procedural provisions different from the provisions of this Code unless this is contrary to the principles of Estonian law.

(3) A request is complied with and information is communicated to a Member State within 14 days as of the receipt of the request by the Police and Border Guard Boards. If the authorities which received the request are unable to comply with the request within such term, the authority shall provide the reasons therefor using the format provided for in subsection (5) of this section. The reasons are communicated to the Police and Border Guard Board which shall inform the requesting state of the delay.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(4) The information collected as a result of compliance with the request shall be immediately sent by the authority which complied with the request to the Police and Border Guard Board which shall communicate it to the requesting state. If a request was sent from a foreign state to the Tax and Customs Board, the response to the requesting state shall be communicated by the Tax and Customs Board.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(5) The format for presenting information shall be established by a regulation of the minister responsible for the area.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 508[82]. Compliance with urgent requests received from Member States

(1) In the case of an urgent request where the authority having received the request has direct access to the information requested, a response is given to the request within eight hours as of the arrival of the request at the Police and Border Guard Board or the Tax and Customs Board.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(2) If the competent authorities which received the request are unable to respond within eight hours, the authority shall provide the reasons therefor using the format provided for in subsection 508[81](5) of this Code. The reasons are communicated to the Police and Border Guard Board which shall inform the requesting Member State of the delay. In the case of requests sent to the Tax and Customs Board, the Tax and Customs Board shall inform the requesting Member State. In such case the request is complied with within three days.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

§ 508[83]. Submission of requests to Member States

Requests to competent authorities of Member States are submitted through the Police and Border Guard Board who shall verify whether the requests meet the requirements. The Tax and Customs Board may submit requests directly to competent authorities of foreign states within the limits of their competence. Requests meeting the requirements are submitted to foreign states through the channels used for international cooperation.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

§ 508[84]. Spontaneous exchange of information

(1) Competent authorities may communicate to foreign states, without a prior request, relevant and necessary information which may contribute to the detection, prevention and investigation of the criminal offences specified in subsection 489[6](1) of this Code.

(2) Information is communicated to the Police and Border Guard Board which shall communicate it to foreign states.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

Chapter 20
IMPLEMENTING PROVISIONS

§ 509. Entry into force of Code

(1) This Code enters into force on 1 July 2004.

(2) The procedure for the implementation of this Code shall be provided for in the implementation Act thereof.
[RT I 2004, 54, 387 – entry into force 01.07.2004]

[1]Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328, 24.11.2006, pp. 59-78); Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ L 81, 27.03.2009, pp. 24-36); Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (OJ L 337, 16.12.2008, pp. 102-122); Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327, 05.12.2008, pp. 27-46); Council Framework Decision 2006/960/JHA of 29 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union

(OJ L 386, 29.12.2006, pp. 89-100); Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and cooperation in criminal procedure (OJ L 350, 30.12.2008, pp. 60-71); Directive 2011/99/EU of the Council of 13 December 2011 on the European protection order (OJ L 338, 21.12.2011, pp. 2-18); Directive 2012/13/EU of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 01.06.2012, pp. 1-10); Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, pp. 42-47); Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 02.08.2003, pp. 45-55); Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.07. 2002, pp 1-20); Council Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (OJ L 294, 11.11.2009, pp. 20-40); Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, pp. 57-74); Directive 2013/48/EU of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294/1, 06.11.2013, pp. 1-13); Directive 2014/62/EU of the European parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA (OJ L 151, 21.05.2014, pp. 1-8); Directive 2014/42/EU of the European Parliament and of the Council European on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.04.2014, pp. 39-50); Directive 2014/41/EU of the European Parliament and of the Council regarding the European Investigation Order in criminal matters (OJ L 130, 01.05.2014, pp. 1-36); Directive (EU) 2016/800 of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.05.2016, p. 1-20). [RT I, 20.12.2019, 1 – entry into force 30.12.2019]