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# Code of Criminal Procedure[1]

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RT I 2003, 27, 166
Entry into force 01.07.2004

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|---|---|---|
| 17.12.2003 | RT I 2003, 83, 558 | 01.07.2004 |
| 17.12.2003 | RT I 2003, 88, 590 | 01.07.2004 |
| 19.05.2004 | RT I 2004, 46, 329 | 01.07.2004, in part 01.01.2005 and 01.09.2005 |
| 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 |

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| 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 by paragraph 2 of Article 140 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 | By its judgment of 18.06.2010, the Constitutional Review Chamber of the Supreme Court declares the rules of summary procedure unconstitutional insofar as they do not effectively guarantee 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 following 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 | By its judgment of 10.04.2012, the Supreme Court en bancdeclares § 366 of the Code of Criminal Procedure unconstitutional insofar as it does not prescribe, as a ground for review of judicial dispositions that have entered into effect, the entry into effect of a judgment which is given under regular rules of procedure and which establishes the absence of a criminal act in a situation where, in the criminal case under review, by judgment given under regular rules of procedure, a sentence of imprisonment has been imposed on a person for participation in that act. |
| 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 | By its judgment of 03.07.2012, the Supreme Court en bancdeclares clause 26 of § 385 of the Code of Criminal Procedure unconstitutional and sets it aside insofar as it does |

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| | | not allow the lodging of an interim appeal against an order which was made by the enforcement judge of a district court under subsection 2 of § 427 of the Code of Criminal Procedure and by which the judge mandated the enforcement, according to subsection 4 of § 74 of the Penal Code, of a conditionally suspended sentence of imprisonment. |
| 13.11.2012 | RT I, 16.11.2012, 6 | By its judgment of 13.11.2012, the Supreme Court en banc declares clause 26 of § 385 of the Code of Criminal Procedure unconstitutional and sets it aside insofar as it does not allow the lodging of an interim appeal against an order which is made by the enforcement judge of a district court under subsection 2 of § 427 of the Code of Criminal Procedure and by which the judge mandated the enforcement, under subsection 5 of § 76 of the Penal Code, of the part of a sentence of imprisonment imposed in the case which was not served due to release on parole. |
| 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 | By its judgment of 11.12.2012, the Constitutional Review Chamber of the Supreme Court declares § 407 of the Code of Criminal Procedure unconstitutional and sets it aside insofar as it excludes the right of a minor to file an appeal against an order by which the court mandates the placement of the minor in a school for students who require special educational conditions. |
| 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 | By its judgment of 30.04.2013, the Supreme Court en banc declares clause 26 of § 385 of the Code of Criminal Procedure unconstitutional and sets it aside insofar as it does not allow the filing of appeal against an order which is made by the enforcement judge of a district court under subsection 2 of § 428 of the Code of Criminal Procedure and by which the judge mandated the enforcement, under subsection 6 of § 69 of the Penal Code, of a sentence of imprisonment that had been substituted by community service. |
| 10.05.2013 | RT I, 15.05.2013, 3 | By its order of 10.05.2013, the Constitutional Review Chamber of the Supreme Court recognises that, at the time when the order of the Tallinn Circuit Court of Appeal dated 7 January 2013 was made, clause 26 of § 385 of the Code of Criminal Procedure was unconstitutional in that it did not allow the filing of appeal against |

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| | | an order which was made by the enforcement judge of a district court under subsection 2 of § 428 of the Code of Criminal Procedure and by which the judge mandated the enforcement, under subsection 6 of § 69 of the Penal Code, of a sentence of imprisonment which had been substituted by community service. |
| 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 position titles of ministers replaced on the basis of subsection 4 of § 107³ 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 |
| 15.12.2021 | RT I, 22.12.2021, 44 | 01.01.2022 |

# Chapter 1

# GENERAL PROVISIONS

**§ 1. Scope of regulation of this Code**

(1) This Code provides the rules for pre-trial and judicial procedure concerning criminal offences and the rules for mandating the enforcement of dispositions rendered in criminal cases.

(2) This Code also provides the grounds and rules for the conduct of covert operations.
[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 rules of international law as well as international treaties binding for Estonia;
3) this Code and other legislative instruments that make provision for criminal procedure;
4) dispositions of the Supreme Court on issues which have not been resolved in the other sources of the law of criminal procedure yet which have arisen in the course of applying the law.

**§ 3. Territorial and temporal scope of the law of criminal procedure**

(1) The law of criminal procedure has binding force in the territory of the Republic Estonia. Where this is provided for by an international treaty or where the subject matter of criminal proceedings is an act of a person serving in the Estonian defence forces, the law of criminal procedure also has such force outside the territory of the Republic.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) Procedural operations in criminal proceedings are governed by the law of criminal procedure in force at the time of performing the operation.

(3) The requirements concerning the use, in Estonian criminal proceedings, of evidence taken abroad are provided by § 65 of this Code.

(4) During a state of emergency this Act applies without prejudice to the special rules provided by the State of Emergency Act.
[RT I 2009, 39, 260 – entry into force 24.07.2009]

**§ 4. Applicability of the law of criminal procedure by reason of the person concerned**

The law of criminal procedure applies equally to all persons with the following exceptions:
1) special rules are provided by Chapter 14 of this Code concerning the issuing of a statement of charges and performance of certain procedural operations in respect of the President of the Republic, of members of the Government of the Republic, of the Auditor General, of the Chancellor of Justice and of the Chief Justice and justices of the Supreme Court;
2) special rules are provided by Chapter $14^1$ of this Code concerning procedural operations that are performed in respect of members of the *Riigikogu* before the issuing of a statement of charges and concerning the issuing of the statement of charges;
3) in respect of a person who enjoys diplomatic immunity or is otherwise privileged under an international treaty, the Estonian law of criminal procedure may be applied at the request of the relevant foreign state, subject to special rules provided by the treaty.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

**§ 5. Principle of exclusive State authority**

Criminal proceedings are commenced and conducted in the name of the Republic of Estonia.

**§ 6. Principle of mandatory criminal proceedings**

Unless the circumstances provided by § 199 of this Code -- which preclude criminal proceedings are present, or unless there are no grounds for terminating such proceedings under subsection 2 of § 201, under §§ 202, 203, $203^1$, 204, 205, $205^1$, $205^2$ or under subsection 3 of § 435 of this Code, where the facts of a criminal offence come to light, the relevant investigative authority and the Prosecutor's Office are required to conduct criminal proceedings in the case.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

**§ 7. Presumption of innocence**

(1) No one is deemed guilty of a criminal offence before the relevant judgment of conviction has entered into effect in their respect.

(2) No one is required to prove their innocence in criminal proceedings.

(3) Any doubt that has not been eliminated, in the course of criminal proceedings, concerning the suspect or accused being guilty of an offence is construed in their favour.

**§ 8. Safeguarding the rights of parties to proceedings**

Investigative authorities, the Prosecutor's Office and the courts are required:
1) when leading in a procedural operation, where this is provided for by law, to explain to parties to proceedings the purpose of the operation, as well as the parties' rights and obligations;
2) to provide the suspect or accused with a real opportunity to defend themselves;
3) to ensure the assistance of defence counsel to the suspect or accused in situations provided for by subsection 2 of § 45 of this Code, or if they apply for such assistance;
4) in a situation of urgency, on an application of a suspect or accused who has been committed in custody, to allow them other legal assistance;
5) to entrust any unsupervised property of the suspect or accused who has been committed in custody for safekeeping to the person named by them, or to the local authority;
6) to ensure supervision of any minor children of the person who has been committed in custody, or care for any persons close to that person who are in need of assistance;
7) to explain to an individual victim their right to contact a victim support official and, where this is needed, to receive victim support services as well as the national compensation that victims of violent crimes are entitled to, and to explain which means provided for by this Code can be used to ensure the victim's safety.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

**§ 9. Safeguarding the liberty of persons; respect for human dignity**

(1) In the absence of a court order committing them in custody, a suspect may be held under arrest for up to forty-eight hours.

(2) Any person who has been committed in custody is notified without delay, in a language and manner understandable to them, of the court ruling committing them in custody.

(3) Investigative authorities, the Prosecutor's Office and courts must treat a party to proceedings such that they do no defame the party's honour or degrade the party's dignity. No one may be subjected to torture or other cruel or inhuman treatment.

(4) Under criminal procedure, interference with a person's private or family life is allowed only in situations provided for and following the rules laid down in this Code in order to prevent a criminal offence, to apprehend the offender, to ascertain the truth in a criminal case or to ensure the enforcement of a judgment.

**§ 10. Language of criminal proceedings**

(1) The language of criminal proceedings is Estonian. With the consent of the proceedings authority, of the parties to proceedings and of the parties to judicial proceedings, criminal proceedings may also be conducted in another language, provided the authority and the parties concerned are proficient in that language.

(2) Suspects, accused, victims, civil defendants and third parties who are not proficient in the Estonian language are provided with the assistance of an interpreter or translator. Should there be doubt, the proceedings authority ascertains the knowledge of Estonian possessed by the person concerned. If it is not possible to ascertain a person's knowledge of Estonian, or if such knowledge turns out to be insufficient, the person is provided with the assistance of an interpreter or translator.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

($2^1$) If the suspect or accused is not proficient in the Estonian language, they are, on their application or on an application of their defence counsel, provided with the assistance of an interpreter at a meeting with the defence counsel which is directly related to the procedural operation that is being performed with respect to the suspect or accused, or to an application or complaint to be made or to an appeal to be filed. If the proceedings authority finds that the assistance of an interpreter or translator is not necessary, it states its refusal by means of a corresponding order.
[RT I, 04.10.2013, 3 – entry into force 27.10.2013]

(3) All documents whose inclusion in the criminal file or court file is applied for must be in the Estonian language or must have an Estonian translation. Documents which, in criminal proceedings that have been terminated, were issued by an investigative authority or the Prosecutor's Office in another language are translated into Estonian if the Prosecutor's Office so directs or if a party to proceedings files a corresponding application.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) On an application of a party to judicial proceedings, a text in a language other than Estonian may be included in the record of the trial or hearing. In such a case, a translation of the text into the Estonian language is annexed to the record.

(5) If the suspect or accused is not proficient in the Estonian language, they are provided with a translation, into their native language or a language in which they are proficient, of the text, or at least the part of the text that is essential for understanding the substance of the suspicion or of the charges, or for ensuring the fairness of proceedings, of the report on the arrest of the person concerned as a suspect, of the order committing that person in custody, of the European arrest warrant, of the statement of charges and of the judgment rendered in their case.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(6) If the suspect or accused is not proficient in the Estonian language, they or their defence counsel may make a reasoned application for the translation, into their native tongue or into another language in which they are proficient, of a document that is essential for the purposes of understanding the substance of the suspicion or charges in the criminal case or for ensuring the fairness of proceedings. If the proceedings authority finds that such an application is not justified either in its entirety or in part, it states its refusal by means of an order.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

($6^1$) If an individual victim is not proficient in the Estonian language, they may, within ten days, apply to be provided with a translation, into their native language or a language in which they are proficient, of a text that is essential for the purposes of understanding the substance of the order by which criminal proceedings in the case were terminated, or of the judgment rendered, or for the purposes of ensuring the fairness of proceedings. An individual victim may also apply to be provided with a translation of other documents essential for ensuring their procedural rights. If the proceedings authority finds that the application is not justified, it states its refusal by means of an order.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(7) In the stead of a written translation of the documents listed in subsections 5–$6^1$ of this section, a sight translation of such documents may be provided or the documents may be summarised orally, if:
1) this does not affect the fairness of proceedings; or
2) the suspect or accused, having been informed of the consequences of waiving a written translation of the documents listed in subsections 5 and 6 of this section, has filed, in a form reproducible in writing, a statement waiving such a translation, or a record of such a statement has been made by another method.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(8) Interpretation is provided to the suspect or accused without delay, whereas written translations of documents are provided to them within a reasonable time such that this does not have an adverse impact on the exercise of their right of defence.
[RT I, 04.10.2013, 3 – entry into force 27.10.2013]

(9) A person may contest a refusal to provide a translation or the provision of a partial translation under this section according to the provisions of §§ 228 or 229 or following Chapter 15 of this Code.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(10) Where a translation of a procedural document is provided to a person under this section, the time limits for any complaints or appeals in respect of the document are calculated as of receipt of the translation.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

**§ 11. Public access to trials or hearings**

(1) Any person can observe and make a record of any trial or hearing according to the rules provided by § 13 of this Code.

(2) The principle of public access applies, without limitation, to any pronouncement of judicial dispositions, unless the interests of a minor, spouse or victim require such a disposition to be pronounced in a closed hearing.

(3) The principle of public access applies from the opening of the trial or hearing until pronouncement of the disposition rendered in the case, subject to the restrictions provided by §§ 12 and 13 of this Code.

(4) The court may remove a minor from a public trial or hearing if this is necessary for the protection of the minor's interests.

**§ 12. Imposing restrictions on public access to a trial or hearing**

(1) The court may decide to conduct a trial or hearing, or a part of a trial or hearing, as closed proceedings:
1) in order to protect a State or business secret or classified information of a foreign state;

[RT I 2007, 16, 77 – entry into force 01.01.2008]
2) in order to protect public morality or the private or 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 situations where public access to the trial or hearing may jeopardise the security of the court, of a party to judicial proceedings, or of a witness.

(2) The court disposes of imposing a restriction on public access to a trial or hearing on the grounds provided by subsection 1 of this section by a substantiated order made of its own motion or on an application of a party to judicial proceedings.
[RT I, 07.12.2018, 2 – entry into force 17.12.2018]

(3) With permission of the court, a closed trial or hearing may be observed by an official of the relevant investigative authority, a court official, a witness, a specialist witness, an expert, an interpreter or a translator, a person mentioned in clause 3 of subsection 5 of § 38 of this Code as well as a person who, for the purposes of subsection 1 of § 71 of this Code, is close to the victim or the accused.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(4) At a closed trial or hearing, the court cautions the parties to proceedings and other persons present in the courtroom that they are not allowed to disclose the matters heard and the documents discussed in the closed trial or hearing insofar as this is necessary for the protection of the right or interest mentioned 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 parties to proceedings and other persons present in the courtroom to maintain as confidential any circumstances which have become known to them in the course of proceedings also in a situation in which the trial or hearing has not been declared closed but in which the maintaining of confidentiality is clearly necessary for the protection of a right or interest mentioned in subsection 1 of this section.
[RT I, 07.12.2018, 2 – entry into force 17.12.2018]

($4^2$) In situations provided for by subsections 4 and $4^1$of this section, a note is entered in the record of the trial or hearing concerning the cautioning of the parties to proceedings and of any other persons present in the courtroom 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 the making of records at trials or hearings**

(1) From the opening of a trial or hearing until the pronouncement of the disposition rendered in the case, persons present in the courtroom are allowed to take written notes.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) Any other means of making a record of the trial or hearing may be used only with permission of the court.

(3) At a closed trial or hearing, the court may allow only the taking of written notes.

**§ 14. Adversarial nature of judicial proceedings**

(1) In judicial proceedings, the functions of prosecution, defence and adjudication of the criminal case are performed by actors fulfilling separate procedural roles.

(2) Withdrawal of the charges according to the rules provided by § 301 of this Code releases the court from the obligation to continue proceedings. If charges are withdrawn for the reason that the act of the accused corresponds to the elements of a misdemeanour, withdrawal of the charges constitutes grounds for terminating criminal proceedings in the case. Otherwise, withdrawal of the charges constitutes grounds for entering a judgment of acquittal.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 15. First-hand proceedings at the trial or hearing**

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

(1) A disposition of the district court may only rely on evidence that has been presented and examined at first hand at the trial or hearing and that appears in the record of proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) A disposition of the circuit court of appeal may rely on:
1) evidence that has been presented and examined at first hand at the hearing of the case in the circuit court of appeal and that appears in the record of proceedings;
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

2) evidence that has been examined at first hand in the district court and that has been disclosed in proceedings on appeal against the judgment of the district court.

(3) A judicial disposition may not be based solely or predominantly on the testimony of a person anonymised in accordance with § 67 of this Code, or on an evidentiary item whose direct source neither the accused nor their defence counsel was able to confront, or on the testimony of a person mentioned in subsection $2^1$ of § 66.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

### § $15^1$. Uninterruptedness and expeditious conduct of the trial or hearing

The court tries or hears the case before it as an integral whole and ensures that a disposition is reached as expeditiously as possible.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

### § $15^2$. Processing of personal data in criminal proceedings

(1) Under criminal procedure, the proceedings authority is authorised to process personal data, including personal data of special categories, which are required for the conduct of pre-trial proceedings and of judicial proceedings, for the collection of evidence, for mandating the enforcement of a disposition rendered in a criminal case, for the conduct of a covert operation or for attaining any other aims provided for by this Act.

(2) When processing personal data in the course of criminal proceedings, the proceedings authority acts as a law enforcement authority for the purposes of subsection 2 of § 13 of the Personal Data Protection Act, and such processing of personal data is governed by the provisions established for law enforcement authorities.

(3) The rights of data subjects provided by the Personal Data Protection Act are exercised subject to the provisions of this Act, regardless of whether the data subject is the suspect, accused, victim, civil defendant, third party, witness or any other person.

(4) When processing personal data under this Act, the data controller may impose restrictions on the rights that the data subject enjoys under the Personal Data Protection Act, if this is required in order to prevent or detect an offence, to conduct proceedings concerning an offence or to enforce a sanction, to conduct civil, administrative or any other lawful proceedings, to prevent harm arising to the rights and freedoms of another person or of the data subject, to prevent threats to national security or to ensure maintenance of public order.

(5) Under subsection 4 of this section, restrictions may be imposed on the following rights of the data subject:
1) a right to know that their personal data are being processed, including they type of data that are processed, as well as the manner, method, purpose, legal basis and extent of or reason for the processing;
2) a right to know who are the recipients of their personal data and the categories of personal data that are disclosed, as well as information about whether their personal data are to be transferred to a foreign state or an international organisation;
3) a right to demand that restrictions be imposed on the processing of their personal data;
4) a right to object to the processing of their personal data;
5) a right to be informed of any breaches in relation to their personal data.

(6) Within their respective jurisdiction, the proceedings authorities are joint controllers of the personal data processed in criminal proceedings.

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

# Chapter 2
# PROCEDURAL ROLES IN CRIMINAL PROCEDURE

### § 16. Proceedings authorities and parties to proceedings

(1) The proceedings authorities are the court, the Prosecutor's Office and the relevant investigative authority.

(2) The parties to proceedings are the suspect or accused together with their defence counsel, as well as the victim, civil defendant and any relevant 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 their defence counsel as well as the victim, civil defendant and any relevant third parties.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

(2) The parties to judicial proceedings enjoy the rights of parties to proceedings as provided by this Code.

# Subchapter 1
# Court

**§ 18. Judicial panel in the district court**

(1) In the district court, cases concerning a criminal offence of the first degree are dealt with by a panel composed of the presiding judge and two lay judges. At the trial or hearing, lay judges have all the rights of a judge.

(2) Cases concerning a criminal offence of the second degree and criminal cases dealt with under a simplified procedure are heard by the judge sitting alone.

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

(4) Where the trial or hearing of a criminal case is likely to extend over a lengthy period of time, a stand-by judge or a stand-by lay judge may be enlisted by order of the court, to be present in the courtroom during the trial. If a judge or lay judge on the panel is unable to continue as a member of that panel, they are replaced respectively by the stand-by judge or the stand-by lay judge.

(5) Preliminary proceedings are conducted by the judge sitting alone.

(6) The composition of a panel to dispose of a criminal case dealt with under international cooperation is provided by Chapter 19.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

**§ 19. Judicial panel in the circuit court of appeal**

(1) In the circuit court of appeal, criminal cases are heard by a panel consisting of at least three appeal judges. Preliminary proceedings in a criminal case are conducted by a circuit court judge sitting alone.

(2) The president of the circuit court of appeal may enlist a judge of a district court within the judicial circuit to a panel of the circuit court of appeal, provided the judge agrees to be so enlisted.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

**§ 20. Judicial panel in the Supreme Court**

(1) In the Supreme Court, criminal cases are considered by a 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. Pre-trial investigation judge**

(1) The pre-trial investigation judge is a district court judge who, sitting alone, discharges the duties assigned to them by this Code in pre-trial proceedings.

(2) In situations provided for by this Code, permission to conduct a covert operation is granted by the pre-trial investigation judge.
[RT I, 29.06.2012, 2 – entry into force 09.07.2012]

**§ 22. Enforcement judge**

The enforcement judge is a district court judge who, sitting alone, discharges the duties assigned to them by this Code in relation to enforcement of judicial dispositions.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

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

(1) A collegial panel resolves any issues related to a criminal case by voting.

(2) In the district court, the presiding judge is the last to present their opinion.

(3) In the circuit court of appeal and in the Supreme Court, the judge or justice who prepared the case for judicial proceedings is the first to present their opinion, unless they are the presiding judge or justice. Voting continues according to length of service, starting with the shortest-serving judge or justice. The presiding judge or justice votes last.

(4) If the votes are divided equally, the vote of the presiding judge or justice decides the matter.

(5) No member of the panel has a right to refuse to vote or to abstain. Where a series of issues are voted in sequence, a member of the panel to hold a view which previously turned out to be the minority position does not have a right to refuse to vote.

(6) A judge whose view, upon the vote, turns out to be the minority position, may file a dissenting opinion. Any dissenting opinions appended to a judgment of the Supreme Court are published together with the judgment.
[RT I 2010, 19, 101 – entry into force 01.06.2010]

**§ 23[1]. Court official**

(1) An order preparing a case for trial or hearing or any other case management order which, under the law, is not subject to appeal – including an order by which the court provisionally refuses to consider a representation, motion or an appeal, as well as an order setting or extending a time limit, may also be made by a court official who is vested with the corresponding power under the rules of the court.

(2) When drawing up and issuing a judicial disposition, the court may employ the assistance of a court official.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 24. General jurisdiction rules concerning the hearing of criminal cases in the district court**

(1) Jurisdiction to hear a criminal case lies with the district court that serves the area in which the criminal offence was committed.

(2) As an exception, a criminal case may be heard in the court that serves the locality in which the consequences of the criminal offence occurred or where the majority of the accused or victims or witnesses are. Exceptional transfer of a criminal case within the judicial district of a circuit court of appeal is decided by the president of the circuit court of appeal; in other situations, the transfer is decided by the Chief Justice of the Supreme Court.

(3) If it is not possible to ascertain the place of commission of a criminal offence, the criminal case is heard at the court that serves the area in which the relevant pre-trial proceedings were completed.

(4) The duties of pre-trial investigation judge are performed by the pre-trial investigation judge of the district court that serves the area in which the criminal offence was committed. If it is not possible to unequivocally ascertain the place of commission of the criminal offence, the duties of pre-trial investigation judge are performed by the pre-trial investigation judge of the district court in whose district the relevant procedural operation was, or is to be, performed. Authorisation for a covert operation is issued by a judge who acts in the capacity of the pre-trial investigation judge and to whom it falls to deal with the case under the court's schedule for division of tasks and who is not the court's president.
[RT I, 13.03.2019, 1 – entry into force 01.01.2020]

(5) Jurisdiction concerning criminal cases dealt with by international cooperation is provided by Chapter 19.

**§ 25. Exclusive jurisdiction rules concerning the hearing of criminal cases in the district court**

(1) Jurisdiction to hear the criminal case concerning a criminal offence committed by means of printed matter lies with the court that serves the area in which the printed matter was published, unless the victim applies for the criminal case be heard in the court that serves the locality of their residence or in the court that serves the area in which such matter has been disseminated.

(2) If a criminal offence is committed abroad, the criminal case is heard by the court that serves the locality in which the Estonian residence of the suspect or accused is situated. If the suspect or accused does not have a residence in Estonia, the criminal case is heard by Harju District Court.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

**§ 26. Jurisdiction over joined criminal cases**

If several courts have jurisdiction over a criminal case, the joined cases may be heard in one of those courts. The court to exercise jurisdiction is determined by the Prosecutor's Office that is to send the statement of charges to court, having regard to the interests of the administration of justice.

**§ 27. Jurisdiction over a criminal case concerning a judge**

(1) A criminal case in which a judge is a party to proceedings and which, according to general jurisdiction rules, should be heard by a district court within the judicial circuit of the circuit court of appeal in whose circuit such a judge is employed, is transferred for trial to a district court within the judicial circuit of another circuit court of appeal.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) Where, according to general jurisdiction rules, the issuing of authorisation for the conduct of covert operations in respect of a judge falls under the jurisdiction of a district court within the judicial circuit of the circuit court of appeal in whose circuit the judge is employed, the authorisation for covert operations is issued, on an application of the Office of the Prosecutor General, by the president of a district court within the judicial circuit of another circuit court of appeal – or by a judge designated by that president – acting in the capacity of the pre-trial investigation judge.
[RT I 2007, 1, 2 – entry into force 30.03.2007]

**§ 27[1]. Jurisdiction over proceedings to compel prosecution**

(1) An appeal against an order of the Office of the Prosecutor General mentioned in subsection 1 of § 208 of this Code falls within the jurisdiction of the circuit court of appeal in whose judicial circuit lies the seat of the Prosecutor's Office or investigative authority who sent the victim the notice concerning refusal to commence criminal proceedings or the order by which criminal proceedings in the case were terminated.

(2) Where the notice concerning refusal to commence criminal proceedings or the order by which criminal proceedings in the case were terminated has been sent to the victim by the Office of the Prosecutor General, the appeal mentioned in subsection 1 of § 208 of this Code falls within the jurisdiction of Tallinn Circuit Court of Appeal.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

**§ 28. Verification of jurisdiction and resolution of jurisdictional disputes**

(1) When preparing a criminal case for trial, the court verifies whether it has jurisdiction to deal with the case and, if its jurisdiction is contested, makes an order by which it transfers that case to the court that has jurisdiction.

(2) Before the criminal case is transferred to the court that has jurisdiction, only urgent procedural operations are permitted.

(3) If a court contests jurisdiction concerning a criminal case received from another court, the jurisdiction to deal with the case is 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 certain procedural operations in the other court would facilitate the trial of a criminal case, save time for the parties to proceedings and for the court and reduce costs of the case. Unless otherwise provided for by law, the court whose assistance is requested may not refuse it.

# Subchapter 2
# Prosecutor's Office

**§ 30. Prosecutor's Office in criminal proceedings**

(1) The Prosecutor's Office directs pre-trial proceedings, ensures their legality and efficiency and represents public prosecution in the courts. Where provided for by this Code, the Prosecutor's Office has a right to file a civil court claim or a statement of a public-law claim. Unless otherwise provided by this Code, the Prosecutor's Office does not have, for the purposes of collecting the evidence required for proving such a claim, the rights of the proceedings authority as provided by this Code.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

(2) The powers of the Prosecutor's Office in criminal proceedings are exercised, in the name of the Prosecutor's Office, by a prosecutor who acts independently and is subject only to the law. The powers of the Prosecutor's Office provided by this Code in relation to conducting proceedings concerning a civil court claim or statement of a public-law claim are exercised by the prosecutor or another person authorised by the Prosecutor General or by the relevant 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 Authorities

### § 31. Definition of investigative authorities

(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 official positions whose holders have a right to participate in criminal proceedings within the jurisdiction of the investigative authority concerned is approved respectively by the Head of each of the authorities mentioned in subsection 1 of this section.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

### § 32. Investigative authorities under criminal procedure

(1) An investigative authority performs the procedural operations provided by this Code independently unless performance of the operation requires the permission of the court or the permission or direction of the Prosecutor's Office.

(2) An investigative authority has a right to demand the production of any document that is needed for solving a criminal case.

# Subchapter 4
# Suspect and Accused

### § 33. Suspect

(1) The suspect is a person who has been arrested on suspicion of having committed a criminal offence, or a person in respect of whom there is sufficient cause to suspect them of having committed a criminal offence and who is subjected to a procedural operation.

(2) The suspect is without delay provided an explanation of their rights and obligations, and is interviewed concerning the substance of the suspicion. The interview may be postponed if the suspect's state of health does not allow them to be interviewed immediately, or if the postponement is necessary in order to ensure the participation of the defence counsel or of an interpreter or translator.

### § 34. Rights and obligations of suspects

(1) The suspect has a right:
1) to know the substance of the suspicion and to provide or refuse to provide a statement concerning this;
2) to know that their statements may be used to bring charges against them;
$2^{1}$) to the assistance of an interpreter or translator;
[RT I, 04.10.2013, 3 – entry into force 27.10.2013]
3) to the assistance of the defence counsel;
4) to meet with their defence counsel without other persons being present;
5) in the presence of their defence counsel, to be interviewed or to participate in a concurrent interview of several persons conducted to resolve a contradiction in their statements, to participate in the linking of a statement to the relevant setting and to participate in an identification line-up;
6) to participate in the judicial hearing of any application for their committal in custody;
7) to offer evidence;

8) to file applications and complaints;
9) to acquaint themselves with the report of any procedural operation performed in the case and to make representations, which are to be included in the report, concerning the conditions, course, results and reports of the operation;
10) to consent to the use of the plea agreement procedure, to participate in plea agreement negotiations, to make proposals concerning the type and term of the sentence to be imposed and to conclude or decline to conclude the plea agreement.

($1^1$) An underage suspect as well as, taking into consideration the circumstances of the criminal case and the vulnerability of the person concerned, a person below twenty-one years of age who is suspected of having committed a criminal offence when they were under eighteen years of age, has a right, in addition to what has been mentioned in subsection 1 of this section:
1) to notify their statutory representative or another person according to subsections 1 and 2 of § $35^2$of this Code;
2) to the presence, according to subsection 3 of § $35^2$of this Code, of their statutory representative or such other person during the performance of any procedural operations in their case and at the trial or hearing;
3) to have a pre-trial individual assessment report prepared in their respect at the latest before the charges are filed, except if this is not in their interests in criminal proceedings in the case, and to have the conclusions of such an assessment taken into account when procedural determinations are made in the case;
4) to have, when they are deprived of their liberty, a medical examination performed in their respect without undue delay where such an examination is prescribed by law or is needed, as well as on their application or on an application of their defence counsel or of a person mentioned in subsection 1 or subsection 2 of § $35^2$of this Code, or by the proceedings authority of its own motion, and to have the conclusions of the examination taken into consideration when procedural decisions are made in the case;
5) to special treatment when they are deprived of their liberty;
6) to be treated in a manner that protects their privacy and dignity according to their age, maturity, ability to understand, as well as any special needs, including potential communication difficulties, and to proceedings free of unjustified delay.
[RT I, 20.12.2019, 1 – entry into force 30.12.2019]

(2) The meeting mentioned in clause 4 of subsection 1 of this section may be interrupted for the performance of a procedural operation when it has lasted one hour.

(3) The suspect is required to:
1) appear when summoned by the investigative authority, the Prosecutor's Office or the court;
2) participate in procedural operations and comply with the directions of the investigative authority, the Prosecutor's Office and the court.

**§ $34^1$. Suspect's right to acquaint themselves with materials in the criminal file**

(1) The suspect has a right to apply for access to any evidence that is material for specifying the substance of the suspicion filed against them, if this is required for ensuring fair proceedings and for the preparation of defence in the case. Access to the evidence that has been collected is provided at the latest after the Prosecutor's Office has declared the pre-trial proceedings completed and, according to § 224 of this Code, has presented the criminal file to the persons concerned in order for those persons to acquaint themselves with the file.

(2) The suspect has a right to apply for access to any evidence that is material to the hearing, in court, of the justification for an application to commit them in custody, and for contesting their arrest or committal in custody before the court.

(3) The Prosecutor's Office decides whether to allow access to the evidence mentioned in subsections 1 and 2 of this section. The Prosecutor's Office may, by order, refuse to allow access to such evidence if this may significantly harm the rights of another person or if this may harm criminal proceedings in the case.

(4) An order which is provided for by subsection 3 of this section and by which the Prosecutor's Office refuses access to evidence may be appealed according to 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 in whose respect the Prosecutor's Office has issued a statement of charges in accordance with § 226 of this Code, or a person against whom a statement of charges has been filed under the fast-track procedure or a person with whom a plea agreement has been concluded under the plea agreement procedure.

(2) The accused has the rights and obligations of the suspect. They have a right to acquaint themselves with the criminal file through their defence counsel, and the right to participate in the trial of their case.

(3) An accused in whose respect a judgment of conviction has entered into effect is a convicted offender.

(4) An accused in whose respect a judgment of acquittal has entered into effect is an acquitted person.

[RT I 2006, 15, 118 – entry into force 14.04.2006]

### § 35[1]. Informing suspects and accused of their rights

(1) The suspect or accused is without delay informed of their rights in plain and intelligible language orally or in writing. They acknowledge their rights having been explained to them by signed receipt.

(1[1]) Information concerning the rights of an underage suspect or accused is also provided to the statutory representative of the suspect or accused and to the person mentioned in subsection 2 of § 35[2] of this Code.
[RT I, 20.12.2019, 1 – entry into force 30.12.2019]

(2) A suspect or accused who has been arrested or committed in custody is, without delay, given a written declaration of rights concerning their rights under criminal procedure. The suspect or accused has a right to keep the declaration in their possession during the time that they remain under arrest or in custody.

(3) Where the suspect or accused mentioned in subsection 2 of this section is not proficient in the Estonian language, they are provided a copy of the declaration of rights in their mother tongue or in a language in which they are proficient.

(4) The model form of the declaration of rights is enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 20.12.2019, 1 – entry into force 30.12.2019]

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

(1) The proceedings authority is required to notify the statutory representative of an underage suspect or accused of the rights and obligations of such a suspect, except in a situation where this is not in the minor's interests or may significantly harm criminal proceedings in the case. In the latter situations, the relevant agency of the local authority must be notified.

(2) Where it is not possible to provide notification to the statutory representative of the underage suspect or accused, or if this is not in the minor's interests, or may significantly harm criminal proceedings in the case, the proceedings authority notifies another person who has been named by the underage suspect or accused, and whom the authority considers to be suitable.

(3) Where an underage suspect or accused so wishes, their statutory representative and the person mentioned in subsection 2 of this section may accompany them:
1) at the trial or hearing;
2) during performance of procedural operations, provided that, in the assessment of the proceedings authority, such attendance is in the minor's interests and does not interfere with criminal proceedings by causing a delay or in any other way.
[RT I, 20.12.2019, 1 – entry into force 30.12.2019]

### § 36. Participation of a corporate suspect or accused in criminal proceedings

A corporate suspect or accused participates in criminal proceedings through a member of its management board or of the body acting as such, or through a trustee in bankruptcy – any of whom is vested with all the rights and obligations of the suspect or accused, including the right to give statements or testimony in the name of the legal person concerned.
[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) The victim is an individual, or a legal person, whose legally protected interests have suffered direct harm as a result of a criminal offence that targeted them, or as a result an unlawful act committed by a person incapable of forming the corresponding *mens rea*. In a situation where an attempt is made to commit a criminal offence, a person is a victim also if, instead of the protected interest that was targeted, harm is dealt to an interest that is subsumed by that interest. The State or another public authority is a victim only if the harm dealt to its legally protected interest gives rise to a pecuniary claim which can be pursued in criminal proceedings. A person is a victim also in a situation in which a criminal offence or an unlawful act committed by a person incapable of

forming the corresponding *mens rea*caused the death of a person close to them and they have suffered harm as a result of the death.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(2) A corporate victim participates in criminal proceedings through its statutory representative, an employee authorised by the statutory representative, the trustee in bankruptcy or a contractual representative, any of whom has all the rights and obligations of the victim. The right to give statements or testimony in the name of the corporate victim is vested in its statutory representative or trustee in bankruptcy.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(3) In relation to the carrying out of procedural operations, unless otherwise prescribed by this Code, the provisions applicable to witnesses apply to the victim.

(4) A person is joined to the proceedings as a victim by being subjected to a procedural operation in the case, or by order of the proceedings authority. A person may be joined to proceedings as a victim at any stage of those proceedings and before any judicial instance until termination of proceedings on appeal against judgment of the district court. Where it comes to light that the person was joined to proceedings unfoundedly or that they no longer correspond to the definition of the victim due to a change in the circumstances, the proceedings authority removes them from proceedings by a corresponding order.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(5) If the pre-trial proceedings authority decides not to grant an application to join a person to proceedings as a victim, or unfoundedly removes from those proceedings a person who was joined to them as such, an explanation is provided to the victim of their right to file an appeal against the authority's order according to the rules provided by § 228 of this Code. A person may make a motion to be joined to proceedings as a victim also when they file an appeal against the judgment rendered in the case.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

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

(1) If an individual victim dies – or a corporate victim is dissolved – after they have filed a civil court claim but before the disposition rendered concerning the claim enters into effect, the proceedings authority permits the universal successor of the victim to join the proceedings as a third party. Universal succession is possible at any stage of proceedings.

(2) The victim's universal successor only has the rights of the victim in relation to the procedural operations concerning the civil court claim filed.

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

(4) If an individual victim dies or a corporate victim is dissolved and the victim's universal successor is not known or it is not possible to identify such a successor within a reasonable time, the court dismisses the civil court claim.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

### § 37[2]. Assessment of protection needs of an individual victim

(1) The proceedings authority is obligated to assess whether any circumstances are present that amount to a reasonable cause to believe that an individual victim requires special treatment and protection in criminal proceedings.

(2) The assessment takes into consideration the victim's personality, the gravity and nature of the criminal offence, who the suspect is, the circumstances in which the criminal offence was committed and the harm caused to the victim. Any minor victims are presumed to require special treatment and protection in criminal proceedings.

(3) As a result of the assessment, a decision is made concerning which of the means provided for by this Code for ensuring the safety of the victim it is possible to employ, as well as whether the interview with the victim should be conducted in premises adapted for their special needs or by, or with the participation of, a specialist trained to interview 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 the victim

(1) The victim has a right to:
1) contest the refusal to commence, or the termination of, criminal proceedings according to the rules provided by §§ 207 and 208 of this Code;
2) file, through the investigative authority or the Prosecutor's Office, a civil court claim or statement of a public-law claim during the time limit provided by subsection 1 of § 225 or clause 4 of § 240 of this Code;

[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
3) give statements or testimony, or refuse to give them, on the grounds provided by §§ 71−73 of this Code;
4) offer evidence;
5) file applications, motions and complaints;
6) acquaint themselves with the report of any procedural operation performed in the case and to make representations, which are to be included in the report, concerning the conditions, course, results and reports of the operation;
7) acquaint themselves with the materials of the criminal file following the rules provided by § 224 of this Code;
8) participate in the trial or hearing of the case;
9) consent to the employment of plea agreement procedure or refuse such consent, state their opinion concerning the charges and the sentence, as well as the quantum of harm mentioned in the charges and the civil court claim or statement of the public-law claim;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
10) consent to the imposition of a temporary restraining order and apply for the imposition of a restraining order following the rules provided by § $310^1$ of this Code;
[RT I 2006, 31, 233 – entry into force 16.07.2006]
11) make an application to be interviewed or examined by a person of their sex if the case concerns sexual violence, gender violence or a criminal offence committed in a close relationship – except if the interview is conducted by the prosecutor, or if the examination is conducted by the judge, or if this would interfere with the course of the proceedings.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(2) The victim is required to:
1) appear when summoned by the investigative authority, the Prosecutor's Office or the court;
2) participate in procedural operations and comply with the directions of the investigative authority, the Prosecutor's Office and the court.

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

(4) The investigative authority or the Prosecutor's Office explains to the victim their rights, the procedure for filing a civil court claim, the principal requirements that apply to such a claim, the time limit for filing the claim and the consequences of allowing such a time limit to expire, and the conditions and rules that govern the provision of State-funded legal aid.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) An individual victim has a right to:
1) receive information concerning the committal in custody of a person suspected of the criminal offence, to apply to be notified of the release of the person committed in custody, in the event this poses a threat – except if communication of such information would cause harm to the suspect;
2) apply to be notified of any premature release of the convicted offender or of their escape from the custodial institution, if the information may prevent a threat to the victim;
3) have one person chosen by themselves accompany them at any procedural operation, unless the proceedings authority has refused this, stating its reasons;
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]
4) apply for an opportunity to state their opinion concerning a premature release on parole of the offender, provided the offence that was committed is a criminal offence of the first degree provided by Chapter 9 or 11 of the Penal Code;
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]
5) state their opinion concerning the impact that the criminal offence had on them and concerning the perpetrator's taking of responsibility for the offence.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(6) The person to accompany the victim at a procedural operation under clause 3 of subsection 5 of this section is cautioned that they are not allowed to disclose any information concerning the proceedings or to intervene in the course of the operation.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

### § $38^1$. Giving effect to the victim's claims in criminal proceedings

(1) The victim has a right to file a civil court claim against the suspect, accused or civil defendant, to be considered by the court as part of criminal proceedings in the case. The victim may seek relief by means of such a court claim, if:
1) the purpose of the relief is to reinstate or remedy the position of their interests that was transgressed against by the act which is the subject matter of criminal proceedings, provided the factual circumstances that the claim is based on overlap to a material extent with the facts that characterise the commission of the criminal offence

that the proceedings focus on, and provided it would also be possible to consider such a claim under the rules of civil procedure;
2) the relief that is sought is compensation for harm that can be claimed against a public authority under the rules of administrative court procedure.

(2) As the victim, a public authority may, in addition to what is provided by subsection 1 of this section, file a statement of a public-law claim seeking disposition of the public-law financial obligation it requires the accused to perform, provided the circumstances under which the obligation arose overlap to a material extent with the facts that characterise the commission of the criminal offence that the proceedings focus on. The statement of the public-law claim may be filed by the administrative authority who would be entitled to determine the relevant financial obligation under administrative procedure. The filing of the statement of a public-law claim in criminal proceedings excludes pursuing such a claim in other proceedings, except if the application is dismissed in criminal proceedings.

(3) A civil court claim or statement of a public-law claim is filed through the investigative authority or the Prosecutor's Office during the time limit provided by subsection 1 of § 225 or in clause 4 of § 240 of this Code.

($3^1$) Where the State, a local authority or other public authority has been joined to criminal proceedings as the victim and its representative does not file its civil court claim or statement of public-law claim during the time limit provided by § 225 or in clause 4 of § 240 of this Code, such a claim may be filed by the Prosecutor's Office in the stead of the State, local authority or other public authority.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

($3^2$) Where the State, a local authority or other public authority has been joined to criminal proceedings as the victim and its representative files, during the time limit provided by § 225 or in clause 4 of § 240 of this Code, a civil court claim or a statement of a public-law claim, in which they state the victim's claim such that it is manifest that the claim is unreasonably small having regard to the harm caused by the criminal offence, or is unproven or contains other material defects which may lead the court to reject or dismiss that claim or statement, and the person who filed that claim or statement has not cured those defects by the due date, the Prosecutor's Office may file the civil court claim or statement of the public-law claim in the stead of the representative.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

($3^3$) Where the State, a local authority or another public authority has been joined to criminal proceedings as the victim and its representative withdraws its civil court claim or statement of its public-law claim before commencement of the trial or hearing, the Prosecutor's Office may file the claim or notice in the stead of the representative.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

($3^4$) In situations mentioned in subsections $3^1$–$3^3$ of this section, the Prosecutor's Office files the civil court claim or statement of the public-law claim for the benefit of the State.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

(4) Consideration of a civil court claim as part of criminal proceedings is exempt from the statutory fee, with the exception of civil court claims that seek compensation for non-pecuniary harm, unless the claim for compensation for such harm derives from the causing of a bodily injury or other health disorder, or of the death of a provider.

(5) The Republic of Estonia as the victim is exempted from payment of the statutory fee when filing a civil court claim or statement of a public-law claim.

(6) Any issues which arise in relation to proceedings on a civil court claim and which are not regulated in this Code are disposed of based on the provisions of the Code of Civil Procedure.

(7) When disposing of any issues that arise in relation to dealing with a statement of a public-law claim and that are not regulated in this Code, the provisions of Chapter 26 of the Code of Administrative Court Procedure are applied.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

**§ $38^2$. Special rule concerning pursuance of the victim's claims in relation to a criminal offence that falls within the field of competition law**

A civil court claim concerning harm caused by commission of the act provided for by § 400 of the Penal Code is dealt with under the rules of civil procedure.
[RT I, 26.05.2017, 1 – entry into force 05.06.2017]

**§ 39. Civil defendant**

(1) The civil defendant is a person or a corporate entity who is not suspected or accused of having committed a criminal offence, yet who is:

1) liable, by law, to pay pecuniary compensation for any harm caused to the victim by the act which is the subject matter of criminal proceedings; or
2) a person against whom, by law, the victim has an *in rem* claim for redress of rights, or a claim arising from unjust enrichment, the purpose of such a claim being to redress or remedy the position of the victim's interests which was transgressed against by the act that is the subject matter of criminal proceedings.

(2) A person is joined to, and removed from, proceedings as a civil defendant by order of the proceedings authority. The authority joins the person mentioned in subsection 1 of this section to proceedings on an application of the victim or the accused, or of its own motion, if there is reason to believe that the victim's claim against the civil defendant could be considered part of criminal proceedings, or if this is needed to protect the interests of the accused. The victim's application must be accompanied by a civil court claim against the person whose joinder to proceedings as a civil defendant the victim applies for. If it turns out that such a person was joined to proceedings unfoundedly or that, due to a change in the circumstances, they no longer fulfil the definition of a civil defendant or if it turns out that the victim's claim will not be considered as part of criminal proceedings in the case, the proceedings authority removes them from the proceedings.

(3) A person may be joined to proceedings as a civil defendant until completion of the examination of evidence in the district court.

(4) A corporate civil defendant participates in criminal proceedings through its statutory representative or its trustee in bankruptcy, either of whom is vested with all the rights and obligations of the civil defendant.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

**§ 40. Rights and obligations of the civil defendant**

(1) The civil defendant has a right to:
1) contest the civil court claim or file a counterclaim;
2) offer evidence;
3) file requests and complaints;
4) acquaint themselves with the report of any procedural operation performed in the case and to make representations, which are to be included in the report, concerning the conditions, course, results and reports of the operation;
5) acquaint themselves with the materials of the criminal file following the rules provided by § 224 of this Code;
6) participate in the trial or hearing of the case;
7) consent to the use of the plea agreement procedure or to refuse such consent, to state their opinion concerning the quantum of harm stated in the charges and concerning the civil court claim.

(2) The civil defendant is required to:
1) appear when summoned by the investigative authority, the Prosecutor's Office or the court;
2) participate in procedural operations and comply with the directions of the investigative authority, the Prosecutor's Office and the court.

**§ 40[1]. Third party**

(1) A third party is a person or a corporate entity who does not appear as the suspect, accused, victim or civil defendant in relation to the criminal offence, yet whose rights and obligations could be decided upon when dealing with the criminal case or conducting specialised proceedings.

(2) A person is joined to, and removed from, the proceedings as a third party by order of the proceedings authority. The proceedings authority joins to the proceedings, as a third party, any person characterised by the elements provided by subsection 1 of this section. If it turns out that the person was joined to the proceedings unjustifiably or if, due to a change in the circumstances, they no longer fulfil the definition of a third party, the authority removes them from the proceedings.

(3) An order concerning the joinder of a person as a third party to, or removal of the person from, proceedings may be made by the proceedings authority at any stage of the proceedings and in any judicial instance until the entry into effect of the judgment rendered in the case, or of the court order made in specialised proceedings. A person may apply for their joinder to proceedings also in an appeal filed against the judicial disposition. In such a situation, their joinder is disposed of when a decision is made concerning acceptance of the appeal filed against the disposition.

(4) A corporate third party participates in criminal proceedings through its statutory representative or its trustee in bankruptcy, either of whom is vested with all of the party's rights and obligations.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

**§ 40[2]. Rights and obligations of a third party**

(1) A third party has a right to:
1) offer evidence;
2) file applications, motions and complaints;
3) acquaint themselves with the report of any procedural operation performed in the case and to make representations, which are to be included in the report, concerning the conditions, course and results of the operation;
4) acquaint themselves with the materials of the criminal file following the rules provided by § 224 of this Code;
5) participate in the trial or hearing of the case.

(2) Where a decision is made in criminal proceedings to confiscate third-party property, the third party has the rights of the suspect provided by clauses 1, 2 and 5 of subsection 1 of § 34 of this Code without prejudice to special rules that apply to confiscations.

(3) A third party is required to:
1) appear when summoned by the investigative authority, the Prosecutor's Office or the court;
2) participate in procedural operations and comply with the directions of the investigative authority, the Prosecutor's Office and the court.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

**§ 41. Representative of the victim, of the civil defendant and of a third party**

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

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

(2) In criminal proceedings, a corporate victim, civil defendant or third party may, in addition to the statutory representatives mentioned respectively in subsection 2 of § 37, subsection 4 of § 39 and subsection 4 of § 40[1]of this Code, have a contractual representative.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(3) In criminal proceedings, State-funded legal aid is provided to victims, civil defendants and third parties on the grounds and following the rules prescribed in the State-Funded Legal Aid Act. If the court finds it likely that, without the assistance of an attorney, a victim's, civil defendant's or third party's material interests would remain unprotected, the court may, of its own motion, decide to grant State-funded legal aid to the person concerned on the grounds and following the rules prescribed in the State-Funded Legal Aid Act.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

(3[1]) The proceedings authority assigns, under the rules for State-funded legal aid, a representative to a victim whose active legal capacity has been restricted, if:
1) it may be presumed under the circumstances that the interests of the victim's statutory representative are in conflict with those of the victim;
2) an underage victim has been separated from their family;
3) the victim is an unaccompanied minor for the purposes of the Act on the Granting of International Protection to Aliens.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(4) A victim, civil defendant or third party may have up to three representatives. A representative may have several principals provided there is no conflict of interests between the principals. In judicial proceedings, the following persons may serve as a contractual representative: an attorney or another person who has acquired at least an officially recognised Master's degree in the field of legal studies or a qualification that is equivalent to such a degree for the purposes of subsection 2 of § 28 of the Republic of Estonia Education Act, or an equivalent foreign qualification.
[RT I 2008, 29, 189 – entry into force 01.07.2008]

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

(6) The representative is required to maintain secrecy concerning any information they become privy to when providing legal aid in the course of criminal proceedings. The representative is allowed to disclose such information to their principal. The representative may disclose information that concerns their principal and that derives from pre-trial proceedings 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
# Defence Counsel

### § 42. Defence counsel

(1) In criminal proceedings, the defence counsel is:
1) an attorney or, with the permission of the proceedings authority, another person who meets the educational requirements established for contractual representatives by this Code and whose mandate in criminal proceedings derives from their agreement with the person defended (contractual defence counsel), or
[RT I 2005, 71, 549 – entry into force 01.01.2006]
2) an attorney whose mandate in criminal proceedings derive from the corresponding assignment by the investigative authority, the Prosecutor's Office or the court and from their appointment by the Estonian Bar Association (appointed defence counsel).
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(2) In judicial proceedings, the person defended may, by agreement, have up to three defence counsel.

(3) The defence counsel may defend several persons if the interests of those persons are not incompatible.

### § 43. Choice and appointment of defence counsel

(1) In criminal proceedings, defence counsel may be chosen by the suspect, the accused or the convicted offender personally or through another person.

(2) The defence counsel is assigned in the case by the investigative authority, the Prosecutor's Office or the court if:
1) the suspect or accused has not chosen a defence counsel but has applied for one to be appointed to them;
2) the suspect or accused has not applied for defence counsel but participation of the counsel is mandatory according to § 45 of this Code.

(3) The proceedings authority notifies the suspect or accused without delay of the assignment to them of the defence counsel and relays to them the contact details of the attorney to provide the State-funded legal aid, who is appointed by the Estonian Bar Association.

($3^1$) Where the suspect or accused has applied for appointment of defence counsel under clause 1 of subsection 2 of this section, the investigative authority, the Prosecutor's Office or the court explains the terms and conditions of the payment of remuneration to, and the rules that govern compensation for the costs incurred by, an appointed defence counsel.
[RT I, 28.12.2016, 14 – entry into force 01.04.2017]

(4) If there is no suspect or accused in the criminal case, but the Prosecutor's Office has applied for deposition a witness's testimony, the Estonian Bar Association appoints, on an application of the pre-trial investigation judge, a defence counsel to represent the interests of the potential suspect at the examination of the witness.

(5) The order of the investigative authority, the Prosecutor's Office or the court concerning assignment of defence counsel is sent to the Estonian Bar Association for the corresponding appointment to be made.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

### § 44. Substitute defence counsel

(1) The defence counsel may appoint a substitute defence counsel to participate in criminal proceedings in their stead for the period of time during which they are prevented from participating in those proceedings. In criminal proceedings, the investigative authority, the Prosecutor's Office or the court may appoint a substitute defence counsel where this is provided for by law.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

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

### § $44^1$. Substitute defence counsel provided under the rules for State-funded legal aid

(1) In pre-trial proceedings, a substitute defence counsel is appointed by the Estonian Bar Association under an order of the investigative authority, the Prosecutor's Office or the court, if it is not possible for the chosen defence counsel to start performing the duties of the defence within 12 hours of the arrest of the person as a suspect or, in other situations, within 24 hours of the conclusion of the defence agreement with the suspect or accused, or of being summoned to the proceedings authority, and the chosen counsel has not appointed a substitute defence counsel for themselves.

(2) In judicial proceedings, the court may decide to appoint a substitute defence counsel if, in a case which is dealt with under regular rules of procedure and in which the chosen or assigned counsel has assumed the duties of the defence, it is not possible for that counsel to attend the trial or hearing, and they have not appointed a substitute for themselves.

(3) If the chosen or assigned defence counsel is unable to participate in the trial or hearing within three months following the preliminary hearing held in the case, the court assigns a substitute defence counsel, requiring the Estonian Bar Association to appoint a defence counsel within one month following the making of the court order and to ensure the participation of the appointed counsel in the trial or hearing within two months following their appointment. If, within one month following the making of the order, it comes to light that it is possible for the chosen or assigned defence counsel themselves to start performing the duties of defence, the Estonian Bar Association does not carry out that order, informing the court accordingly and stating the corresponding reasons.

(4) In situations mentioned in this section, the assigned substitute defence counsel participates in criminal proceedings until the defence counsel chosen by or assigned for the suspect or accused is able to start performing the duties of defence.

(5) In situations mentioned in this section, assignment of a substitute defence counsel does not terminate the mandate of the defence counsel chosen by or assigned for the suspect or accused, or release the defence counsel from their defence duties.

(6) In situations mentioned in this section, the assigned substitute defence counsel must, prior to starting to perform the duties of defence, if possible, consult with the defence counsel chosen by or assigned for the suspect or accused, and follow the instructions of that counsel when performing such duties.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

**§ 45. Participation of defence counsel in criminal proceedings**

(1) The defence counsel may participate in criminal proceedings from the moment when the procedural role of suspect in the case is assigned to a person, or in a situation provided for by subsection 4 of § 43 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) Participation of the defence counsel is mandatory during the entire length of criminal proceedings if:
1) the person subject to proceedings was a minor when they committed the criminal offence or unlawful act;
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]
2) due to a mental or physical disability, the person subject to proceedings is unable to defend themselves, or if their defence is complicated because of the disability;
3) the person subject to proceedings is suspected or accused of a criminal offence for which life imprisonment may be imposed;
4) the interests of the person subject to proceedings are incompatible with those of another person who has a defence counsel;
5) the person subject to proceedings has spent at least four months in custody;
[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) The participation of defence counsel in pre-trial proceedings is mandatory starting from presentation – according to the rules provided by subsection 3 of § 223 of this Code – of the criminal file to the persons concerned for acquainting themselves with the file, except in a situation where the proceedings concern a criminal offence of the second degree, where the prosecutor considers it possible for the criminal case to be disposed of by the abridged procedure, including when that procedure is conducted in the fast-track form, and where the suspect has been informed in writing, against signed acknowledgement, of their right to be assisted by defence counsel, of the terms and conditions of being provided such counsel and of the consequences of not applying for one, and yet has not made the corresponding application, and the prosecutor or judge finds that the interests of the administration of justice do not require the participation of defence counsel.
[RT I, 28.12.2016, 14 – entry into force 01.04.2017]

(4) The participation of defence counsel in judicial proceedings is mandatory, except:
1) under the plea agreement procedure in accordance with the rules provided by §§ 239−250 of this Code, including under that procedure when it is conducted in the fast-track form, if the suspect or the accused has not filed an application for the participation of defence counsel in judicial proceedings and, in the opinion of the proceedings authority, the interests of the administration of justice do not require such participation;
2) in proceedings concerning a criminal offence of the second degree under the abridged procedure, including when that procedure is conducted in the fast-track form, following the rules provided by §§ 233−238 of this Code, if the accused has waived the right to a defence counsel and participation of such counsel is not required in the interests of the administration of justice in the opinion of the proceedings authority.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

($4^1$) Requirements for the form of the waiver mentioned in subsection 4 of this section are enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4$^2$) Where, on a motion of the accused, the defence counsel does not participate in the trial or hearing, the accused has the same procedural rights and obligations at the trial or hearing that their defence counsel would have.
[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 assigned defence counsel is required to participate in criminal proceedings until completion of consideration of the criminal case under the rules governing appeals to the Supreme Court, and may, of their own motion, refuse to assume the duties of the defence or resign such duties, once they have assumed them, only on the grounds provided by subsection 1 of § 46 of this Code.

(6) Performance of duties of the defence by a contractual defence counsel in pre-trial proceedings includes participation in the completion of pre-trial proceedings.

(7) The performance of duties of the defence by a contractual defence counsel in the district court includes the making of appeals, or interim appeals, against dispositions of the district court if the person defended so wishes.

(8) The performance of duties of the defence by a contractual defence counsel in the circuit court of appeal includes the making of appeals to the Supreme Court – or interim appeals – against dispositions of the circuit court of appeal, as well as preliminary proceedings in the Supreme Court, if the person defended so wishes.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(9) A contractual defence counsel may, of their own motioin, refuse to assume the duties of the defence or resign such duties, once they have assumed them, only on the grounds provided by subsection 1 of § 46 of this Code.

**§ 46. Refusal to assume duties of defence and resignation of duties of defence once assumed**

(1) The defence counsel may, of their own motion and with the consent of the owner of their law office, refuse to assume the duties of the defence or resign such duties, once they have assumed them, if:
1) following the rules provided by subsection 5 of § 45 of the Bar Association Act, the counsel has been released from the obligation to maintain professional secrecy, or if the suspect or accused has demanded that the counsel do something that involves a violation of the law or of the requirements of professional ethics;
2) performance of the duties of the defence by that defence counsel would amount to a violation of the right of defence;
3) the person defended has breached a material term or condition of the client contract.

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

(2) Any refusal to assume the duties of the defence or of any resignation of such duties, once assumed, is notified to the proceedings authority is notified without delay.

(3) Any refusal to assume the duties of the defence or any resignation of such duties, once they have been assumed, has legal significance from the time that a new defence counsel starts performing those duties.

(4) Where the defence counsel has refused to assume the duties of defence or has waived the duties of defence that they had previously assumed, the new defence counsel who assumes those duties next may, for the purpose of acquainting themselves with the materials of the criminal case, apply for postponement, by up to three days, of any investigative operations that require the participation of the person defended and of the defence counsel.

**§ 47. Rights and obligations of the defence counsel**

(1) The defence counsel has a right to:
1) receive from any person or corporate entity any documents necessary for the provision of legal assistance to the person defended;
2) offer evidence;
3) file applications, motions and complaints;
4) acquaint themselves with the report of any procedural operation performed in the case and to make representations, which are to be included in the report, concerning the conditions, course, results and report of the operation;
5) with the knowledge of the proceedings authority, use technical equipment when carrying out the duties of the defence provided this does not interfere with the performance of the procedural operation;
6) during pre-trial proceedings, participate in any investigative operations carried out in the presence of the person defended, with the right to put questions through the proceedings authority;

7) starting from becoming a participant in criminal proceedings in the case, acquaint themselves with the report of the interview with the person defended and the report of the person's arrest as the suspect and, on completion of pre-trial proceedings, with the entirety of the material in the criminal file;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
8) meet with the person defended without the presence of other persons, without any limitations on the number of times the duration of the meetings, unless a different provision is made in this Code for the duration of such meetings.

(2) The defence counsel is required to use any means and methods of defence that are not prohibited by law in order to find any facts that justify the person defended, are non-incriminating, or mitigate their sentence, and to provide other legal assistance to the person defended as necessary in the criminal case.

(3) The defence counsel is required to maintain secrecy concerning any information that they become privy to when providing legal aid in the course of criminal proceedings. The counsel is allowed to disclose such information to the person defended. The counsel may disclose information concerning pre-trial proceedings about the person defended only with the consent of the person 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 defence counsel**

The suspect or accused may waive defence counsel in writing during pre-trial proceedings unless participation of such counsel is mandatory.

# Subchapter 7
# Circumstances Precluding Participation in Criminal Proceedings

**§ 49. Grounds for the judge to recuse themselves**

(1) The judge is required to recuse themselves from criminal proceedings if they:
1) have previously rendered the lower-instance judicial disposition in the criminal case, or a judicial disposition in that case which has been set aside by the higher-instance court in part or in full, except if the higher-instance court, when it set aside that disposition, remanded the case to the same panel for retrial or for a new hearing;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
2) as the pre-trial investigation judge, have made an order mentioned in §§ 132, 134, 135 or 137 of this Code in the same criminal case, except where the case is dealt with under the plea agreement or the summary procedure;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
3) have previously been involved in the same criminal case in another procedural role;
4) are or have been a person close to the accused, to the victim or to the civil defendant according to subsection 1 of § 71 of this Code.
5) [Repealed – RT I, 23.02.2011, 1 – entry into force 01.09.2011]

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

(3) The fact of having disposed of an appeal against an order of the pre-trial investigation judge or an order of the Prosecutor's Office in the case does not constitute a ground for the judge to recuse themselves.

(4) Persons who, within the meaning of subsection 1 of § 71 of this Code, are or have been in a close relationship, may not serve on the judicial panel dealing with the case.

(5) The self-recusal of a judge is effected by means of a reasoned recusal declaration which is included in the court file.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) Should the judge find that it is not possible for them to remain impartial for a reason not mentioned in subsection 1 of this section, they file a motion for recusal according to the rules prescribed in § 49[1] of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 49[1]. Dealing with a motion for recusal filed by the judge**

(1) The judge or the judicial panel files a motion for recusal mentioned in subsection 6 of § 49 of this Code with the president of the court or with a judge appointed by the president.

(2) Until the motion for recusal is disposed of, the judge or the panel that received that motion may only perform urgent procedural operations.

(3) The president of the court or a judge appointed by the president disposes of the motion for recusal by an order made by written procedure within three working days following receipt of that motion.

(4) A motion for recusal filed by the president of a district court is resolved by the president of the circuit court of appeal or a judge appointed by the latter president. A motion for recusal of the president of the circuit court of appeal is disposed of by the Chief Justice of the Supreme Court or a justice appointed by the Chief Justice. A motion for recusal of a justice of the Supreme Court is disposed of by the judicial panel hearing the case.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 50. Recusal of the judge**

(1) If the judge has not recused themselves on grounds provided by § 49 of this Code, a party to judicial proceedings may file a motion to recuse them.

(2) Motions for recusal are filed during the lead-in to the trial or hearing. If the ground for the judge's recusal comes to light at a later stage and is notified to the court without delay, the motion for recusal may be filed before the accused is invited to make a final statement.

(3) Where a motion for recusal has been filed, the judge may, before disposing of the motion, only perform urgent procedural operations in the case.

(4) Before disposing of the motion for recusal, the court hears the explanation of the judge to be recused and the submissions of the parties.

(5) A motion for recusal is resolved by an order made in the deliberation room. A motion seeking the recusal of one of the judges is resolved by the rest of the judicial panel without the presence of the judge to be recused. In the event of an equal division of votes, the judge is recused. A motion seeking the recusal of several judges or of the entire panel is resolved by that panel by simple majority voting. If the panel finds that the motion must be granted for a reason not mentioned in subsection 1 of § 49 of this Code, the making of the corresponding order is forgone and the motion is referred for disposition following the rules prescribed in § $49^1$ of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) Where a criminal case is heard by the judge sitting alone, any motions to recuse the judge are disposed of by that judge. If the judge finds that the motion for recusal must be granted for a reason not mentioned in subsection 1 of § 49 of this Code, they refer the motion for disposition following 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 judicial disposition may invoke a ground for the judge's recusal if the motion for such recusal was filed with the lower court at the proper time but was denied or if the ground comes to light after the criminal case has been disposed of.

**§ 51. Replacing a judge who has recused themselves or who has been recused**

Where it is not possible to replace, within the court, a judge who has recused themselves or who has been recused, the president of the circuit court of appeal refers the criminal case to be dealt with by another district court within their judicial circuit. Referral of the criminal case to a district court within the judicial circuit of another circuit court of appeal is decided by the Chief Justice of the Supreme Court.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

**§ 52. Grounds for a prosecutor to recuse themselves**

(1) The prosecutor is required to recuse themselves from criminal proceedings on grounds provided by subsections 1 and 6 of § 49 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) Previous participation as prosecutor in criminal proceedings in the case does not constitute a ground for the prosecutor to recuse themselves.

**§ 53. Recusing the prosecutor**

(1) Where the prosecutor has not recused themselves on grounds provided by subsections 1 and 6 of § 49 of this Code, the suspect, accused, victim, civil defendant, third party or defence counsel may file an application or motion to recuse them.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) During pre-trial proceedings, an application to recuse the prosecutor is disposed of by an order of the Office of the Prosecutor General within five days following the filing of the application.

(3) During judicial proceedings, the motion for recusal is disposed of by the court.

**§ 54. Grounds for defence counsel to recuse themselves**

A person may not act as defence counsel if they:
1) have appeared or are appearing in the criminal case in another procedural role;
2) in the same or a related criminal case, have previously defended or represented another person whose interests are incompatible with those of the person defended.

**§ 55. Grounds for recusal of defence counsel**

(1) Where grounds provided by subsection $3^1$ of § 20 of the State-Funded Legal Aid Act are present or where the defence counsel does not recuse themselves on grounds provided by § 54 of this Code, the court, of its own motion or on a motion of a party to judicial proceedings, recuses the defence counsel by an order.
[RT I 2009, 1, 1 – entry into force 01.01.2010]

(2) The court recuses the defence counsel if it comes to light, in the recusal proceeding provided for by §§ 56 and 57 of this Code, that the counsel has abused their procedural capacity by communicating with the person defended – who is under arrest as a suspect or who has been committed in custody – in a manner which may facilitate the commission of another criminal offence or violation of internal rules of the custodial institution.

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

**§ 56. Application or motion for a proceeding to recuse defence counsel**

(1) A proceeding to recuse the defence counsel is conducted:
1) during pre-trial proceedings, by the pre-trial investigation judge;
2) before the district court, by the judge sitting alone or by one of the judges of the judicial panel;
3) before the circuit court of appeal, by one of the judges of the judicial panel and, before the Supreme Court, by one of the justices of the judicial panel.

(2) An application to conduct the defence counsel recusal proceeding does not preclude continuation of pre-trial proceedings.

(3) Where a motion to conduct the defence counsel recusal proceeding is made during judicial proceedings, the trial or hearing to be held in the case is adjourned by up to one month.

(4) On the first working day following the date of receipt of the motion to conduct the defence counsel recusal proceeding, the judge schedules the time of the hearing at which the proceeding is to be conducted and notifies it to the Prosecutor's Office that filed the motion, to the defence counsel whose recusal is sought, to the person defended by that counsel and, if the counsel is a member of the Bar Association, to the Board of the Association.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

**§ 57. Proceeding to recuse the defence counsel**

(1) The proceeding to recuse the defence counsel is conducted within five days following receipt of the corresponding motion.

(2) If the person who filed the motion does not attend the judicial hearing held to conduct the recusal proceeding, the defence counsel is not recused.

(3) If, for a valid reason mentioned in § 170 of this Code, the defence counsel does not appear at the judicial hearing held to conduct the recusal proceeding, that proceeding is adjourned by up to three days.

(4) If, without a valid reason, the defence counsel, having received the summons, fails to appear at the judicial hearing held to conduct the recusal proceeding, or if the reason for their non-appearance is unknown or if they do not appear at an adjourned hearing, that proceeding is conducted in their absence.

(5) In the recusal proceeding, the court hears the person who filed the motion and the defence counsel, both of whom may offer evidence and, with permission of the court, put questions to one another.

(6) The disposition made as a result of the recusal proceeding is issued as a court order.

(7) The defence counsel who has been recused according to the rules provided by this section and by § 55 of this Code has a right to resume their duties in criminal proceedings after the ground of recusal provided by subsection 2 of § 55 has ceased to apply.

**§ 58. Replacement of defence counsel who has recused themselves or of defence counsel who has been recused**

If the defence counsel withdraws from proceedings or is disqualified on the grounds provided by § 55 of this Code, the person defended may choose a new defence counsel within the time limit granted by the court or, in situations provided for by § 43 or § 45 of this Code, defence counsel is assigned to the person.

**§ 59. Recusal of other persons participating in proceedings**

(1) An official of the investigative authority that is conducting proceedings in the criminal case is required recuse themselves on the grounds provided by subsections 1 and 6 of § 49 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, judicial hearing clerk and interpreter or translator are required to recuse themselves, or are recused, on the grounds and following the rules provided by §§ 96, 97, 157 and 162 of this Code.

(4) A representative of the victim, civil defendant, third party or witness is required to recuse themselves on the grounds provided by § 54 of this Code. Recusal of a representative of a victim, civil defendant, third party or witness is subject to the provisions prescribed in this Code for recusal of defence counsel.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) Recusal applications filed during pre-trial proceedings are disposed of by an order of the Prosecutor's Office within three days following their filing.

(6) In judicial proceedings, motions for recusal are disposed of by the court.

# Chapter 3
# EVIDENCE

## Subchapter 1
## General Conditions for Evidence and for Collection of Evidence

**§ 60. Proof by evidence and by judicial notice**

(1) When disposing of the criminal case, the court relies on circumstances which it has declared to have been proven by evidence or of which it has taken judicial notice.

(2) 'Proven by evidence' means that as a result of the evidence heard in the case the court has become convinced that circumstances that constitute the subject matter of evidence are or are not present.

(3) The court may take judicial notice of a circumstance regarding which reliable information is available from sources external to criminal proceedings.

**§ 61. Evaluation of evidence**

(1) No item of evidence has predetermined weight.

(2) The court assesses the evidence as a whole, following its inner conviction.

**§ 62. Subject matter of evidence**

Circumstances that constitute the subject matter of evidence are:
1) the time, place and manner of, as well as other facts surrounding, the commission of the criminal offence;
2) the elements of the criminal offence;
3) the culpability of the person who committed the criminal offence;
4) information to characterise the person who committed the criminal offence, and any other circumstances that have an impact on that person's liability.

**§ 63. Item of evidence**

(1) 'Item of evidence' means a statement or testimony of the suspect, accused, victim, witness or specialist witness, an expert's report, the statement or testimony given by an expert when providing clarifications concerning their report, an item of physical evidence, a report of an investigative or a covert operation, the record or video recording of a trial or hearing or the report or video recording of an investigative or a covert operation, and also any other document, as well as any photograph, footage or other data recording.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(1[1]) The presentation, as evidence in criminal proceedings, of any information collected under the Security Authorities Act is decided by the Prosecutor General, having regard to the restrictions mentioned in subsection 2 of § 126[1] and subsection 2 of § 126[7] of this Code.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

(2) Items of evidence not listed in subsection 1 of this section may also be used to prove the facts at issue in criminal proceedings, except where they have been obtained by a criminal offence or by means of violating a fundamental right.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 64. General conditions for the collection of evidence**

(1) Evidence is collected in a manner which does not offend the honour and dignity of those participating in its collection, does not endanger the life or health of such participants and does not cause unjustified pecuniary harm. It is prohibited to collect evidence by torturing a person or by subjecting them to violence in any other way, or by using means which affects their faculty of memory, or by treating them in a manner that degrades human dignity.

(2) If, in the course of a search or physical examination of a person, or of the taking of material for comparison, it is necessary to reveal the body of the person, the official of the investigative authority, the prosecutor and any other participants in the corresponding procedural operation, except health care professionals and forensic pathologists, must be of the same sex as the person.

(3) If technical equipment is to be used to take the evidence, this is notified in advance to the participants in the corresponding procedural operation and the purpose of using the equipment is explained to them.

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

(5) Where this is needed, participants of a procedural operation are cautioned that, under § 214 of this Code, disclosure of information relating to pre-trial proceedings is not allowed.

(6) The taking of evidence by covert operations 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 a ship during voyage and in a foreign state**

(1) Evidence taken in a foreign state according to the legislation of such a state may be used in criminal proceedings in Estonia unless the procedural operations performed in order to obtain the evidence are contrary to the principles of Estonian criminal procedure, having regard to the special rule provided by subsection 2 of this section.

(2) If the subject matter of criminal proceedings is an act committed outside the Republic of Estonia by a person who serves in the Defence Forces, evidence taken in a foreign state may be used in such proceedings regardless of whether the procedural operations performed to obtain the evidence were or were not conducted on the basis of a request for assistance, unless such operations are contrary to the principles of Estonian criminal procedure.

(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 according to § 73 of the Merchant Shipping Code are deemed evidence in the corresponding criminal proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

# Subchapter 2
# Interviewing or Examination of Witnesses

**§ 66. Witness**

(1) A witness is a natural person who may have knowledge of the circumstances that constitute the subject matter of evidence in the case.

(2) The person suspected or accused in the case, as well as an official of the investigative authority, the prosecutor or judge who is conducting proceedings in the criminal case may not appear in the case as a witness. An official of the investigative authority, a prosecutor or a judge who has conducted proceedings in the case may appear as a witness in judicial proceedings for the purposes of verifying the reliability of an item of evidence.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(2[1]) The statement or testimony of a witness concerning any circumstances which constitute the subject matter of evidence and which the witness has become aware of through another person does not constitute evidence, unless:

1) the direct source of the evidence cannot be interviewed or examined for the reason mentioned in subsection 1 of § 291 of this Code;
2) the substance of the statement or testimony of the witness is what that witness heard from the other person about circumstances that they had perceived directly prior to speaking, provided they were, when speaking, still under the influence of what they had perceived, and provided there is no reason to believe that they were distorting the truth;
3) the substance of the statement or testimony of the witness is what that witness heard from the other person, and what the witness heard contains an admission of having committed a criminal offence or is otherwise clearly contrary to the interests of the speaker;
4) the substance of the statement or testimony of the witness deals with the circumstances of a criminal offence committed jointly.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) A witness is required to give a statement or to testify unless there are lawful grounds according to §§ 71–73 of this Code for refusing to do so. When giving a statement or testifying, the witness is required to tell the truth.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 67. Ensuring the safety of a witness**

(1) Having regard to the gravity of the criminal offence or to any exceptional circumstances, the pre-trial investigation judge may, on an application of the Prosecutor's Office, by order, anonymise a witness in order to ensure their safety.

(2) To enter an order by which a witness is anonymised, the pre-trial investigation judge questions the witness in order to ascertain their reliability and their need for protection, and hears the relevant submissions of the prosecutor. Where this is needed, the pre-trial investigation judge acquaints themselves with the criminal file.

(3) The order by which a witness is anonymised assigns the witness a name to be used in procedural operations according to subsection 8 of § 146 of this Code.

(4) Information concerning the name, personal identification number (or, if the person does not possess such a number, their date of birth), citizenship, education, place of residence and position of employment or educational institution of a witness who has been anonymised is enclosed in an envelope bearing the number of the criminal case and the signature of the person conducting the proceedings. The envelope is sealed and kept separately from the criminal file. Only the proceedings authority may acquaint themselves with the information contained in the envelope; the authority is to re-seal and re-sign the envelope after having acquainted itself with the information.

(5) In judicial proceedings, a witness bearing an assigned name is examined by telephone according to the rules provided by clause 2 of subsection 2 of § 69 of this Code using voice changing equipment, if necessary. Questions may also be put to the witness in writing.

(6) To ensure the safety of the witness, regardless of whether or not they have been anonymised, the relevant provisions of the Witness Protection Act may be applied in their respect.
[RT I 2005, 39, 307 – entry into force 21.07.2005]

**§ 67[1]. Representative of a witness**

(1) In pre-trial proceedings, in order to protect their rights, a witness may apply for an attorney or another person who meets the educational requirements established for contractual representatives to be present when they are interviewed.

(2) The proceedings authority may not allow a person who already appears in the case as a party to proceedings, a witness or a specialist witness, or who may turn out to be a witness or a specialist witness, or in whose respect there is a reasonable suspicion that their interests are in conflict with the interests of the witness, to appear as the witness's representative. The decision disallowing a person to appear as a representative is issued as an order of the proceedings authority, which the witness may contest before the pre-trial investigation judge within two working days following its receipt.

(3) If, within two working days following the time of the operation mentioned in the summons of the proceedings authority, the witness proves unable to appear for the interview together with a representative who complies with the requirements of subsections 1 and 2 of this section, the interview is conducted without a representative.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(4) The representative of a witness has a right to intervene in the interview if a violation of the procedural requirements leads to a violation of the rights of the witness, and to file complaints on the grounds and following

the rules provided by Subchapter 5 of Chapter 8 of this Code. The representative does not have a right to give statements in the name of the witness.

(5) A representative is required to maintain as confidential any information which becomes known to them when providing legal assistance in the course of criminal proceedings. The representative is allowed to disclose such information to the principal. The representative may disclose information that concerns the principal and that emanates from pre-trial proceedings in the case 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. Interviewing or examining a witness**

(1) The witness is provided an explanation of their rights and obligations, and an explanation that they have a right to write their statement in their own hand.

(2) A witness of at least fourteen years of age is cautioned against refusing to give a statement or testifying when there is no statutory basis for doing so and against making a knowingly false statement or providing knowingly false testimony, concerning which a signed acknowledgement is taken in the interview report. Where this is needed, it is explained to the witness that deliberately withholding any circumstances known to them will be regarded as refusal to give a statement or to testify.

(3) When giving a statement or testifying, the witness may use notes and other documents concerning numerical data, names and other information which is difficult to retain.

(4) The witness may be interviewed or examined only concerning the circumstances that constitute the subject matter of evidence. Leading questions may be asked only in situations mentioned in clauses 2–5 of subsection 2 of § $288^{1}$ 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 morals and habits of the suspect, accused or victim may be put to a witness only if the act which is the subject matter of criminal proceedings must be assessed as an integral part of the previous conduct of the suspect, accused or victim.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 69. Distance interview or distance examination**

(1) The proceedings authority may arrange a distance interview or examination of a person if interviewing or examining the person first-hand is complicated or unreasonably burdensome or if the distance interview or examination is necessary for protecting the person's interests.
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

(2) For the purposes of this Code, distance interview or examination means an interview or examination:
1) by means of a technical solution as a result of which the statement or testimony of the person interviewed or examined is seen and heard directly via live streaming, and questions can be put to the person;
2) by telephone, as a result of which the statement or testimony of the person interviewed or examined is heard directly by live streaming, and questions can be put to the person.
[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) A note is recorded in the report of the distance interview or examination regarding the cautioning of the witness against refusing to give a statement or testimony without a statutory basis and against making a knowingly false statement or giving knowingly false testimony.

(5) When interviewing or examining a person who is in a foreign state, the provisions of § $489^{41}$ of this Code are followed if the interview or examination takes place under a cooperative arrangement between the Member States of the European Union, whereas the provisions of § 468 of this Code are followed in other situations.
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

(6) The Minister in charge of the policy sector may enact more specific requirements for arranging distance interviews or distance examination.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ $69^{1}$. Deposition of testimony**

(1) The Prosecutor's Office, suspect or defence counsel may apply for a person who is a witness in criminal proceedings to be examined before the pre-trial investigation judge, provided the subject matter of such proceedings is an intentional criminal offence for which at least up to three years' imprisonment is prescribed as the sentence.

(2) The court grants the application if circumstances are present which warrant the conclusion that a subsequent examination of the witness at trial may turn out to be impossible or the witness may be induced to give false testimony. Where it denies the application, the court issues its denial as a substantiated order which is contestable by way of interim appeal.

(3) The court disposes of an application for deposition of testimony within five days following its receipt and, where it grants the application, determines, at the earliest opportunity, the time of the examination, which it notifies without delay to the Prosecutor's Office and to the defence counsel.

(4) The prosecutor, defence counsel, suspect and witness are summoned to the pre-trial investigation judge for the examination. On an application of the witness or of the Prosecutor's Office, the summoning of the suspect to the examination is forgone if the presence of the suspect at the examination poses a threat to the safety of the witness. The summoning of the persons concerned to the deposition of testimony is arranged by the party to proceedings who applied for their examination. To the extent provided by subsections 4 and 5 of § $163^1$ of this Code, the defence counsel may apply for assistance to the pre-trial investigation judge in order to summon such persons.

(5) Non-appearance of the suspect who has received a summons does not preclude the examination. The examination is not held if the prosecutor or the defence counsel who has received a summons does not appear for a valid reason and has notified this to the court in advance. If the party to proceedings who applied for examination does not appear for the examination or does not bring before the judge the person whom they applied to have examined, the examination before the pre-trial investigation judge is forgone.

(6) When conducting, and making a record of, the examination, the provisions of §§ 155−158 and §§ 287−291 of this Code are followed.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ $69^2$. Written statement**

(1) Where, during pre-trial procedure, the proceedings authority finds it inexpedient to hold a direct or distance interview, it may require a witness to respond in writing to the questions that have been put to the witness, and set a time limit for providing the response.

(2) A person who is being required to respond to questions in writing is informed of their rights, obligations and potential liability, and it is explained to them that, regardless of having provided a written statement, they may be summoned for an interview.

(3) The person who provides a written statement certifies, in the eFile system, by their signature or by any other means reproducible in writing, that they have been apprised of their rights, obligations and potential liability and that the responses they have provided are truthful.
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

**§ 70. Special rules for interviewing or examining an underage witness**

(1) The proceedings authority may require a child protection official, social worker, teacher or psychologist to be present when it is interviewing or examining an underage witness.
[RT I, 11.07.2013, 1 – entry into force 01.09.2013]

(2) If the proceedings authority has not received appropriate training, enlisting the assistance of a child protection official, social worker, teacher or psychologist for interviewing or examining a minor is mandatory if:
[RT I, 11.07.2013, 1 – entry into force 01.09.2013]
1) the witness is younger than ten years of age and interviews or examination may have a harmful effect on the minor's mental well-being;
2) the witness is younger than fourteen years of age and the interview or examination relates to domestic violence or to sexual abuse;
3) the witness has a speech or sensory impairment or an intellectual disability or suffers from mental disorders.

(3) Where this is needed, the interview with, or examination of, the minor is video recorded. In a situation mentioned in subsection 2 of this section, the interview with the minor is video recorded if – for the reason that the minor's first-hand examination in court is not possible due to the minor's age or the minor's mental state – the intention is to use that interview as evidence in judicial proceedings.

(4) During pre-trial proceedings, the suspect has a right to acquaint themselves with the video recordings mentioned in subsection 3 of this section. During five days following their having acquainting themselves with the recordings, the suspect or the defence counsel has a right to put questions to the witness. The Prosecutor's Office considers the corresponding application within five days following its filing. Denial of the application is issued as an order, a copy of which is transmitted to the person who filed the application. The fact that an

application has been denied does not prevent its being filed anew in accordance with the rules provided by § 225 of this Code or during judicial proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 71. Refusing – for personal reasons – to give a statement or testify**

(1) A right to refuse to give a statement as a witness or to testify is vested in:
1) any descendants and any lineally ascending relatives of the suspect or accused;
2) a sister, half-sister, brother or half-brother of the suspect or accused, or a person who is or has been married to the sister, half-sister, brother or half-brother;
3) a step or foster parent or a step or foster child of the suspect or accused;
4) an adoptive parent or 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 of such a person, also after the marriage or permanent cohabitation has ended.

(2) A witness may also refuse to give a statement or to testify if:

(1) the statement or testimony may incriminate themselves or a person listed in subsection 1 of this section in the commission of a criminal offence or of a misdemeanour;
2) they have been convicted or acquitted of the same criminal offence as a joint principal offender or as an accomplice.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 72. Refusing to give a statement or testify due to professional or other activities**

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

(1) A right to refuse to give a statement or testify as a witness concerning circumstances which have become known to the witness in the course of their professional or other activities is vested in:
[RT I, 21.12.2010, 1 – entry into force 31.12.2010]
1) a minister of religion of a religious organisation registered in Estonia;
2) the defence counsel and the notary, unless otherwise provided by law;
3) a health care professional and a pharmacist regarding circumstances concerning the descent, artificial insemination, family or health of a person;
$3^1$) a person processing information for journalistic purposes, regarding information which makes it possible to identify their informant, except in a situation in which the taking of the evidence by other procedural operations is precluded or exceedingly complicated and the subject matter of criminal proceedings is a criminal offence for which an imprisonment of at least up to eight years' is prescribed, there is a predominant public interest for the statement or testimony to be given and the person is required to give the statement or testimony on an application or motion of the Prosecutor's Office by order of the pre-trial investigation judge or by 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 right to refuse to give a statement or testify also extends to members of the professional support staff of the persons mentioned in clauses 1−3 of subsection 1 of this section.

($2^1$) In a situation provided for by clause $3^1$of subsection 1 this section, the right to refuse to give a statement or testify also extends to a person who, in the course of their professional activities, learns of circumstances which may identify the informant of a person processing information for journalistic purposes.
[RT I, 21.12.2010, 1 – entry into force 31.12.2010]

(3) Persons mentioned in subsection 1 of this section and their professional support staff as well as persons mentioned in subsection $2^1$do not have a right to refuse to give a statement or testify if the application or motion for their statement or testimony is made by the suspect or accused.
[RT I, 21.12.2010, 1 – entry into force 31.12.2010]

(4) Where, based on a procedural operation, the court is convinced that a refusal to give a statement or testify by a person mentioned in subsection 1 or subsection 2 of this section is not related to their professional activities, it may require the person to testify.

**§ 73. Refusing to give a statement or testify concerning a State secret or classified information of a foreign state**

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

(1) A witness has a right to refuse to give a statement or to testify 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) Where a witness refuses to give a statement or to testify, invoking a state secret or classified information of a foreign state, the investigative authority, the Prosecutor's Office or the court requests the authority in

possession of the State secret or classified information of a foreign state to certify that the circumstances in question have been declared a State secret or classified information of a foreign state.
[RT I 2007, 16, 77 – entry into force 01.01.2008]

(3) If the authority in possession of the state secret or classified information of a foreign state does not certify that the circumstances in question have been declared a state secret or classified information of a foreign state, or does not respond to the request mentioned in subsection 2 of this section within twenty days, the witness is obligated to give the statement or to testify.

**§ 74. Witness interview report**

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

(1) The following are recorded in the report of the interview:
1) the witness's name, personal identification number (or, if they do not possess such a number, their date of birth), as well as their citizenship, education, residence and employment or the name of their educational institution;
2) the nature of the relationship between the witness and the suspect or victim;
3) the statement.

(2) The report filed when an additional or a repeat interview has been conducted does not restate the personal data of the person interviewed or the particulars concerning the relationship between the person and the suspect or accused, referring instead to the report of the first interview.

(3) Where the witness makes the corresponding application, their residence or employment, or the name of their educational institution, is not stated in the interview report. The particulars concerned are appended to the interview report in a sealed envelope.

(4) When being interviewed, a witness may, after having spoken freely, write their statement in the interview report in their own hand, regarding which a corresponding note is recorded in the report.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

# Subchapter 3
# Interview with the Suspect

**§ 75. Interview with the suspect**

(1) When leading in an interview with the suspect, the suspect's name, residence or seat with the corresponding address, personal identification number (or, if they do not possess such a number, their date of birth), citizenship, education, native language and employment or educational institution are ascertained.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(2) When beginning the interview, it is explained to the suspect that they have a right to refuse to give a statement and that any statement given may be used against them.

(3) The suspect is asked whether they committed the criminal offence of which they are suspected and they are invited to give a statement by speaking freely about the facts surrounding the criminal offence on which the suspicion is based.

($3^1$) In the course of the interview, the suspect and their defence counsel have a right to receive a copy, to the extent provided by clauses 1−3 of subsection 1 of § 76 of this Code, of the interview report.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) Subsection $2^1$ of § 66, subsections 3–6 of § 68 and subsections 1 and 2 of § 69 of this Code are followed when interviewing a suspect. Where this is needed, an interview with an underage suspect is recorded.
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

**§ 76. Report of an interview with the suspect**

(1) The following are recorded in the report of the interview:
1) the suspect's name, residence or seat with the corresponding address, personal identification number (or, if they do not possess such a number, their date of birth), citizenship, education, native language and employment or the name of their educational institution;
2) the suspect's marital status;
3) the facts of the criminal offence of which the person is suspected and the legal designation of the criminal offence according to the relevant section, subsection and clause of the Penal Code;

4) the suspect's statement.

(2) A report of an interview with a suspect is filed following subsections 2 and 4 of § 74 of this Code.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

# Subchapter 4
# Contrastive Interview or Examination, Linking of Statement or Testimony to the Relevant Setting, Identification Line-up

### § 77. Contrastive interview or examination

(1) Persons may be interviewed or examined contrastively if it is not possible otherwise to resolve a contradiction contained in their statements or testimony.

(2) In a contrastive interview, the relationship between the persons whose statements or testimony is being contrasted is ascertained and questions concerning the circumstance that shows a contradiction are put to those persons in consecutive order.

(3) In a contrastive interview or examination, previous statements or testimony of the persons interviewed or examined may be presented and other evidence may be produced or offered.

(4) With permission of the official of the investigative authority, the persons whose statements are being contrasted may, through the official, put questions to each other concerning any contradictions shown by their statements. Were this is needed, the official of the investigative authority changes the wording of the question.

(5) When taking statements in the course of a contrastive interview, subsection $2^1$of § 66 and subsections 2−6 of § 68 of this Code are followed.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) Participation in a contrastive interview or examination of a person whose statement or testimony is to be contrasted with that of another person may be arranged by the proceedings authority by means of a technical solution which complies with the requirements mentioned in clause 1 of subsection 2 of § 69 of this Code. A contrastive interview or examination arranged by means of a technical solution is video recorded.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

### § 78. Report of a contrastive interview

(1) The report of a contrastive interview records the course and results of the corresponding investigative operation in the form of questions and answers following the order in which the questions were put and answered.

(2) When the proceedings authority demands this, a person whose statement or testimony is being contrasted to that of another person signs a certificate of truth in respect of each answer recorded in the report.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) If the answers of the persons whose statements or testimony are being contrasted match, they may be recorded in the report as a single answer.

(4) Where a previous statement of the person interviewed or examined is presented or where other evidence is produced or offered, this must be reflected by the wording of the corresponding question recorded in the report.

### § 79. Linking a statement or testimony to the relevant setting

(1) When linking a statement or testimony to the relevant setting, the suspect, accused, victim or witness who has been interviewed or examined is invited to explain and specify the circumstances relating to the criminal event at the relevant scene and to link their statement or testimony to the setting at the scene.

(2) Where, during pre-trial proceedings, it is necessary to link the statements of several persons to the relevant setting, the linking is performed separately with each person.

(3) When taking a statement or testimony in the course of linking a previously given statement or testimony to the relevant setting, subsection $2^1$of § 66 and subsections 2−6 of § 68 of this Code are followed.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

### § 80. Report of linking a statement or testimony to the relevant setting

The following are recorded in the report of linking a statement or testimony to the relevant setting:
1) an invitation to the suspect, accused, victim or witness to explain and specify the circumstances concerning the subject matter of evidence at the relevant scene;

2) any statement or testimony given when linking a previously given statement or testimony to the relevant setting;
3) the nature and substance of the operations performed by the suspect, accused, victim or witness and the name of the place or the object to which the previously given statement or testimony, or the operations performed, were linked;
4) whether and to what extent the setting at the scene of events was recreated in the course of the investigative operation;
5) the location, at the scene of events, of the object to which the previously given statement or testimony was linked and information reflecting inspection of the object;
6) common names of objects that have been seized for use as items of physical evidence.

**§ 81. Identification line-up**

(1) Where this is needed, the proceedings authority may present a person or thing, or any other object for identification to the suspect, accused, victim or witness who has been interviewed or examined.

(2) A person, thing or any other object is presented for identification in a line-up with at least two other similar objects.

(3) A set of objects is not assembled if the object to be presented for identification is:
1) a corpse;
2) an area, building, room or other object which does not allow for the line-up of several objects at the same time;
3) an object whose features render it substantially different from other objects and do not allow a line-up of objects similar to one another to be assembled.

(4) Where this is needed, a person, thing or other object is presented for identification by means of a photograph, footage or an audio or video recording.

(5) An identification line-up may be repeated if the first line-up took place by means of a photograph, footage 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 its former appearance.

(6) If the suspect, accused, victim or witness identifies the object which is presented to them for identification or declares it to be similar to an object related to the event that is being investigated, they are invited to name the characteristic features based on which they reached such a conclusion and to explain the relationship between the object and the event. If they reject the proposition of identity or of similarity, they are invited to explain in what respect the object or objects presented to them differ from the object related to the event.

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

(8) When taking a statement in the course of presentation for identification, subsection $2^1$ of § 66 and subsections 2−6 of § 68 of this Code are followed.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 82. Report of an identification line-up**

(1) The report of an identification line-up states:
1) the common names of the object or objects presented for identification;
2) material features that make the objects similar to one another, and where the object presented for identification was located in the line-up;
3) the place in the line-up that was chosen by the person presented for identification;
4) the invitation that was made to the identifying party to look at the object or objects presented to them and to tell whether they have identified the object related to the event under investigation and whether they accept that the object is similar to, or affirm that it is different from, the other objects;
5) characteristic features by which an object was identified by the identifying party.

(2) If the person who has been identified contests the result of the investigative operation, a corresponding note is made in the report.

# Subchapter 5
# Inspection and Enquiries to Electronic Communications Undertakings

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

**§ 83. Aim of inspection and objects of inspection**

(1) The aim of an inspection is to collect information required for resolving the criminal case, to detect the indicia of a criminal offence and to seize any objects that are to be used as physical evidence.

(2) The objects of inspection are:
1) the scene of events;
2) the corpse;
3) a document, another object or an item of physical evidence;
4) where a physical examination is to be conducted, the person or the postal or telegraphic item to be examined.

(3) Where explanations from the suspect, accused, witness, specialist witness or victim are conducive to ensuring the comprehensiveness, exhaustiveness and objectivity of the inspection, the person is summoned to attend the inspection.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 84. Inspection of the scene of events**

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

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

**§ 85. Inspection of the corpse**

(1) An inspection of the corpse is conducted at the scene of events or at any other location where the corpse is situated.

(2) When inspecting a corpse, the following is ascertained:
1) the identity of the corpse or, where the corpse is unknown, its description is provided;
2) the location, position and pose of the corpse;
3) the indicia of a criminal offence and any objects located near the corpse;
4) the indicia of a criminal offence on the uncovered parts of the corpse, on its clothes, footwear, and on its covered parts;
5) the signs of death;
6) other characteristic features needed for resolving the criminal case.

(3) Where possible, an inspection of the corpse is conducted in the presence of a forensic pathologist or a specialist witness whose task is to:
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
1) unless death is evident, ascertain its arrival;
2) assist the official of the investigative authority in the conduct of the inspection in order to collect and record the source information necessary for an expert assessment.

**§ 86. Inspection of document, another object or an item of physical evidence**

(1) When inspecting a document or another object, the indicia of a criminal offence and any other characteristic features that are needed for resolving the criminal case and that constitute grounds for using the object in question as an item of physical evidence are ascertained.

(2) Where further examination of a document, thing or other object that appears as an item of physical evidence is needed, an inspection of the item of physical evidence is performed.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 87. Report of an inspection**

(1) The report of an inspection records:
1) a description of the setting at the scene of events;
2) the identity of the corpse or, where the corpse is unknown, the person’s description;
3) the name and characteristic features of any document or other object discovered in the course of the inspection;
4) a description of the indicia of a criminal offence;
5) other information reflecting the inspection;
6) the name and number of any object that was taken into custody in the course of the investigative operation and that is to be used as an item of physical evidence.

(2) Any explanations provided by a person who participated in the investigative operation or any particulars of any covert operations performed in the course of the inspection are not recorded in the report of inspection of a scene of events.

**§ 88. Physical examination of a person**

(1) When performing physical examination of a person, the following is ascertained:
1) whether there are any indicia of a criminal offence on the body, clothes or footwear of the person, which constitute grounds for declaring them a suspect;
2) the nature of any harm to the person's health and the location and other characteristics of any bodily injuries;
3) any bodily peculiarities of the suspect, accused or victim or any distinctive marks on their body, which need to be recorded with a view to resolving the criminal case;
4) whether, with the person or hidden in their body, there are items to be used as physical evidence;
5) any other facts related to the subject matter of evidence in the criminal case.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(2) If the aim of the physical examination of a person is to detect the indicia of a criminal offence on their body, a forensic pathologist, health care professional or other specialist witness takes part in the examination.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) When conducting a physical examination of a person, it is allowed to take, from the person, samples for analysis or material for expert assessment. The provisions of § 100 of this Code are followed when taking such samples and material.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(4) The report of a physical examination of a person records:
1) a description of the indicia of a criminal offence discovered on the body, clothes or footwear of the person;
2) a description of the peculiarities or distinctive marks on the person's body;
3) the names of any objects were discovered in the course of the investigative operation and which are to be used as physical evidence.

(5) It is not allowed to draw any conclusions in the report of a physical examination of a person concerning the nature of any harm to their health, the aging of such harm or the manner in or means by which the harm was caused.

**§ 89. Attachment and examination of a postal or telegraphic item**

(1) In order to conduct an examination of a postal or telegraphic item, the item is attached on an application of the Prosecutor's Office by order of the pre-trial investigation judge or of the court.

(2) An order by which a postal or telegraphic item is attached states:
1) the name of the sender or addressee of the item to be attached and their residence or seat, with the corresponding address;
2) the reasons for attachment;
3) the rules for notifying the investigative authority of the item that has been attached.

(3) A copy of the order by which a postal or telegraphic item is attached is sent for execution to the Head of the provider of the postal or telecommunications service.

(4) When conducting an examination of a postal or telegraphic item, information to reflect the inspection is collected concerning the circumstances that constitute the subject matter of evidence in the case and any items to be used as physical evidence in criminal proceedings are seized from the provider of the postal or telecommunications service. The provider transmits to the addressee any examined object that is not related to the criminal case.

(5) Attachment of a postal or telegraphic item is released by order of the Prosecutor's Office. A copy of the order is transmitted to any person who is not a party to proceedings but in respect of whom the attachment and examination of the item violated the confidentiality of messages.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 90. Report of examination of a postal or telegraphic item**

A report of examination of a postal or telegraphic item records:
1) a reference to the order by which the item was attached;
2) a reference to the object examined;
3) information reflecting inspection of the item;
4) a reference to the postal or telegraphic item that was seized and is to be used as physical evidence.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 90[1]. Requiring data from an electronic communications undertaking**

(1) A proceedings authority may make an enquiry to an electronic communications undertaking concerning the data required to identify an end user linked to certain identification tokens used in a public electronic communications network, with the exception of data relating to the fact of communication of a message.

(2) On an application of the Prosecutor's Office and with the authorisation of the pre-trial investigation judge in pre-trial proceedings – or of the court in judicial proceedings – an investigative authority may make an enquiry to an electronic communications undertaking concerning data that are listed in subsections 2 and 3 of § 111[1] of the Electronic Communications Act and that are not mentioned in subsection 1 of this section.

(3) An enquiry provided for by subsection 2 of this section may be made if the criminal offence is one listed in subsection 2 of § 126[2] of this Code and if it is ineluctably necessary for achieving the purpose of criminal proceedings. In relation to a criminal offence not mentioned in the list, such an enquiry is permitted if it is ineluctably necessary for achieving the purpose of criminal proceedings, justified by the gravity and nature of the offence and does not unjustifiably interfere with personal rights.

(4) An authorisation for an enquiry concerning communication data states:
1) the data that are allowed to be collected by the enquiry;
2) the reason for collecting the data;
3) the period of time concerning which collection of the data is allowed.

(5) An order of the pre-trial investigation judge – or a court order – that disposes of the application of the Prosecutor's Office may be made as a note on the application.

(6) In a situation of urgency where it is not possible to obtain, at the proper time, an authorisation of the pre-trial investigation judge or of the court, an enquiry mentioned in subsection 2 of this section may be made under an authorisation of the Prosecutor's Office which has been given in a form that is reproducible in writing and contains at least the particulars provided for by clauses 1 and 3 of subsection 4 of this section. In such a case, a reasoned application for allowing the enquiry must be filed with the court within the first business day following its making. The pre-trial investigation judge decides on allowing the enquiry by an order that may be made as a note on the application of the Prosecutor's Office.
[RT I, 22.12.2021, 44 – entry into force 01.01.2022]

# Subchapter 6
# Search and Investigative Experiment

**§ 91. Search**

(1) The aim of a search is to find, in a building, a room, a vehicle or an enclosed area, an object to be confiscated or used as an item of physical evidence, or a document, thing or person needed for resolving the criminal case, or property to be attached in criminal proceedings, or a corpse, or to apprehend a person who has been declared a fugitive from justice. A search may be conducted provided there is a reasonable suspicion that what is searched for is located at the place to be searched.

(2) Unless otherwise provided by this Code, a search may be conducted on an application of the Prosecutor's Office under a warrant from the pre-trial investigation judge or from the court. The order by which the pre-trial investigation judge or the court disposes of such an application may take the form of a note made on the application.

(3) A search may be conducted based on a warrant from the Prosecutor's Office, except for a search at a notary's office or at the office of a law firm or at the premises of a person processing information for journalistic purposes, provided there is reason to believe that the suspect is using the premises or vehicle to be searched, or used those premises or that vehicle, at the time of the criminal event or during pre-trial proceedings, and the person is suspected of having committed a criminal offence mentioned in subsection 2 of § 126[2] of this Code.

(4) A search warrant states:
1) as the aim of the search, what the search is for (hereinafter, 'the object searched for');
2) the reasons for the search;
3) the place at which the search is conducted.

(5) In a situation of urgency, if it is not possible to issue a search warrant at a proper time, a search may be conducted, on conditions provided by subsection 3 of this section, based on an authorisation of the Prosecutor's Office provided in a form reproducible in writing.

(6) When a search is conducted on the grounds provided by subsections 3 and 5 of this section, this must be notified, through the Prosecutor's Office, to the pre-trial investigation judge during the first working day following commencement of the search. The judge decides, by an order which may be made as a note on the warrant from the Prosecutor's Office, whether or not to declare the search permissible.

(7) During the lead-in to a search, the search warrant is presented to the person at whose premises the search is performed, or to a member of their family who is a legal adult, or to a representative of a legal person or of the institution of the State or of a local authority at whose premises the search is performed. Signed acknowledgement of such presentation is obtained on the warrant from the person, family member or representative. In a situation mentioned in subsection 5 of this section, the circumstances mentioned in subsection 4 of this section, and the reasons for conducting the search as a matter of urgency, are explained to the person, family member or representative. Signed acknowledgement of such explanation is obtained on the search report from the person, family member or representative. Where the relevant person or representative is not present, participation of a representative of the local authority must be arranged.

(8) When a search is conducted at the office of a notary or of a law firm, the notary or the attorney at whose premises the search is performed must be in attendance. If the notary or attorney cannot attend the search, it must be attended by the person who stands in for the notary or by another attorney who provides legal services through the same firm or, where this is impossible, by another notary or another attorney.

(9) During the lead-in to a search, an invitation is made to hand over the object searched for or to show the place where a corpse has been hidden or where a person who has been declared a fugitive is hiding. If the invitation is not acceded to or if there is reason to believe that it has only been followed in part, search operations are conducted.

(10) In the course of a search, any objects that are subject to confiscation or that clearly represent items of evidence in criminal proceedings may be seized, provided these were discovered without any search operations, in a clearly visible place, or in the course of reasonable search operations undertaken to find the objects searched for.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

### § 91[1]. Entry against the will of the possessor

Where the performance of a procedural operation requires entry, against the will of the possessor, into a building, a room, a vehicle or an enclosed area, the rules provided by § 91 of this Code are followed, except where this is necessary for:
1) inspection of a corpse or a scene of events directly after the corpse was found or the criminal offence was committed, or
2) for arresting a person as a suspect directly after commission of a criminal offence.
[RT I, 12.07.2014, 1 – entry into force 13.07.2014]

### § 92. Search report

(1) A search report records:
1) the invitation to hand over the object searched for or to show the location of a corpse or of a person who has been declared a fugitive from justice;
2) the names of any objects that were handed over voluntarily;
3) the conditions, course and results of any search operations;
4) the names of any objects found and the characteristic features of any objects that are of relevance for resolving the criminal case;
5) particulars regarding the identification of a person who has been declared a fugitive from justice and who was apprehended.
[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

(1[1]) In a situation mentioned in subsection 5 of § 9 of this Code, the circumstances mentioned in subsection 4 of § 91 and the reasons why the search was conducted as a matter of urgency are stated in the introductory part of the search report.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(2) Where a physical examination of a person is performed in the course of a search, the particulars listed in subsection 4 of § 88 of this Code may be recorded in the search report. In such a situation, it is not necessary to file a report of physical examination of the person.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

### § 93. Investigative experiment

(1) The aim of an investigative experiment is to ascertain, by practical testing, whether the circumstances or operations of an investigated event were present at the time of the criminal event or whether it was possible to perceive their existence.

(2) The suspect, accused, victim or witness participates in an investigative experiment if:
1) their assistance is required in order to recreate the setting at the scene of events;

2) the results of the investigative experiment allow their statement or testimony to be verified;
3) the results of the tests depend on the qualities, abilities or skills of the participant.

(3) It is allowed to use an item of physical evidence in an investigative experiment if:
1) substitution of the item may affect the results of the investigative operation, and destruction of the item is precluded;
2) it is not necessary to present the item as part of an identification line-up to a person participating in the experiment.

(4) When explaining the results of an investigative experiment, conclusions based on specialised knowledge are not allowed.

**§ 94. Report of an investigative experiment**

The report of an investigative experiment records:
1) the question for whose determination it was deemed necessary to conduct practical tests;
2) whether the setting at the scene of events was recreated for conducting the tests;
3) whether the suspect, accused, witness or victim has declared the setting of the investigative experiment to correspond to the setting of the event under investigation;
4) a description of the tests: their number, sequential order, conditions, the changing of the number, and their substance;
5) the results of the tests.

# Subchapter 7
# Ascertainment of Circumstances that Require Specialised Knowledge

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

**§ 95. Expert**

(1) 'Expert' means a person who applies non-legal specialised knowledge when conducting an expert assessment in situations and following the rules provided by this Code.

(2) When commissioning an expert assessment, the proceedings authority gives preference to a public forensic institution. If the required type of expert assessment is not on the list of assessments performed by the relevant public forensic institution, the proceedings authority, when nominating the expert, gives preference to an expert certified by a public authority, yet other persons possessing the relevant knowledge may also be nominated.
[RT I, 04.07.2012, 1 – entry into force 01.08.2012]

(3) If an expert assessment is arranged outside a forensic institution, the proceedings authority ascertains whether the person to be nominated as the expert is impartial with regard to the criminal case and agrees to conduct the assessment. The person is explained the rights and obligations of experts as provided by § 98 of this Code. If a person who has not been sworn in is assigned as the expert, they are cautioned with regard to a criminal sentence for rendering a knowingly false expert opinion. With the agreement of the expert, the proceedings authority sets a time limit for the expert assessment.

(4) The proceedings authority may request that an expert assessment be carried out at a forensic institution of a foreign state and use the expert opinion rendered in the foreign state as evidence in the criminal case.

**§ 96. Grounds for an expert to recuse themselves**

(1) An expert is required to recuse themselves from criminal proceedings:
1) on the grounds provided by subsections 1 and 6 of § 49 of this Code;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
2) if they work in a position subordinate to, or are otherwise dependent on, a party to proceedings or an official of the investigative authority who is conducting proceedings in the criminal case.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(2) A committee of experts may not include any persons who have, between themselves, a close relationship listed in subsection 1 of § 71 of this Code.

(3) An expert's earlier participation in criminal proceedings in the case in the capacity of an expert or of a specialist witness does not constitute a ground for recusal.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) An expert's recusal is formalised based on a corresponding recusal application that states its reasons and that is included in the criminal file.

**§ 97. Recusing the expert**

(1) Where the expert has not recused themselves from proceedings on the grounds provided by § 96 of this Code, the suspect, accused, victim, civil defendant or defence counsel may file an application or motion to recuse the expert.

(2) An application or motion to recuse the expert is disposed of following the rules provided by subsections 5 and 6 of § 59 of this Code.

**§ 98. Rights and obligations of the expert**

(1) When conducting an expert assessment, the expert has a right:
1) to make an application or motion that the material for expert assessment be supplemented by additional items;
2) in order to ensure that the material for expert assessment is exhaustive, to take part in procedural operations at the invitation of the investigative authority or the Prosecutor's Office and, at the invitation of the court, to take part in the examination of evidence;
3) to acquaint themselves with materials of the criminal case that are required for the expert assessment;
4) to refuse to carry out the expert assessment if the material for such assessment that has been presented to them is not sufficient or if the assessment tasks stated in the order on expert assessment fall outside their specialised knowledge or if providing an answer to the questions posed does not require expert inquiry or the drawing of conclusions based on specialised knowledge;
5) to make an application or motion that, with permission of the proceedings authority, a person who may provide explanations that are required for expert inquiries be present when the expert assessment is carried out;
6) to set and resolve, of their own motion, expert assessment tasks not stated in the order concerning the expert assessment.

(2) An expert is required to:
1) carry out an expert assessment, when they have been assigned as the expert;
2) appear when summoned by the proceedings authority;
3) ensure that expert inquiries are conducted comprehensively, exhaustively and objectively, and that the expert opinion is scientifically sound;
4) [Repealed – RT I, 23.02.2011, 1 – entry into force 01.09.2011]
5) maintain as confidential any facts that may be disclosed only with the written permission of the proceedings authority and that they have become privy to when carrying out the expert assessment.

(3) Where, without a valid reason, the expert does not appear, a fine may be imposed on them by the pre-trial investigation judge on an application of the Prosecutor's Office or by order of the court.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 99. Making provision for expert assessment and inquiry**

(1) Where this is needed, material is collected for expert assessment or inquiry, the suspect or accused is placed in a medical institution in a compulsory manner in order to carry out, in their respect, a forensic psychiatric or forensic medical examination, or a corpse is exhumed from its burial place in order for a forensic medical examination or any other expert assessment or comparative inquiry to be performed.

(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 a person and taking a sample of their DNA**

(1) A person who is suspected, accused or convicted of an intentionally committed criminal offence which is mentioned in Subchapters 1, 2, 6 or 7 of Chapter 9, in Subchapter 2 of Chapter 11, in Subchapters 1 or 4 of Chapter 22 of the Penal Code or in any other Chapter of the Penal Code and whose elements include the use of

violence and which is punishable by at least two years of imprisonment is fingerprinted and a sample of their DNA is taken for the purposes of offence proceedings or of the detection and prevention of offences.

(2) For the purposes of offence proceedings, or of the detection and prevention of offences, a person who is suspected, accused or convicted of a criminal offence which does not fall under subsection 1 of this section but which is punishable by at least one year of imprisonment according to the Penal Code may also be fingerprinted and a sample of their DNA may be taken.

(3) Coercion may be applied with regard to a person falling under subsections 1 and 2 of this section if they refuse to be fingerprinted or to provide a sample of their DNA.

(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 recorded under subsection 4 of this section in the National Fingerprint Database and in the National DNA Database are retained according 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 from fingerprinting, and from analysis of DNA samples, carried out for another purpose**

(1) To provide for an expert assessment ordered in criminal proceedings, it is permissible to use data from fingerprinting and from analyses of DNA samples carried out for another purpose, provided that it is not possible to collect evidence by other procedural operations or that collection of evidence by such operations is materially complicated or that it may prejudice the interests of criminal proceedings in the case.

(2) The provision of subsection 1 of this section may be applied only if, in criminal proceedings, a need has arisen to collect information about a criminal offence of the first degree or an intentional criminal offence of the second degree that is punishable by at least up to three years' imprisonment.

(3) An operation mentioned in subsection 1 of this section may be performed only with the written permission of the Prosecutor's Office that also states the reasons for the need to use the data.
[RT I, 04.07.2012, 1 – entry into force 01.08.2012]

**§ 100. Taking of material for comparison**

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

(1) The purpose of the taking of material for comparison is to collect trace or print material and samples for a comparison required for an expert assessment or for expert inquiry.
[RT I, 04.07.2012, 1 – entry into force 01.08.2012]

(1$^1$) In order to exclude traces or prints lawfully left on the scene of events, a victim, witness or any other person may be fingerprinted and a sample of their DNA may be taken.
[RT I, 04.07.2012, 1 – entry into force 01.08.2012]

(2) An order authorising the taking of material for comparison is required if:
1) the suspect or accused refuses to provide such material, and it is possible to achieve the aim of the procedural operation by coercion;
2) the taking of material for comparison interferes with the bodily inviolability of the person concerned;
3) a legal person is required to produce documents as material for comparison.

(3) An order authorising the taking of material for comparison states:
1) who the material for comparison is to be taken from;
2) the type of the material;
3) the reasons for the procedural operation.

(4) Where the taking of material for comparison interferes with the bodily inviolability of the person concerned, a forensic pathologist, health care professional or other specialist witness participates in the procedural operation.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) Unless otherwise provided for by law, an investigative authority or another competent authority may preserve any material for comparison taken for the purposes of proceedings concerning, or of the detection and of prevention of, offences.
[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 from analysis of the DNA samples of persons taken under subsection $1^1$ of this section are not recorded in the National DNA Database or are removed from that database immediately after the carrying out of the comparative inquiry. Any DNA samples that have been collected are destroyed within two months following completion of the expert assessment or comparative inquiry. The samples are destroyed by a public forensic institution, with a corresponding note being recorded in the expert's report or in the report of the inquiry.
[RT I, 04.07.2012, 1 – entry into force 01.08.2012]

**§ 101. Report of the taking of material for expert assessment**

A report of the taking of material for expert assessment states:
1) the names of any trace or print material for comparison, and of any samples, taken;
2) the manner in and conditions under which the material for expert assessment was taken;
3) the amount or quantity of the material for expert assessment.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

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

(1) If the performance of a forensic psychiatric or forensic medical examination requires long-term expert inquiries, the proceedings authority commissions expert assessment by a committee of experts and places the suspect or accused in the relevant medical institution in a compulsory manner.

(2) The suspect or accused is placed in the medical institution on an application of the Prosecutor’s Office by order of the pre-trial investigation judge or of the court.

(3) The suspect or accused is placed in the medical institution for up to one month. On an application of the Prosecutor’s Office, the pre-trial investigation judge or the court may extend that time limit by three months.

(4) The time spent by the suspect or accused in the medical institution is counted as time they have spent in custody.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 103. Exhumation of corpse from official place of burial**

(1) A corpse is, or its remains are, exhumed from its official place of burial if, in criminal proceedings, it is necessary to ascertain the cause of death or any other circumstances that constitute the subject matter of evidence, or to collect trace or print material or samples for a comparison conducted as part of an expert assessment.

(2) The basis for exhuming a corpse from its place of burial is a corresponding order of the Prosecutor’s Office or of the court.

(3) A corpse is exhumed from its place of burial with the participation of a forensic pathologist or another specialist witness 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 during the procedural operation and, where this is needed, the corpse is presented to them for identification.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) Where this is needed, soil and other samples are taken from a corpse’s place of burial.

(5) In the order authorising exhumation of a corpse from its place of burial, a direction is addressed to the city or rural municipality government to reinter the corpse and restore the gravesite.

**§ 104. Report of exhumation of a corpse from its place of burial**

A report of exhumation of a corpse from its place of burial states:
1) the name and location of the place of burial and information showing where the grave is situated;

2) a description of the grave and the grave markers;
3) information reflecting inspection of the coffin and the corpse.

**§ 105. Arranging an expert assessment**

(1) Based on the need for evidence, an expert assessment is arranged by order of the proceedings authority.

(2) The proceedings authority may not refuse to commission an expert assessment applied for by the suspect, accused, defence counsel, victim or civil defendant if the circumstance to be ascertained by such an assessment may have material importance for the resolution of the criminal case.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 106. Order concerning expert assessment**

(1) The body of an order concerning expert assessment states:
1) the name and number of the criminal case, the facts of the criminal offence and other source information necessary for the expert assessment;
2) the reason for commissioning the expert assessment.

(2) The concluding part of an order concerning expert assessment states:
1) the type of expert assessment according to the field of specialised knowledge;
2) the need to arrange for expert assessment;
[RT I, 04.07.2012, 1 – entry into force 01.08.2012]
3) the name of the expert or public forensic institution that is to carry out the order concerning expert assessment;
4) the particulars of the objects of expert assessment that are linked to the criminal event, and of the material for comparison and of the material for the expert or experts to acquaint themselves with;
5) the questions posed to the expert;
6) in a situation provided for by subsection 3 of § 95 of this Code, the time limit for the expert assessment.

(3) If an expert assessment is to be arranged in a public forensic institution, a particular expert may be assigned by name, subject to approval by the Head of the institution. Under the order concerning expert assessment, a committee of experts may also include experts who are not employed by the public forensic institution.

(4) The following are not allowed to be put to the expert:
1) questions which are of a legal nature or fall outside their area of specialisation;
2) questions the answering of which does not require expert inquiry or the drawing of conclusions based on specialised knowledge.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 107. Composition of an expert's report**

(1) The introductory part of an expert's report states:
1) the date and place of its filing;
2) the name of the person who commissioned the expert assessment, the date on which the corresponding order was issued and the date on which it was transmitted to the expert;
3) the title and number of the criminal case;
4) the type of assessment;
5) the particulars concerning the expert;
6) the name of the object presented for assessment or of the person who was the subject of assessment;
7) whether and when any motions were made to add items to the material for assessment and when such motions were granted;
8) the information on which the assessment was to be based;
9) the questions put to the expert in the order concerning expert assessment and any questions formulated by the expert of their own motion;
10) the names of the persons who were present when the assessment was carried out;
11) the measures to be taken with regard to the item of physical evidence presented for assessment, to the material for comparison, to the material for assessment or to the object presented for assessment.
[RT I, 04.07.2012, 1 – entry into force 01.08.2012]

(2) Where an expert assessment is carried out by a person who has not been sworn in, such an expert signs a note which is included in the introduction to the expert's report and which acknowledges that they have been cautioned with regard to criminal liability.

(3) The body of the expert's report states:
1) a description of the inquiries conducted;
2) the particulars of evaluation of the results of the inquiries, and the reasons for the expert’s opinion.

(4) If a question put to the expert is of a legal nature, falls outside their area of specialisation or does not require expert inquiry or the drawing of conclusions based on specialised knowledge, the expert, in the expert’s report, refuses to provide an answer to such a question.

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

(6) The concluding part of the expert's report states the expert's opinion, supported by the inquiries 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 carried out the expert assessment.
[RT I, 04.07.2012, 1 – entry into force 01.08.2012]

**§ 108. Report concerning refusal to undertake an expert assessment**

(1) Where an expert refuses to undertake an expert assessment on the grounds provided by clause 4 of subsection 1 of § 98 of this Code, they file a report concerning the refusal.

(2) A report concerning refusal to undertake an expert assessment states the particulars provided by subsection 1 of § 107 of this Code and states the reasons for the refusal.

**§ 109. Interviewing an expert**

Where this is needed, an expert is interviewed during pre-trial procedure to clarify the substance of the expert's report or of the report concerning refusal to conduct the expert assessment. The interviewing of the expert takes place in accordance with subsection $2^1$ of § 66 and §§ 68 and 69 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ $109^1$. Specialist witness**

(1) 'Specialist witness' means a natural person who possesses specialised knowledge that they use in situations and in accordance with the rules provided by this Code but who has not been enlisted in criminal proceedings as an expert.

(2) A specialist witness may be enlisted to assist in a procedural operation. Before the commencement of the operation, the proceedings authority ascertains the identity of the specialist witness, their competence and their relationship with the suspect or accused. Any representations made by the specialist witness in connection with the detection and preservation of evidence are recorded in the report.

(3) A specialist witness may be interviewed or examined concerning the following circumstances:
1) the course of the procedural operation performed in the presence of the specialist witness;
2) other circumstances concerning which the specialist witness can provide explanations due to their specialised knowledge, where this is needed for the purposes of acquiring a better understanding of the circumstances that constitute the subject matter of evidence.

(4) A specialist witness is interviewed or examined in accordance with the provisions that apply to the interviewing or examination of witnesses without prejudice to the special rules provided by this section.

(5) If it emerges that a specialist witness may know the circumstances mentioned in § 66 of this Code, they are interviewed or examined concerning such circumstances as a witness. The same person may be interviewed or examined as a witness and as a specialist witness during a single 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, accused or 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 by 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 Evidence by Covert Operations

[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 Item of Physical Evidence

### § 123. Document

(1) When proving one's case, any document may be used that contains information concerning circumstances that constitute the subject matter of evidence in the case.

(2) A document is deemed an item of physical evidence if it possesses the characteristics mentioned in subsection 1 of § 124 of this Code.

### § 124. Item of physical evidence

(1) 'Item of physical evidence' means a the object or material that constituted an element of the criminal offence committed, the means used to commit that offence, an object bearing indicia of the criminal offence, an impression or a print made of such indicia, or any other unique object which is related to the criminal event and which can be used to ascertain the circumstances that constitute the subject matter of evidence.

(2) If an object that is used as an item of physical evidence has not been described in the report on the investigative operation with the degree of detail required for evidentiary purposes, an inspection of the object is carried out in order to record its characteristic features.

(3) An item of physical evidence or an object that has been seized is returned to the owner or former lawful possessor without delay provided this does not interfere with criminal proceedings in the case. As a rule, such an item or object is returned at the place where it is held.
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

(4) Where six months have elapsed from the time when an item of physical evidence was seized but there is no accused in the criminal case, the item is handed over for safekeeping, on an application of its owner or lawful possessor and under the conditions for safekeeping of physical evidence, to the person who filed the application, except in situations mentioned in subsections 5 and 6 of this section.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) On an application of the investigative authority, the prosecutor may extend the six-month time limit mentioned in subsection 4 of this section to up to one year. Where no application mentioned in subsection 4 is has been made, the time limit extends automatically.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) On an application of the Prosecutor's Office, the pre-trial investigation judge may extend the time limits mentioned in subsections 4 and 5 of this section to more than one year if the delay in bringing the charges is due to the complexity or large volume of the criminal case or to exceptional circumstances related to international cooperation. Where no application mentioned in subsection 4 is has been made, the time limit extends automatically.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

### § 125. Safekeeping of the item of physical evidence

(1) An item of physical evidence is kept in the criminal file, in a physical evidence storage facility of the investigative authority, the Prosecutor's Office or the court, or in any other room in their possession or area guarded or monitored by them, or in a forensic institution, or is made subject to the measures prescribed by § 126 of this Code, provided this does not prejudice the interests of criminal proceedings in the case.
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

(2) An item of physical evidence which cannot be kept following the rules provided by subsection 1 of this section and with regard to which, having regard to the interests of criminal proceedings, prior to the entry into

effect of the judgment or to termination of the proceedings, the measures prescribed in § 126 of this Code cannot be applied, is deposited for safekeeping on a contract basis.

(3) The keeper of an item of physical evidence ensures the inviolability and preservation of the item.

(4) A depositary who is not the item's owner or lawful possessor is entitled to compensation for the safekeeping fee, which is included in costs of the case. The costs of safekeeping are compensated for on the basis of a contract between the proceedings authority and the depositary.

(5) If the item of physical evidence represents a document which its holder requires in the course of their subsequent economic or professional activity or for another valid reason, the proceedings authority makes a copy of the document for the holder. The truth of the copy is certified by the signature of the proceedings authority on the copy.

(6) Subsections 1−5 of this section are applied also with regard to an object that has been seized but that does not constitute an item of physical evidence.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 126. Measures to be applied to items of physical evidence and to property to be confiscated**

(1) An item of physical evidence that is perishable in the short term and that cannot be returned to its lawful possessor is granted free of charge to a health care of social welfare institution of the State or of a local authority, transferred or destroyed in the course of criminal proceedings by order of the proceedings authority. The money received from a sale is charged to public revenue.

($1^1$) An item of physical evidence which cannot be returned to its lawful possessor and whose costs of safekeeping are unreasonably high may be disposed of on an application of the Prosecutor's Office by order of the pre-trial investigation judge. The amount obtained from the disposal is attached.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

($1^2$) An item of physical evidence which its owner or lawful possessor has not removed within six months as of learning of the decision to return it may be transferred or destroyed by the keeper of the item following the rules provided by the State Assets Act.
[RT I, 31.12.2016, 2 – entry into force 01.02.2017]

(2) Property which is subject to confiscation and whose lawful possessor has not been ascertained may be confiscated in the course of criminal proceedings on an application of the Prosecutor's Office by order of the court.

($2^1$) Property attached as an interim measure to achieve a confiscation may be disposed of on an application of the Prosecutor's Office, with the consent of the owner of the property by order of the pre-trial investigation judge. Property may be disposed of without the consent of its owner if the cost of its safekeeping is unreasonably high or if this is necessary to prevent a material reduction of its value. The amount obtained from the disposal is attached.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

($2^2$) Items of no value or of little value, or pirate or counterfeit goods, which have been attached as an interim measure to achieve a confiscation, may be destroyed without the consent of their owner or, in a situation provided for by law, reworked on an application of the Prosecutor's Office by order of the pre-trial investigation judge, provided the cost of safekeeping of such items or goods is unreasonably high.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(3) The following measures are to be prescribed in respect of an item of physical evidence in an order of the proceedings authority or in the judgment rendered in the case:
1) a thing bearing an indicium of the criminal offence, a document, or an impression or a print made of an indicium of the criminal offence may be retained in the materials of the criminal case, included in the criminal file or preserved in a physical evidence storage facility or any other room in the possession of the proceedings authority, or in a forensic institution;
2) other items of physical evidence whose ownership has not been contested are returned to their owner or lawful possessor;
3) the right of ownership in respect of an item of physical evidence which has commercial value and whose owner or lawful possessor of has not been ascertained is vested in the State;
4) items of no value and pirate or counterfeit goods are destroyed or, in a situation provided for by law, converted;
5) any objects used to create the appearance of a criminal offence are returned to their owner or lawful possessor;

6) the right of ownership in any property which was obtained by the criminal offence and whose return has not been applied for by its lawful possessor vests in the State, or such property is disposed of to satisfy a related civil court claim or statement of a public-law claim.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(4) Where the ownership relations pertaining to an item of physical evidence mentioned in clause 2 of subsection 3 of this section are not clear, the measures to be applied in respect of the item in pre-trial proceedings are decided by order of the pre-trial investigation judge on an application of the Prosecutor's Office.

(5) Subsections 1−3 of this section also apply with regard to any objects that have been confiscated in criminal proceedings and that do not constitute physical evidence.

(5[1]) An item of physical evidence which has passed into the ownership of the State under subsection 3 of this section, and any property obtained by a criminal offence, is subject to the rules laid down concerning confiscated property.
[RT I, 31.12.2016, 2 – entry into force 01.02.2017]

(6) The rules concerning the return, from the budget, of money received from disposal of confiscated property to the lawful possessor of such property are enacted by the Government of the Republic by a regulation.
[RT I, 31.12.2016, 2 – entry into force 01.02.2017]

(7) The Government of the Republic enacts rules for registration, safekeeping, transfer and destruction of items of physical evidence and attached property by proceedings authorities as well as for appraisal, disposal and destruction – by such authorities – of highly perishable items of physical evidence and of property attached as an interim measure to achieve a confiscation.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

# Chapter 3[1]
# COVERT OPERATIONS

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

### § 126[1]. General conditions for conducting a covert operation

(1) 'Covert operation' means the processing of personal data in order to perform a task provided for by law with the objective of concealing the fact and the substance of such processing from the data subject.

(2) A covert operation is permitted on the grounds laid down in this Code provided it is not possible to gather the data by means of other operations or to collect evidence by means of other procedural operations, or provided such gathering or collection is not possible at a proper time, or is materially complicated, or may prejudice the interests of criminal proceedings in the case.

(3) The conduct of a covert operation may not endanger the life or health of a person, create an unjustified risk to property and the environment or unfoundedly interfere with other personal rights.

(4) Information obtained by means of a covert operation constitutes evidence, provided the requirements of the law have been observed when applying for authorisation for the operation, when granting the authorisation and when conducting the operation.

(5) Covert operations are conducted directly by the authorities mentioned in subsection 1 of § 126[2] of this Code and through the institutions administered by such authorities as well as through authorities empowered to conduct such operations, through subordinate units and employees, through undercover agents, covert operatives and persons whose secret cooperation has been enlisted.

(6) The assistance of a member of the *Riigikogu* or of the council of a rural municipality or a city, a judge, a prosecutor, an attorney-at-law, a minister of a religion or an official elected or appointed by the *Riigikogu* may be enlisted in the operations provided by this Chapter subject to their consent – and a minor's assistance may be enlisted with the consent of their statutory representative and permission of the pre-trial investigation judge – only if they are a party to proceedings or a witness in the criminal case in question or if they, or a person close to them, are the target of the criminal offence.

(7) Where a covert operation is requested by another investigative authority, the covert operations authority to conduct the operation transmits the information obtained by that operation to the requesting authority together with any photographs, footage, audio or video recordings and recordings of other data made in the course of the operation.

(8) When conducting a covert operation, a covert operations authority has a right to process, in addition to data obtained from covert operations, also data from other sources.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

**§ 126[2]. Grounds for conducting a covert operation**

(1) The Police and Border Guard Board, the Internal Security Service, the Tax and Customs Board, the Military Police, the Department of Prisons of the Ministry of Justice and a prison (hereinafter, 'covert operations authority') may conduct a covert operation on the following grounds:
1) there is a need to collect information about the preparation of a criminal offence, for the purpose of detecting or preventing it;
2) to execute an order by which a person has been declared a fugitive from justice;
3) there is a need to collect information in confiscation proceedings according to the provisions of Chapter 16[1] of this Code;
4) there is a need to collect information in criminal proceedings about a criminal offence.

(2) A covert operation may be conducted on the grounds mentioned in clauses 1 and 4 of subsection 1 of this section, provided the case concerns a criminal offence mentioned in §§ 89–93[1], 95–97, 99, 100[1], 101–104, 106–108, 110–114, 116, 118 and 120, in subsection 2 of § 121, in §§ 133–137, 138[1] and 141–146, in subsections 2 and 4 of § 151, in § 157[3], in subsection 2 of § 161, §§ 162, 163, 172–179, 183–185, 187–190, 194, 195, 199 and 200, subsections 2 and 3 of § 201, in subsections 2 and 3 of § 202, in §§ 204, 206–214, 216[1]–217, 217[2], 222, 227, 231–238, 241, 243, 244, 246, 250, 251, 255 and 256, in clause 2 of § 258, in §§ 259, 259[1] and 263, in subsections 2 and 4 of § 266, in §§ 274, 290[1], 291, 291[1], 294, 296, 298–299, 300, 300[1], 302, 303, 310–313 and 315–316[1], in subsection 2 of § 321, in §§ 326–328, 331, 331[3], 333–334, 335, 336, 340 and 347, in subsections 1 and 3 of § 356, in subsections 1 and 3 of § 357, in subsections 1 and 3 of § 361, in subsections 2–3 of § 364, in §§ 375–376[2], 384, 389[1], 391, 393, 394 and 394[1], in subsections 2 and 4 of § 398, in subsections 2 and 4 of § 398[1], in §§ 400, 402[3], 402[4], 403–407, 414–416, 418, 418[1], 421[1], 421[2], 434, 435 and 437–439, in subsection 3 of § 440 and in §§ 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, a covert operation may be conducted in respect of the following persons:
1) on the ground mentioned in clause 1 of subsection 1 of this section – in respect of a person in relation to whom there is a good reason to believe that they will commit a criminal offence mentioned in subsection 2 of this section;
2) on the ground mentioned in clause 2 of subsection 1 of this section – in respect of a person who has been declared a fugitive from justice;
3) on the ground mentioned in clause 3 of subsection 1 of this section – in respect of a person to whom property that is the object of confiscation proceedings belongs, or who is in possession of such property;
4) on the ground mentioned in clause 4 of subsection 1 of this section – in respect of a person who is a suspect in criminal proceedings or in whose respect there is a substantiated reason to believe that they have committed or are going to commit the criminal offence in question.

(4) A covert operation to be conducted on the grounds provided by clauses 2–4 of subsection 1 of this section may also be conducted in respect of a person in respect of whom there is a substantiated reason to believe that they are communicating with a person mentioned in clauses 2–4 of subsection 3 of this section, are relaying information or providing assistance to such a person, or are allowing such a person to use their means of communication, provided conducting a covert operation in respect of the person may yield the information required to achieve the objective of the operation.

(5) A covert operations authority may conduct a covert operation on the grounds mentioned in subsection 1 of this section, provided this relates to a criminal offence which is in the investigative jurisdiction of that authority.

(6) Within the scope of its powers, under the conditions and following the rules provided by this Code, a covert operations authority may conduct a covert operation on an application of another covert operations authority.

(7) The Police and Border Guard Board and the Internal Security Service may also conduct a covert operation on an application of another investigative authority.

(8) The Department of Prisons of the Ministry of Justice and a prison may also conduct a covert operation in a custodial institution on an application of another investigative authority.

(9) Where the ground for a covert operation ceases to apply, the operation must be terminated without delay.

(10) Covert operations may be conducted on grounds not mentioned in this Code only on the grounds provided by the Estonian Defence Forces Organisation Act, the Taxation Act, the Police and Border Guard Act, the Weapons Act, the Strategic Goods Act, the Customs Act, the Witness Protection Act, the Security Act, the Imprisonment Act, the Aliens Act and the Obligation to Leave and Prohibition of Entry Act. When conducting a covert operation, processing information collected by means of the operation, notifying the operation and

presenting the information collected by such an operation, the provisions of this Chapter apply subject to special rules provided by the aforementioned Acts.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

### § 126[3]. Covert operations

(1) On the grounds mentioned in subsection 1 of § 126[2] of this Code, a covert operations authority may conduct covert surveillance of a person, thing or area, covertly collect samples for comparison and perform preparatory investigations, covertly conduct an examination of an object and covertly substitute it with a replacement object.

(2) On the ground mentioned in clause 1 of subsection 1 of § 126[2] of this Code, the Police and Border Guard Board and the Internal Security Service may, when collecting information concerning preparation of a criminal offence mentioned in §§ 244 and 246, in clause 3 of subsection 2 of § 266 and in §§ 255 and 256 of the Penal Code, and on the grounds mentioned in clauses 3 and 4 of § 126[2] of this Code, conduct the following covert operations:
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]
1) covert examination of a postal item;
2) secret interception of auditory or visual information;
3) using an undercover agent.

(3) For the purpose of detecting a criminal offence or arresting a criminal offender, the Police and Border Guard Board and the Internal Security Service may simulate a criminal offence on the ground mentioned in clause 4 of subsection 1 of § 126[2] of this Code.

(4) On the grounds mentioned in clauses 1 and 4 of subsection 1 of § 126[2] of this Code, the Department of Prisons of the Ministry of Justice and a prison may conduct the following covert operations:
1) covert examination of a postal item;
2) secret interception of auditory or visual information.

(5) When conducting a covert operation mentioned in subsection 1 and in clauses 2 and 3 of subsection 2 of this section, it is permitted to covertly enter a building, a room, a vehicle, an enclosed area or a computer system provided this is ineluctably necessary for achieving the objectives of the operation.

(6) For the purposes of this Act, entry on premises in possession of another party is deemed to be covert if the fact of such an entry remains concealed from that party or if, when making such an entry, the party in possession has been misled by means of deception as to the actual circumstances, and the party, had they known those circumstances, would not have given their permission for the entry.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

### § 126[4]. Granting an authorisation for a covert operation

(1) A covert operation may be conducted when this is authorised in writing by the Prosecutor's Office or by the pre-trial investigation judge. The pre-trial investigation judge resolves the grant of such an authorisation by an order on the basis of a reasoned application from the Prosecutor's Office. A reasoned application of the Prosecutor's Office is considered by the pre-trial investigation judge without delay and an authorisation to conduct the covert operation in question is granted or refused by an order.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

(2) In situations of urgency, a covert operation that requires an authorisation from the Prosecutor's Office may be conducted with such an authorisation being issued in a reproducible form. A written authorisation is issued within 24 hours following commencement of the operation.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

(3) Where an immediate danger to the life, physical integrity, physical freedom or a high-value property interest of a person is involved, and where it is not possible to apply for or to issue a relevant authorisation at a proper time, a covert operation that requires authorisation from the court may be conducted, in a situation of urgency, with such an authorisation being issued in a reproducible form. A written application is filed and a corresponding authorisation issued within 24 hours following commencement of the operation.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

(4) An authorisation issued in a situation of urgency in a reproducible form must contain the following information:
1) the issuer of the authorisation;
2) the date and time of issue of the authorisation;
3) the covert operation for which the authorisation is issued;
4) where it is known, the name of the person in respect of whom the covert operation is to be conducted;
5) the time limit of the permission for covert operations.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

(5) Where, to conduct a covert operation or to place or remove any technical means required for such an operation, covert entry needs to be made to a building, room, vehicle, an enclosed area or a computer system, the Prosecutor's Office applies for and obtains a corresponding separate authorisation from the pre-trial investigation judge.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

(6) The duration of covert operations conducted with respect to a particular person on the grounds provided by clauses 1, 2 and 4 of subsection 1 of § $126^2$of this Code in the same proceedings must not exceed one year. In exceptional situations, the Prosecutor General may authorise, or apply to the court for authorisation to conduct, covert operations for more than one year. In a criminal case dealt with under Council Regulation (EU) 2017/1939, the relevant authorisation 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 samples for comparison and conduct of initial investigations, covert examination and substitution of an object**

(1) For conducting covert surveillance of a person, an object or area, for covert collection of samples for comparison and for conducting initial investigations, and for covert examination or substitution of an object, the Prosecutor's Office grants an authorisation for up to two months. The Prosecutor's Office may extend the time limit of the authorisation by up to two months at a time.

(2) In the course of covert operations mentioned in this section, collected information is – where this is needed – video recorded, photographed or copied or recorded by any other method.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

**§ $126^6$. Covert examination of a postal item**

(1) When covertly examining a postal item, inspection information is collected regarding the item.

(2) After having conducted a covert examination of a postal item, the item is transmitted to the addressee.

(3) In the course of the operation mentioned in this section, collected information is – where this is needed – video recorded, photographed or copied or recorded by any other method.

(4) As part of a covert examination of a postal item, the item may be substituted with a replacement.

(5) For the covert operation mentioned in this section, authorisation is granted by the pre-trial investigation judge for up to two months. When the time limit for which the authorisation was granted elapses, the pre-trial investigation judge may extent it by up to two months at a time.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

**§ $126^7$. Secret interception of auditory or visual information**

(1) Information obtained by secret interception of messages transmitted over a public electronic communications network or of auditory or visual information transmitted by any other method is recorded.

(2) Information which is transmitted by a person mentioned in § 72 of this Code or which is transmitted to such a person by another person and which is obtained by secret interception is not used as evidence provided the substance of such information consists in facts that have become known to the person in the course of the person's official or professional activities, unless:
1) such a person has already provided a statement or given testimony concerning those facts or if the facts have been made public by any other method;
2) an authorisation for secret interception has been granted with respect to such a person or
3) a secret interception concerning another person shows that the person in question is committing or has committed a criminal offence.

(3) For the covert operation mentioned in this section, authorisation is granted by the pre-trial investigation judge for up to two months. When the time limit for which the authorisation was granted elapses, the pre-trial investigation judge may extent it by up to two months at a time.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

### § 126[8]. Simulating a criminal offence

(1) 'Simulating a criminal offence' means the commission, with the authorisation of the court, of an act that has elements of a criminal offence, having regard to the restrictions prescribed by subsection 3 of § 126[1] of this Code.

(2) If possible, the simulation of a criminal offence is recorded by means of photographs, footage or an audio or video recording.

(3) For the covert operation mentioned in this section, authorisation is granted by the pre-trial investigation judge for up to two months. When the time limit for which the authorisation was granted elapses, the pre-trial investigation judge may extent it by up to two months at a time.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

### § 126[9]. Using an undercover agent

(1) For the purposes of this Code, 'undercover agent' means a person who uses a changed identity to collect information on the grounds mentioned in clauses 1, 3 or 4 of subsection 1 of § 126[2] of this Code.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(2) Authorization for using an undercover agent is granted by the Prosecutor's Office in writing. The authorisation is granted for up to six months and the time limit in question may be extended by up to six months at a time.

(3) If an undercover agent is an official of a covert operations authority, they are subject to all the obligations of such an official insofar as this does not lead to disclosure of their changed identity.

(4) When using a statement of an undercover agent as an item of evidence, the provisions of this Code concerning witnesses are followed.

(5) When the Prosecutor's Office so decides, the fact of using an undercover agent, or the identity of such an agent, is kept confidential also after termination of the corresponding covert operation, provided making it public may endanger the life or health, honour or reputation or property of the agent or of a person closely connected to them, or the agent's further work as an undercover agent.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

### § 126[10]. Documenting a covert operation

(1) Based on the information collected by a covert operation, an official of the body that conducted the operation or applied for it files a report of the operation which states:
1) the name of the authority that conducted the operation;
2) the time and place of conducting the operation;
3) the name of the person in respect of whom the operation was conducted;
4) the date of issue of an authorisation of the court or of the Prosecutor's Office which was the basis for the operation;
5) where the basis for the operation was an authorisation of the court, the date on which the corresponding application of the Prosecutor's Office was filed;
6) information that is collected by the operation and that is necessary for achieving the aim of the operation or for resolving the criminal case.

(2) Where necessary, any photographs, footage or audio or video recordings, or any other recordings of information, made in the course of the covert operation are annexed to the report.

(3) Where necessary, the covert operations authority that conducted the covert operation states the information collected by that operation in an operation summary. The operation summary and any photographs, footage, audio or video recordings or other recordings of information made in the course of the operation are included in the operation file.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

### § 126[11]. Keeping a covert operation file

(1) The information collected by a covert operation, any recordings of information made in the course of the operation, any information obtained in a manner mentioned in subsection 8 of § 126[1] of this Code as well as any information that is required in order to comprehend the entirety of the information collected by the operation and that concerns any covert operative or any person, organisational unit or body or branch of a foreign company that has been used as a front in the operation, is preserved in the operation file.

(2) The rules for keeping and preservation of covert operation files are enacted by a regulation of the Government of the Republic at the proposal of the Minister in charge of the policy sector.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

**§ 126[12]. Preservation, use and destruction of covert operation files and recordings of information collected by a covert operation**

(1) Any photographs, footage, audio or video recordings and any other recordings of information or any part of such recordings that is required for resolving the criminal case and that has been made in the course of a covert operation are preserved in the criminal file or with the materials of the criminal case. The remainder of the material of a covert operation is preserved at the covert operations authority following the rules provided by subsection 2 of § 126[11] of this Code.

(2) Covert operation files are preserved as follows:
1) covert operation files kept concerning a criminal offence under preparation, files documenting operations to apprehend a person who has been declared a fugitive from justice and confiscation files – until the need to use the information contained in the file ceases to be, but not longer than for 50 years;
2) files on criminal offences – until removal of information concerning the sentence from the Criminal Records Database or until the lapsing of the limitation period for the 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 authorisation 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) Information collected by a covert operation may be preserved for study and research purposes. Personal data and, where this is needed, the relevant setting, must be completely altered in order to avoid revealing any persons who participated in the operation or were enlisted for it.

(5) Where the criminal file includes a recording of information which has been made in the course of a covert operation and which does not need to be preserved, the person whose fundamental rights were interfered with by the covert operation may, when the judgment has entered into effect, make a motion to destroy such a recording.

(6) A recording of information provided for by subsection 5 of this section is destroyed by the court. A report is filed concerning the destruction of the recording; the report is included in the criminal file.

(7) Where materials of a covert operation are preserved in a criminal file, and where such a file is to be made public in accordance with the Public Information Act, any information concerning persons who did not appear as the accused in criminal proceedings in the case and the inviolability of whose private or family life was materially interfered with by such an operation and whose rights or freedoms may suffer material harm when the file is made public is removed from or masked in the criminal file.

(8) Files containing a state secret or classified information of a foreign state are preserved and destroyed according to the State Secrets and Classified Information of Foreign States Act.

(9) Covert operation files that are to be destroyed and the corresponding recordings of information that have been collected are destroyed in the presence of a prosecutor by a committee formed by the Head of the covert operations authority. The committee draws up a record concerning destruction of the file and of any corresponding recording of information that has been collected; the record states the number of the file or other particulars concerning the destroyed recording of information and the reason for its destruction.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

**§ 126[13]. Notification regarding a covert operation**

(1) When the time limit of an authorisation to conduct a covert operation expires and, if several covert operations are being conducted that are at least partly concurrent, when the time limit of the authorisation of the last operation expires, the covert operations authority, without delay, notifies the person in respect of whom the operation was conducted as well as any person the inviolability of whose private or family life was materially interfered with by the operation and who has been identified in the course of the proceedings. Such persons are notified of the time and type of the operation conducted in their respect.

(2) Where this is authorised by the Prosecutor's Office, a covert operations authority may decide not to provide notification of a covert operation, if such notification may:
1) materially harm criminal proceedings in the case;
2) materially harm the rights and freedoms of another person which are guaranteed by law or endanger another person;
3) jeopardise the secrecy of the methods and tactics of the authority, of the means used to conduct covert operations, or of the cooperation of an undercover agent, of a covert operative or of a person whose secret cooperation has been enlisted in the case.

(3) Where this is authorised by the Prosecutor's Office, notifying a covert operation to a person concerned may be forgone until the grounds mentioned in subsection 2 of this section cease to be present. The Prosecutor's Office verifies the presence of grounds for forgoing notification when pre-trial proceedings are completed in the criminal case, but not later than one year after expiration of the time limit of the authorisation for the operation.

(4) If the grounds for forgoing notification of a covert operation are still present one year after expiration of the time limit of the authorisation for the operation, the Prosecutor's Office applies, at the latest 15 days prior to the expiration of that time limit, to the pre-trial investigation judge for an authorisation to extend the time limit. The pre-trial investigation judge, by order, grants the authorisation to forgo notification of the person or refuses to grant such an authorisation. Where it is decided not to notify the person, the order states whether notification is to be forgone for an unspecified or a specified period of time. Where notification is to be forgone for a specified period of time, that period is stated.

(5) If the grounds mentioned in subsection 2 of this section have not ceased to be present when the time limit of an authorisation that has been granted by the pre-trial investigation judge for forgoing notification and that is mentioned in subsection 4 of this section expires, the Prosecutor's Office applies, at the latest 15 days prior to the expiration of that time limit, to the pre-trial investigation judge for an authorisation to extend the time limit for forgoing notification. The pre-trial investigation judge, by order, grants the authorisation according to the provisions of subsection 4 of this section.

(6) Where the time limit of an authorisation for forgoing notification expires or where authorisation to extend such a time limit is refused, the persons concerned are notified of the corresponding covert operation without delay.

(7) When a person is notified of a covert operation conducted in their respect, the relevant rules for appeal must also be explained to them.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

### § 126[14]. Presenting the information collected by a covert operation to the person concerned

(1) Arrangements are made, for a person who has been notified according to § 126[13] of this Code, if they so wish, to acquaint themselves with the information collected in their respect and with the photographs, footage, audio or video recordings or other recordings of information made in the course of the corresponding covert operation. Where this is authorised by the Prosecutor's Office, a decision may be made not to present, to such a person, until the relevant grounds cease to be present, the following particulars:
1) particulars concerning the family or private life of other persons;
2) particulars whose presentation may harm the rights and freedoms of another person that are guaranteed by law;
3) particulars which contain state secrets, classified information of a foreign state or secrets of another person that are protected by law;
4) particulars whose presentation may endanger the life, health, honour or reputation or property of an employee of a covert operations authority, of an undercover agent, of a covert operative, of a person whose secret cooperation has been enlisted in the case or of another person who participated in the covert operation concerned or of any person closely connected with any of the aforementioned persons;
5) particulars whose presentation may jeopardise the right of an undercover agent, a covert operative or a person whose secret cooperation has been enlisted in the case to maintain the confidentiality of their cooperation;
6) particulars whose presentation may lead to information being passed concerning the methods or tactics of a covert operations authority or concerning the means used to conduct covert operations;
7) particulars that it is not possible to separate and present such that they would not disclose the particulars mentioned in clauses 1–6 of this subsection.

(2) When information collected by a covert operation is presented to a person concerned or when a decision is made not to present such information to such a person, the relevant rules for appeal must also be explained to them.

(3) The rules for notification of covert operations and for presentation of covert operation files are enacted by a regulation of the Government of the Republic at the proposal of the Minister in charge of the policy sector.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

### § 126[15]. Overseeing a covert operation

(1) The Prosecutor's Office oversees a covert operation for compliance with the authorisation provided for by § 126[4] of this Code.

(2) The activities of the covert operations authorities are overseen by the committee of the *Riigikogu* mentioned in § 36 of the Security Authorities Act. At least once every three months, a covert operations authority files a written report with the committee through the relevant ministry.

(3) Once a year, based on the information obtained from covert operations authorities, the Prosecutor's Office and courts, the Ministry of Justice publishes on its website a report which contains the following information concerning the previous year:
1) the number and type of covert operation files that have been opened;
2) the number of authorisations for covert operations, by type of operation;
3) the number of persons notified of a covert operation having been conducted in their respect and the number of persons in whose respect notification has been postponed for more than one year in accordance with subsection 4 of § 126[13] of this Code.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

### § 126[16]. Filing of appeals related to a covert operation

(1) An interim appeal may be filed, following the rules provided by Chapter 15 of this Code, against any judicial warrant authorising a covert operation on the grounds mentioned in this Code.

(2) A complaint may be filed, following the rules provided by Subchapter 5 of Chapter 8 of this Code, against actions in the course of a covert operation conducted on the grounds mentioned in this Code, against a decision to forgo notification of such an operation, and against a decision not to present certain information collected by such an operation.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

### § 126[17]. Covert operations information system

(1) 'Covert operations information system' (hereinafter, 'the information system') means a database within the National Information System that is maintained for processing information regarding the covert operations provided by this Code; the purpose of the information system is to:
1) provide an overview of the conduct, by covert operations authorities, of covert operations;
2) provide an overview of applications by covert operations authorities and by the Prosecutor's Office for conducting a covert operation;
3) provide an overview of the authorisations issued by the Prosecutor's Office and the courts for conducting a covert operation;
4) provide an overview of notifications provided regarding covert operations and of the presentation of information collected by covert operations;
5) serve as a record of information concerning the covert operations conducted;
6) facilitate organisation of the work of covert operations authorities, the Prosecutor's Office and the courts;
7) ensure the collection of statistics of covert operations that are necessary for the making of criminal justice policy decisions;
8) to allow for electronic transmission of data and documents.

(2) The information system is established and its constitutive regulations are enacted by the Government of the Republic.

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

(4) The Minister in charge of the policy sector may organise the operation 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 INFORMATION

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

### § 126[18]. Processing of passenger name record information

(1) A proceedings authority may make an enquiry concerning passenger name record (PNR) information to a PNR unit if this is necessary to achieve the purpose of criminal proceedings in the case.

(2) The processing of PNR information is permitted only in relation to the criminal offences listed in clauses 1–16, 18–20, 22, 23, 25–28 and 30–32 of subsection 1 of § 489[6] of this Code.
[RT I, 05.02.2019, 1 – entry into force 15.02.2019]

# Chapter 4

# ENSURING COMPLIANCE IN CRIMINAL PROCEEDINGS

## Subchapter 1
## Compliance Enforcement Measures

**§ 127. Choosing a compliance enforcement measure**

(1) When choosing a compliance enforcement measure, the factors to be considered include the possibility of the suspect, accused or convicted offender evading criminal proceedings or the execution of a judgment, of their continuing to commit criminal offences or destroying, altering or fabricating evidence, the severity of their sentence, who they are, their state of health and marital status, as well as other circumstances relevant to the imposition of such a measure.

(2) When changing a compliance enforcement measure, the provisions of this Code concerning the imposition of such a measure are followed.

**§ 128. Prohibition of departure from residence**

(1) 'Prohibition of departure from residence' consists in imposing an obligation on the suspect or accused – or a representative of the corporate suspect or accused – not to leave their residence for more than seventy-two hours without permission of the proceedings authority.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) To impose a prohibition of departure from residence, an order is issued on which the suspect or accused or the representative of the corporate suspect or accused is directed to provide signed acknowledgement. When taking the person's acknowledgement, they are cautioned that, should they violate the compliance enforcement measure in question, a fine or more severe compliance enforcement measure may be imposed on them.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) In pre-trial proceedings, a prohibition of departure from residence may not be imposed for longer than one year. Where the criminal case is of particular complexity or involves particularly extensive material, or in exceptional circumstances linked to international cooperation in criminal proceedings, the Prosecutor's Office may, in pre-trial proceedings, extend the duration of the prohibition up to two years.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

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

**§ 129. Custody of a member of the Defence Forces**

As a compliance enforcement measure, the suspect or accused who is a member of the Defence Forces and who is performing their compulsory military service may, by an order, be released into the custody of the command staff of their military unit.
[RT I 2008, 35, 212 – entry into force 01.01.2009]

**§ 130. Committal in custody and grounds for such committal**

(1) 'Committal in custody' means a compliance enforcement measure that is imposed on the suspect, accused or convicted offender and that consists in the person's being deprived of their liberty by order of the court.

(2) The suspect or accused may be committed in custody on an application of the Prosecutor's Office by order of the pre-trial investigation judge, or by court order, if they are likely to evade criminal proceedings or to continue to commit criminal offences and if committal in custody is an ineluctable necessity.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(3) In pre-trial proceedings, the suspect or accused may be committed in custody only for the period provided by § $131^1$ 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 committed to answer the charges and who is at large may be committed in custody by order of the district court or of the circuit court of appeal if they have not appeared when summoned by the court and may continue to evade judicial proceedings.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(4[1]) An accused who is at large may be committed in custody by the 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) To ensure execution of a judgment of conviction, the court may commit a convicted offender in custody following the rules provided by § 429 of this Code.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(6) A suspect who is a member of the Defence Forces and who is not present in the territory of the Republic of Estonia may, on an application of the Prosecutor's Office, be committed in custody by order of the pre-trial investigation judge on grounds provided by subsection 2 of this section in order for them to be transferred to the Republic of Estonia.

**§ 131. Rules for committal in custody**

(1) An application or motion to commit a person in custody is notified by the Prosecutor's Office immediately to the person's defence counsel.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(2) At the direction of the Prosecutor's Office, the suspect or accused in whose respect an application for committal in custody has been filed is brought by the investigative authority before the pre-trial investigation judge for the application to be considered.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(3) In order to issue an order committing the suspect or accused in custody, the pre-trial investigation judge acquaints themselves with the criminal file and questions the person to be committed in custody to ascertain whether the application for their committal in custody is justified. The prosecutor and, on an application of the person to be committed in custody, their defence counsel, are summoned to the pre-trial investigation judge and their submissions are heard. Where the person to be committed in custody is a minor, the pre-trial investigation judge assesses, with particular thoroughness, any potential adverse impacts that such a person's committal in custody would entail.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(3[1]) The pre-trial investigation judge may arrange the participation, in the consideration of an application for committal in custody, of the persons mentioned in subsections 2 and 3 of this section by means of a technical solution which complies with the requirements mentioned in clause 1 of subsection 2 of § 69 of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(3[2]) Where a minor is committed in custody, the court may order the minor's committal to be substituted by placement in a closed children's institution and state, in the order, the closed children's institution where the minor who has been committed in custody is to be placed. Outside the closed children's institution, the escorting of such a minor is carried out following the rules provided by § 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 who has been committed in custody and who violates the conditions of their stay in a closed children's institution may, on the basis of a corresponding report of the Head of the institution, and with permission of the court, be transferred to a prison to serve their custody.
[RT I, 05.12.2017, 1 – entry into force 01.07.2018]

(4) For committing in custody a person who has been declared a fugitive from justice or for committing in custody a suspect who is outside the territory of the Republic of Estonia, the pre-trial investigation judge, without having questioned such a person, issues a warrant authorising their committal in custody. At the latest on the second day following apprehension of the person or transfer of the suspect to Estonia, the person committed in custody is brought before the pre-trial investigation judge for questioning.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(5) If no grounds for committal in custody apply, the person is released without delay.

**§ 131[1]. Duration of committal in custody in pre-trial proceedings**

(1) During pre-trial proceedings, a person suspected or accused of a criminal offence of the first degree may not remain committed in custody for more than six months and a person suspected or accused of a criminal offence of the second degree for more than four months. An underage suspect or an underage accused may not remain committed in custody during pre-trial proceedings for more than two months.

(2) Where a criminal case is particularly complex or voluminous, or under exceptional circumstances linked to international cooperation in criminal proceedings, the pre-trial investigation judge may, on an application of the Prosecutor General, extend the duration of committal in custody mentioned in subsection 1 of this section. In a criminal case dealt with under Council Regulation (EU) 2017/1939, the aforementioned application is made by the European Prosecutor or a European Delegated Prosecutor.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

(3) The duration mentioned in subsections 1 and 2 of this section does not, in the case of a person whose extradition has been requested by the Republic of Estonia, include time spent in the foreign state in extradition custody or in surrender custody, or the time during which the person was held in custody during pre-trial proceedings under a decision of the competent authority of a foreign state prior to assumption of criminal proceedings in the case by the Republic of Estonia.

(4) When committing a person in custody, the pre-trial investigation judge issues an authorisation for holding the suspect or the accused in custody for up to two months. The pre-trial investigation judge may extend the duration of custody on the basis of a substantiated application of the Prosecutor's Office by up to two months at a time, having regard to the restrictions provided by subsections 1 and 2 of this section.

(5) Where the degree of the criminal offence of which the person who has been committed in custody is suspected or accused changes during their time in custody, the provision of subsection 1 of this section is applied according to the updated legal designation of the offence as of the time when the grounds for suspecting or accusing the person based on the updated degree of severity came to light.

(6) An application for extending the duration of custody is filed and considered in accordance with the rules provided by § 131 of this Code.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

**§ 132. Order of committal in custody**

(1) An order of committal in custody states:
1) the name and residence of the person being committed in custody;
2) the facts of the criminal offence of which the person is suspected or accused, and the legal designation of the offence;
3) the ground for committal in custody with a reference to § 130 or § 429 of this Code;
4) the reason for committal in custody.

(2) The order committing a person in custody is included in their criminal file and a copy of the order is transmitted to the person.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 133. Notification of committal in custody**

(1) The pre-trial investigation judge or the court notify a committal in custody without delay to a person close to the person committed in custody and to the latter's employer or educational institution.

($1^1$) The Prosecutor's Office or, where the Prosecutor's Office so directs, the investigative authority notifies the committal in custody to any individual victim in the case and ascertains whether they wish to receive information concerning release of the person held in custody, provided such notification may prevent a threat to such a victim.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(2) Notification of committal in custody may be delayed where this serves the purpose of preventing a criminal offence or of ascertaining the truth in criminal proceedings.

(3) Where a citizen of a foreign state is committed in custody, a copy of the order committing them in custody or of the relevant judgment is sent to the Ministry of Foreign Affairs.

**§ 134. Refusal to commit a person in custody and release of a person committed in custody**

(1) The pre-trial investigation judge or the court issues a refusal to commit a person in custody, or to extend the duration of such committal, as an order.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) If the grounds for committal in custody cease to be present before a statement of charges is sent to court following the rules provided by subsection 3 of § 226 of this Code, the pre-trial investigation judge or the Prosecutor's Office makes an order to release the person committed in custody. When such a person is released, the Prosecutor's Office or, where the Prosecutor's Office so directs, the investigative authority notifies this to any individual victim in the case, provided they have expressed a corresponding wish and provided such notification may prevent a threat to such a victim.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

**§ 135. Cash bail**

(1) The pre-trial investigation judge or the court may, with the consent of the suspect or accused, substitute cash bail for committal in custody. The conditions and duration of such substitution may be prescribed in the order of committal in custody.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

(2) 'Cash bail' means a sum of money paid, as a compliance enforcement measure, to a prescribed account by the suspect or accused or by another person on their behalf.
[RT I, 31.01.2014, 6 – entry into force 01.07.2014]

(3) The suspect or accused is released from custody when the cash bail has been credited to the prescribed account.
[RT I, 31.01.2014, 6 – entry into force 01.07.2014]

(4) When setting the amount of a cash bail, the court has regard to the severity of the sentence that may be imposed, the extent of the harm caused by the criminal offence, and the financial situation of the suspect or accused. The minimum amount of cash bail is five hundred days' wages.

(5) Cash bail is imposed by a court order. To dispose of an application for cash bail, the person committed in custody is brought before the pre-trial investigation judge; the prosecutor and, on the application of the person, their defence counsel are summoned, and their submissions are heard.

($5^1$) On an application of the Prosecutor's Office or of its own motion, the court may, when making a cash bail order, impose a prohibition of departure from residence on the suspect or accused following the rules provided by §§ 127 and 128 of this Code.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

($5^2$) The pre-trial investigation judge may arrange the participation, in the proceeding held to dispose of an application for cash bail, of the persons mentioned in subsection 5 of this section by means of a technical solution which complies with the requirements mentioned in clause 1 of subsection 2 of § 69 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) Where the suspect or accused evades criminal proceedings or continues to commit intentional criminal offences or violates a prohibition of departure from residence, their cash bail is charged to public revenue by the judgment or by the order terminating criminal proceedings in the case, after deduction of the amount required to compensate for the costs of such proceedings.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

($6^1$) If the grounds for committal in custody cease to be present before the statement of charges is sent to court following the rules provided by subsection 3 of § 226 of this Code, the pre-trial investigation judge or the Prosecutor's Office revokes cash bail by an order.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(7) Cash bail is refunded if:
1) the suspect or accused does not violate its conditions;
2) criminal proceedings in the case 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, the person committed in custody or their defence counsel may file an interim appeal following the rules provided by Chapter 15 of this Code against the decision, or refusal, to commit the person in 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. Verifying the justifiability of cash bail**

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

(1) When four months have elapsed following imposition of cash bail, the suspect, accused or defence counsel may make an application to the pre-trial investigation judge or the court to verify the justifiability of such a measure.

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

(2) The pre-trial investigation judge considers such an application within five days following its receipt. The prosecutor, the defence counsel and, where this is needed, the person on whom cash bail has been imposed, are summoned to the judge. A new application may be filed when the period provided by subsection 1 of this section has elapsed after consideration of the previous application.
[RT I, 19.03.2015, 1 – entry into force 01.09.2016]

($2^1$) The pre-trial investigation judge or the court may arrange the participation, in the hearing convened to dispose of the application, of the persons mentioned in subsection 2 of this section by means of a technical solution which complies with the requirements mentioned in clause 1 of subsection 2 of § 69 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) To dispose of the application, the pre-trial investigation judge acquaints themselves with the criminal file. The application is disposed of by a court order against which no further appeal lies.

($3^1$) If the pre-trial investigation judge or the court finds that continuing the cash bail arrangement is not justified, it must be stated in the court order whether cash bail is to be returned or whether the suspect or accused is committed in custody.
[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]

### § $137^1$. Substituting electronic monitoring for committal in custody

(1) On an application of the suspect, the accused or the prosecutor, the pre-trial investigation judge or the court, with the consent of the person committed in custody, may substitute committal in custody with the obligation, provided for by subsection 1 of § $75^1$ of the Penal Code, to submit to electronic monitoring. The time spent under electronic monitoring is not deemed time in pre-trial confinement or time under arrest and is not counted as time served for the purposes of the sentence imposed.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

($1^1$) When the period for which electronic monitoring was imposed or the period provided by § $75^1$ of the Penal Code elapses, the pre-trial investigation judge – on an application of the Prosecutor's Office – or the court decides on any further compliance enforcement measures to be imposed.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

($1^2$) The period for which electronic monitoring is imposed in pre-trial proceedings is subject to the provisions of subsection 3 of § $75^1$ of the Penal Code.
[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 the pre-trial investigation judge or the court receives an application for substitution of committal in custody, they instruct a probation officer serving the locality of residence of the suspect or accused to present, within five working days, an opinion concerning the possibility of employing electronic monitoring.

(4) Electronic monitoring is imposed by a court order. To dispose of an application for electronic monitoring, the person committed in custody is brought before the pre-trial investigation judge or the court; the prosecutor and, on an application or motion of the person committed in custody, their defence counsel are summoned to the judge or court and their submissions are heard.

(5) The pre-trial investigation judge or the court may arrange the participation, for disposing of the application for imposition of electronic monitoring, of the persons mentioned in subsection 4 of this section by means of a technical solution which complies with the requirements mentioned in clause 1 of subsection 2 of § 69 of this Code.

(6) Before making a decision on the imposition of electronic monitoring, the pre-trial investigation judge or court presents the opinion of a probation supervisor concerning the possibility of employing electronic monitoring in the locality of residence of the suspect or accused.

(7) The suspect or accused is released from custody and electronic monitoring is used in their respect when the time limit for filing an interim appeal elapses or the order of the higher-instance court enters into effect.

(8) If the suspect or accused does not submit to electronic monitoring, the pre-trial investigation judge or the court, by an order based on a report of the probation officer, substitutes such monitoring with committal in custody.

(9) The imposition of, or refusal to impose, electronic monitoring in pre-trial proceedings and verification of the justifiability of such monitoring is subject to the provisions of this Code concerning cash bail.

[RT I, 07.07.2017, 1 – entry into force 01.11.2017]

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

(1) Where it is ascertained, as a result of expert assessment, that a person who has been committed in custody perpetrated an unlawful act in a state of mental incompetence, or that they are mentally ill or suffer from dementia or any other severe mental disorder, they are, without delay, released from custody by order of the Prosecutor's Office, unless otherwise provided by § 395[1] of this Code.

(2) The investigative authority transmits the expert's report mentioned 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 Measures for Ensuring Compliance

**§ 138. Consequences of not appearing when summoned by a proceedings authority**

(1) Any person who has been summoned by a proceedings authority and who does not appear is fined by order of the court, made by the pre-trial investigation judge on an application of the Prosecutor's Office or by the court of its own motion, or is given a short-term custodial sentence of up to five days by the pre-trial investigation judge or the court.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) On an appeal filed by the person who was given a fine or a short-term custodial sentence, the court may set aside such a fine or sentence, which was imposed for not appearing when summoned, if the person proves that their non-appearance was due to a valid reason provided for by § 170 of this Code.

(3) Any suspect, accused, convicted offender, victim, civil defendant or witness who does not appear when summoned by a proceedings authority may be forcibly brought in following the provisions of § 139 of this Code, or may be declared a fugitive from justice following the provisions of § 140 of this Code.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 138[1]. Imposing a fine**

(1) Where the court or pre-trial investigation judge is authorised, in a situation provided for by this Code, to impose a fine, the amount of such a fine may be up to 3200 euros, unless this Code provides otherwise. In determining the amount of the fine, the court or pre-trial investigation judge has regard to the financial situation of the person as well as to other circumstances of their case.

(2) Instead of or besides a minor, a fine may be imposed on their parent or guardian, unless this Code provides otherwise. Instead of a legal adult of restricted active legal capacity, a fine may be imposed on their guardian. No fine is imposed on a minor of less than 14 years of age and on a person of restricted active legal capacity.

(3) A fine may be imposed on a person only after they have been given a corresponding caution, except where prior cautioning is not possible or reasonable.

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

(5) A person who has been fined, or their representative, is without delay served with a copy of the order imposing the fine.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 139. Forcible bringing-in**

(1) 'Forcible bringing-in' means the conveying of a suspect, accused, convicted offender, victim, civil defendant or witness to an investigative authority, forensic institution, the Prosecutor's Office or court for the performance of a procedural operation, and the conveying of a convicted offender to a prison or jail to serve their sentence.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) A person may be ordered forcibly brought in where:

1) they have received a summons but have not appeared – without a valid reason mentioned in § 170 of this Code;
1[1]) there is reason to believe that they are evading criminal proceedings;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
2) prior summoning of a person may interfere with criminal proceedings, and the person refuses to come in voluntarily when so directed by the investigative authority or the Prosecutor's Office;
3) they are evading the execution of a judgment.

(3) The person is conveyed to the Prosecutor's Office or to court by order of the Prosecutor's Office, or of the court, which states:
1) the name of the person to be forcibly brought in, their procedural status, residence and place of employment or the name of their educational institution;
2) the reason for their being forcibly brought in;
3) the time of execution of the order and the place to which the person is to be conveyed.

(3[1]) A convicted offender may be ordered forcibly brought in to a prison or jail on the grounds and according to the rules provided by subsection 3 of § 414 of this Code.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(4) An order to forcibly bring in a person is transmitted for execution to an investigative authority.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

(5) A person who has been ordered to be forcibly brought in may be arrested for as long as is necessary for the performance of the procedural operation which is grounds for the order, but not for longer than forty-eight hours.

**§ 140. Declaring a person to be a fugitive from justice**

(1) A proceedings authority may, by an order, declare the suspect, accused, victim, civil defendant or witness a fugitive from justice if they have failed, without a valid reason mentioned in § 170 of this Code, to appear as summoned and if their whereabouts are unknown, and may so declare a convicted offender if the offender evades execution of the judgment given in their case.

(2) An order declaring a person to be a fugitive from justice states:
1) the facts of the criminal offence;
2) the name of the person declared a fugitive, their procedural role, residence and place of employment or name of their educational institution.

(2[1]) Where this is needed, the proceedings authority includes in the order by which it declares a person a fugitive, an obligation to bring the person, when they are apprehended, before the proceedings authority following the provisions on forcible bringing-in.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) An order declaring a person to be a fugitive from justice is transmitted for execution to the covert operations authority that conducts or conducted proceedings in the criminal case that is grounds for the order. If proceedings in the criminal case are, or were, conducted by an investigative authority which is not a covert operations authority, the order is transmitted for execution to the Police and Border Guard Board.
[RT I, 29.06.2012, 2 – entry into force 09.07.2012]

(3[1]) Where an order declaring a person to be a fugitive concerns the suspect, accused or convicted offender, the warrant for their committal in custody, or a judicial disposition which has entered into effect and on the basis of which the execution of their imprisonment has been mandated is transmitted to a covert operations authority together with the order.
[RT I, 29.06.2012, 2 – entry into force 09.07.2012]

(4) When a person who has been declared a fugitive is apprehended, they are forcibly brought in to the proceedings authority or to the place where they are to serve their pre-trial custody or their imprisonment, with a corresponding notification being made to the proceedings authority.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 140[1]. Ascertaining a person's identity**

(1) A proceedings authority may ascertain the identity of a party to proceedings, of a convicted offender, of an expert or of a witness in accordance with the rules provided by § 32 of the Law Enforcement Act.

(2) If ascertaining the identity of a person following the rules mentioned in subsection 1 of this section is impossible or disproportionately difficult, their identity may be ascertained in accordance with the rules provided by § 33 of the Law Enforcement Act.
[RT I, 13.03.2014, 4 – entry into force 01.07.2014]

**§ 140[2]. Prohibition of stay**

To provide for the performance of a procedural operation, a prohibition of stay may be imposed in respect of a particular place or person following the rules provided by § 44 of the Law Enforcement Act.
[RT I, 13.03.2014, 4 – entry into force 01.07.2014]

**§ 141. Suspending the suspect or accused from an official position**

(1) The suspect or accused is suspended from their official position on an application of the Prosecutor's Office by order of the pre-trial investigation judge, or by court order, if:
[RT I 2004, 46, 329 – entry into force 01.07.2004]
1) they may commit further criminal offences, should they continue to work in their position;
2) their continuing to work in their position may harm criminal proceedings in the case.

(2) A copy of an order suspending the suspect or accused from their official position is handed to the suspect or accused and to the Head of the institution that employs them.

(3) If the grounds for suspension cease to be present before the statement of charges is sent to court following the rules provided by subsection 3 of § 226 of this Code, the pre-trial investigation judge or the Prosecutor's Office revokes the suspension by a corresponding order.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 141[1]. Temporary restraining order**

(1) The suspect or accused in proceedings concerning a criminal offence against the person or a criminal offence against a minor may, in order to protect the privacy or other personal rights of a victim and on an application or motion of the Prosecutor's Office by order of the pre-trial investigation judge or of the court, be prohibited from attending any places determined by the court, from approaching any persons determined by the court or from communicating with such persons.
[RT I 2006, 31, 233 – entry into force 16.07.2006]

(1[1]) The court may, together with a temporary restraining order and with the consent of the suspect or accused, impose electronic monitoring as provided for by § 75[1] of the Penal Code.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(1[2]) In a situation of urgency, the restraining order provided for by subsection 1 of this section may be imposed by order of the Prosecutor's Office and regardless of the victim's consent. In such a situation, the Prosecutor's Office notifies the imposition of the restraining order to the court within two working days and the court, having regard to the victim's consent, decides on the permissibility of the order following the rules provided by subsections 1[3]–6 of this section.
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

(1[3]) The order which is mentioned in subsection 1 of this section and by which a temporary restraining order is imposed and the order which is mentioned in subsection 1[2] and by which a restraining order is declared permissible may be made as a note on the corresponding application, motion 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 imposed on the suspect or accused with the consent of the victim.
[RT I 2006, 31, 233 – entry into force 16.07.2006]

(3) To make a temporary restraining order, the pre-trial investigation judge acquaints themselves with the criminal file and questions the suspect or accused and, where this is needed, the victim in order to ascertain whether the application for a temporary restraining order is justified. The prosecutor and, should the suspect or accused make the corresponding application or motion, their defence counsel are also summoned before the court or the pre-trial investigation judge and their opinions are heard.
[RT I 2006, 31, 233 – entry into force 16.07.2006]

(3[1]) The pre-trial investigation judge or the court may organise the participation, in the disposition of the application or motion for imposing a restraining order, of the persons mentioned in subsection 3 of this section by means of a technical solution which complies with the requirements mentioned in clause 1 of subsection 2 of § 69 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) A temporary restraining order states:
1) the reasons for the order;

2) the conditions of the order.
[RT I 2006, 31, 233 – entry into force 16.07.2006]

(5) The victim, the Prosecutor's Office, the suspect, the accused or their defence counsel may, following the rules provided by Chapter 15 of this Code, file an interim appeal against the imposition of a temporary restraining order or against a refusal to impose such an order.
[RT I 2006, 31, 233 – entry into force 16.07.2006]

(6) A copy of the temporary restraining order is provided to the suspect or accused and to the victim, and another one is sent to the Police and Border Guard Board. The pre-trial investigation judge or the court also notifies the imposition of the temporary restraining order, without delay, to any other persons who are affected by the order.
[RT I, 29.12.2011, 1 – entry into force 01.01.2012]

### § 141[2]. Verification of continued justification of suspension from an official position or of imposition of a temporary restraining order

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

(1) The suspect, accused or their defence counsel may, when four months have elapsed following suspension from an official position or imposition of a temporary restraining order, file an application or motion with the pre-trial investigation judge or with the court to verify whether such suspension or imposition continues to be justified, or to vary the conditions of the temporary restraining order. A new application or motion may be filed when four months have elapsed from consideration of the previous one.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(1[1]) Where a temporary restraining order restricts the right of the suspect or accused to use their dwelling, the suspect, the accused or their defence counsel may file the application or motion mentioned in subsection 1 of this section when one month has elapsed from the imposition of the order.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) The pre-trial investigation judge or the court considers the application or motion within five days following its receipt. The prosecutor, suspect or accused and, on an application or motion of the suspect or accused, their defence counsel, are summoned before the pre-trial investigation judge or the court. When verifying whether a temporary restraining order remains justified, the victim is also summoned.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2[1]) When disposing of the application or motion, the pre-trial investigation judge or the court may arrange participation of persons mentioned in subsection 2 of this section by means of a technical solution which complies with the requirements mentioned in clause 1 of subsection 2 of § 69 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) The application or motion is disposed of by a court order. The order is not subject to contestation, except where it varies the conditions of a temporary restraining order.
[RT I 2006, 31, 233 – entry into force 16.07.2006]

### § 141[3]. Varying or setting aside a temporary restraining order on an application or motion of the victim and of the Prosecutor's Office

(1) On a corresponding application or motion of the victim or on a corresponding application or motion of the Prosecutor's Office and with the consent of the victim, the pre-trial investigation judge or the court may vary the conditions of a temporary restraining order or set the order aside.

(2) To make an order varying the conditions of, or setting aside, a temporary restraining order, the pre-trial investigation judge or the court acquaint themselves with the criminal file and question the suspect or accused and the victim to ascertain whether the application or motion is justified. The prosecutor, victim, suspect or accused and, on an application or motion of the suspect or accused, their defence counsel, are summoned before the pre-trial investigation judge or the court.

(3) A copy of an order varying the conditions of, or setting aside, a temporary restraining order is provided to the suspect or accused, to the victim and to any other person whom the restraining order affects.
[RT I 2006, 31, 233 – entry into force 16.07.2006]

### § 141[4]. Interim protection of confiscation, substitutional confiscation, civil court claim, statement of public-law claim and forfeiture of property

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

(1) Where there is a reasonable suspicion that a criminal offence has been committed, property may be attached, following the rules provided by § 142 of this Code, for interim protection of a confiscation, a substitutional confiscation, a civil court claim, a statement of a public-law claim or a forfeiture of property – or any other

measures provided by § 378 of the Code of Civil Procedure for interim protection of claims may be imposed – if there is reason to believe that failure to take such measures in order to protect a claim of the victim, a confiscation, a substitutional confiscation or a forfeiture of property may complicate execution of the judicial disposition in the case or render it impossible.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(2) The rules provided by § 142 of this Code are followed when imposing a measure for interim protection of a court claim.
[RT I, 26.02.2014, 1 – entry into force 08.03.2014]

(3) When selecting an interim measure to protect a pecuniary claim, consideration must be given to the principle that the measure to be imposed should only burden the suspect, accused, civil defendant or a third party to a degree that may be considered reasonable in the circumstances. Where an interim measure is imposed to protect a monetary claim, the amount of the claim must be taken into account.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(4) To protect a pecuniary claim, the court may impose several interim measures at the same time.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

**§ 142. Attachment of property**

(1) The objective of attachment of property is to ensure interim protection of a civil court claim, of a statement of a public-law claim, of confiscation or substitutional confiscation or of a forfeiture of property. 'Attachment of property' means recording the details of the property of the suspect, accused, convicted offender, civil defendant or third party, or of the property that is the subject matter of a money laundering or terrorist financing scheme, and preventing any transfer of such property.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(2) Property is attached on an application of the Prosecutor's Office by order of the pre-trial investigation judge or of the court, having regard to the exception mentioned in subsection 3 of this section.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

($2^1$) The attachment of property held in an account with a credit or financial institution consists in setting a restriction on using the account such that during the time the restriction applies the credit or financial institution does not, to the extent of the property attached, execute debiting instructions in respect of that account.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(3) In situations of urgency, property may be attached by order of the Prosecutor's Office. The attachment must be notified to the pre-trial investigation judge within the next 24 hours and the judge must decide, by order and without delay, but not later than 72 hours after learning of the attachment, whether to grant or refuse a corresponding authorisation. If the judge refuses to grant the authorisation, the attachment is released immediately.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(4) Where property is attached to ensure interim protection of a civil court claim, the attachment is based on the extent of the harm caused by the criminal offence.

(5) An order on attachment of property is presented without delay to the person whose property has been attached, or to a member of their family who is a legal adult or, where the property of a legal person has been attached, to a representative of such a person, and their signed acknowledgement on the order – stating that the order has been presented to them – is obtained. Where obtaining such an acknowledgement is not possible, the order is transmitted to the person whose property has been attached or to a representative of the legal person who owns the property. Where property is seized in the course of a procedural operation and the required person or representative is not present, participation of a representative of the local authority must be arranged.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) Where this is needed, the expert or specialist witness who participated in the procedural operation ascertains the value of attached property on the spot.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(7) Attached property is seized or entrusted for safekeeping to a bailee. Property is entrusted to the bailee under a bailment contract. The bailee is to ensure preservation of the property and is cautioned that any unauthorised use or disposal of or intentional damage to the property carries a criminal sanction.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(8) To attach an item of immovable property, the pre-trial investigation judge transmits an attachment order to the Land Registry Department of Tartu District Court for a note restraining disposition of the property to be recorded in the Land Register.

[RT I, 21.06.2014, 8 – entry into force 01.01.2015]

(9) To attach a movable or a right recorded in a public register, the Prosecutor's Office presents the attachment order to the relevant public register or, to attach a registered security, to the Central Securities Depository.
[RT I, 26.06.2017, 1 – entry into force 06.07.2017]

(10) Attachment is not available in respect of property that is provided for by law as exempt from being levied upon under an enforceable title.

(11) Where the grounds for attachment of property or cease to apply before the completion of pre-trial proceedings, the Prosecutor's Office or pre-trial investigation judge releases the attachment by an order. An attachment of immovable property is released by an order of the pre-trial investigation judge.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

**§ 143. Report of attachment of property**

(1) A report of attachment of property states:
1) the common names and characteristics of the objects attached and their number, volume or weight and value;
2) a list of the property attached or entrusted into the custody of a bailee;
3) the absence of attachable property – where there is no such property.

(2) A list of attached property may be appended to the report of attachment of property, in which case a corresponding note is made in the report. In such a situation, the particulars listed in clause 1 of subsection 1 of this section are not stated in the report.

**§ 143[1]. Additional restrictions that may be imposed on a person subjected to a restriction of personal liberty**

(1) If there is sufficient reason to think that the suspect or accused who has been committed in custody, or who is serving a term of imprisonment or a short-term custodial sentence, may, by their actions, harm the conduct of criminal proceedings in the case, the Prosecutor's Office or the court may make an order to relocate them, or to isolate them completely from other persons who have been committed in custody or who are serving such a term or sentence. The Prosecutor's Office or the court may also, by order, restrict or completely disallow the following with regard to such a suspect or accused:
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
1) the right to short or long-term visits;
2) the right to correspondence and to using the telephone;
3) the right to a short-term prison leave;
4) the right to be taken out of the prison under supervision or to be released from prison.

(2) The order states:
1) the name of the suspect or accused;
2) the reasons and extent of the relocation or of the restriction of rights;
3) the period for which the relocation or restrictions have been imposed.

(3) The order is sent to the prison or jail to be executed without delay. A copy of the order is sent to the suspect or accused.

(4) The restriction mentioned in clause 1 of subsection 2 of this section does not extend to correspondence and the use of the telephone for communication with State authorities, local authorities and their officials, as well as with the 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) A procedural document is issued in the Estonian language. Where a procedural document has been issued in another language, a translation into Estonian is appended to it.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) In criminal proceedings terminated by the investigative authority or the Prosecutor's Office, a translation into the Estonian language of procedural documents issued in another language is provided at the direction of the Prosecutor's Office or on the application of a party to proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 145. Order**

(1) An order (in this translation, also 'warrant') is:
1) a ruling by a proceedings authority on a procedural issue, issued in writing and substantiated;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
$1^1$) a ruling terminating criminal proceedings, made in accordance with the rules provided by subsection $1^1$ of § 206 of this Code;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
$1^2$) in a situation provided for by this Code, a ruling on a procedural issue, made as a note on the underlying application, without setting out its reasons;
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]
2) a ruling on a procedural issue which is made following the rules provided by § 137 of this Code to dispose of an individual issue in judicial proceedings and which is entered in the record of the trial or hearing, without setting out its substantiation.

(2) The introduction of a substantiated order states:
1) the date and place of its issue;
2) the position title and name of the person issuing the order;
3) the title of the criminal case: the number of the case and the legal designation 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 body of a substantiated order states:
1) the reasons for the order;
2) the legal basis for the order in procedural law.

(4) The final part of a substantiated order states the ruling made to dispose of the criminal case or of an individual issue in such a case.

($4^1$) The court may add, to an order by which a party to proceedings is required to pay an amount of money to the Republic of Estonia under a claim which has not arisen from participation of the State or of any of its administrative bodies in judicial proceedings as a party to those proceedings, in a separate document, the particulars required to pay the claim.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

($4^2$) A list of the particulars required to pay the claim mentioned in subsection $4^1$ of this section and the technical requirements for stating these are enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(5) When drawing up an order, any additional requirements established concerning its content are observed.

(6) Where it is provided for by this Code, a substantiated order is presented to the party or parties to proceedings, their rights and obligations are explained to them and signed acknowledgement is obtained from them regarding such explanation.

(7) An order made by a proceedings authority in a criminal case which the authority is conducting is mandatory for all persons.

**§ 146. Report of an investigative or other procedural operation**

(1) A report to reflect the conditions, course and results of an investigative or other procedural operation is filed in typewritten or word-processed form or in clearly legible handwriting. Where this is needed, the assistance of a record taker is employed.

(2) The introduction of the report states:
1) the date and place of the investigative or other procedural operation;
2) the position title and name of the person filing the report;
3) the number of the criminal case and the title of the investigative or other procedural operation;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
4) in situations provided for by law, a reference to the order under which the investigative or other procedural operation was carried out;

5) the procedural status of the person subject to the investigative or other procedural operation, the person's name, their residence or seat, address, the connection number of their means of communication or e-mail address;
6) the procedural status, name, residence or seat and address of any other person who participated in the investigative or other procedural operation;
7) the time of commencement and of conclusion of the investigative or other procedural operation, and other particulars;
8) the lead-in to the investigative or other procedural operation according to § 8 of this Code;
9) the legal basis of the investigative or other procedural operation in procedural law.

(3) Where a witness who provides a statement in the course of the investigative operation is at least fourteen years of age, it is stated in the introduction to the report that they have been cautioned with respect to criminal liability incurred, under the Penal Code, by a refusal to provide a statement or give testimony without a statutory basis for refusal or by giving a knowingly false statement or knowingly false testimony.

(4) In the introductory part of the report, signed acknowledgement is obtained from the party to proceedings concerning an explanation having been provided to them of their rights and obligations.

(5) The body of the report records:
1) the course and results of the investigative or other procedural operation with the degree of detail required for evidentiary purposes, observing any additional requirements provided for by this Code regarding the substance of procedural operations;
2) the use of any technical equipment.

(6) The final part of the report states:
1) the common names of any objects seized in the course of the investigative or other procedural operation and the manner in which they have been packaged;
2) presentation of the report to the persons who participated in the investigative or other procedural operation;
3) any annexes to the report.

(7) Where conclusions whose comprehension requires specialised knowledge are stated in the report, the report sets out the method of reaching such conclusions and the particulars of the person who formulated the conclusions that are based on such knowledge.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(8) Where a witness participating in a procedural operation does so under a fictitious name, a copy is made of the report of such an operation, in which no other personal data besides the fictitious name are stated, and which the witness is not asked to sign. The original of the report is placed in the envelope that is mentioned in subsection 4 of § 67 of this Code and that is kept separately from the criminal file.

**§ 147. Record taker**

When recording the conditions, course and results of a procedural operation, an investigative authority or the Prosecutor’s Office may use the assistance of a record taker.

**§ 148. Annex to the report of an investigative or other procedural operation**

(1) Where this is necessary, in addition to setting out evidentiary information in the report of an investigative or other procedural operation, such information may be recorded in the form of a photograph, footage, an audio or video recording, a drawing or in any other illustrative manner.

(2) A photograph, drawing and any other illustrative material is included in the criminal file together with the report, while footage and audio or video recordings are packaged and kept with the materials of the criminal case.

**§ 149. Photograph**

(1) The conditions, course and results of an investigative or other procedural operation are recorded by means of photography if this is considered necessary by the official of the investigative authority or if the obligation to do so is provided for by this Code.

(2) If a negative has been used in making a photographic print, the negative is annexed to the report of the investigative or other procedural operation.

(3) A digital photograph is set out in the report of the procedural operation or as an annex to such a report, and preserved in the form of a computer file in the eFile system. A digital photograph may also be produced of single frames of a video recording.
[RT I 2008, 28, 180 – entry into force 15.07.2008]

**§ 150. Footage and an audio or video recording**

(1) Footage may be shot of an investigative or other procedural operation, or of a complete part of such an operation, or the operation may be audio or video recorded. This must be notified to any participating witness or party to proceedings before commencement of the operation.

(2) The information required by subsections 2 and 3 of § 146 of this Code is stated at the beginning of any audio or video recording. When the investigative or other procedural operation has been completed, the recording is presented to the participants for listening or viewing.

(3) Based on the audio or video recording of an investigative or other procedural operation, a report is filed concerning that operation following the rules provided by this Code.

(4) An audio or video recording is included in the criminal file. Subsequent rectification of such a recording is not allowed.

(5) The video recording of their interview or examination or of another investigative or other procedural operation in which they participated is not presented to a witness of less than 14 years of age. Where the witness is less than 18 years of age, a decision may be made not to present such a recording to them.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 151. Drawing**

(1) A drawing may be appended to a report in order to illustrate the conditions, course and results of the investigative operation and to clarify and supplement the substance of the report.

(2) A reference is made on the drawing to the report of the investigative operation, and the time of making the report is stated.

(3) The drawing is signed by the proceedings authority. Where the drawing was made by a specialist witness or a person subjected to the investigative operation, its truth and accuracy is also attested by the signature of the person in question.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) Where this is necessary, the proceedings authority also obtains signed attestation of a drawing's truth and accuracy from any other person who participated in the investigative operation.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 152. Presenting the report of an investigative or other procedural operation**

(1) The report of an investigative or other procedural operation is handed – for reading – to the person subjected to the operation and to any other persons who participated in that operation, or is read out, if the person in question so requests, and a corresponding note is made in the report.

(2) Where a person who acquaints themselves with the report of an investigative or other procedural operation makes any representations concerning the conditions, course and results the operation, or concerning the report, or makes an application to rectify the report, or any other application, such a representation or application is recorded in that report.

(3) A copy of the report of a search or of an attachment of property is handed to the person subjected to the corresponding operation or to a member of their family who is a legal adult or, if the person is a legal entity or an institution of the State or of a local authority, to such a person's representative who participated in the procedural operation. Where none of the aforementioned was present, a copy of the report is handed to a representative of the local authority.

(4) The report is signed by the proceedings authority, by any specialist witness, by any person subjected to the operation and by any person who participated in the operation.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) If a person mentioned in subsection 4 of this section refuses to sign the report or if they are unable to do so due to a physical disability, a note concerning the refusal and the reasons for the refusal, or concerning the impossibility of their signing, is made in the report and attested to by an official of the investigative authority.

(6) The report that was filed based on the video recording of an interview with a witness of less than 14 years of age, or on the video recording of another investigative or procedural operation, is not presented to such a witness. A decision may be made not to present such a report also to a witness of less than 18 years of age.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 153. Summary of pre-trial proceedings**

(1) The summary of pre-trial proceedings states:
1) the date and place of its filing;
2) the position title and name of the official of the investigative authority;
3) the title of the criminal case;
4) the suspect's name, residence or seat and address as well as personal identification number (or, where the suspect does not possess one, their date of birth) and their citizenship, education, native language and employer or educational institution;
5) any previous convictions of the suspect;
6) any compliance enforcement measures imposed on the suspect, and their duration;
7) facts of the subject matter of evidence which are listed in clause 1 of § 62 of this Code and which were ascertained in pre-trial proceedings,;
8) a list of the evidence;
9) a list of items of physical evidence and of any recordings, and particulars concerning their location;
10) information concerning any objects attached as an interim measure to achieve a confiscation;
11) information concerning any civil court claims or notices of public-law claims and concerning any interim protection measures regarding such claims;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
12) information concerning proceeds of the criminal offence;
13) a list of particulars 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) A summary of pre-trial proceedings is signed and dated by an official of the investigative authority.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 154. Statement of charges**

(1) The introductory part of a statement of charges states:
1) the date and place of its issue;
2) the position title and name of the prosecutor;
3) the title of the criminal case;
4) the name, residence or seat and address of the accused, the accused's personal identification number or, if they do not possess one, their date of birth, citizenship, education, native language and employer or educational institution;
5) any previous convictions of the accused.

(2) The body of a statement of charges states:
1) the facts of the criminal offence;
2) the type and extent of the harm caused by the criminal offence;
3) information concerning any property that was obtained by the criminal offence;
$3^1$) any mitigating and aggravating circumstances;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
$3^2$) information on whether the victim has filed the application or motion provided for by clause 2 or clause 4 of subsection 5 of § 38 of this Code or expressed the opinion provided for by clause 5 of that subsection;
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]
4) evidence to prove the facts on which the charges are based, pointing out, regarding each item of evidence, which fact the prosecution intends to prove by that item;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
5) information concerning any compliance enforcement measures imposed on the accused, any varying of those measures and the measures that are currently applicable;
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]
$5^1$) where the accused is a citizen of a foreign state, information concerning the possibility of imposing expulsion as an ancillary sanction according to the provisions of § 54 of the Penal Code;
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]
6) information concerning circumstances based on which a forfeiture of property has been assessed in the case or concerning circumstances which serve as grounds for a 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 circumstances which serve as an indication for ordering the accused to undertake a course of addiction treatment for drug addicts or a course of complex treatment for sex offenders;
[RT I, 15.06.2012, 2 – entry into force 01.06.2013]
9) information concerning any children and property of the accused that are in need of supervision;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
10) information concerning any items of physical evidence and any other objects seized as part of criminal proceedings in the case;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
11) particulars concerning the costs of the criminal case;
[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) information 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 states:
1) the name of the accused;
2) the substance of the charges;
3) the legal designation of the criminal offence according to the relevant section, subsection and clause of the Penal Code.

(4) The statement of charges is signed and dated by the prosecutor.

**§ 154[1]. Civil court claim**

(1) A civil court claim is filed in writing and states:
1) the name, address and other contact details of the person filing it;
2) the name of the accused or civil defendant against whom the claim is filed. Until they are shown the criminal file, a victim may decide not to state, in the claim, the name of the accused or of the civil defendant. In such a situation, the victim must supplement the claim with the corresponding information within the time limit provided by subsection 1 of § 225 or clause 4 of § 240 of this Code;
3) in specific terms, the relief sought by the party filing the claim;
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]
4) the factual circumstances on which the filer's claim is based;
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]
5) evidence to prove the circumstances on which the claim is based and on which the victim intends to rely regardless of the body of evidence to be offered by the Prosecutor's Office, if the party filing the claim is not the Prosecutor's Office. Where a claim is filed by the Prosecutor's Office under subsections $3^1$, $3^2$or $3^3$of § $38^1$of this Code, such a claim states the evidence that is to be used to prove the circumstances on which the claim is based and that the Prosecutor's Office intends to rely on.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

(2) In a claim for compensation for non-pecuniary harm, the amount of the compensation claimed may be left unspecified and fair compensation at the discretion of the court may be sought as relief.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

**§ 154[2]. Statement of a public-law claim**

A statement of a public-law claim is filed in writing and states:
1) the person filing the statement, their address and other contact details;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
2) the name of the accused or defendant against whom the statement is filed;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
3) in specific terms, the relief sought by the person filing the statement;
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]
4) the substantive-law grounds for the claim filed by the statement and its legal and factual reasons;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
5) evidence to prove the facts on which the claim is based, upon which the victim intends to rely, regardless of the body of evidence offered by the Prosecutor's Office, if the party filing the statement is not the Prosecutor's Office. Where the statement is filed by the Prosecutor's Office under subsections $3^1$, $3^2$or $3^3$of § $38^1$of this Code, the civil court claim sets out the evidence that is to be used to prove the circumstances on which the relief is based and that the Prosecutor's Office intends to rely on.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

**§ 155. Record of the trial or hearing**

(1) The record of the trial or hearing before the court of first instance or of the hearing before the circuit court of appeal is a procedural document which is filed in typewritten or word-processed form and in which a record taker, in their own words or as a summary dictated by the judge, records the conditions and course of the trial or hearing of the criminal case.

(2) The record of a trial or hearing states:
1) the date and place of the trial or hearing and the time of its commencement and end;
2) the name of the court and the composition of the panel of judges;
3) the names of the parties to judicial proceedings, of the record taker, and of any translators or interpreters and of experts;

4) the title of the criminal case tried or heard;
5) [Repealed – RT I, 23.02.2011, 1 – entry into force 01.09.2011]
6) the titles of any operations performed by the court, in chronological order;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
7) in an adversarial examination, the questions put to the person being examined by the parties to judicial proceedings and the person's testimony;
8) any representations, motions or applications and the results of their disposition;
9) the titles of any orders made at the trial or hearing;
10) the relief applied for by the parties in their concluding statements;
11) the relief applied for by the accused in their final statement;
12) whether the judgment or order was made in the deliberation room;
13) pronouncement of the judgment or order and explanation of the rules and the time limit for appeal.

($2^1$) A judicial record taker makes a record of the trial or hearing without interrupting its smooth progress.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

($2^2$) Where a trial or hearing was audio or video recorded, the corresponding recording constitutes an integral part of its record. If what is reflected in such a record derogates from the recording, the recording prevails.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) The record is signed and dated by the presiding judge and the judicial record taker.

**§ 156. Audio and video recording of a trial or hearing**

(1) Trials and hearings are audio recorded. The court may also video record a trial or hearing or any of its stages.
[RT I, 31.05.2018, 2 – entry into force 01.01.2019]

(2) Where a trial or hearing or an operation performed by the court is audio or video recorded, the court may use the recording for the purpose of adding to and specifying the record of the corresponding proceedings before the court.

(3) Rectification of an audio or video recording is not allowed.

(4) A decision may be made not to record a trial or hearing if:

(1) it comes to light before or in the course of the trial or hearing that recording is technically impossible and if the court is convinced that holding the trial or hearing without recording it is expedient and in line with the interests of the parties to judicial proceedings;
2) the trial or hearing is held outside the court's premises;
3) the hearing is held to pronounce the court's disposition in a case;
4) it is a hearing of the Supreme Court.
[RT I, 31.05.2018, 2 – entry into force 01.01.2019]

(5) Trials or hearings are audio or video recorded in digital form.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ $156^1$. Acquainting oneself with the recording of a trial or hearing and with the record of judicial proceedings**

(1) The parties to judicial proceedings have a right to receive a copy of the record of such proceedings and, where an audio recording has been made of those proceedings, of such a recording.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) The court notifies the parties to judicial proceedings of the time of signing the record of such proceedings and, without delay, transmits the record, after it has been signed, by electronic means to the prosecutor and to other parties to judicial proceedings who have notified their e-mail addresses to the court. The parties may also acquaint themselves with the record in the court's office.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) On a motion of a party to judicial proceedings, the court makes a signed record of the trial or hearing accessible to the parties to judicial proceedings not later than when three days have elapsed after the day of the trial or hearing.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) A copy of an audio recording of the trial or hearing is issued by the court's office on a digital data medium or by electronic means within three days following the filing of the corresponding application. A copy of the audio recording of the trial or hearing is made accessible to the prosecutor through the eFile system.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) Where a video recording was made of the trial or hearing, the court presents – on an application of a party to judicial proceedings – such a recording to the party in court within three days following the making of the application.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) A copy of a record or recording of a trial or hearing which was declared closed in its entirety or in part is issued by the court only if this does not jeopardise the interests mentioned in subsection 1 of § 12 of this Code. The court makes it possible for a party to judicial proceedings to acquaint themselves with such a recording or record in court.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(7) The fee to be charged for making a copy of the audio recording mentioned in subsection 1 of this section, in the amount of up to five euros, and the rules for its payment, are enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(8) A statutory fee, in the amount provided by subsection 1 of § 61 of the Statutory Fees Act, is paid for a copy of the record mentioned in subsection 1 of this section.
[RT I, 30.12.2014, 1 – entry into force 01.01.2015]

### § 156$^2$. Making procedural documents available in judicial proceedings

(1) The court, without delay and through the eFile system, makes all procedural documents of any proceedings before it available to the parties to judicial proceedings, regardless of how such documents are served on those parties.

(2) The Minister in charge of the policy sector may, by regulation, enact detailed requirements for making procedural documents available through a procedural document information system.
[RT I, 22.03.2013, 9 – entry into force 01.04.2013]

### § 157. Judicial record taker

(1) A judicial record taker is an officer of the court whose task is to make the technical arrangements to prepare a trial or hearing, to arrange its audio or video recording where this is prescribed by law or where the court so directs, and to make a record of the conditions, course and results of the trial or hearing.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) A judicial record taker is required to recuse themselves from criminal proceedings on the grounds provided by subsections 1 and 6 of § 49 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) If a judicial record taker has not recused themselves on the grounds provided by subsections 1 and 6 of § 49 of this Code, the prosecutor, accused, defence counsel, victim or civil defendant may file a motion to recuse the record taker. The motion is disposed of following the rules prescribed in subsection 6 of § 59 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

### § 158. Motion to rectify the record of a trial or hearing

(1) Within three days following the signing of the record of a trial or hearing, parties to judicial proceedings may file a written motion – which is included in the criminal file – to rectify the record.

(2) The motion is considered by the judge or presiding judge. If the judge or presiding judge agrees with the motion, they rectify the record accordingly; the truth and accuracy of any rectifications is certified by the signatures of the judge or presiding judge and of the record taker.

(3) If the judge or presiding judge does not agree with the motion to rectify, such a motion is considered at a case management hearing held within five days following receipt of the motion. Where this is possible, the audio or video recording of the trial or hearing is played in order to dispose of the motion. The motion is disposed of by an order of the judge or presiding judge.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

### § 159. Judgment

(1) A judgment is a judicial disposition rendered in the name of the Republic of Estonia, which decides the criminal case on its merits.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) When drawing up a judgment, §§ 311–314 of this Code are observed.

(3) The court may add, to a judgment by which a party to proceedings is required to pay an amount of money to the Republic of Estonia under a claim which has not arisen from participation of the State or of an administrative body of the State in judicial proceedings as a party to those proceedings, in a separate document, the particulars required to pay the claim.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(4) A list of the particulars required to fulfil a claim mentioned in subsection 3 of this section and the technical requirements for formalising these are enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

**§ 160. Recreating a document**

(1) If a procedural or other document of relevance for disposing of a criminal case is destroyed, lost or removed and it is not possible to restore it, a judicially or notarially certified copy of such a document is deemed to be equivalent to the original document.

(2) Where it is not possible to replace a procedural document with a certified copy, the document is recreated based on a draft of that document, if such a draft exists. A recreated procedural document is deemed to be valid if the proceedings authority who originally drew up the document in question attests, by their signature, that the recreated document corresponds to the original one.

**§ 160[1]. Criminal file**

(1) 'Criminal file' means the set of documents collected in a criminal case.

(2) The court keeps a court file on every criminal case that it deals with; all procedural documents and any other documents related to the case are included in the file in chronological order. Where this is prescribed by law, other objects related to the case are kept with the file.

(3) A court file is kept as a body of written documents.

(4) A court file may also be kept, in whole or in part, in digital form.

(5) Where a court file is kept in digital form, paper documents are scanned and saved in the eFile system under the relevant case. The system automatically records the time of saving the document and the particulars of the person saving it. Documents saved in the system are equivalent to paper documents.

(6) The time and the rules to govern the transition to mandatory keeping of court files in digital form, as well as the technical requirements for the keeping of digital court files, for acquainting oneself with such files and for preserving electronic documents are enacted by a regulation of the Minister in charge of the policy sector.

(7) Detailed requirements for archiving digital court files and for acquainting oneself with archived files and procedural documents are enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 22.03.2013, 9 – entry into force 01.04.2013]

**§ 160[2]. Transmission of digital documents**

(1) Unless otherwise provided by this Code, any digital applications, appeals and other documents in criminal proceedings are transmitted directly or through the eFile system. A digital document that has been transmitted directly is imported into the eFile system by the proceedings authority.
[RT I 2008, 28, 180 – entry into force 15.07.2008]

(2) To include a digital document in a criminal file, the document is printed and placed in the file. The truth and accuracy of the printed document and its correspondence to the digital document is certified by the proceedings authority by affixing its signature and by adding to it the identification number of the document in the eFile system.
[RT I 2008, 28, 180 – entry into force 15.07.2008]

(3) Unless a valid reason is present for filing a procedural document in another form, any applications, appeals and other documents to be filed with a proceedings authority are filed by attorneys, notaries, enforcement agents, trustees in bankruptcy and institutions of the State or local authorities in electronic form.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 160[3]. Requirements for documents**

(1) The requirements for criminal files and the model form of the statement of defence are enacted by the Minister in charge of the policy sector.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(1[1]) The model forms of documents of pre-trial procedure in criminal cases are established by the Prosecutor General by guidelines issued to the Prosecutor's Office and to investigative authorities under subsection 5 of § 213 of this Code.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(2) The rules for the formulation, transmission and preservation of documents signed digitally in criminal proceedings and of other digital documents are enacted by the Minister in charge of the policy sector.
[RT I 2008, 28, 180 – entry into force 15.07.2008]

**§ 160[4]. Taking notes from and obtaining a copy of a document**

(1) If, under this Code, a person has a right to acquaint themselves with a procedural document, they are, unless otherwise regulated by this Code, allowed to take notes from such a document and, for a charge, to obtain a copy of the document.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) In the interests of criminal proceedings, the Prosecutor's Office may, by reasoned order and for a specified period of time, restrict the right to take notes from and to obtain a copy of a document.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) A statutory fee, in the amount provided by subsection 1 of § 61 of the Statutory Fees Act, is paid for a copy mentioned in subsection 1 of this section.
[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 if a party to proceedings is not proficient in the Estonian language, a translator or an interpreter is engaged to assist in the proceedings. The participation of the translator or interpreter in a procedural operation or at a trial or hearing may be arranged by means of a technical solution which complies with the requirements mentioned in subsection 2 of § 69 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 acting as an intermediary for a deaf or mute person. The duties of an interpreter or translator may not be performed by an actor fulfilling another procedural role.

(3) An interpreter or translator who has not been sworn is cautioned that knowingly false interpretation or translation may make them liable to a criminal sanction.

(4) A procedural operation that requires mandatory participation of an interpreter or translator is null and void if they are not present.

(5) An interpreter or translator has a right, in order to produce a true and accurate interpretation or translation, to put questions to the party to proceedings, to acquaint themselves with the report of the procedural operation or record of the trial or hearing and to make representations concerning the report or record, which are to be included in that report or record.

(6) The interpreter or translator is required to make an accurate and complete interpretation or translation of everything that concerns the procedural operation, and to maintain as confidential any information which they have become privy to when making the interpretation or translation. If a non-staff interpreter or translator is not sufficiently proficient in language for specific purposes or in the manner of expression used by a deaf or mute person, they are required to refuse to participate in criminal proceedings in the case.
[RT I, 04.10.2013, 3 – entry into force 27.10.2013]

(7) The suspect or accused or their defence counsel may, following the rules provided by § 228 of this Code, file a complaint against the production, by a translator or interpreter, of a false translation or interpretation.
[RT I, 04.10.2013, 3 – entry into force 27.10.2013]

**§ 162. Grounds for an interpreter or translator to recuse themselves and recusing an interpreter or translator**

(1) An interpreter or translator is required to recuse themselves from criminal proceedings on the grounds provided by subsections 1 and 6 of § 49 of this Code.

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

(2) If an interpreter or translator has not recused themselves on the grounds provided by subsections 1 and 6 of § 49 of this Code, the prosecutor, suspect, accused, defence counsel, victim or civil defendant may file an application or motion to recuse the interpreter or translator.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

($2^1$) A proceedings authority may recuse an interpreter or translator if the interpreter or translator does not perform their duties as is due or if the quality of the interpretation or translation may adversely affect 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) An application or motion to recuse is disposed of following the rules provided by subsections 5 and 6 of § 59 of this Code.

# Subchapter 3
# Summoning a Person and Publishing the Time of the Hearing

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

### § 163. Summons

(1) A summons states:
1) the name of the person summoned;
2) the position title, name and contact information of the person issuing the summons;
3) the reason for the summons, and the role in which the person is summoned;
4) if a legal person is summoned, whether the summons is addressed to a statutory representative or a representative;
5) whether appearance is mandatory;
6) the place and time of appearance;
7) the number of the criminal case;
8) the obligation to give notice of non-appearance and of the reason for it;
9) the consequences of non-appearance.

(2) The concluding part of a summons contains a notice form which is completed when the summons is served on a person against signed acknowledgement. The notice form states the name of the person who received the summons, their signed acknowledgement of receiving the summons, the date of receipt of the summons and the obligation of the person who received the summons when the person to whom the summons was addressed was absent to deliver the summons to the latter at the earliest opportunity or to notify the person who issued the summons that transmission of the summons is impossible. If a person refuses to accept a summons, the person serving the summons records a corresponding note in the notice form in the concluding part of the summons and attests it by their signature.

(3) If a person is summoned to a proceedings authority following the rules provided by § 164 of this Code, the telephone number or the number of another means of communication to which the summons has been transmitted is stated in the notice form provided for by subsection 2 of this section.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

### § $163^1$. Summoning a person to the district court under regular rules of procedure

(1) In a criminal case dealt with by the district court under regular rules of procedure, the summoning of a witness, specialist witness or expert is arranged by the party to judicial proceedings who makes the motion to examine the person.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) In a criminal case dealt with by the district court under regular rules of procedure, the summoning of the victim, civil defendant, third party and their representatives is arranged by the Prosecutor's Office.

(3) In a criminal case dealt with by the district court under regular rules of procedure, the summoning of the accused is arranged by the defence counsel or the Prosecutor’s Office according to the agreement reached at the preliminary hearing. Where no agreement is reached, the summoning of the accused is arranged by the Prosecutor’s Office.

(4) On a corresponding motion of the parties to judicial proceedings, the court issues them summonses at the preliminary hearing, setting out in each summons the information listed in subsection 1 of § 163 of this Code. In place of the position title and particulars of the person issuing the summons, the court states the particulars of the party to judicial proceedings.

(5) On a motion of the defence counsel, the court provides to them, from the Population Register, the address of any person to be summoned to court as a witness on the counsel’s motion.

(6) A summons is served on a witness, a specialist witness or an expert by the party to judicial proceedings or, on instructions of such a party, by a third party.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(7) When the Prosecutor's Office performs the tasks prescribed in this section, it is authorised to exercise the rights mentioned in clauses 5 and 10 of subsection 1 of § 213 of this Code. In judicial proceedings, the Prosecutor's Office has a right to summon to court, by its own authority, any person whose summoning has been decided at a preliminary hearing held in the case.
[RT I 2008, 32, 198 – entry into force 01.01.2009]

**§ 164. Regular procedure for serving a summons**

(1) A person is summoned to an investigative authority, the Prosecutor's Office or a court by a summons communicated by telephone or another technical 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 evades appearance before the proceedings authority or where a person has expressed the wish to receive the summons in writing, they are summoned to the investigative authority, the Prosecutor's Office or court by a written summons.

(3) A communication read out to a person who is present by an official of an investigative authority, by the prosecutor or by the court is deemed equivalent to a summons served on the person against signed acknowledgement within the meaning of subsection 2 of § 165 of this Code, provided a corresponding note is made in the report or record of proceedings.

(4) A summons must be communicated to or served on a person such that sufficient time remains for them to make their appearance.

(5) A summons may be delivered on any day and at any time.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 165. Rules for the service of a written summons**

(1) A written summons may be served against signed acknowledgement provided on the notice form, as a postal item to be released against signed acknowledgement, or by electronic means.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) A written summons is delivered to a person who is a legal adult or to a minor of at least fourteen years of age against signed acknowledgement on the notice form. A written summons addressed to a person who is less than fourteen years of age or to a person who suffers from a mental disorder is delivered to their parent or any other statutory representative or guardian against signed acknowledgement on the notice form. If it was not possible to deliver a summons to the person to whom it is addressed, the summons is delivered against signed acknowledgement on the notice form to a member of the person's family who is a legal adult and who is living together with the person, or is sent to the employer or educational institution of the person for being transmitted to them.

(3) A summons sent by post is deemed to be received by the person on the date recorded on the postal service provider's notice of delivery form.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) A summons may be sent to a party to proceedings by e-mail to an e-mail address they have communicated to the proceedings authority or to an e-mail address that is published by the party's employer on their website or that is published the party on a personal website. A summons transmitted by e-mail must include a note stating the obligation to acknowledge, by electronic means, the receipt of the summons. Where no acknowledgement of receipt of the summons is received within three working days following the sending of the summons to the e-mail address ascertained by the proceedings authority, the summons is sent as a postal item to be released against signed acknowledgement, or is delivered to the person to whom the summons is addressed against signed acknowledgement.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

($4^1$) If a summons is made accessible through the eFile system, the person to whom the summons is addressed is notified of its presence at their e-mail address as shown in a procedural document or as published on the Internet. The notice form must include a reference to the digital summons in the eFile system and a time limit for accessing that summons, which is three days following the point in time at which the summons was sent. A summons is not signed digitally if its sender and the time of its sending are identifiable in the eFile system. The service of a summons made accessible through the eFile system is deemed to have taken place when its recipient opens it in an information system, or acknowledges its receipt in such a system without opening the document, as well as when these actions are performed by another person to whom the recipient has made

it possible to view documents in such a system. If the summons is not accessed through the eFile system within three days following the time of its sending, the summons is sent as a postal item to be released against signed acknowledgement, or is delivered to the person to whom the summons is addressed against signed acknowledgement.
[RT I, 22.03.2013, 9 – entry into force 01.04.2013]

(5) The notice form concerning the service of a summons against signed acknowledgement, a postal service provider's notice of delivery form, a printout of an e-mail concerning the issue of a summons and a printout of an e-mail acknowledging receipt of a summons are included in the criminal file. The fact of a summons being received through the eFile system is registered in that system and a corresponding printout is not included in the file.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) The Minister in charge of the policy sector may, by regulation, enact detailed requirements for electronic service, through the eFile system, of procedural documents in judicial proceedings.
[RT I, 22.03.2013, 9 – entry into force 01.04.2013]

**§ 166. Transmitting a summons to a prisoner**

A summons to a person who has been committed in custody or who is serving a term of imprisonment is transmitted through the Head of their custodial institution, who makes the arrangements for the person's appearance.

**§ 167. Transmitting a summons to a person serving in the Defence Forces**

A summons to a person serving in the Defence Forces is transmitted through their direct commander, who makes the arrangements for the person's appearance.
[RT I 2008, 35, 212 – entry into force 01.01.2009]

**§ 168. Transmitting a summons by means of a notice in a newspaper**

(1) If there are multiple victims or civil defendants or if it is not possible to ascertain their identities, an investigative authority, the Prosecutor's Office or the court may summon such persons by means of a notice in a newspaper. A summons published in such a manner is deemed to have been delivered at the time of publication of the notice.

(2) A notice in a newspaper states the information listed in subsection 2 of § 163 of this Code.

(3) The notice is published in a 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 is included in the criminal file.

**§ 169. Transmission of summons to a person whose whereabouts are unknown**

Where a summons cannot be served on a person following the rules provided by §§ 164–167 of this Code, such a person is declared a fugitive from justice by order of the investigative authority or of the Prosecutor's Office, or by court order, according to the provisions of § 140 of this Code.

**§ 169[1]. Publication of the time of a hearing on the court's website**

The time of a hearing is published on the court's website, stating the number of the criminal case, the name of the accused who is a legal adult or the initials of the accused who is a minor and the legal designation of the criminal offence of which the person is accused under the relevant section, subsection or clause of the Penal Code. In respect of a closed hearing, only the time of the hearing, the number of the criminal case and a note that the hearing is held as a closed hearing is published. The time of the hearing is removed from the website when seven days have elapsed following the hearing.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 170. Valid reasons for non-appearance of a person who has been summoned**

(1) If it is not possible for a person who has been summoned to appear at the due time, they must, without delay, provide a corresponding notification.

(2) Valid reasons for non-appearance are:
1) absence unrelated to evasion of criminal proceedings;
2) not having received the summons or late receipt of the summons;
3) a serious illness of the person who has been summoned or a sudden serious illness of a person close to them which prevents the former person from appearing at the proceedings authority;
3[1]) participation in a previously scheduled trial or hearing;
[RT I 2008, 32, 198 – entry into force 15.07.2008]

4) any other circumstance which the investigative authority, the Prosecutor's Office or the court deems to be a valid one.

(3) If an eyewitness to a criminal offence whose identity has not been ascertained refuses to participate in criminal proceedings as a witness, an official of an investigative authority may arrest them for up to 12 hours in order to ascertain their identity, filing a corresponding report.

(4) To show the presence of an impediment mentioned in clause 3 of subsection 2 of this section, the person concerned presents a corresponding certificate to the proceedings authority. The form of and the rules for issuing the certificate are enacted by the Minister in charge of the policy sector.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

# Chapter 6
# PROCEDURAL TIME LIMITS

**§ 171. Calculation of a time limit**

(1) A time limit is calculated in hours, days and months. A time limit does not include the hour or day from which the time limit is counted to begin.

(2) Where a person is arrested as a suspect or committed in custody, the relevant time limit is calculated from the point in time at which they were arrested. If a person is sentenced to a term of imprisonment, the term is calculated from the time of their arrival at the prison for serving the sentence, unless the time of commencement of serving the sentence is provided by the judgment rendered in the case.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(3) Where a time limit is calculated in days, it elapses on the last working day at twenty-four hours. If the end of a time limit calculated in days falls on a holiday, the last day of the time limit is the first working day following the holiday.

(4) Where a time limit is calculated in months, it elapses on the relevant day of the last month. If the end of such a time limit days falls on a calendar month that does not have the relevant day, the time limit elapses on the last day of that month.

(5) Where the end of a time limit calculated in months falls on a holiday, the last day of such a time limit is the first working day following the holiday.

(6) Where an operation is to be performed by the investigative authority, the Prosecutor's Office or the court, the corresponding time limit elapses at the close of working hours in the authority in question.

(7) A time limit has not been allowed to expire if an appeal or complaint has been posted or dispatched by a publicly used technical communication channel before expiration of the time limit. A time limit has not been allowed to expire if a person committed in custody has presented their appeal or complaint to the administration of their custodial institution before expiration of the time limit.

**§ 172. Reinstatement of a time limit for appeal**

(1) A time limit for appeal that has been allowed to expire for a valid reason is reinstated by order of the investigative authority, Prosecutor's Office or court that is in charge of proceedings in the criminal case.

(2) The following are valid reasons for allowing a time limit for appeal to expire:
1) absence unrelated to evasion of criminal proceedings;
2) any other circumstance that the investigative authority, Prosecutor's Office or court deems to be a valid one.

(3) An application or motion for reinstatement may be made within 14 days following the day when the impediment ceased to be present.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

# Chapter 7
# COSTS OF CRIMINAL PROCEEDINGS

## Subchapter 1

# Types of Costs of Criminal Proceedings

**§ 173. Costs of criminal proceedings**

(1) The costs of criminal proceedings are:
1) costs of the case;
2) special costs;
3) additional costs.

(2) The costs of the case are compensated for, to an extent determined by the proceedings authority, by a person obligated to do so under this Code.

(3) Special costs are compensated for by the person through whose fault those costs were 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 are borne by the person who incurred them.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 174. Compensation for costs of non-parties to proceedings**

[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
The costs incurred by a non-party to proceedings, except the costs of the case mentioned in clauses 1–3 of subsection 1 of § 175 of this Code, are not deemed to be costs of the case.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 175. Costs of the case**

(1) The costs of the case are:
1) reasonable remuneration paid to a chosen defence counsel or representative and other necessary costs incurred by the party to proceedings in connection with criminal proceedings;
2) any amounts paid to a victim, witness, expert or specialist witness under § 178 of this Code, except the costs mentioned in clause 1 of subsection 1 of § 176 of this Code;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
3) costs incurred by a public forensic institution or any other institution of the State, or any other legal person, in connection with conducting an expert assessment or ascertaining a state of intoxication;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
4) the remuneration set for an appointed defence counsel and the expenses of such a counsel, to the extent that those expenses are justified and necessary;
[RT I 2009, 1, 1 – entry into force 01.01.2010]
5) the cost of making a copy of the materials of the criminal file for the defence counsel under subsection 1 of § 224 of this Code, at the rate provided by subsection 1 of § 61 of the Statutory Fees Act;
[RT I, 30.12.2014, 1 – entry into force 01.01.2015]
6) fees for the safekeeping of items of physical evidence and the costs of carriage and of destruction of such items;
7) costs of the safekeeping, disposing and destroying of any property confiscated in the case;
8) costs incurred as a result of interim measures to protect a civil court claim or statement of a public-law claim;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
9) the compensation levy paid following a judgment of conviction;
10) other costs incurred by the proceedings authority when in charge of proceedings in the criminal case, except costs considered to be special or additional costs under this Code.

(2) If a party to proceedings has several defence counsel or representatives, remuneration paid to such counsel or representatives, in an amount not exceeding reasonable remuneration normally paid to one such counsel or representative, is included in the costs of the case.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(3) Where the suspect or accused conducts their own defence, the necessary costs of the defence are included in the costs of the case. Excessive costs which would not have been incurred if the assistance of defence counsel had been enlisted are not included in the costs of the case.

(4) Costs incurred by a non-party to proceedings in relation to the conduct of an expert assessment are compensated for under the conditions and following the rules provided by the Forensic Examination Act.
[RT I 2010, 8, 35 – entry into force 01.03.2010]

**§ 176. Special costs**

(1) Special costs are:
1) costs incurred as a result of adjourning a hearing in the case due to the non-appearance of a party to proceedings;

2) the costs of forcibly bringing a person in.

(2) The rules for the calculation of special costs and the amounts of such costs are set by the Government of the Republic.

**§ 177. Additional costs**

Additional costs are:
1) remuneration paid to a non-party for information concerning facts that constitute the subject matter of evidence;
2) the costs of keeping the suspect or accused in custody;
3) any amounts paid to an interpreter or a translator under § 178 of this Code;
4) any amounts paid in criminal proceedings under 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 an institution of the State or of a local authority in connection with criminal proceedings and which are not mentioned in clauses 1 and 10 of subsection 1 of § 175 of this Code;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
6) any amounts paid to a representative of a witness under § $67^1$ of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 178. Compensation for costs incurred by victims, witnesses, interpreters, translators, experts and specialist witnesses**

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

(1) A victim, witness, non-staff interpreter or translator and an expert or a specialist witness who is not employed at a public forensic institution is compensated for the following costs incurred in connection with criminal proceedings:
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
1) loss of income, in accordance with subsection 4 of this section;
2) a daily allowance;
3) travel and overnight accommodation expenses.

(2) A translator, an interpreter, an expert or a specialist witness is remunerated for the performance of their duties, unless they performed those duties as part of the duties of their office. The hourly fee paid to an expert, a specialist witness, an interpreter or a translator may not be less than the minimum hourly fee permitted to be paid to a person in an employment relationship and may not exceed such a fee by more than 50 times.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) The costs mentioned in subsection 1 of this section are compensated for also if the hearing to be held is postponed. No remuneration or compensation is paid to a person who caused the postponement.

(4) A victim, witness, translator, interpreter, expert or specialist witness whose employer does not maintain their salary or wages when they are absent from work due to having been summoned to a proceedings authority is paid compensation, based on a certificate from the employer and in the amount corresponding to their average salary or wages, for the entire time of their absence. If the victim, witness, interpreter, translator, expert or specialist witness does not present such a certificate from the employer, compensation for the time of absence from work is calculated based on the applicable minimum wage.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) The Government of the Republic, by regulation, enacts:
[RT I 2006, 21, 160 – entry into force 25.05.2006]
1) the amount and the rules for the payment of remuneration payable to victims, witnesses, interpreters, translators, experts and specialist witnesses;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
2) the amount and the rules for the payment of the compensations mentioned in subsection 1 of this section;
[RT I 2006, 21, 160 – entry into force 25.05.2006]
3) – where this is needed – special rules for the payment of remuneration or compensation to experts, specialist witnesses, interpreters or translators residing in a foreign state.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 179. Compensation levy**

(1) The amount of the compensation levy entailed by a judgment of conviction is:
1) when convicted of a criminal offence of 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) when convicted of a criminal offence of 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) When a person is convicted under several sections of the Penal Code, they must pay the compensation levy that corresponds to the degree of the most serious criminal offence they were convicted of.

(3) No compensation levy is imposed when a corrective measure is applied to a minor under subsection 1 of § 87 of the Penal Code.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

# Subchapter 2
# Compensation for Costs of Criminal Proceedings

**§ 180. Compensation for costs of the case when a judgment of conviction is rendered**

(1) When a judgment of conviction is rendered in the case, the costs of the case are compensated for by the convicted offender. In such a case, the exceptions provided by § 182 of this Code are taken into consideration.

($1^1$) When determining the costs of the case provided for by clause 4 of subsection 1 of § 175 of this Code and making the decision concerning compensation, the court takes into consideration the grounds of those costs and the circumstances under which they were incurred.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(2) If several persons are convicted in a criminal case, the court decides the division of the costs taking into account the extent of the liability and the financial situation of each convicted offender.

(3) When awarding costs in the case, the court takes into account the financial situation of the convicted offender and their prospects for re-socialisation. Where it is clear that the convicted offender is unable to compensate for the costs of the case, the court orders a part of those costs to be borne by the State. Where a minor is convicted, the costs of the case may be ordered to be borne by the State in their entirety. The court may order any costs of criminal proceedings to be compensated for in instalments.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

**§ 181. Compensation for costs of the case when a judgment of acquittal is rendered**

(1) When a judgment of acquittal is rendered in the case, the costs of the case are compensated for by the State, taking into account the exceptions provided by § 182 of this Code.

(2) A person who has been acquitted compensates for any costs of the case caused by intentional or negligent non-performance of an obligation incumbent upon them, or by a false admission of guilt.

**§ 182. Subdivision of costs of the case related to a civil court claim or statement of a public-law claim**

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

(1) Where a civil court claim or statement of a public-law claim is denied, the costs of proceedings on such a claim are borne by the victim. The cost of any legal aid assigned to a victim following the rules provided by subsection $3^1$of § 41 of this Code is borne by the State.

(2) Where a civil court claim or statement of a public-law claim is granted in full, the costs due to proceedings on such a claim are borne by the convicted offender or the civil defendant.

(3) Where a civil court claim or statement of a public-law claim is granted in part, the court, taking all circumstances into consideration, divides the costs due to proceedings on such a claim between the victim, the convicted offender and the civil defendant.

(4) Regardless of the provisions of subsections 1–3 of this section, the court may decide to order the costs incurred by the convicted offender, victim or civil defendant in relation to proceedings on the civil court claim or statement of a public-law claim to be borne in part or in full by the party who incurred those costs, if awarding them from the opposing party would be extremely unfair to the latter or unreasonable.

(5) Where a civil court claim or statement of a public-law claim is dismissed due to a judgment of acquittal having been entered or criminal proceedings having been terminated in the case, the costs due to proceedings on such a claim are borne by the State. Where such a claim is dismissed due to other reasons, the court, taking all circumstances into consideration, divides the costs that have arisen in proceedings on the claim between the victim, the convicted offender and the civil defendant.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(6) In situations provided for by subsections 1, 3, 4 and 5 of this Code, if the person who filed the civil court claim or statement of a public-law claim under subsections $3^1$, $3^2$or $3^3$of § $38^1$of this Code is the Prosecutor's Office, the costs of the case are borne by the State.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

**§ 183. Compensation for costs of the case when criminal proceedings are terminated**

(1) Where criminal proceedings are terminated, the costs of the case are borne by the State, unless otherwise provided by this Code.

(2) Where criminal proceedings are terminated and the materials of the criminal case are referred for a decision to be taken concerning commencement of misdemeanour proceedings due to the elements of a misdemeanour having come to light in the case, decision on the costs of the case which would also have arisen under misdemeanour procedure may be reserved for the disposition to be made in misdemeanour proceedings. Where the decision is made not to commence misdemeanour proceedings, the costs of the case are borne by the State.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

**§ 184. Compensation for costs of the case due to a false crime report**

Where criminal proceedings are commenced on the basis of a knowingly false crime report, the costs of the case are compensated for by the person who filed such a report.

**§ 185. Compensation for costs of the case in proceedings on an appeal**

(1) Where a disposition mentioned in clauses 2–4 of subsection 1 of § 337 or in subsection 2 of § 337 of this Code is rendered under the procedure for appeals, the costs of the case are borne by the State.

(2) Where the disposition mentioned in clause 1 of subsection 1 of § 337 of this Code is rendered under the procedure, the costs of the case are borne by the person in whose interest the appeal was filed. If the appeal was filed by the Prosecutor's Office, the costs of the case are borne by the State.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 186. Compensation for costs of the case in proceedings on an appeal to the Supreme Court and in proceedings for extraordinary review of a judicial disposition that has entered into effect**

(1) Where a disposition mentioned in clauses 2–7 of subsection 1 of § 361 of this Code is rendered as in proceedings on appeal to the Supreme Court, the costs of the case are borne by the State.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) Where the disposition mentioned in clause 1 of subsection 1 of § 361 of this Code is rendered in proceedings on appeal to the Supreme Court, the costs of the case are borne by the person in whose interest the appeal was filed. If the appeal was filed by the Prosecutor's Office, the costs of the case are borne by the State.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(3) Where a petition for extraordinary review is denied, the petitioner may be ordered to compensate for the costs of the case.

**§ 187. Compensation for costs of the case in proceedings to dispose of an interim appeal**

(1) Where a court order is set aside in proceedings to dispose of an interim appeal, the corresponding costs of the case are borne by the State.

(2) Where an interim appeal is denied, the costs of the case are borne by the person in whose interest the appeal was filed. Where an interim appeal, which was denied, was filed in the interest of the suspect, accused or a third party, the person to be required to compensate for the costs of the case incurred in the course of proceedings to dispose of the appeal is determined in accordance with the provisions of §§ 180–184, $187^1$and 188 of this Code when a final disposition is rendered in the criminal case.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ $187^1$. Compensation for costs of the case in confiscation proceedings**

(1) If a motion for confiscation is granted, the costs of the case related to proceedings for the confiscation of property obtained by a criminal offence are compensated for by the convicted offender. If a motion for confiscation is granted in part, the court may order a part of the corresponding costs of the case to be borne by the State.

(2) Where a motion for confiscation is denied, the corresponding costs of the case are compensated for by the State.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

**§ 188. Minor's obligation to compensate for costs of criminal proceedings**

Where the obligation to compensate for costs of criminal proceedings falls on a minor, the proceedings authority may order such costs to be compensated for by their parent, guardian or child care institution.

# Subchapter 3
# Decision on Compensation for Costs of Criminal Proceedings

**§ 189. Decision on compensation for costs of criminal proceedings**

(1) In pre-trial proceedings, compensation for costs of criminal proceedings is decided by an order of the investigative authority or of the Prosecutor's Office.

(2) In judicial proceedings, compensation for costs of criminal proceedings is decided by a court order or judgment.

(3) Where compensation for costs of criminal proceedings is prescribed by a judgment, such compensation may be contested according to Chapter 15 of this Code, separately from the judgment.

(4) An application or motion for determining the quantum of the fee and the extent of compensation for the costs of an appointed defence counsel is disposed of digitally in the information system of the investigative authority, the Prosecutor's Office or the court.
[RT I, 21.05.2014, 1 – entry into force 31.05.2014]

(5) The situations in which the proceedings authority may dispose of the application or motion mentioned in subsection 4 of this section by means of a note on the corresponding paper document are determined by a regulation of the Minister in charge of the policy sector.
[RT I, 21.05.2014, 1 – entry into force 31.05.2014]

($5^1$) The proceedings authority may dispose of the payment of compensation for the costs of a victim, witness, interpreter, translator, expert or specialist witness by means of a note on the corresponding application.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

**§ 190. Substance of a decision on compensation for costs of criminal proceedings**

In a decision on compensation for costs of criminal proceedings, the proceedings authority determines:
1) who is to compensate for the costs of the case and the share of such costs that falls on each payer, expressed as an absolute amount or, if this is not possible, as a fraction;
2) the quantum of any special costs and the person required to compensate for such costs;
3) whether and to what extent the application or motion 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. Contesting a decision on compensation for costs of criminal proceedings**

(1) The Prosecutor's Office or the party to proceedings who is required to compensate for the costs of criminal proceedings under a decision on compensation for such costs may contest such a decision according to the provisions of §§ 228 or 229 of this Code, in the appeal – or appeal to the Supreme Court – filed in the case, or according to Chapter 15 of this Code.

(2) When considering an interim appeal filed against a decision on compensation for costs of criminal proceedings, the court may, regardless of the substance of such an appeal, extend the scope of its consideration to the entire decision.

(3) When considering an appeal – or an appeal to the Supreme Court – filed against a judgment, the circuit court of appeal or the Supreme Court may enter a new decision on compensation for costs of criminal proceedings regardless of whether or not such costs have been contested.

**§ 192. Determining the compensation for costs**

(1) 'Compensation for costs' means a sum of money payable by a person under the decision on compensation for costs of criminal proceedings.

(2) Under a decision on compensation for costs of criminal proceedings and at on an application of a party to proceedings or of the Prosecutor's Office, the proceedings authority determines the amount of the compensation for costs if:

1) the allocation of the costs of the case in the decision has been expressed as a fraction;
2) the costs of the case have been allocated inconsistently in the decision;
3) the decision awards compensation for a cost whose quantum was not known at the time of awarding.

(3) The order mentioned to in subsection 1 of this section may be contested following the rules provided by subsection 1 of § 191 of this Code.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

# Chapter 8
# PRE-TRIAL PROCEDURE

## Subchapter 1
## Commencement and Termination of Criminal Proceedings

**§ 193. Commencement of criminal proceedings**

(1) An investigative authority or the Prosecutor's Office commences criminal proceedings by the first investigative or other procedural operation if an indication and the grounds for commencing such proceedings are present and if the circumstances provided for by subsection 1 of § 199 of this Code do not apply.

(2) If criminal proceedings are commenced by an investigative authority, the authority notifies the Prosecutor's Office without delay of having commenced such proceedings.

(3) If criminal proceedings are commenced by the Prosecutor's Office, the Prosecutor's Office transmits the materials of the criminal case according to investigative jurisdiction.

**§ 194. Indication and grounds for criminal proceedings**

(1) 'Indication for criminal proceedings' means a crime report or other information indicating that a crime has been committed.

(2) 'Grounds for criminal proceedings' means establishing the presence of the elements of a criminal offence in the indication for criminal proceedings.

**§ 195. Crime report**

(1) A crime report is presented to an investigative authority or the Prosecutor's Office orally or in writing.

(2) A report in which a crime is incriminated to a person is a criminal complaint.

(3) A report is filed concerning an oral crime report that is made first-hand on the scene and a copy of the report is handed to the person who made the crime report. A crime report that is communicated by telephone is taken down in writing or audio recorded.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(4) If the person who presented a crime report is an individual victim, a written acknowledgement of receipt of the crime report is sent to them within 20 days following such receipt; such an acknowledgement may also be included in a notice of refusal to commence criminal proceedings or in a summons to a procedural operation.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(5) Where this is needed, linguistic assistance is provided to a victim who presents a crime report. If the victim applies for this, an acknowledgement of receipt of the crime report is provided to them in a language that they understand.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

**§ 196. Reporting a violent death**

(1) Where there is reason to believe that a person has died as a result of a crime, or if a corpse is found that cannot be identified, this must be notified without delay to an investigative authority or to the Prosecutor's Office.

(2) Where a health care professional, when conducting an autopsy, develops a suspicion that the person's death was caused by a crime, they are obligated to notify this without delay to an investigative authority or to the Prosecutor's Office.

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

**§ 197. Other information indicating that a crime has been committed**

(1) Indication for criminal proceedings may consist in information that the Prosecutor's Office or an investigative authority identifies in a publication and that indicates that a crime has taken place.

(2) Indication for criminal proceedings may consist in information indicating that a crime has taken place, which an investigative authority or the Prosecutor's Office has ascertained in the performance of their duties.

**§ 198. Replying to a crime report**

(1) Within ten days following receipt of a crime report, the investigative authority or the Prosecutor's Office is required to notify the person who presented the report of a decision not to commence criminal proceedings under subsection 1 or 2 of § 199 of this Code.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

($1^1$) The time limit mentioned in subsection 1 of this section may be extended by ten days if, in order to decide on whether or not to commence criminal proceedings on the basis of a crime report, additional information needs to be obtained from the person who presented the report. The person who presented the crime report is notified of the time limit for replying to the report having been extended, and of the reasons for such extension.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) Where a criminal complaint has been filed, the investigative authority or the Prosecutor's Office also notifies the decision not to commence criminal proceedings to the person named in the complaint, except where confidentiality of the fact of reporting the crime is guaranteed under the law or where non-notification is required in order to prevent a crime.
[RT I, 29.06.2012, 1 – entry into force 01.04.2013]

**§ 199. Circumstances precluding criminal proceedings**

(1) Criminal proceedings are not commenced where:
1) no grounds for criminal proceedings are present;
2) the limitation period of the criminal offence has expired;
3) an amnesty instrument precludes the imposition of a sanction;
4) the suspect or accused has died or the corporate suspect or accused has been dissolved;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
5) on the charges in question, a judicial disposition or an order terminating criminal proceedings in the case on the grounds provided by § 200 of this Code has entered into effect in respect of the person;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
6) the suspect or accused suffers from an incurable illness and, because of this, is unable to participate in criminal proceedings or to serve the sentence;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
7) the criminal offence in question is one defined in § 414, § 415, § 418 or § $418^1$ of the Penal Code and the person voluntarily surrenders the firearm or explosive device or a material part of such a firearm or device, or ammunition or explosives that they possess illegally;
[RT I, 16.04.2013, 1 – entry into force 26.04.2013]
8) criminal proceedings are concentrated in another state on the grounds provided by §§ $436^1$–$436^6$ of this Code.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(2) Criminal proceedings are not commenced when the person's arrest as a suspect is substituted according to § 219 of this Code.

(3) Criminal proceedings are continued if this is applied for the purposes of rehabilitation by:
[RT I 2004, 46, 329 – entry into force 01.07.2004]
1) the suspect or accused, in situations provided for by clause 2 or 3 of subsection 1 of this section;
2) the representative of a deceased suspect or accused in a situation provided for by clause 4 of subsection 1 of this section;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
3) the suspect, accused or their representative in a situation provided for by 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 when circumstances come to light that preclude such proceedings**

Where a circumstance that is mentioned in § 199 of this Code and that precludes criminal proceedings comes to light during pre-trial proceedings, proceedings in the case are terminated by order of the investigative authority on authorisation of the Prosecutor's Office, or by order of the Prosecutor's Office.

**§ 200[1]. Termination of criminal proceedings due to the perpetrator remaining unidentified**

(1) Where the person who committed the criminal offence has not been identified in the course of pre-trial proceedings and it is not possible to collect additional evidence in the case, or the collection of such evidence is not expedient, proceedings are terminated by order of the investigative authority on authorisation of the Prosecutor's Office or by order of the Prosecutor's Office. Proceedings may also be terminated in part, in respect of a certain suspect or of a certain criminal offence.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(2) Where the grounds prescribed in subsection 1 no longer apply, proceedings are resumed following the rules provided by § 193 of this Code.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 201. Termination of criminal proceedings when the perpetrator is a minor**

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

(1) Where the decision is made not to commence criminal proceedings, or criminal proceedings are terminated, for the reason that the unlawful act in question was committed by a minor who was incapable of forming the required *mens rea*because of their age, the investigative authority or the Prosecutor's Office explains to the minor and to their statutory representative the nature of the act that would have constituted a criminal offence, and the grounds for the termination of criminal proceedings. The investigative authority or the Prosecutor's Office may send a notification, and a copy of any materials of the criminal case that are deemed necessary, to the local authority in whose administrative territory the minor's residence is located.

(2) If the Prosecutor's Office finds that a person who committed a criminal offence when at least fourteen but less than eighteen years of age can be influenced without subjecting them to a sanction or a corrective measure prescribed in § 87 of the Penal Code, the Prosecutor's Office may terminate criminal proceedings, caution such a person and impose, with their consent, as appropriate, the following obligations:
1) 10–60 hours of community service;
2) to compensate for or repair the harm caused by the criminal offence;
3) a social programme;
4) a course of withdrawal or other treatment;
5) reconciliation service;
6) any other relevant obligation.

(3) Under subsection 2 of this section, the Prosecutor's Office determines a time limit for performing each of the aforementioned obligations, which may not be longer than ten months. If the person, within such a time limit, does not perform the obligation that has been imposed, the Prosecutor's Office may, by order, resume criminal proceedings in the case.

(4) Prior to terminating criminal proceedings under subsection 2 of this section, the nature of the act that constitutes a criminal offence and the grounds for termination of criminal proceedings in the case must be explained to the minor who committed the offence, and to their statutory representative. Where criminal proceedings against a minor are terminated under this section, the prosecutor may send a notification, and a copy of the materials of the criminal case that are deemed necessary, to the local authority in whose administrative territory the minor's residence is located.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

**§ 202. Termination of criminal proceedings when there is no public interest in pursuing the case and when the person is not culpable to a high degree**

(1) Where the subject matter of criminal proceedings is a criminal offence of the second degree and the person suspected or accused of the offence is not culpable to a high degree, and has remedied or has commenced to remedy the harm caused by the criminal offence, and has paid the costs of criminal proceedings in the case, or assumed the obligation to pay such costs, and it is not in the public interest to pursue such proceedings, the Prosecutor's Office may, with the consent of the suspect or accused, make a motion for the court to terminate proceedings.

(2) When terminating criminal proceedings in the case, the court may, on an application of the Prosecutor's Office and with the consent of the suspect or accused, impose the following obligations on the suspect or accused, to be performed within the set time limit:
1) to pay the costs of criminal proceedings in the case or compensate for the harm caused by the criminal offence;
[RT I 2007, 11, 51 – entry into force 18.02.2007]
2) to pay a specific amount into the State's revenue or to be used for a specific purpose in the interests of the public;

3) to perform 10–240 hours of community service. The performance of such service is subject to the provisions of subsection 2, of the second sentence of subsection 4, and of subsection 5 of § 69 of the Penal Code;
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]
4) to undergo a prescribed treatment;
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]
4[1]) not to use narcotic 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 the monitoring of observance of the prohibition to consume alcohol by means of an electronic device as provided for by subsection 1 of § 75[1] of the Penal Code;
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]
7) to perform any other relevant obligation.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(3) The time limit for fulfilling the obligations listed in clauses 1–3 and 6 of subsection 2 of this section may not be longer than six months. The time limit for fulfilling the obligations mentioned in clauses 4–5 of subsection 2 of this section may not be longer than eighteen months.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(4) The motion of the Prosecutor's Office is disposed of by an order of the judge sitting alone. Where this is needed, the prosecutor and the suspect or accused and, on a motion of the suspect or accused, also the defence counsel are summoned to the judge in order to dispose of the motion.

(5) If the judge does not agree with the motion filed by the Prosecutor's Office, they make an order by which they return the criminal case for proceedings to be continued.

(6) If a person in whose respect criminal proceedings were terminated under subsection 2 of this section does not perform an obligation imposed on them, the court, on a motion of the Prosecutor's Office, resumes criminal proceedings in the case by a corresponding order. At sentencing, the extent to which the person has performed the obligation is taken into consideration.
[RT I 2007, 11, 51 – entry into force 18.02.2007]

(7) Where the subject matter of criminal proceedings is a criminal offence of the second degree for which the Special Part of the Penal Code does not prescribe, as a sanction, a minimum term of imprisonment, or only prescribes a monetary penalty, criminal proceedings in the case may be terminated and the relevant obligations imposed by the Prosecutor's Office on the grounds provided by subsections 1 and 2 of this section. The Prosecutor's Office may resume terminated criminal proceedings by an order on the ground provided by subsection 6 of this section.

**§ 203. Termination of criminal proceedings due to the sanction not serving its purpose**

(1) Where the subject matter of criminal proceedings is a criminal offence of the second degree, the Prosecutor's Office, with the consent of the suspect or accused and of the victim, may make a motion for the court to terminate the proceedings if:
1) the sanction to be imposed for the criminal offence in question would be negligible compared to a sanction that has been or is expected to be imposed on the suspect or accused for the commission of another criminal offence;
2) the imposition of a sanction for the criminal offence is not to be expected during a reasonable time and a sanction that has been or is expected to be imposed on the suspect or accused for the commission of another criminal offence is sufficient to achieve the purpose of the sentence and satisfy the public's interest in the proceedings.

(1[1]) Where a person suspected or accused of having committed a criminal offence provided by Subchapter 1 of Chapter 12 of the Penal Code may be influenced not to commit offences in the future by treatment of their addiction disorder or by keeping such a disorder under control, the Prosecutor's Office, with the consent of the suspect or accused, may make a motion for the court to terminate criminal proceedings on condition that the person is referred for medical treatment or that the disorder is kept under control by other methods. The court may impose obligations on the suspect or accused in accordance with the provisions of subsections 2 and 3 of § 202 of this Code.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(2) The motion of the Prosecutor's Office is disposed of by an order of the judge sitting alone. Where this is needed, the prosecutor and the suspect or accused and, on a motion of the suspect or accused, also the defence counsel are summoned to the judge for disposing of the motion.

(3) If the judge does not agree with the motion filed by the Prosecutor's Office, they make an order by which they return the criminal case for proceedings to be continued.

(4) Where criminal proceedings were terminated on account of a sanction that was imposed on the suspect or accused for another criminal offence and the sanction is subsequently set aside, the court may, on a motion of the Prosecutor's Office, resume the proceedings by an order.

(5) Where criminal proceedings were terminated on account of a sanction which was expected to be imposed on the suspect or accused for another criminal offence, the court may, on a motion of the Prosecutor's Office, resume the proceedings if the sanction that is imposed does not meet the preconditions mentioned in clauses 1 and 2 of subsection 1 of this section.

($5^1$) Where criminal proceedings were terminated on conditions provided by subsection $1^1$of this section, the court may, by an order, resume such proceedings on a motion of the Prosecutor's Office if the person fails to perform the obligations imposed on them, withdraws their consent, or evades treatment, or if their treatment is discontinued on medical orders.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(6) Where the subject matter of criminal proceedings is a criminal offence of the second degree for which the Special Part of the Penal Code does not prescribe, as a sanction, a minimum term of imprisonment, or only prescribes a monetary penalty, proceedings may be terminated by the Prosecutor's Office on the grounds provided by subsection 1 of this section. The Prosecutor's Office may resume terminated proceedings by an order on grounds provided by subsections 4 and 5 of this section.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

### § $203^1$. Termination of criminal proceedings due to reconciliation

(1) Where the subject matter of criminal proceedings is a criminal offence of the second degree, the facts of the offence are clear and it is not in the public interest to continue the proceedings, and the suspect or accused and the victim have reached reconciliation in accordance with the rules provided by § $203^2$of this Code, the Prosecutor's Office, with the consent of the suspect or accused and of the victim, may make a motion for the court to terminate criminal proceedings in the case. Termination of criminal proceedings is not permitted:
1) regarding the criminal offences mentioned in §§ $133^1$, $133^2$, 134, 138–139, $141^1$and 143 and regarding the criminal offence mentioned 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) regarding a criminal offence committed by a legal adult 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) regarding crimes against humanity and international security, criminal offences against the State, criminal offences of misconduct by a public official, criminal offences creating a danger to the public and criminal offences against the administration of justice.

(2) The motion of the Prosecutor's Office is disposed of by an order of the judge sitting alone. Where this is needed, the conciliator, prosecutor, victim, suspect or accused and, on a motion of the suspect or accused, also the defence counsel are summoned to the judge for disposing of the motion of the Prosecutor's Office.

(3) Where it terminates criminal proceedings in the case, the court imposes on the suspect or accused, on an application of the Prosecutor's Office and with the consent of the suspect or accused, the obligation to pay the costs of criminal proceedings and to meet some or all of the conditions of the reconciliation agreement provided for by subsection 3 of § $203^2$of this Code. The time limit for the performance of an obligation may not exceed six months. A copy of the order is sent to the conciliator.

(4) If the judge does not agree with the application filed by the Prosecutor's Office, they make an order by which they return the criminal case for proceedings to be continued.

(5) If a person in whose respect criminal proceedings have been terminated under subsection 1 of this section does not perform the obligations imposed on them or commits another intentional criminal offence against the same victim within six months following termination of the proceedings, the court, on a motion of the Prosecutor's Office, resumes the proceedings by an order.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(6) Where the subject matter of criminal proceedings is a criminal offence of the second degree for which the Special Part of the Penal Code does not prescribe, as a sanction, a minimum term of imprisonment, or only prescribes a monetary penalty, proceedings may be terminated by the Prosecutor's Office on the grounds provided by subsections 1 and 3 of this section. The Prosecutor's Office may resume terminated proceedings by an order on grounds provided by subsection 5 of this section.

(7) Following the rules provided by §§ 228–232 or §§ 383–392 of this Code, within ten days following receipt of a copy of an order which is made under this section and which terminates criminal proceedings in the case, the victim has a right to file an appeal against such an order.
[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 grounds provided by subsection 1 of § 203[1] of this Code, refer the suspect or accused and the victim for a conciliation procedure with the objective of reaching an agreement between the suspect or accused and the victim concerning reconciliation and concerning repairing the harm caused by the criminal offence. For such a procedure to be implemented, the consent of the suspect or accused and of the victim is required. Where any of the persons concerned is a minor or suffers from a mental disorder, the consent of their parent or other statutory representative or guardian is also required.

(2) The order by which the Prosecutor's Office or the court imposes a conciliation procedure is sent to the conciliator for making arrangements for the procedure.

(3) Where reconciliation is reached, the conciliator draws up a corresponding written reconciliation agreement which is signed by the suspect or accused and the victim as well as, if any of the persons concerned is a minor or suffers from a mental disorder, by their statutory representative or guardian. A reconciliation agreement must include rules for and terms and conditions of repairing the harm caused by the criminal offence. A reconciliation agreement may contain other conditions.

(4) The conciliator provides the Prosecutor's Office with a report describing the course of conciliation. If reconciliation is reached, a copy of the reconciliation agreement is appended to the report.

(5) After termination of criminal proceedings, the conciliator verifies whether or not the conditions of the reconciliation agreement that were assumed as an obligation under the rules provided by subsection 3 of § 203[1] of this Code are being met. The conciliator has a right to require production of documents or information confirming performance of the obligation. The conciliator notifies performance of, or failure to perform, the obligation to the Prosecutor's Office.

(6) When performing their duties, a conciliator has a right to acquaint themselves with the materials of the criminal case on authorisation of, and to the extent determined by, the court. A conciliator is required to maintain as confidential any facts which have become known to them in connection with conciliation proceedings. The court or the Prosecutor's Office may summon a conciliator for oral questioning in order to clarify the substance of the agreement concluded under conciliation procedure.
[RT I 2007, 11, 51 – entry into force 18.02.2007]

**§ 204. Termination of criminal proceedings concerning a criminal offence committed by a citizen of a foreign state or in a foreign state**

(1) The Prosecutor's Office may terminate criminal proceedings by an order if:
1) the criminal offence was committed outside the territory in which this Code applies;
2) the criminal offence was committed by a foreign citizen on board a foreign ship or aircraft while 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 territory in which this Code applies;
4) a decision concerning extradition to a foreign state of the person thought to have committed the criminal offence 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 whose consequences occurred in the territory of the Republic of Estonia if pursuing the proceedings may entail grave consequences for the Republic of Estonia or would be contrary to other public interests.

(3) Termination of criminal proceedings on grounds 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 treaty binding on Estonia.
[RT I 2008, 33, 200 – entry into force 28.07.2008]

**§ 205. Termination of criminal proceedings due to assistance received from the subject towards ascertaining facts comprising the subject-matter of evidence**

(1) The Office of the Prosecutor General may, by an order, terminate criminal proceedings in respect of the suspect or accused – subject to their consent – if they have provided significant assistance towards ascertaining the facts comprising the subject-matter of evidence in relation to a criminal offence pursuing which is important for public interest reasons and if, without such assistance, detection of the offence and collection of evidence concerning it would not have been possible or would have had to overcome serious difficulties.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) The Office of the Prosecutor General may, by an order, resume proceedings if the suspect or accused discontinues their assistance towards ascertaining facts comprising the subject-matter of evidence of the offence or if, within three years following termination of the proceedings, they intentionally commit a new criminal offence.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

### § 205[1]. Termination of criminal proceedings concerning a criminal offence in the field of competition

(1) By an order of the Office of the Prosecutor General, criminal proceedings are terminated in respect of a leniency applicant who complies with the conditions for the granting of leniency provided for by the Competition Act and is the first to file an application for leniency which contains information indicating that a criminal offence defined in § 400 of the Penal Code has been committed and makes it possible to commence criminal proceedings. This subsection does not apply if proceedings concerning the offence whose commission is indicated by the information provided by the applicant for leniency have been commenced before the application was filed.

(2) Where criminal proceedings concerning a criminal offence provided by § 400 of the Penal Code have been commenced before an application for leniency was filed, the Office of the Prosecutor General terminates criminal proceedings by an order in respect of a leniency applicant who complies with the conditions for the granting of leniency and is the first to file such an application together with evidence which, in the view of the Prosecutor's Office, significantly facilitates the filing of charges in the case. This subsection is only applied if subsection 1 of this section is not applicable in respect of any leniency applicant.

(3) If there are no grounds for termination of criminal proceedings under subsections 1 or 2 of this section in respect of a leniency applicant who complies with the conditions for the granting of leniency, the sentence imposed on such a person for a criminal offence provided by § 400 of the Penal Code is reduced in proportion to the assistance they provided in the proceedings.

(4) The Prosecutor's Office, having received a notification from the Competition Authority concerning an application for leniency, determines any further actions of the leniency applicant in consultation with the investigative authority and with the applicant. The Prosecutor's Office may grant the leniency applicant a time limit of up to one month to present their evidence. If the investigative authority and the Prosecutor's Office, having evaluated the evidence provided by the leniency applicant, finds that there the grounds for the granting of leniency under subsections 1, 2 or 3 of this section are not present, the Prosecutor's Office notifies the leniency applicant of having rejected their application.

(5) If, after an order mentioned in subsections 1 or 2 of this section has been made, circumstances come to light which rule out the granting of leniency, the Office of the Prosecutor General may, by an order, resume proceedings in respect of the leniency applicant.
[RT I 2010, 8, 34 – entry into force 27.02.2010]

### § 205[2]. Termination of criminal proceedings in connection with expiry of a reasonable time for proceedings

If it comes to light in pre-trial proceedings that it is not possible to solve a criminal case within a reasonable time, the Office of the Prosecutor General may, having regard to the gravity of the criminal offence, the complexity and volume of the case, the proceedings previously conducted in the case and any other circumstances, with the consent of the suspect, terminate criminal proceedings by an order.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

### § 206. Order by which criminal proceedings are terminated

(1) An order by which criminal proceedings are terminated states:

1) the grounds for the termination, according to §§ 200–205[2] of this Code;
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

2) revocation of any compliance enforcement measure or of any other measure to ensure compliance that has been imposed in the proceedings;
[RT I 2006, 63, 466 – entry into force 01.02.2007]

3) how items of physical evidence and any objects that have been seized in the course of proceedings or that are subject to confiscation – if such items or objects are present – are to be dealt with;
[RT I 2007, 2, 7 – entry into force 01.02.2007]

3[1]) where 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) an explanation mentioned in subsection 1 of § 14 of the Compensation for Harm Caused in Offence Proceedings Act of the rules governing the filing of applications for compensation for harm – if a right to demand compensation for harm under § 5 or § 6 of that Act has accrued to the person;
[RT I, 20.11.2014, 1 – entry into force 01.05.2015]
5) a decision concerning compensation for costs of criminal proceedings;
6) the rules for appealing the order.

($1^1$) When criminal proceedings are terminated, the stating of the reasons mentioned in clause 1 of subsection 3 of § 145 of this Code in the order may be forgone. A simplified order states the right of the victim to file – within ten days following receipt of the order – an application with the proceedings authority for a substantiated order. The proceedings authority issues a substantiated order within fifteen days following receipt of the application.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) A copy of an order on termination of criminal proceedings is sent without delay to:
1) the person who reported the criminal offence;
2) the suspect or accused and the defence 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 reproducible in writing.
[RT I, 08.07.2021, 1 – entry into force 15.07.2021]

(3) The victim has a right to acquaint themselves with the criminal file within ten days following receipt of a copy of the order by which criminal proceedings were terminated.

(4) A copy of the order by which criminal proceedings are terminated may be sent to the relevant hierarchically subordinate authority to decide on the commencement of misdemeanour or disciplinary proceedings.

(5) An order by which criminal proceedings are terminated under § 202 or § 203 of this Code is published following the rules provided by § $408^1$ of this Code; the name and personal data of the suspect are replaced by initials or by an alphabetical character.
[RT I 2008, 32, 198 – entry into force 01.01.2010]

**§ 207. Contestation, before the Office of the Prosecutor General, of refusal to commence or of termination of criminal proceedings**

(1) The victim may file an appeal with the Prosecutor's Office against a decision refusing to commence criminal proceedings, made on the grounds provided by subsections 1 or 2 of § 199 of this Code.

(2) The victim may file an appeal with the Office of the Prosecutor General against termination of criminal proceedings or denial, by the Prosecutor's Office, of an appeal provided for by subsection 1 of this section.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) An appeal mentioned in subsections 1 or 2 of this section may be filed within ten days following receipt of notification of the decision by which commencement of criminal proceedings is refused, of the order by which the Prosecutor's Office disposes of the appeal or a copy of a substantiated order by which criminal proceedings are terminated.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) The Prosecutor's Office disposes of an appeal mentioned in subsection 1 of this section within fifteen days following its receipt. The Office of the Prosecutor General disposes of an appeal mentioned in subsection 2 of this section within one month following its receipt.

(5) The Prosecutor's Office or the Office of the Prosecutor General issues a substantiated order concerning denial of the appeal and sends a copy of the order to the appellant.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 208. Contestation, before the circuit court of appeal, of refusal to commence or of termination of criminal proceedings**

(1) Where an appeal mentioned in subsections 1 or 2 of § 207 of this Code or an application 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 filed the appeal or application may, acting through an attorney, contest the order before the circuit court of appeal within one month following receipt of a copy of that 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 the victim, through an attorney, before the 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 the circuit court of appeal states:
1) the facts of the criminal offence;
2) the legal designation of the offence;
3) the items of evidence collected in the case that support the criminal suspicion;
4) where criminal proceedings have been terminated or their termination under § 205[2] of this Code has been refused, a short description of proceedings that have been conducted in the case;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
5) any procedural operations whose performance, in the appellant's view, was refused unfoundedly or the reasons why the appellant finds that their right to proceedings within a reasonable time has been violated.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) When making arrangements for hearing an appeal mentioned in subsection 2 of this section, the circuit court of appeal follows the provisions of § 326 of this Code without prejudice to special rules provided by this section.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

(4) An appeal mentioned in subsection 2 of this section is disposed of by a circuit court judge sitting alone within ten days following its receipt. Before rendering the decision, the judge has a right to:
1) require production of the materials of the criminal file;
2) issue instructions 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 the judge finds the commencement or continuation of criminal proceedings unjustified, the judge enters an order that states:
1) the reasons for denying the appeal;
2) an order for the appellant to pay the costs.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

(6) If the judge finds the commencement or continuation of criminal proceedings justified, the judge sets aside the order and directs the Office of the Prosecutor General to commence or continue criminal proceedings in the case.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

(7) If the judge finds that the right of the suspect to proceedings within a reasonable time has been violated, the judge sets aside the order of the Office of the Prosecutor General and terminates criminal proceedings in the case. When terminating the proceedings, the judge observes the requirements of § 206 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(8) Where the circuit court of appeal sets aside an order of the Office of the Prosecutor General, the opinion stated in the court's disposition concerning the interpretation and application of legal rules is mandatory for the Prosecutor's Office in proceedings in which the disposition was rendered.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(9) In a situation mentioned in subsection 5 of this section, the court may make an order by which it varies the order by which criminal proceedings were terminated.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 209. Archiving of criminal files**

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

(1) Where criminal proceedings are terminated on the grounds provided by §§ 200-205[2] of this Code, the criminal file is archived.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(1[1]) In a criminal case sent to court under regular rules of procedure, the criminal file is archived when the judicial disposition made in the case enters into effect.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) The rules for the archiving of criminal files and the period for which the files are to be preserved are enacted by a regulation of the Government of the Republic.

**§ 210. eFile procedural information management system**

(1) The eFile procedural information management system (hereinafter, the 'eFile system') is a database belonging to State Information Systems which is maintained for the processing of procedural information and personal data and whose objective is to:
1) provide an overview of criminal cases in which proceedings are conducted by investigative authorities, the Prosecutor's Office or the courts as well as of cases in which criminal proceedings were not commenced;
2) reflect information concerning operations performed in the course of criminal proceedings;
3) facilitate organising the work of proceedings authorities;
4) collect crime statistics which are necessary for making decisions in the field of criminal justice policy;
5) allow for electronic transmission of data and documents.

(2) The following information is entered in the database:
1) information concerning criminal cases in which proceedings are pending, cases in which a decision was made not to commence criminal proceedings and cases in which criminal proceedings were terminated;
2) information concerning operations performed in the course of criminal proceedings;
3) digital documents where provided for by this Code;
4) information concerning proceedings authorities, parties to proceedings, convicted offenders, experts, specialist witnesses and witnesses;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
5) judicial dispositions that have been rendered.

(3) The eFile system is established and its constitutive regulations are enacted by the Government of the Republic.

(4) The data controller of the eFile system is the Ministry of Justice. Authorised processors of the system are persons appointed by the Minister in charge of the policy sector.

(5) The Minister in charge of the policy sector may issue regulations to organise the work of the eFile system.

(6) Based on data in the eFile system, by 1 March each year the Ministry of Justice publishes a report concerning criminal activity during the previous year.

(7) Crime statistics are published by the Ministry of Justice.

(8) The Government of the Republic enacts rules concerning the publication of crime statistics.
[RT I 2008, 28, 180 – entry into force 15.07.2008]

# Subchapter 2
# General Conditions for Pre-Trial Proceedings

**§ 211. Purpose of pre-trial proceedings**

(1) The purpose of pre-trial proceedings is to collect evidentiary information and establish other conditions that are needed for judicial proceedings in the case.

(2) In pre-trial proceedings, the investigative authority and the Prosecutor's Office ascertain any circumstances that justify and any circumstances that incriminate the suspect or accused.

**§ 212. Investigative jurisdiction**

(1) Pre-trial proceedings are conducted by the Police and Border Guard Board and the Internal Security Service, unless otherwise provided by subsection 2 of this section.
[RT I, 29.12.2011, 1 – entry into force 01.01.2012]

(2) In addition to the investigative authorities mentioned in subsection 1 of this section, pre-trial proceedings are conducted by:
1) [Repealed – RT I 2009, 27, 165 – entry into force 01.01.2010]
2) the Tax and Customs Board, regarding criminal offences in tax and customs matters, regarding criminal offences related to the conveying of narcotic drugs and psychotropic substances across the border and regarding any acts mentioned in § $421^1$ of the Penal Code, except where the offence involves a radioactive or explosive substance or a quantity of ammunition that exceeds the limit provided by subsection 5 of § 46 of the Weapons Act, or a firearm that does not fully meet the technical requirements for rendering weapons incapable of firing, and regarding any acts mentioned in § $421^2$ of the Penal Code where such acts involve goods used to commit human rights violations or services related such violations;
[RT I, 16.06.2017, 1 – entry into force 01.07.2017]
3) the Military Police regarding criminal offences relating to service in the Defence Forces and regarding 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 regarding criminal offences in the field of competition;
6) the Department of Prisons of the Ministry of Justice and prisons regarding criminal offences committed in prisons and criminal offences committed by prisoners;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
7) the Environment Board regarding criminal offences relating to violation of requirements for the protection and use of the environment and of 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 partition of investigative jurisdiction between the Police and Border Guard Board and the Internal Security Service is enacted 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 practical expediency, the Prosecutor's Office may, by order, vary the investigative jurisdiction provided by subsections 1 and 2 of this section in a particular criminal case.
[RT I 2009, 27, 165 – entry into force 01.01.2010]

**§ 213. Prosecutor's Office in pre-trial proceedings**

(1) The Prosecutor's Office presides over pre-trial proceedings and ensures their legality and effectiveness, and is authorised to:
1) where this is needed, perform procedural operations;
[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 of such operations;
3) terminate criminal proceedings;
4) require the materials of a criminal file and any other materials of a case to be handed over so that it may acquaint itself with those materials and verify them;
5) issue instructions to investigative authorities;
6) set aside and vary any orders of investigative authorities;
7) remove an official of an investigative authority from criminal proceedings;
8) change the investigative jurisdiction of a criminal case;
9) declare pre-trial proceedings completed;
10) require an official of an investigative authority to present oral or written explanations concerning circumstances related to proceedings;
11) assign the task of appointing a probation officer to the Head of the probation supervision department;
12) in pre-trial proceedings, perform any other tasks provided by this Code.

(2) When exercising the rights mentioned in clauses 1 and 2 of subsection 1 of this section, the Prosecutor's Office enjoys the rights of an investigative authority.

(3) Where, in pre-trial proceedings, the Prosecutor's Office ascertains elements of a disciplinary offence in the conduct of an official of an investigative authority, the Prosecutor's Office addresses a written proposal to the person authorised to impose disciplinary sanctions on the official to commence disciplinary proceedings in their respect. The person is required to notify the Prosecutor's Office in writing of the outcome of disposing of the proposal, and state the relevant reasons, within one month following receipt of the proposal.

(4) In a case in which the suspect is a minor, or in which a person is suspected of having committed a sexual offence or of repeatedly driving a motor vehicle in a state of intoxication, the Prosecutor's Office assigns the to the Head of the probation supervision department task of appointing a probation officer, except where this may constitute an obstacle to allocating the case to be dealt with under the fast-track procedure.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(4$^1$) Where electronic monitoring provided for by § 75$^1$ of the Penal Code – except for electronic checking of compliance with the prohibition to consume alcohol – is employed, the Prosecutor's Office is under a duty to task the probation supervision department in whose service area the residence of the suspect or accused is located to present an opinion concerning the possibility of application of electronic monitoring in the place of residence of the suspect or accused.
[RT I, 07.07.2017, 1 – entry into force 01.11.2017]

(5) To ensure the legality and efficacy of pre-trial proceedings, the Prosecutor General may issue general guidelines to the Prosecutor's Office and to investigative authorities. Guidelines intended for investigative authorities are agreed with the Head of the investigative authority for which the instructions are meant.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(6) A higher-ranking prosecutor may require a lower-ranking prosecutor to present oral or written explanations concerning circumstances related to proceedings and may, by their order, revoke an unlawful or unfounded order, instruction or demand of the lower-ranking prosecutor. The opinion set out in the order of the higher-

ranking prosecutor on the interpretation and application of a legal rule is mandatory for the lower-ranking prosecutor in criminal proceedings in that case.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(7) If an investigative authority finds that carrying out an order issued by the Prosecutor's Office is impractical due to a lack of funds or for another valid reason, the Head of the authority notifies this to the Prosecutor General who decides the matter and informs the Minister in charge of the policy sector.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(8) Where a criminal case is being deal with under Council Regulation 2017/1939, the provisions of subsections 5–7 of this section apply to the European prosecutor or the European delegated prosecutor – unless this is contrary to that Regulation.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

**§ 214. Conditions for disclosure of information concerning pre-trial proceedings**

(1) Information concerning pre-trial proceedings is disclosed only with permission of and to the extent allowed by the Prosecutor's Office and under the conditions provided by subsection 2 of this section.

(2) Disclosure of information concerning pre-trial proceedings is permitted in the interests of the proceedings, of the public or of the data subject, provided this does not inordinately:
1) encourage crime or render detection of a criminal offence more difficult;
2) prejudice the interests of the Republic of Estonia or of criminal proceedings;
3) endanger a business secret or harm the activities of a legal person;
[RT I 2007, 12, 66 – entry into force 25.02.2007]
4) prejudice the rights of the data subject or of third parties, particularly where personal data of a special category are disclosed.
[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

(3) Where the prohibition of disclosure of information concerning pre-trial proceedings has been violated, the pre-trial investigation judge may, on an application of the Prosecutor's Office, enter an order by which they impose a fine on a party to proceedings, on any other person participating in the proceedings or on a non-party. No fine is imposed on the suspect or accused.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 215. Binding nature of orders and requirements issued by investigative authorities and the Prosecutor's Office**

(1) Any orders or requirements issued by investigative authorities and the Prosecutor's Office in any criminal proceedings they are conducting are binding on everyone and are executed throughout the territory of the Republic of Estonia. Where the subject-matter of criminal proceedings is an act of a person serving in the Defence Forces, such orders or requirements are binding on members of the Defence Forces who are carrying out a mission abroad. The costs incurred to comply with a requirement or order are not subject to compensation.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(2) An investigative authority conducting criminal proceedings has a right to make a written request to another such authority for the performance of single procedural operations and for any other assistance. Such requests are fulfilled without delay.

(3) On an application of the Prosecutor's Office, the pre-trial investigation judge may enter an order by which they impose a fine on a party to proceedings, another person participating in the proceedings or a non-party who has failed to comply with the obligation provided by subsection 1 of this section. No fine is imposed on the suspect or accused.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 216. Joinder and separation of criminal cases**

(1) Where several persons are suspected or accused of having jointly committed a criminal offence, their criminal cases are joined for proceedings to be conducted jointly.

(2) The criminal case concerning a suspect or accused may be separated from a criminal case in which several persons are suspected or accused of having jointly committing a criminal offence, or a decision may be made not to join the case of the suspect or accused to a criminal case concerning another person or persons, if:
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]
1) the whereabouts of the suspect or accused are unknown or they evade criminal proceedings or are serving a custodial sentence in a foreign state or other circumstances exist due to which it is not possible to subject them to procedural operations within a reasonable timeframe;
2) the suspect or accused is a citizen of or stays in a foreign state;
3) after the completion of pre-trial proceedings, the suspect or accused applies for the criminal case to be dealt with using the abridged or plea agreement procedure and doing so is impossible due to circumstances respectively mentioned in clause 2 of subsection 2 of § 233 or clause 3 of subsection 2 of § 239.

(3) Several criminal cases may be joined for proceedings to be conducted jointly where a person is suspected or accused of:
1) having committed several criminal offences;
2) without prior authorisation, having concealed or not reported a criminal offence.

(4) Where this is necessary to avoid expiry of the limitation period of a criminal offence or to ensure that proceedings are completed within a reasonable time, a case regarding one or more criminal offences may be separated from the original criminal case.

(5) Where a minor is suspected or accused of having committed a criminal offence together with a legal adult, in the interests of the minor their criminal case may be separated from the original case for separate proceedings regardless of the presence of the conditions for separation mentioned in this section.

(6) Criminal cases are joined or separated by order of the investigative authority, the Prosecutor's Office or the court. A copy of the order by which a criminal case is separated from the original case is included in the new file.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

# Subchapter 3
# Arresting a Person as a Suspect

**§ 217. Arresting a person as a suspect**

(1) Arresting a person as a suspect is a procedural operation that consists in the person being deprived of their liberty for up to 48 hours. An arrest report is filed concerning the arrest.

(2) A person is arrested as a suspect if:
1) they are apprehended in the act of committing a criminal offence or immediately after such an act;
2) an eyewitness to the criminal offence or a victim points them out as the person who committed the offence;
3) *indicia*of the criminal offence indicate that they are the person who committed the offence.

(3) A may be arrested as a suspect based on other information indicating the commission of a criminal offence if:
1) they attempt to escape;
2) their identity has not been ascertained;
3) they are likely to continue to commit criminal offences;
4) they are likely to evade or otherwise obstruct criminal proceedings.

(4) Anyone may convey to the police, for being arrested as a suspect, a person who is apprehended in the act of committing a criminal offence or in the course of attempting to escape after having committed such an offence.

(5) In relation to circumstances linked to their professional work, an attorney may be arrested as a suspect only by order of the pre-trial investigation judge or of the court, made on an application of the Prosecutor's Office.

(6) Arresting, as a suspect, 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 is governed by § 377 of this Code.

(7) An official of the investigative authority explains, to a person detained as a suspect, their rights and obligations and, without delay, conducts an interview with such a person following the rules provided by § 75 of this Code.

(8) If the Prosecutor's Office is convinced of the need to commit a person in custody, the Office makes an application for the person's committal in custody and, within forty-eight hours following the person's arrest as a suspect, arranges for them to be conveyed before the pre-trial investigation judge to dispose of the application.

(9) Where, during pre-trial proceedings, the ground for arresting a person as a suspect ceases to apply, the person is released without delay.

(10) A person arrested as a suspect is given an opportunity to notify their arrest, through the proceedings authority and at their choice, to at least one person close to them. The arrest of a minor must be notified without delay to their statutory representative, except in a situation in which this is not in the minor's interests. In the latter case, the relevant agency of the local authority must be notified. If the notification is likely to harm criminal proceedings, the opportunity to notify a close person or notification of the minor's arrest may be denied with permission of the Prosecutor's Office.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

**§ 217[1]. Stopping a vehicle**

For placing a suspect or accused under arrest, a stop signal may be given to the driver of a vehicle and the vehicle may be forced to stop following the rules provided by § 45 of the Law Enforcement Act.
[RT I, 13.03.2014, 4 – entry into force 01.07.2014]

**§ 217[2]. Use of direct coercion**

To perform procedural operations and operations ensuring compliance with criminal proceedings, direct coercion may be used following the rules provided by the Law Enforcement Act and other Acts.
[RT I, 13.03.2014, 4 – entry into force 01.07.2014]

**§ 218. Report on the suspect's arrest**

(1) A report on the suspect's arrest states:
1) the ground for the arrest, with a reference to subsections 2 and 3 of § 217 of this Code;
2) the date and time of the arrest;
3) the facts of the criminal offence that the person is suspected of having committed and the legal designation of the offence according to the relevant section, subsection and clause of the Penal Code;
[RT I 2006, 15, 118 – entry into force 14.04.2006]
4) provision of an explanation of the rights and obligations provided by § 34 of this Code to the suspect;
5) a list and identifying features of any items seized from the suspect at the time of arrest;
6) a description of the clothing and bodily injuries, if any, of the person arrested;
7) any representations and applications made by the person arrested;
8) if the person arrested 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 informed of the suspect's arrest without delay.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 219. Substitutional measure for arresting a person as a suspect**

(1) Where a person has committed a criminal offence of the second degree for which a monetary penalty may be imposed and the person does not have a permanent or temporary residence in Estonia, the investigative authority may, with the person's consent, as a substitutional measure for arresting them as a suspect, order them to pay a sum of money into public revenue which covers the costs of the case, the potential monetary penalty to which the person might be sentenced and the harm caused by the offence.

(2) A record is filed concerning imposition of the substitutional measure and concerning receipt of the payment into public revenue; a copy of the record is transmitted to the Prosecutor's Office.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

# Subchapter 4
# Completion of Pre-Trial Proceedings

**§ 220. Requiring the production of information needed to calculate average daily earnings**

(1) Before completion of pre-trial proceedings, the investigative authority requires the Tax and Customs Board or, where this is needed, an employer or another person or authority to produce the information needed to calculate the average daily earnings of the suspect or accused.

(2) Where this is needed, the Prosecutor's Office and the court may require the production of additional information needed to calculate the average daily earnings.

(3) A person or authority whom a proceedings authority has required to produce the information needed to calculate average daily earnings must respond to the enquiry within seven days following its receipt.

(4) The suspect or accused has a right to present, to the proceedings authority, information concerning their earnings and debts.
[RT I 2003, 88, 590 – entry into force 01.07.2004]

**§ 221. Requiring the production of information needed to impose a sentence of forfeiture of property and to confiscate property obtained by a criminal offence**

(1) Where a person is suspected or accused of a criminal offence for which the law permits a person to be sentenced to a forfeiture of property, or in relation to which confiscation may be imposed under § 83[2] of the Penal Code, the investigative authority may, by order, assign an enforcement agent to collect the information needed.

(2) Where this is needed, the Prosecutor's Office and the court may require the production of additional information that is needed to calculate the amount of a forfeiture of property or that is related to a confiscation.

(3) The enforcement agent ascertains the property of the suspect, accused or third party and appraises such property. Within thirty days following receipt of the order, the agent issues a certificate concerning the person's pecuniary situation and presents the certificate, together with the evidence based on which the certificate was issued, to the proceedings authority.

(4) The suspect, accused or third party has a right to present, to the proceedings authority, information concerning their earnings and debts.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

**§ 221[1]. Requiring the production of information needed to order a course of addiction treatment for drug addicts or of complex treatment for sex offenders**

(1) If a person is suspected or accused of a criminal offence for which the law allows a custodial sentence to be imposed – which may then be substituted by a course of addiction treatment for drug addicts or substituted in part by a course of complex treatment for sex offenders – the investigative authority and the Prosecutor's Office may, by expert assessment order, commission the opinion of an expert of forensic psychiatry or forensic sexology on the need to order the suspect or accused to undertake a course of such addiction or complex treatment.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) Where necessary, the court may require the production of additional information that is needed for ordering a course of narcotic drug addiction treatment or of complex treatment for sex offenders. If such information or the opinion provided by an expert of forensic psychiatry or forensic sexology suggests that a forensic medical examination is needed, the proceedings authority may require one to be performed.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(3) An expert of forensic psychiatry or forensic sexology ascertains the state of health of the suspect or accused and issues an expert report in the matter. The report is presented to the proceedings authority within thirty days following receipt of the corresponding order.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(4) The investigative authority and the Prosecutor's Office may address an application to the probation supervision department of the prison in whose service area the residence of the suspect or accused is located to request an opinion – having regard to the person in question, their living conditions and financial situation – on the possibility of ordering the suspect or accused to undertake a course of addiction treatment for drug addicts or of complex treatment for sex offenders.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(5) The probation officer issues such an opinion within thirty days following receipt of the application. To provide the opinion, the probation officer has a right to acquaint themselves with the expert's report mentioned in subsection 3 of this section.

(6) The suspect or accused has a right to receive information concerning their mental disorder, the methods of treatment and diagnosis being used, as well as concerning arrangements for the funding of the course of addiction treatment for drug addicts or of complex treatment for sex offenders, and to acquaint themselves with their medical file.
[RT I, 15.06.2012, 2 – entry into force 01.06.2013]

**§ 222. Operations of an investigative authority on completion of pre-trial proceedings**

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

(1) If the official of an investigative authority is convinced that the evidence required in the criminal case has been collected, they send the criminal file, whose material has been systematised and whose pages have been numbered, without delay to the Prosecutor's Office together with any items of physical evidence, any recordings and any sealed envelopes containing the personal particulars of an anonymous witness. Where so instructed by the Prosecutor's Office, they present to the Office a summary of pre-trial proceedings which complies with the requirements of § 153 of this Code. The summary is sent to the Prosecutor's Office together with the criminal file as a paper copy as well as electronically.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) If the criminal case has several suspects, a joint summary of pre-trial proceedings is filed, stating the personal particulars of each suspect separately.

(3) A certificate concerning the costs of criminal proceedings is annexed to the criminal file sent to the Prosecutor's Office.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 223. Operations of the Prosecutor's Office on receiving the criminal file**

(1) The branch of the Prosecutor's Office that receives a criminal file declares pre-trial proceedings to have been completed, requires the investigative authority to perform additional procedural operations or terminates criminal proceedings on the grounds and following the rules provided by §§ 200–205[2] of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(2) Where necessary, the branch of the Prosecutor's Office that received the criminal file performs additional operations after receipt of the file. The Prosecutor's Office has a right to remove from the file any material that is irrelevant to the criminal case and, if this is needed, re-systematise the file.

(3) When it declares pre-trial proceedings to have been completed, the Prosecutor's Office presents the criminal file according to § 224 of this Code to allow the parties mentioned in that section to acquaint themselves with the file.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) Where this is needed for dealing with the case under the plea agreement procedure, the Prosecutor's Office performs the operations provided by §§ 240 and 244[1] of this Code.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

**§ 224. Presenting the criminal file to the suspect, defence counsel, victim and civil defendant**

[RT I, 28.12.2016, 14 – entry into force 01.04.2017]

(1) The Prosecutor's Office presents a copy of the criminal file to the defence counsel on a digital storage medium or, on a substantiated written application of the defence counsel, on paper. The counsel may waive being provided with a copy of the file. The counsel signs an acknowledgement of having received the copy or having waived its provision.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(1[1]) Where the participation of defence counsel at presentation of the criminal file is not mandatory under subsection 3 of § 45 of this Code, the file is presented to the suspect on the latter's application using a means chosen by the prosecutor.
[RT I, 28.12.2016, 14 – entry into force 01.04.2017]

(2) The Prosecutor's Office presents the criminal file to the victim or civil defendant on their application.

(3) On an application of the defence counsel, victim or civil defendant – or, in a situation mentioned in subsection 1[1] of this section, the suspect – any recording made or any item of physical evidence collected in the criminal case is presented to them.
[RT I, 28.12.2016, 14 – entry into force 01.04.2017]

(4) Where it is clear that a person is stalling when acquainting themselves with a criminal file, a recording or an item of physical evidence, the Prosecutor's Office sets a time limit for the person to do so.

(5) The victim and civil defendant have a right to copy, by hand, any materials in the criminal file and to apply to the Prosecutor's Office for copies to be made of such materials for a charge.

(6) A note is made in the criminal file concerning its presentation – or the presentation of any recording made or any item of physical evidence collected in the criminal case – to the suspect, defence counsel, victim or civil defendant.
[RT I, 28.12.2016, 14 – entry into force 01.04.2017]

(7) On an application of the defence counsel, any storage medium containing a State secret or classified information of a foreign state which is used as evidence in the criminal case and which is not included in the criminal file is presented to that counsel following the rules provided by the State Secrets and Classified Information of Foreign States Act. A note is made in the criminal file concerning such presentation.
[RT I 2007, 16, 77 – entry into force 01.01.2008]

(8) On an application of the defence counsel – or, in a situation mentioned in subsection 1[1] of this section, of the suspect – any material removed from the file under subsection 2 of § 223 of this Code is presented to the counsel or suspect and arrangements are made to permit them to make copies of the material for a fee.
[RT I, 28.12.2016, 14 – entry into force 01.04.2017]

(9) A statutory fee is paid for the copies mentioned in subsections 5 and 8 of this section at the rate provided by subsection 1 of § 61 of the Statutory Fees Act.
[RT I, 30.12.2014, 1 – entry into force 01.01.2015]

(10) When presenting the criminal file and any material removed from the file to the defence counsel or, in a situation mentioned in subsection $1^1$ of this section, to the suspect, the Prosecutor's Office, having regard to the need to protect personal data, determines whether and to what extent the counsel or suspect are permitted to make additional copies of the file or materials. The Prosecutor's Office notes the prohibition to make copies on the copy of the document or file that is presented to the counsel or suspect.
[RT I, 28.12.2016, 14 – entry into force 01.04.2017]

**§ $224^1$. Presenting the file to the suspect or accused**

(1) The defence counsel presents the material mentioned in § 224 of this Code to the suspect or accused if the latter so wishes. Materials whose copying the Prosecutor's Office has prohibited are presented by the defence counsel only in the counsel's professional premises or in a custodial institution.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(2) It is prohibited for the defence counsel to hand over any copies of any material mentioned in § 224 of this Code to other persons, with the exception of the suspect or accused in a situation and to the extent permitted by subsection 10 of § 224 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 225. Making and disposing of applications**

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

(1) The parties to proceedings may make applications to the Prosecutor's Office within ten days following presentation of the criminal file. If the criminal case is voluminous or complicated, the Prosecutor's Office may extend this time limit on a written application of a party to proceedings. Refusal to extend the time limit is rendered as an order of the Prosecutor's Office. The making of an application for providing a written translation of the materials of the file does not stay the issuing of a statement of charges or the sending of such a statement to court.
[RT I, 04.10.2013, 3 – entry into force 27.10.2013]

($1^1$) Where a civil court claim or statement of a public-law claim is filed after expiry of the time limit provided by subsection 1 of this section, the Prosecutor's Office returns it by an order and explains to the victim their right to file a court claim under the rules of civil procedure.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(2) The Prosecutor's Office considers an application within ten days following its receipt.

(3) Denial of an application is rendered as an order a copy of which is sent to the person who made the application. The fact that the application mentioned in subsection 1 of this section was denied in pre-trial proceedings does not preclude its repetition in judicial proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) Any material in the criminal file which is collected by additional operations is presented to the parties according to § 224 of this Code.

(5) An application of the suspect or accused for their case to be dealt with under the abridged procedure is considered in accordance with § 234 of this Code. No order is made concerning consideration of such an application. Should the Prosecutor's Office refuse to grant the application, its refusal cannot be appealed.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

**§ 226. Issuing a statement of charges and sending the statement to court**

(1) Where, having presented the criminal file to the parties, the Prosecutor's Office is convinced that the evidence needed in the criminal case has been collected, it issues a statement of charges according to § 154 of this Code.

(2) A list of persons to be summoned to trial on a motion of the Prosecutor's Office is appended to the statement of charges. The list states the given name and surname of the persons to be summoned and the residence or seat of the victim, civil defendant, third party and their representatives, as well as of the defence counsel and the accused. Where a witness has been anonymised, their assigned name is stated in the list. An extract of the list only states the given name and surname of the persons to be summoned.
[RT I 2008, 32, 198 – entry into force 01.01.2009]

(3) The Prosecutor's Office transmits to the accused and the defence counsel the statement of charges as well as any extracts of the list provided for by subsection 2 of this section, and sends the statement of charges to court. The statement of charges is also transmitted to 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) When a statement of charges is sent to court, the envelope mentioned in subsection 4 of § 67 of this Code is retained in the Prosecutor's Office. The envelope is presented to the court on its instruction.

(6) If committal in custody has been imposed as a compliance enforcement measure in the criminal case and the prosecutor deems it necessary to maintain the measure, the Prosecutor's Office performs the operations mentioned in subsection 3 of this section not later than fifteen days before expiry of the time limit provided by subsection 3 or $3^1$ of § 130 of this Code.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

(7) Where a civil court claim or statement of a public-law claim has been filed in pre-trial proceedings, the Prosecutor's Office sends it to court together with the statement of charges. The Prosecutor's Office sends a copy of such a claim to the accused, the defence counsel and the civil defendant. No evidence may be appended to such a claim in a criminal case that is sent to court under regular rules of procedure.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

**§ 227. Operations of defence counsel on completion of pre-trial proceedings**

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

(1) Having received a copy of the statement of charges, the defence counsel files, not later than three working days before the preliminary hearing, a statement of defence with the court and a copy of such a statement with the Prosecutor's Office. Where the criminal case is particularly complex or voluminous, the court may extend that time limit on substantiated application of the defence 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 states:
1) the position of the defence concerning the charges and concerning any harm mentioned in the statement of charges, as well as which of the assertions and positions set out in the statement the defence contests and which it admits;
2) items of evidence which the defence counsel wishes to offer to the court, with a reference to the facts each item is intended to prove;

(3) a list of the persons to be summoned to trial on a motion of the defence counsel;
4) any other applications of the defence counsel.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) The model form for statements of defence is enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) If the defence counsel does not file a statement of defence within the time limit prescribed in this section, the court notifies this without delay to the Board of the Estonian Bar Association and invites the accused to select a new defence counsel by the time determined by the court, or appoints a stand-in defence counsel to the accused and requires the Estonian Bar Association to appoint a defence counsel according to subsection 1 of § $44^1$ of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

# Subchapter 5
# Complaints or Appeals Against Actions of an Investigative Authority or of the Prosecutor's Office

**§ 228. Complaints or appeals against actions of an investigative authority or of the Prosecutor's Office**

(1) If a party to proceedings or a non-party finds that a violation of procedural requirements during the performance of a procedural operation – or in relation to the making of an order – by the investigative authority has resulted in a violation of their rights, they have a right to file a complaint against such an operation or an appeal against such an order with the Prosecutor's Office before the statement of charges is issued.

(2) Before the statement of charges is issued, a person mentioned in subsection 1 of this section has a right to file an appeal with the Office of the Prosecutor General against an order or procedural operation of the Prosecutor's Office.

(3) A complaint or an appeal mentioned in subsections 1 or 2 of this section is filed with the body who is to dispose of it, either directly or through the person whose order or procedural operation the appeal or complaint contests.

(4) The complaint or appeal states:
1) the name of the branch of the Prosecutor's Office with which it is filed;
2) the given name and surname, procedural role, residence or seat and address of the complainant or appellant;
3) the order or procedural operation contested, the date of the order or operation, and the name of the person in whose respect the order or operation is contested;
4) what part of the order or procedural operation is contested;
5) the substance of and reasons for the relief sought by the complaint or appeal;
6) a list of any documents appended to the appeal.

(5) A complaint or appeal against the actions of an investigative authority or of the Prosecutor's Office does not stay execution of the contested order or performance of the procedural operation.

(6) Where the Prosecutor's Office receives a complaint or appeal mentioned in subsections 1 or 2 of this section after the statement of charges has been sent to court according to subsection 3 of § 226 of this Code, the appeal is communicated to the court that deals with the criminal case.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 229. Disposing of a complaint or appeal in the Prosecutor's Office or in the Office of the Prosecutor General**

(1) A complaint or appeal filed with the Prosecutor's Office or the Office of the Prosecutor General is disposed of within 30 days following its receipt.

(2) When dealing with an appeal against an order of an investigative authority or of the Prosecutor's Office, or with a complaint concerning a procedural operation of an investigative authority or of the Prosecutor's Office, the Prosecutor's Office or the Office of the Prosecutor General may, by order:
1) deny the appeal;
2) grant the appeal in full or in part and – if the violation can no longer be eliminated – recognise that the person's rights were violated;
3) set aside the contested order or stay the contested procedural operation in full or in part, eliminating the violation of rights.

(3) The person who filed the complaint or appeal is notified of their right to file a further appeal with the district court under § 230 of this Code.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

(4) An order entered to dispose of an appeal or a complaint is sent without delay to the investigative authority or the Prosecutor's Office that made the contested order or performed the contested procedural operation; a copy of the order is sent to the person who filed the appeal or complaint.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 230. Filing an appeal with the district court**

(1) Where actions are contested which have violated a person's rights and which have been carried out by an investigative authority or the Prosecutor's Office, and where the person does not agree with the order given by the Office of the Prosecutor General following consideration of the person's appeal, the person has a right to file an appeal with the pre-trial investigation judge of the district court in whose service area the contested order was made or the contested procedural operation conducted.

($1^1$) Where, in a criminal case that is dealt with under Council Regulation (EU) 2017/1939, a person's rights have been violated by actions of an investigative authority or of the Prosecutor's Office and the corresponding complaint or appeal has been finally disposed of by the Prosecutor's Office under that Regulation, the person has a right to contest such actions following the rules provided by this section.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

(2) An appeal may be filed within ten days following the day when the person became or should have become aware of the contested order.

(3) Appeals are filed in writing following the requirements of clauses 2–6 of subsection 4 of § 228 of this Code.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

**§ 231. Disposing of the appeal in the district court**

(1) The pre-trial investigation judge considers the appeal within 30 days following its receipt.

(2) The appeal is considered by written procedure having regard to the scope of the appeal and in respect of the person concerning whom it was filed.

(3) When disposing of the appeal, the court may:
1) deny the appeal;
2) grant the appeal in full or in part and – if the violation can no longer be eliminated – recognise that the person's rights were violated;
3) set aside the contested order or stay the contested procedural operation in full or in part, eliminating the violation of rights.

(4) The court that receives the appeal may suspend execution of the contested order or procedural operation.

(5) An order of the pre-trial investigation judge is final and not subject to appeal, with the exception of orders disposing of appeals concerning the course of a covert operation or against a decision not to notify a person of, or not to present the information collected by, such an operation.
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]

**§ 232. Abandoning an appeal**

An appeal filed against the actions of an investigative authority, the Prosecutor's Office or the Office of the Prosecutor General may be abandoned until it has been disposed of.

# Chapter 9
# SIMPLIFIED PROCEDURES

## Subchapter 1
## Abridged Procedure

**§ 233. Grounds for using the abridged procedure**

(1) On a motion of the accused and of the Prosecutor's Office, the court may dispose of the criminal case by using the abridged procedure – based on the materials of the criminal file, without summoning any witnesses, specialist witnesses or experts.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

($1^1$) Until commencement of the examination of evidence in the district court, the accused and the prosecutor may make a motion to the court for the case to be disposed of by using the abridged procedure.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(2) The abridged procedure is not used if:
1) the case concerns a criminal offence for which the Penal Code prescribes the sentence of life imprisonment;
2) there are several accused in the case and at least one of them does not consent to the use of the procedure.
3) [Repealed – RT I, 05.07.2013, 2 – entry into force 15.07.2013]

(3) Where the abridged procedure is used, the provisions of Subchapters 2, 3, 5 and 6 of Chapter 10 of this Code are followed without prejudice to special rules provided by this Subchapter.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 234. Application for the case to be dealt with under the abridged procedure**

(1) The suspect or accused may make an application to the Prosecutor's Office for the abridged procedure to be used in the case.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) If the Prosecutor's Office refuses to use the abridged procedure, criminal proceedings are continued according to regular rules of procedure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) Where, before the operations listed in § 226 of this Code are carried out, the suspect or accused, the defence counsel and the Prosecutor's Office agree on the use of the abridged procedure, the Prosecutor's Office states, in the statement of charges issued under § 154 of this Code, that an application for the use of the abridged procedure has been made. The application of the suspect or accused and the statement of charges are included in the criminal file and the file is sent to court.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) Where, in the course of judicial proceedings, the suspect or accused, the defence counsel and the Prosecutor's Office agree on the use of the abridged procedure, the Prosecutor's Office presents the corresponding motion of the accused and the criminal file to the court at the hearing.

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

(5) The accused and the Prosecutor's Office may withdraw the motion for the use of the abridged procedure until completion of the examination of evidence. If the accused or the Prosecutor's Office withdraws the motion during the hearing, the court enters the disposition provided by clause 1 of subsection 1 of § 238 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]. Committing the accused to answer the charges under the abridged procedure**

[RT I 2006, 21, 160 – entry into force 25.05.2006]

(1) The judge who receives the criminal file verifies whether the court has jurisdiction over the case under the provisions of §§ 24–27 of this Code and makes an order by which they:
1) commit the accused to answer the charges, following the provisions of § 263 of this Code;
2) return the criminal file to the Prosecutor's Office – if the grounds for using the abridged procedure do not apply;
3) by which the criminal file is returned to the Prosecutor's Office for proceedings to be continued – if the court rejects the use of the abridged procedure to dispose of the case.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

(2) Where grounds provided by § 258 of this Code come to light, the court convenes a preliminary hearing, to be held following the provisions of subsection 2 of § 257[1] and of §§ 259–262 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 236. Parties summoned to the hearing**

(1) The prosecutor, the accused, the defence counsel, the victim and the civil defendant are summoned to the hearing.

(2) The victim's or civil defendant's non-appearance does not preclude the hearing of the case or consideration of the civil court claim or statement of the public-law claim.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(3) Participation of the parties to judicial proceedings in a hearing held under the rules of the abridged procedure may be arranged by the court by means of a technical solution which complies with the requirements mentioned in clause 1 of subsection 2 of § 69 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) The prosecutor is not required to attend the pronouncement of the judgment.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 237. Examination of evidence under the abridged procedure**

(1) The judge announces the commencement of the examination of evidence and invites the prosecutor to make an opening speech. The prosecutor gives an overview of the charges and of the evidence which supports the charges and is to be examined during examination of the evidence on a motion of the prosecutor.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) After the opening speech of the prosecutor, the judge asks whether the accused understands the charges, whether they plead guilty or not guilty and whether they consent to the criminal case being disposed of under the abridged procedure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) The judge invites the defence counsel to present their opinion as to whether the charges are justified. After that, the victim and the civil defendant or their representatives are given the floor.

(4) At the hearing, the attending parties may only rely on materials in the criminal file. The court intervenes if the parties raise circumstances that do not appear in the file.

(5) The accused may make a motion to be heard as a witness. When examining the accused, the provisions of § 293 of this Code are followed. If the accused has waived defence counsel under clause 3 of subsection 4 of § 45 of this Code, the prosecutor is the first to question the accused, followed by the other parties to proceedings in the order determined by the judge.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) The judge may put questions to parties to proceedings.

(7) When concluding the examination of evidence, the judge asks whether the parties to proceedings have any motions the wish to make. The court disposes of such motions following § 298 of this Code.

**§ 237[1]. Switching to the abridged procedure during judicial proceedings**

(1) On receiving a motion mentioned in subsection 4 of § 234 of this Code, the judge continues the hearing following the rules provided by § 237 of this Code.

(2) When the court rejects the abridged procedure under clause 2 or 3 of subsection 1 of § 235[1] of this Code, it continues the proceedings following regular rules of procedure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 238. Dispositions under the abridged procedure**

(1) The court retires to the deliberation room to make one of the following dispositions:
1) an order by which it returns the criminal file to the Prosecutor's Office – if the grounds for using the abridged procedure do not apply;
2) an order by which it returns the criminal file to the Prosecutor's Office – if the materials of the criminal file are not sufficient for the case to be disposed of under the abridged procedure;
3) an order by which it terminates criminal proceedings in the case – if grounds listed in clauses 2–6 of subsection 1 of § 199 of this Code have come to light;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
4) a judgment of conviction or acquittal in respect of the accused.

(2) When it renders a judgment of conviction under the abridged procedure, the court, having weighed all the facts of the criminal offence, reduces the principal sentence to be imposed on the accused by one third. When sentencing the accused under § 64 of the Penal Code, the combined sentence to be imposed is reduced by one third.

# Subchapter 2
# Plea Agreement Procedure

**§ 239. Grounds for using the plea agreement procedure**

(1) On a motion of the accused and of the Prosecutor's Office, the court may dispose of the criminal case by using the plea agreement procedure.

(2) The plea agreement procedure is not used if:
1) the case concerns a criminal offence defined in §§ 89–91, 95–97, 99–102, in subsection 2 of § 102[2], in § 103, in subsection 2 of § 110, subsection 2 of § 111, subsection 2 of § 112, in §§ 113–114, 118, 125, 135, in subsections 2 and 2[1] of § 141, subsections 2 and 3 of § 141[1], in clause 1 of subsection 2 and subsection 4 of § 151, in clause 5 of subsection 2 of § 200, in clause 3 of subsection 2 of § 214, in §§ 237, 244 and 246, in clause 3 of subsection 3 of § 251, in subsection 3 of § 252, in subsection 2 of § 259, in §§ 290[1] and 302, in subsection 3 of § 327, in subsection 3 of § 405, in subsection 2 of § 422, in § 435, in clause 1 of § 441, clause 1 of § 442, clause 1 of § 443 or clause 1 of subsection 2 and subsection 3 of § 445 of the Penal Code;
[RT I, 20.12.2019, 1 – entry into force 30.12.2019]
2) the accused, their defence counsel or the Prosecutor's Office does not consent to the use of the procedure;
3) there are several accused in the case and at least one of them does not consent to the use of the procedure;
4) if the victim, civil defendant or third party does not consent to the use of the 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 victim's consent mentioned in clause 4 of subsection 2 of this section is not required for using the plea agreement procedure if the victim is the State, a local authority or another public authority and the Prosecutor's Office has, in accordance with subsection 3[1], 3[2] or 3[3] of § 38[1] of this Code, filed a civil court claim or statement of a public-law claim in the stead of a representative of the State or of such an authority.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

(3) Until completion of the examination of evidence in the district court, the accused and the prosecutor may make a motion to the court to use the plea agreement procedure.

(4) Where the plea agreement procedure is used, the provisions of Chapter 10 of this Code are followed without prejudice to special rules provided by this Subchapter.

**§ 240. Initiation of the plea agreement procedure by the Prosecutor's Office**

If the Prosecutor's Office considers it possible to use the plea agreement procedure possible, the Office performs the following operations:
1) explains, to the suspect or accused and the civil defendant, the possibility of using that procedure, their rights under the procedure and the consequences of its application in the case;
2) draws up a report according to § 243 of this Code concerning the consent of the civil defendant to the use of that procedure;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
3) asks the victim to provide their consent to that procedure and asks an individual victim whether they wish to receive notification of the time of the hearing to be held in the case, unless the victim has previously expressed their opinion on these issues in the course of criminal proceedings, and explains that the victim does not have a right to withdraw their consent;
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]
4) ascertains the opinion of the victim concerning the charges and the sentence, unless the victim has previously expressed their opinion about these issues in the course of criminal proceedings and, where this is needed, sets a reasonable time limit for the victim to file a civil court claim, a statement of a public-law claim or an application for the compensation of costs of the case.
[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. Initiation of the plea agreement procedure on an application of the suspect or accused**

(1) If the suspect or accused wishes the plea agreement procedure to be used, they make a written application to the Prosecutor's Office according to § 225 of this Code.

(2) If the Prosecutor's Office agrees to the use of the plea agreement procedure, it performs the operations provided by §§ 240 and 243 of this Code. If the Prosecutor's Office refuses, criminal proceedings are continued following regular rules of procedure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 243. Report concerning consent granted by the civil defendant and third party to the use of the plea agreement procedure**

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

(1) The following particulars are recorded in a report concerning the grant of consent by the civil defendant or third party to the use of the plea agreement procedure:
1) the time and place of filing the report;
2) the position title and name of the person who drew up the report;
3) the name of the suspect or accused;
4) the name, residence or seat and address, personal identification number (or, if the civil defendant or third party does not possess such a number, their date of birth), citizenship and place of work or educational institution;
5) a note concerning whether the civil defendant or third party have been provided an explanation of their rights of under the plea agreement procedure and of the consequences of that procedure;
6) the consent of the civil defendant to the use of the plea agreement procedure and to the victim's civil court claim or statement of a public-law claim filed against them;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
7) the consent of the third party to any determination made concerning their rights or freedoms that are protected by law.

(2) The report is signed by the prosecutor and civil defendant or third party.

(3) The civil defendant or third party does not have a right to withdraw the consent they have granted.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 244. Negotiations under the plea agreement procedure**

(1) Once it has filed the report mentioned in § 243 of this Code, the Prosecutor's Office commences negotiations with the suspect or accused and their defence counsel in order to prepare a plea agreement. At the beginning of negotiations, the Prosecutor's Office explains the rights of the suspect or accused under the plea agreement procedure and the consequences of that procedure for 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, the suspect or accused and the defence counsel do not reach an agreement concerning the terms and conditions provided for by subsection 1 of § 245 of this Code, criminal proceedings are continued following regular rules of procedure.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(4) A plea agreement may not stipulate a sentence that is more severe than 18 years' imprisonment.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 244[1]. Plea agreement procedure: dismissal of the civil court claim or statement of the public-law claim**

(1) If the Prosecutor's Office finds that the civil court claim or statement of the public-law claim is impermissible or unjustified in its entirety or that a substantial part of such a claim is impermissible or unjustified, it makes an order by which it returns the claim to the victim. The Prosecutor's Office may return the statement of the public-law claim to the victim also where this is needed in order for the criminal case to be disposed of expeditiously. An order by which a civil court claim or statement of a public-law claim is dismissed under this subsection is not subject to contestation.

(2) Where a civil court claim or statement of a public-law claim is filed after the time limit provided by subsection 4 of § 240 of this Code, the Prosecutor's Office returns such a claim by an order. An appeal may be filed against the order of the Prosecutor's Office following the rules provided by Subchapter 5 of Chapter 8 of this Code. The victim may, among other things, contest the reasonableness of the time limit set by the Prosecutor's Office.

(3) Dismissal of a civil court claim or statement of a public-law claim does not preclude the filing of the same claim under the rules of civil procedure or of administrative court procedure, or collection, under the rules of administrative procedure, of the obligation that was the cause of the public-law claim – which the Prosecutor's Office explains in its order. Where, under subsection 4 of § 38[1] of this Code, the victim has a right to file a civil court claim without paying the statutory fee, they also have, on the same basis, a right to file a civil court claim or complaint without paying such a fee under the rules of civil procedure or of administrative court procedure.

(4) Where, following dismissal of a civil court claim or statement of a public-law claim under this section, proceedings continue in the same case under a procedure other than the plea agreement procedure, the claim is appended to the statement of charges following the rules provided by subsection 7 of § 226 of this Code, provided the claim has not yet been filed under the rules of civil procedure concerning civil or administrative court proceedings – or provided an administrative authority has not rendered an administrative decision to dispose of the claim that was filed by means of the statement of public-law claim.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

**§ 244[2]. Special rules for negotiations with alien suspects or accused**

(1) The Prosecutor's Office holds negotiations with an alien suspect or accused with a view for the person to assume an obligation to leave the Republic of Estonia for a host country and to be prohibited re-entry for a period of five to ten years, provided that in the assessment of the Police and the Border Guard Board it is possible for the person to return to the host country.

(2) The Prosecutor's Office requests from the Police and Border Guard Board an assessment of the possibility for the alien to return to the host country; the Board transmits its assessment to the Prosecutor's Office within 30 days following receipt of the request.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

**§ 245. Plea agreement**

(1) A plea agreement states:
1) the time and place of conclusion of the agreement;
2) the position title and name of the prosecutor;
3) for the accused, their name, residence or seat and address, personal identification number (or, if the accused does not possess one, their date of birth), citizenship, education, native language and place of work or educational institution;
4) the name of the defence counsel;
5) any previous convictions of the accused;
6) any compliance enforcement measures imposed on the accused, and the duration of such measures;
6[1]) a note concerning provision, to the suspect of accused, of an explanation of their rights under the plea agreement procedure and of the consequences of that procedure;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
7) the facts of the criminal offence;
8) the legal designation of the criminal offence and the nature and extent of the harm caused by it;
9) the type and length or amount of the sentence;
10) items of property subject to confiscation;
[RT I 2007, 2, 7 – entry into force 01.02.2007]
11) the cause of and relief sought by the civil court claim or statement of the public-law claim that has been filed against the accused;

[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
12) the costs of 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) Where the accused is sentenced for several criminal offences, the plea agreement states the type and length or amount of the sentence for each offence and for the overall sentence.

(3) Where the accused is sentenced under several judgments, the plea agreement also states the type and length or amount of the overall sentence.

(4) A plea agreement is deemed concluded when it has been signed by the prosecutor, the accused and their defence counsel.

(5) The Prosecutor's Office transmits copies of the plea agreement to the accused and their defence counsel and sends the criminal file to the court. If an individual victim has filed an application under clause 3 of § 240 of this Code to be notified of the time of the hearing of the case, the Prosecutor's Office appends such an application to the agreement that it sends to the court.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

**§ 245[1]. Committing the accused to answer the charges under the plea agreement procedure**

[RT I 2006, 21, 160 – entry into force 25.05.2006]

(1) The judge to receive the criminal file verifies whether the court has jurisdiction over the case under the provisions of §§ 24–27 of this Code and makes an order by which they:
1) commit the accused to answer the charges, following the provisions of § 263 of this Code;
2) return the file to the Prosecutor's Office – if the grounds for using the plea agreement procedure do not apply;
3) return the file to the Prosecutor's Office, allowing for the possibility of concluding a new plea agreement – if the court rejects the legal designation of the criminal offence or the type or length or amount of the sentence;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
4) return the file to the Prosecutor's Office for proceedings to be continued – if the court rejects the use of the plea agreement procedure to dispose of the case.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

(2) Where a ground provided by § 258 of this Code comes to light, the court convenes a preliminary hearing which is held following the rules provided by subsection 2 of § 257[1] and of §§ 259–262 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 245[2]. Special rules for plea agreements concluded with alien suspects or accused**

(1) Where a plea agreement is concluded with an alien who assumes an obligation to leave the Republic of Estonia for a host country, the agreement additionally states:
1) the period of validity and the scope of the prohibition of re-entry imposed on the alien;
2) the alien's obligation to leave the Republic of Estonia for the host country by an appointed date and the consequences of failure to comply with the agreement;
3) particulars concerning the mandating of enforcement of the obligation to leave, if the alien has been committed in custody or is serving a term of imprisonment in Estonia or if the alien's liberty has been restricted on other lawful grounds.

(2) If an alien does not comply with the obligation to leave the Republic of Estonia for a host country that they have assumed, if they have been declared a suspect in a new criminal offence before having complied with the obligation to leave, or if they re-enter Estonia before expiry of the period of validity of the prohibition of re-entry that was imposed in their case, the enforcement judge may, on an application of the Prosecutor's Office, mandate the enforcement of the sentence imposed on the alien to the extent that such a sentence has not been served.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

**§ 246. Parties summoned to the hearing**

(1) The parties that are summoned to the hearing are the prosecutor, the accused and their defence counsel.

(1[1]) The court notifies an individual victim of the time of the hearing if this has been applied for by the victim; notification is made based on the contact details provided by the victim or through the eFile system. Non-appearance of the victim does not preclude the court from proceeding with the hearing.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(2) Participation of parties to judicial proceedings in the hearing conducted under the plea agreement procedure may be arranged by the court by means of a technical solution which complies with the requirements mentioned in clause 1 of subsection 2 of § 69 of this Code.

(3) The prosecutor is not required to attend the pronouncement of the judgment.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 247. Hearing under the plea agreement procedure**

(1) The judge announces the commencement of the hearing concerning the plea agreement and invites the prosecutor to give an overview of the agreement.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) Having heard an overview of the plea agreement, the judge asks whether the accused understands the agreement and accepts it. The judge invites the accused to explain the circumstances relating to the conclusion of the agreement and makes a determination as to whether or not the accused's conclusion of the agreement reflects their true intention.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) The judge invites the defence counsel and the prosecutor to state their respective opinions concerning the plea agreement as well as whether they stand by it.

(4) The judge may question the parties to proceedings.

(5) When the hearing concerning the plea agreement is concluded, the court announces the time when its disposition is to be pronounced.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 248. Judicial dispositions under the plea agreement procedure**

(1) The court renders one of the following dispositions:
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
1) an order by which it returns the criminal file to the Prosecutor's Office – if the grounds for using the plea agreement procedure do not apply;
[RT I 2006, 21, 160 – entry into force 25.05.2006]
2) an order by which it returns the criminal file to the Prosecutor's Office, allowing for the possibility of concluding a new agreement – if the court rejects the legal designation of the criminal offence or the type or the length or amount of the sentence, or the obligation to leave the Republic of Estonia for a host country accompanied by a ban on re-entry for a period of five to ten years that has been assumed by an alien under the plea agreement;
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]
3) an order by which it rejects the plea agreement procedure and returns the criminal file to the Prosecutor's Office – if the court has doubts based on § 306 of this Code;
4) an order by which it terminates criminal proceedings – if grounds listed in clauses 2–6 of subsection 1 of § 199 of this Code have come to light;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
5) a judgment by which it convicts the accused and imposes the sentence stipulated in the plea agreement.

(2) Where the court makes an order mentioned in clause 1 or 2 of subsection 1 of this section, it returns the criminal file to the Prosecutor's Office for criminal proceedings to be continued.

**§ 249. Body of a judgment of conviction rendered under the plea agreement procedure**

The following is stated in the body of the judgment:
1) the charges of which the court convicts the accused;
2) the substance of the plea agreement.

**§ 250. Commencement of the plea agreement procedure during the trial or hearing**

(1) On receiving a report mentioned in § 243, an opinion mentioned in clause 3 of § 240 and a plea agreement mentioned in § 245 of this Code, the judge continues the trial or hearing following the rules provided by § 247. If the trial or hearing commenced before presentation of the plea agreement, only the agreement is presented.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) When the court rejects the plea agreement procedure under clause 1 or 2 of subsection 1 of § 248 of this Code, it continues proceedings following regular rules of procedure.

# Subchapter 3

# Summary Procedure

**§ 251. Grounds for using the summary procedure**

(1) Where, in a case concerning a criminal offence of the second degree, for which the prosecutor considers a monetary penalty to be acceptable as the principal sanction, the facts of the subject matter of evidence are clear, the court may, on an application of the Prosecutor's Office, dispose of the case by using the summary procedure.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(2) The summary procedure is not used if the suspect is a minor.

(3) The summary procedure is not used if the suspect can be ordered to undertake a course of addiction treatment for drug addicts or of complex treatment for sex offenders.
[RT I, 15.06.2012, 2 – entry into force 01.06.2013]

**§ 252. Body of the statement of charges under the summary procedure**

(1) Under the summary procedure, the Prosecutor's Office issues a statement of charges the body of which states:
1) the facts of the criminal offence;
2) the legal designation of the offence;
3) the nature and extent of the harm caused by the offence;
4) the items of evidence supporting the charges;
5) a proposal concerning the type and length pr amount of the sentence.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(2) The statement of charges and the materials of the criminal case are sent to court; copies of the statement are sent to the accused and their defence counsel.

(3) Within ten days following receipt of the statement of charges, the accused and the defence counsel may file written submissions with the court concerning disposition of the criminal case.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 253. Dispositions under the summary procedure**

When the criminal case has been received in court – but not earlier than fifteen days after transmission of the statement of charges to the accused and the defence counsel – the judge, having verified that the court has jurisdiction over the case, renders one of the following dispositions:
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
1) a judgment under the summary procedure in accordance with § 254 of this Code;
2) an order by which they terminate criminal proceedings – if grounds provided by clauses 2–6 of subsection 1 of § 199 of this Code have come to light;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
3) an order by which they refuse to use the summary procedure and return the criminal file to the Prosecutor's Office.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 254. Judgment under the summary procedure**

(1) If the judge accepts the conclusions presented in the statement of charges concerning the charges having been proven and concerning the length or amount of the sentence, the judge renders a judgment in the case.

(2) The introductory part of a judgment rendered under the summary procedure states:
1) that the judgment is rendered on behalf of the Republic of Estonia;
2) the date and place of rendering the judgment;
3) the name of the court that rendered the judgment and the name of the judge;
4) the name, residence or seat and address, personal identification number (or, where the accused does not possess one, their 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) any previous convictions of the accused.

(3) The body of a judgment rendered under the summary procedure states:
1) the facts of the criminal offence;
2) the legal designation of the offence;
3) the nature and extent of the harm caused by the offence;
4) the reasons for the sentence imposed on the accused.

(4) The operative part of a judgment rendered under the summary procedure states:
1) the conviction of the accused under the relevant section, subsection or clause of the Penal Code;
2) the length or amount of the sentence;
3) a decision concerning the costs of criminal proceedings;
4) the rules and time limit for appealing the summary judgment.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(5) A copy of the judgment rendered under the summary procedure is served on the accused, the defence counsel, the victim and the Prosecutor's Office according to the provisions of subsections 3 and 5 of § 164 of this Code within three days following the making of the judgment.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(6) Within fifteen days following receipt of the judgment rendered under the summary procedure, the accused and the defence counsel have a right to make a motion to the court for the criminal case to be disposed of under regular rules of procedure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(7) If the accused or the defence counsel do not make a motion for the court to dispose of the criminal case under regular rules of procedure, the judgment rendered under the summary procedure enters into effect.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 255. Contesting a judgment rendered under the summary procedure; trial under regular rules of procedure**

(1) If the convicted offender contests the judgment rendered under the summary procedure and makes a motion for the court to dispose of the criminal case under regular rules of procedure, the judge makes an order by which they return the criminal file to the Prosecutor's Office; the order serves as a basis for issuing a new statement of charges according to § 154 of this Code and for proceedings to be continued under regular rules of procedure.

(2) The case is tried under regular rules of procedure in accordance with the provisions of Chapter 10 of this Code.

**§ 256. Switching to the summary procedure at trial**

(1) In a situation provided for by clause 2 of subsection 2 of § 269 of this Code, the prosecutor may make a motion to the court for the case to be disposed of using the summary procedure and make a proposal concerning the length or amount of the sentence to be imposed on the accused.

(2) If the motion is granted, the court conducts summary proceedings following §§ 253 and 254 of this Code.

(3) If the motion is denied, the case is tried under regular rules of procedure.

# Subchapter 4
# Fast-Track Procedure

[RT I 2006, 15, 118 - entry into force 14.04.2006]

**§ 256[1]. Grounds for using the fast-track procedure**

[RT I 2006, 15, 118 – entry into force 14.04.2006]

(1) Where a person is suspected of a criminal offence of the second degree, the facts of the subject matter of evidence are clear and all necessary evidence concerning the offence has been collected, the Prosecutor's Office may make an application to the court for the case to be disposed of using the fast-track procedure. The motion is filed within 48 hours after the person has been interviewed, or arrested, as a suspect.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(2) Where a person is suspected of a criminal offence provided by Subchapter 1 of Chapter 12 of the Penal Code, the facts concerning the commission of the offence are not contested, the person can be induced – by treatment of their addiction disorder or by other methods of managing such a disorder – not to commit further offences and they have represented that they consent to being referred for treatment or to following another method of managing their disorder, the fast-track procedure may be used in their case in accordance with the rules provided by subsection 1 of this section and by Subchapter 2 of Chapter 9 of this Code.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

**§ 256[2]. Fast-track procedure investigation report and the statement of charges under that procedure**

(1) A fast-track procedure investigation report states:

1) any statements of the suspect as well as any other particulars relating to the corresponding interview in accordance with subsection 1 of § 76 of this Code, or a reference to a separate report of an interview with the suspect;
2) whether the suspect wishes the hearing of the criminal case to be conducted without summoning any witnesses;
3) the statements of witnesses as well as any other particulars relating to the corresponding interviews in accordance with § 74 of this Code, or a reference to separate reports of such interviews;
4) a list of other items of evidence;
5) the particulars provided by subsection 1 of § 218 of this Code, if the person has been arrested as a suspect.

(2) A fast-track procedure investigation report is transmitted to the Prosecutor's Office without delay. Other items of evidence and the certificate mentioned in subsection 3 of § 222 of this Code are appended to the report.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(3) Where this is needed, the Prosecutor's Office performs the operations required for simplified procedures to be used. In such a situation, the particulars mentioned in §§ 245 or 252 of this Code are added to the report. The operations mentioned in clauses 2 and 3 of § 240 of this Code may be performed in respect of the victim only by an investigative authority.

(4) The Prosecutor's Office issues a statement of charges, supplementing the fast-track procedure investigation report with the particulars provided for by § 154 of this Code, having regard to special rules concerning the report.

(5) The accused and their defence counsel are given a copy of the fast-track procedure investigation report. If the accused is not proficient in the Estonian language, they may apply for the report to be translated into their native language or a language in which they are proficient. If separate procedural documents are filed instead of the report, the accused and the defence counsel are given copies of the statement of charges and of the materials of the criminal case.

(6) After the suspect has been interviewed and until the beginning of the trial, the defence counsel has a right to acquaint themselves with the entirety of the materials of the criminal case. Any applications and complaints or appeals are made to and disposed of by the Prosecutor's Office until an application for the case to be dealt with under the fast-track procedure is made to the court.
[RT I 2006, 15, 118 – entry into force 14.04.2006]

### § 256[3]. Summoning of parties to the hearing

(1) The parties to proceedings and any witnesses are summoned to court by the investigative authority or the Prosecutor's Office following the rules provided by subsection 3 of § 164 of this Code subject to prior approval by the court.

(2) The accused and their defence counsel are summoned to court by the Prosecutor's Office following the rules provided by subsection 1 of this section.
[RT I 2006, 15, 118 – entry into force 14.04.2006]

### § 256[4]. Judicial proceedings under the fast-track procedure

[RT I 2006, 15, 118 – entry into force 14.04.2006]

(1) The prosecutor makes an oral application to the court for the case to be disposed of using the fast-track procedure and passes the materials of the criminal case to the court.
[RT I 2006, 15, 118 – entry into force 14.04.2006]

(2) The judge verifies whether the court has jurisdiction over the case following the rules provided by subsection 1 of § 257 of this Code and opens the hearing. A note concerning verification of jurisdiction is made in the record of the hearing. Having announced the commencement of the examination of evidence, the court invites the prosecutor to present the statement of charges.
[RT I 2006, 15, 118 – entry into force 14.04.2006]

(3) Should it not be possible to proceed directly to substantive hearing of the criminal case, the court convenes a preliminary hearing following the rules provided by §§ 258–263 of this Code.
[RT I 2006, 15, 118 – entry into force 14.04.2006]

(4) Judicial proceedings under the fast-track procedure are conducted in accordance with the rules provided by §§ 233–238 or 239–250 or 251–256 or 266–317 of this Code, without prejudice to special rules provided by this Subchapter.
[RT I 2006, 15, 118 – entry into force 14.04.2006]

(5) The prosecutor is not required to attend the pronouncement of the judgment.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

### § 256[5]. Dispositions under the fast-track procedure

[RT I 2006, 15, 118 – entry into force 14.04.2006]

(1) The court renders one of the following dispositions:
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
1) an order by which it returns the materials of the criminal case to the Prosecutors Office – if grounds for using the fast-track procedure do not apply, except where the evidence is insufficient;
[RT I 2006, 15, 118 – entry into force 14.04.2006]
2) a judgment of conviction or acquittal in respect of the accused.
[RT I 2006, 15, 118 – entry into force 14.04.2006]

(2) When the court renders a judgment of conviction under the fast-track procedure, it reduces the amount of the compensation levy mentioned in subsection 1 of § 179 of this Code but not by more than one half.
[RT I 2006, 15, 118 – entry into force 14.04.2006]

# Chapter 10
# JUDICIAL PROCEDURE IN THE DISTRICT COURT

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

## Subchapter 1
## Preliminary Procedure

### § 257. Committing the accused to answer the charges

(1) The judge who receives the statement of charges verifies, according to the provisions of §§ 24–27 of this Code, whether the court has jurisdiction to deal with the criminal case and makes an order by which they commit the accused to answer the charges.

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

(3) In a criminal case which was sent to court under regular rules of procedure and in which committal in custody has been imposed as a compliance enforcement measure, the judge makes a decision on committing the accused to answer the charges not later than on the working day preceding the end of the period for which the committal in custody has been ordered.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

### § 257[1]. Preliminary hearing

(1) Where grounds mentioned in § 258 of this Code are present, the court holds a preliminary hearing to dispose of any organisational issues before the commencement of trial in the case.

(2) Where the grounds mentioned in clause 1, 2 or 3 of subsection 1 of § 258 come to light, the judge convenes a preliminary hearing to decide on committing the accused to answer the charges.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

### § 258. Grounds for convening a preliminary hearing

(1) A preliminary hearing is convened:
1) in order to decide on varying or revoking a compliance enforcement measure or to consider an application for imposing such a measure;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
2) in order to decide on returning the statement of charges to the Prosecutor's Office if the statement does not comply with the requirements of § 154 of this Code;
2[1]) if the statement of defence does not comply with the requirements provided by subsection 3 of § 227 of this Code;
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]
3) in order to decide on termination of criminal proceedings on the grounds provided by clauses 2–6 of subsection 1 of § 199 of this Code;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
4) in order to plan the trial in a criminal case sent to court under regular rules of procedure and to dispose of any applications or motions of the parties to judicial proceedings;
[RT I 2008, 32, 198 – entry into force 15.07.2008]
5) to deal with any other issues, if the judge deems it necessary to convene such a hearing.

[RT I 2008, 32, 198 – entry into force 15.07.2008]

(2) Summonses to a preliminary hearing are served on the parties to judicial proceedings in accordance with the rules provided by §§ 163–169 of this Code.

(3) Where this is needed, the court acquaints itself with the materials of the criminal file.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 259. Participants in a preliminary hearing**

(1) A preliminary hearing is held by the judge sitting alone.

(2) In a preliminary hearing, the participation of the prosecutor and defence counsel is mandatory.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

(3) Where this is needed, other parties to proceedings may be summoned to a preliminary hearing. If the hearing is held in order to decide on acceptance of a civil court claim or statement of a public-law claim or to make preparations for considering such a claim, also the victim and the civil defendant – or their representatives – are summoned.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(4) A record is made of the preliminary hearing by the judicial hearing clerk.

(5) The judge may arrange participation of the persons mentioned in this section in the preliminary hearing by means of a technical solution which complies with the requirements mentioned in clause 1 of subsection 2 of § 69 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 260. Consequences of non-appearance for a preliminary hearing**

(1) If the prosecutor does not appear for the preliminary hearing, the hearing is adjourned and the prosecutor's non-appearance is notified to the Prosecutor's Office.

($1^1$) If the defence counsel does not appear for the preliminary hearing, the hearing is adjourned. If the counsel is an attorney, their failure to appear is notified to the Board of the Bar Association.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

(2) Non-appearance of any other parties to judicial proceedings does not preclude the holding of the preliminary hearing, unless the court decides otherwise. Where the victim who has been summoned – or their representative – does not appear for the hearing, the court may make an order by which it dismisses the civil court claim or statement of a public-law claim. In such a situation, the court has regard, above all, to the extent to which adjournment of the hearing would delay the trial of the case as well as to the reasons for non-appearance of the victim or their representative.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

**§ 261. Rules for conducting a preliminary hearing**

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

(1) Having opened a preliminary hearing, the judge:
1) announces the title of the criminal case to be prepared for trial and the matters to be disposed of at the hearing and, where the assistance of an interpreter or translator has been enlisted, follows the requirements of subsection 3 of § 161 of this Code;
2) ascertains who has appeared for the hearing and, if this is needed, verifies the identity of any persons who have appeared;
3) disposes of any motions for recusal.

(2) Having completed the lead-in to the preliminary hearing, the judge explains the grounds for convening the hearing and hears the opinions of the parties who have appeared regarding the matters to be disposed of at the hearing.

(3) In order to commit the accused to answer the charges, the judge, with the assistance of the parties to judicial proceedings, plans the trial of the case such as to avoid – as much as possible – unnecessary expenditure of time, repeated summoning of persons and adjournment of proceedings.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

**§ 262. Powers of the judge at a preliminary hearing**

(1) At a preliminary hearing, the judge may make an order by which they:
1) commit the accused to answer the charges;
2) return the statement of charges to the Prosecutor's Office – if the statement does not meet the requirements of § 154 of this Code;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
$2^1$) direct the statement of defence to be supplemented, or up a new statement to be provided, within five working days following the hearing – if the statement of defence does not meet the requirements provided by subsection 3 of § 227 of this Code;
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]
3) terminate criminal proceedings in the case – in situations mentioned in clauses 2–6 of subsection 1 of § 199 of this Code;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
4) impose or vary a compliance enforcement measure;
$4^1$) accept a civil court claim or statement of a public-law claim or set a time limit for the party to cure any defects of such a claim, or dismiss the claim;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
5) dispose of any motion or application of a party to proceedings.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

(2) If the court finds that the case falls within the jurisdiction of an administrative court but the administrative court has previously found the case to be outside of its jurisdiction, the court to deal with the case is determined in accordance with the rules provided by § 711 of the Code of Civil Procedure by a special panel formed by the Criminal Chamber and the Administrative Law Chamber of the Supreme Court.
[RT I, 20.11.2014, 1 – entry into force 01.05.2015]

**§ 263. Order committing the accused to answer the charges**

An order committing the accused to answer the charges states:
1) the name, residence or seat and address, personal identification number (or, if the accused does not possess one, their date of birth), citizenship, education, native language and employer 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 trial, if these are known. Where a trial is scheduled for several days, all the days in question are marked as trial days;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
4) whether the trial will be open or closed to the public;
5) the given names and surnames of the persons to be summoned to trial and their time of appearance, if known;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
6) the examination, according to subsection 5 of § 67 of this Code, of a witness or victim to whom a pseudonym has been assigned;
7) whether any compliance enforcement measures are imposed or varied;
8) the disposition of any motions or applications.

**§ $263^1$. Accepting a civil court claim or statement of a public-law claim for adjudication**

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

(1) Where a civil court claim or statement of a public-law claim has been sent to court together with the statement of charges, the court makes an order by which it accepts such a claim for adjudication or for sets a time limit for curing its defects, or dismisses it. Where this is needed, the court sets a time limit for the accused, defence counsel or civil defendant to file a written response to the claim.

(2) Dismissal of a civil court claim or statement of a public-law claim does not preclude the filing of the claim under the rules of civil or administrative court procedure or the issue, in administrative proceedings, of an administrative decision concerning the obligation which was the cause for the statement of the public-law claim.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

**§ 264. Enlisting the assistance of a probation supervisor**

(1) Where this is needed, the judge instructs the Head of the probation supervision department to appoint a probation supervisor.

(2) In a criminal case concerning an underage accused, an accused who is charged with the commission of a sexual offence or an accused who is charged with repeatedly driving a motor vehicle in a state of alcohol intoxication – the judge verifies whether a pre-trial report has been filed, if one is required. The probation officer supplements the report with additional information if the judge so directs.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(2[1]) Before imposing electronic monitoring as provided for by § 75[1] of the Penal Code, the judge verifies whether – if this is required – an assessment has been filed concerning the possibility of installation of electronic monitoring equipment at the place of residence of the suspect or accused. The probation officer supplements the assessment with additional information if the judge so directs.
[RT I, 07.07.2017, 1 – entry into force 01.11.2017]

(3) Where so directed by the judge, the probation supervisor ascertains the facts that are of relevance to the imposition of obligations or of community service and files a pre-trial report with the court, which is included in the materials of the criminal case.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 265. Prosecutor, parties to proceedings, witnesses, specialist witnesses and experts – summoning to trial**

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

(1) The prosecutor and any parties to proceedings are summoned to trial by a summons following the rules provided by §§ 163–169 of this Code.

(2) Together with the summons, the court transmits to the accused, the Prosecutor's Office and the defence counsel a copy of the order committing the accused to answer the charges.

(3) When summoning a witness, a specialist witness or an expert, the court has regard to the schedule of the trial as determined at the preliminary hearing.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 265[1]. Holding the trial immediately following a preliminary hearing**

(1) In a criminal case sent to court under regular rules of procedure, the trial may be held immediately following the preliminary hearing, provided that all persons who have a role in judicial proceedings in the case are able to appear in court at the time appointed for the preliminary hearing, provided that this would ensure the uninterrupted and expeditious conduct of the trial and provided that the parties to judicial proceedings and the court agree to this.

(2) The parties to judicial proceedings and the court may agree to hold the trial immediately following the preliminary hearing either before such a hearing or during it.

(3) In a situation mentioned in this section the victim, civil defendant, third party, their representatives and the accused are summoned to court by the Prosecutor's Office following the rules provided by §§ 163–169 of this Code.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

# Subchapter 2
# General Provisions for Trials

**§ 266. Presiding over and order at a trial**

(1) A trial is presided over by the judge. In criminal cases mentioned in subsections 1 and 3 of § 18 of this Code, the trial is presided over by the presiding judge.

(2) The parties to judicial proceedings and other persons present in the courtroom must unconditionally comply with any directions of the judge. When the judicial panel enters or leaves the courtroom, the persons present in the room stand up.

(3) Any person to address the court stands up to do so. With permission of the judge, a person may remain seated when speaking.

(4) When attendance in the courtroom exceeds capacity, the judge has a right to limit the number of persons present.

(5) A witness, specialist witness or an expert who has not yet been examined during examination of the evidence may be present in the courtroom only with permission of the court. The court may give directions to prevent communication between persons who have been examined and those who have not.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 267. Measures in respect of persons who disrupt the orderly conduct of trial**

(1) If the accused disrupts the orderly conduct of the trial and does not comply with directions of the judge or a bailiff, the following measures may be taken in their respect by order of the court:
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]
1) they may be removed from the courtroom temporarily or for the duration of the trial;
2) they may be given a short-term custodial sentence of up to ten days, or ordered to pay a fine.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) When the accused is summoned back to the courtroom, they are informed of the judicial operations performed during their absence.

(3) Where, for disrupting the orderly conduct of the trial, the accused was removed from the courtroom for the duration of the trial, they are, once the judgment has been pronounced, without delay given a copy of the judgment or, in a situation provided for by subsection 4 of § 315 of this Code, of its operative part.

(4) If the prosecutor, a representative or the defence counsel disrupts the orderly conduct of the trial, does not comply with directions of the judge or a bailiff or, by their conduct, expresses disrespect to the court, a fine may be imposed on them by order of the court.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

($4^1$) The court may remove the defence counsel, representative or prosecutor from the case if the person's conduct in court does not meet the requirements or, in the course of judicial proceedings, the person has shown themselves to be dishonest, incompetent or irresponsible, or if they have maliciously obstructed the fair and expeditious conduct of proceedings in the case or repeatedly failed to comply with a direction of the court.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

($4^2$) When applying the provisions of subsections 4 and $4^1$ of this section, the court, without delay, invites the party to judicial proceedings to select a new representative or defence counsel, or the Prosecutor's Office to appoint a new prosecutor, by the date determined by the court. The court notifies, respectively, the Board of the Bar Association or the Prosecutor's Office of having applied the provisions of subsections 4 and $4^1$ of this section in respect of an attorney or a prosecutor.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) If any other party to proceedings or any other person present in the courtroom disrupts the orderly conduct of the trial, does not comply with directions of the judge or a bailiff or, by their conduct, expresses disrespect to the court, they may be removed from the courtroom or, by order of the court, given a fine or a short-term custodial sentence of up to five days.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(6) Where the conduct of a person disrupting the proceedings contains the elements of a criminal offence, the prosecutor commences criminal proceedings in their respect, or the court transmits a crime report to the police. Where this is needed, the court arrests such a person as a suspect based on the record of proceedings.

(7) A judge performing their functions in court outside of a trial or hearing may, by order of the court, impose a short-term custodial sentence of up to five days or a fine on any person who does not comply with directions of the judge or a bailiff or who, by their conduct, expresses disrespect to the court.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(8) Where the person who disrupted the proceedings applies for this, they are issued the court's order in the form of an extract from the record of the trial.

**§ 268. Scope of trial**

(1) The trial of a criminal case in respect of the accused proceeds strictly in accordance with the statement of charges, unless otherwise provided for by this section.

(2) At the trial, until conclusion of the examination of evidence, the prosecutor may amend the charges or file additional charges, presenting the amendments and additions in writing to the court and to other parties to judicial proceedings. Where such amendments or additions render the text of the charges or the statement of charges incoherent, the court may, of its own motion or on a motion of a party to judicial proceedings, require the prosecutor to file a new consolidated text of the charges or a consolidated statement of charges.

(3) For the purposes of subsection 2 of this section, amendment of the charges does not mean supplementing or rectifying any factual or legal assertions that have been presented – without amending the main facts on which the charges are based, or the legal designation of the criminal offence – or a partial withdrawal of the charges.

(4) Where the charges are amended or additional charges filed, the court, on a motion of the accused or of the defence counsel, calls a recess or adjourns the trial in order to provide for the right of defence. Where this is required to provide for the right of defence, the court may, on a motion of the accused or of the defence counsel,

call a recess or adjourn the trial also when the charges are supplemented or rectified as mentioned in subsection 3 of this section.

(5) When convicting the accused, the court may not rely on facts which materially differ from the facts that comprise the subject matter of evidence and that were described in the charges – or in an amended version, or a version with additions, of the charges. When rendering its judgment, the court may not rely on a fact that has not been considered during the proceedings.

(6) The court may, based on facts established during examination of the evidence, amend the legal designation of the criminal offence, provided the accused has had sufficient opportunity to defend themselves against such a designation. Where this is needed, the court invites the parties to judicial proceedings to make submissions concerning a legal designation not contained in the statement of charges. When aggravating circumstances that were not mentioned in the statement of charges or circumstances which trigger the imposition of non-punitive corrective measures come to light, the court must also give the parties an opportunity to make submissions concerning such circumstances. On a motion of the accused or of the defence counsel, the court calls a recess in order to allow the right of defence to be exercised.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 268[1]. Integrity of trial in a criminal case dealt with under regular rules of procedure**

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

(1) When planning the trial of a criminal case sent to court under regular rules of procedure, the judicial panel of the district court that deals with the case observes the principle according to which the proceedings, once opened, should be concluded without interference from other judicial business and without lengthy interruptions, and seeks to arrive at a disposition of the case in an expeditious manner.

(2) Based on the schedule of trials, the court finds an opportunity to concurrently try a criminal case sent to court under regular rules of procedure if:
1) in the case, a person is accused of having committed a criminal offence while they were still a minor;
2) in the case, committal in custody has been imposed in respect of the accused as a compliance enforcement measure and the court deems it necessary to maintain the measure.

(3) Where adjournment of judicial proceedings in a criminal case dealt with under regular rules of procedure is inevitable or where time slots become available in the schedule of judicial proceedings, the court has a right to commence the trial of another criminal case sent to court to be tried under regular rules of procedure, provided this does not interfere with the trial schedule of the previous case. Similarly, in a situation where judicial proceedings in a criminal case dealt with by the court will inevitably be adjourned, the court has a right to commence trial of the following criminal case scheduled for trial under regular rules of procedure.

(4) The court may complete the trial of another criminal case commenced due to reasons provided by subsection 3 of this section concurrently with the trial of a previously commenced criminal case, aiming to reach a judicial disposition in all cases in an expeditious manner.

(5) The court is not bound by the order of arrival of criminal cases in court and, pursuing the objective of conducting the trial without interruptions from beginning to end and reaching a disposition without delay, the court has a right to commence the trial of a criminal case regardless of its order of arrival, taking into consideration the volume of the case.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 269. Participation of the accused in trial**

(1) A criminal case is tried with participation of the accused, having regard to the exceptions mentioned in this section and § 276[1] of this Code. If the accused does not appear, the trial is adjourned. The participation of the accused at pronouncement of the judgment is not mandatory.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) As an exception, a criminal case may be heard without the participation of the accused if:
1) they have been removed from the courtroom on the grounds and following the rules provided by subsection 1 of § 267 of this Code;
2) they have received the summons, attempts to ascertain their whereabouts have been unsuccessful, there is sufficient reason to believe that they are evading appearance before the court, reasonable efforts have been made to find them, and it is possible to try the case without them;
[RT I, 20.12.2019, 1 – entry into force 30.12.2019]
3) after having been examined at trial, they have worked themselves into a state that precludes their participation in the trial, and it is possible to continue the trial without them;

4) bringing them to court is fraught with complications, and it is possible for them to participate in the trial by means of a technical solution which complies with the requirements mentioned in clause 1 of subsection 2 of § 69 of this Code, and the court is convinced that their right of defence is ensured;
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]
5) they have filed a reasoned motion with the court for the case to be tried without their participation and the court is convinced that it is possible to defend the rights of the accused without their participation in the trial and the absence of the accused from trial is not contrary to public interest;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
6) they are unable to participate in the trial for an extended period due to illness but they have been informed of the time and place of trial, they agree to the case being tried without their participation and with the participation of their defence counsel and the court is convinced that it is possible to defend the rights of the accused without their participation in the trial.
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

($2^1$) When granting a motion of the accused on the grounds mentioned in clause 5 of subsection 2 of this section, the court determines the parts of the trial in which the participation of the accused is not mandatory. Participation of the accused in the operations mentioned in §§ 285 and 298–304 of this Code is mandatory.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) Where an accused evades trial or where the trial of a criminal case is hindered by a serious illness of the accused which renders them unable to appear in court, the court may make an order by which it decides to conduct separate proceedings concerning the charges filed against such an accused, adjourn the hearing of the separated charges until apprehension or recovery of the accused, and continue trial of the criminal case concerning the other accused.

(4) In the trial of a criminal case involving several accused, the trial of those criminal offences included in the criminal case which does not involve a specific accused may be conducted without the presence of such an accused and their defence counsel.
[RT I 2004, 54, 387 – entry into force 01.07.2004]

**§ 270. Participation of the prosecutor and defence counsel in the trial**

(1) The participation of the prosecutor in the trial is mandatory. If the prosecutor does not appear, the trial is adjourned and the non-appearance notified to the Prosecutor's Office.

(2) If the defence counsel does not appear for the trial, the trial is adjourned. Where the defence counsel is an attorney, their non-appearance is notified to the Board of the Bar Association.

**§ 271. Trial without the presence of a witness, victim, specialist witness or expert**

(1) Where a witness, victim, specialist witness or expert does not appear for the trial, the court, having heard submissions from the parties to judicial proceedings, makes an order by which it continues or adjourns the trial.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) If the court finds that a civil court claim or statement of a public-law claim cannot be considered without the presence of the victim, such a claim is dismissed for the purposes of criminal proceedings, and it is explained to the victim that dismissal of the claim does not exclude filing the same claim under the rules of civil or administrative court procedure, or filing for performance of the obligation which was the cause for the statement of the public-law claim under the rules of administrative procedure.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

**§ 272. Trial without the presence of the civil defendant**

(1) Non-appearance of a civil defendant for trial does not preclude either the trial or consideration of the civil court claim.

(2) Where the court finds that it is not possible to consider the civil court claim without the presence of the civil defendant, the claim is dismissed for the purposes of criminal proceedings.

**§ 273. Adjournment of trial**

(1) The trial of a criminal case is adjourned by an order where:
1) a person not mentioned in §§ 269–271 of this Code has not appear for trial and the person's participation in the trial is required;
2) collection of additional evidence is required;
$2^1$) conducting a comprehensive, thorough and objective trial of the criminal case is complicated due to suspicion of another criminal offence which has come to light during the trial;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
3) continuing the trial is not possible for another reason.

(2) Before adjourning the trial, any witness, victim, specialist witness, expert or civil defendant who has appeared for the trial may be examined and the decision may be made not to summon them to trial for a second time.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) Where the trial of a criminal case is adjourned due to non-appearance of a party to proceedings or of another person and the court does not recognise any of the valid reasons mentioned in subsection 2 of § 170 of this Code, the court applies the measures provided by § 138 of this Code. The court may decide not to apply those measures if it deems it necessary to apply the measures provided by § 139 or 140 of this Code.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

(4) Where the defence counsel is not familiar with the criminal case, the court may adjourn the trial for up to ten days, order such counsel to bear any costs of criminal proceedings that are caused by the adjournment, and notify the Board of the Bar Association of such conduct of the defence counsel.

(5) In a situation mentioned in subsection 1 of this section, the court, where this is possible, directly sets the time for continuing the trial. The adjournment is for as short a period as possible and the trial continues following the principle of uninterrupted proceedings.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

**§ 274. Termination of criminal proceedings at the trial**

(1) Where, during trial, circumstances are ascertained which under clauses 2–8 of subsection 1 of § 199 of this Code preclude criminal proceedings or where criminal proceedings must be terminated in connection with expiry of reasonable time for proceedings on the grounds provided by § $274^2$ of this Code or where, in a situation mentioned in clause 1 of subsection 1 of § 199 of this Code, the actions of the accused correspond to the elements of a misdemeanour, the court enters an order by which it terminates criminal proceedings. In any other situations falling under clause 1 of subsection 1 of § 199, a judgment of acquittal is entered.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(2) Criminal proceedings are not terminated where, for purposes of rehabilitation, their continuation is applied for by:
1) the accused – in situations provided for by clause 1, 2, 3 or 6 of subsection 1 of § 199 of this Code;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
2) a person close to the accused – in a situation provided for by clause 4 of subsection 1 of § 199 of this Code.

(3) Where criminal proceedings are terminated with regard to a minor who at the time of commission of the unlawful act was incapable of forming the required *mens rea* because of their age or who can be influenced without the imposition of a sanction or the application of a corrective measure prescribed by § 87 of the Penal Code, subsection 1 or 2 of § 201 of this Code is applied respectively.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(4) Where a civil court claim was dismissed when criminal proceedings were terminated, such a claim may be filed under the rules provided by the Code of Civil Procedure.

(5) On a motion of the prosecutor and the accused, the court may terminate criminal proceedings on the grounds provided by § 202–$203^1$ of this Code.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(6) On a motion of the prosecutor, the court may terminate criminal proceedings on the grounds provided by § 204 of this Code.

**§ $274^1$. Motion to expedite judicial proceedings**

(1) Where judicial proceedings have been conducted in a criminal case for at least nine months and the court does not, without a valid reason, perform a procedural operation that is required, and – among other things – does not, at the proper time, schedule the trial in order to ensure that judicial proceedings can be completed within a reasonable time – or if it is clear that the time allocated for trial is not such as to permit the case to be tried without interruptions – a party to judicial proceedings may make a motion to the court to take measures appropriate to speeding up the completion of judicial proceedings.

(2) If the court considers the motion to be justified, it orders – within thirty days following receipt of the motion – a measure which presumably will allow judicial proceedings to be completed within a reasonable time. The court is not bound by the motion when choosing the measure.

(3) Denial of a motion to expedite judicial proceedings or the application of a measure which is different from the one described in the motion is issued as a substantiated order within the time limit mentioned in subsection

2 of this section. An order by which the court applies a measure described in the motion does not require its reasons to be stated.

(4) A new motion may be filed six months after the entry into effect of the court order made concerning the previous motion, except where such a motion is filed for the reason that the court conducting proceedings in the case has not applied the measures prescribed by the order in due time.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 274[2]. Termination of criminal proceedings at trial in connection with expiry of reasonable time for proceedings**

(1) Where it is established at trial that a criminal case cannot be disposed of within a reasonable time and violation of the right of the accused to proceedings within a reasonable time cannot be cured by any other method, the court may, with the consent of the accused, terminate the proceedings, having regard to circumstances provided by § 205[2] of this Code.

(2) The president of the court is informed of an order mentioned in subsection 1 of this section by which criminal proceedings are terminated due to expiry of reasonable time for proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 275. Deciding on compliance enforcement measures**

(1) During the trial of a criminal case, the court has a right to choose, by order, a compliance enforcement measure, or to vary or revoke one that was previously chosen with regard to the suspect or accused.

(2) Where the accused has been committed in custody pending proceedings before the district court, the court, of its own motion, verifies the justifiability of their committal in custody at least once every six months, and makes a corresponding written order.

(3) When verifying the justifiability of committal in custody of its own motion, the court, before making its order, ascertains, at trial or by written procedure, the positions of the prosecutor, defence counsel and, where this is needed, the accused.

(4) An order mentioned in subsection 2 of this section by which the court finds that the accused's committal in custody continues to be justified is notified to the president of the court.

(5) Where, during trial, the court has – without questioning the person – chosen to impose, in respect of a person who has been declared a fugitive from justice or of an accused who is outside the territory of the Republic of Estonia, the compliance enforcement measure of committal in custody, the person is taken, without delay and not later than within 72 hours following their apprehension as a fugitive or their transfer to Estonia as the accused, for questioning before the court trying the case or, where this is not possible, before the pre-trial investigation judge.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 276. Methods of making a court order**

[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) When the court decides to terminate criminal proceedings, to order a person to be forcibly brought in, to impose a specific compliance enforcement measure or to vary or revoke such a measure, to grant a motion for recusal, to order an expert assessment or to remove the accused from the courtroom, it does so 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 are issued as procedural documents and included in the criminal file, or are made orally and entered in the record of the trial or hearing.
[RT I 2004, 54, 387 – entry into force 01.07.2004]

**§ 276[1]. Case management hearing**

In order to decide on varying or revocation of a compliance enforcement measure, to consider an application to impose a compliance enforcement measure, to consider a motion to expedite judicial proceedings, to decide on other organisational issues of judicial proceedings or to dispose of a motion or application of a party to judicial proceedings, the court may convene a case management hearing in accordance with the provisions of this Code concerning such hearings, provided it is not possible to dispose of the issues in question within a reasonable time at the trial.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

### § 276[2]. Deposition of testimony after the statement of charges has been sent to court

(1) Where, after the statement of charges has been sent to court, circumstances come to light which allow to conclude that subsequent examination of a witness at trial may turn out to be impossible or the witness may be induced to give false testimony, the prosecutor, defence counsel or accused may, prior to the examination of evidence or during a recess, make a motion to the court to have the witness give their testimony by way of deposition.

(2) The testimony is given by way of deposition at the court dealing with the case in accordance with the rules provided by subsections 2–6 of § 69[1] of this Code.

(3) Where a party to judicial proceedings seeks a deposition of the testimony of a witness who is not listed in the statement of charges or the statement of defence as a person to be summoned to court, and who has not been interviewed during pre-trial proceedings, the court may grant the motion under conditions mentioned in § 286[1] of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

### § 276[3]. Preparing for an adversarial examination

A party to judicial proceedings, when preparing for an adversarial examination, may communicate with a person whom the party wishes to examine at trial, provided the person consents.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

## Subchapter 3
## Lead-in to Trial

### § 277. Opening of trial

(1) Having opened the trial, the judge:
1) announces the title of the criminal case to be tried;
2) ascertains which parties to judicial proceedings are in attendance;
3) ascertains whether the summonses have been received and what are the reasons for non-appearance.

(2) The judicial hearing clerk reports to the court whether the witnesses, experts, specialist witnesses and translators or interpreters who have been summoned are in attendance.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) The court may require that a party to judicial proceedings prove the service of a summons by producing a document mentioned in subsection 5 of § 165 of this Code. The service of a summons may also be proved by an oral or written confirmation of a person who served the summons and who is not a party in the case.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

### § 278. Translators and interpreters at the trial

(1) If an interpreter or translator participates in the trial, the court announces their name. Where the interpreter or translator is a member of the court's staff, the court explains that they have taken a professional oath and are aware of criminal liability for a knowingly false interpretation or translation.

(2) To a non-staff interpreter or translator, the judge explains the rights provided by subsection 5 of § 161 of this Code.

(3) Before a non-staff interpreter or translator commences interpretation or translation, they are cautioned that a knowingly false interpretation or translation will entail criminal liability.

### § 279. Verifying the identity of and explaining the rights and obligations to the accused

(1) The judge verifies the identity of the accused and ascertains whether they have 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 committing them to answer the charges, the court hands those documents to the accused and, on a motion of the accused or of the defence counsel, sets a time limit for the accused and the defence counsel to acquaint themselves with the documents or, if necessary, adjourns the trial.

(3) An explanation is provided to the accused of the rights and obligations provided by subsection 2 of § 35 of this Code.

**§ 280. [Repealed – RT I, 23.02.2011, 1 – entry into force 01.09.2011]**

**§ 280[1]. Verifying the identity of the civil defendant and third party**

The judge verifies the identity of the civil defendant and third party and ascertains the nature of their relationship with the accused and the victim.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 281. Explaining their rights and obligations to the victim, civil defendant and third party**

The judge explains the rights and obligations provided by §§ 38, 40 and 40[2]of this Code to the victim, civil defendant and third party.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 282. Verifying the representation authority of the defence counsel and of a representative**

The judge verifies the representation authority of the defence counsel and representatives who take part in the trial.

**§ 283. Explaining their rights and obligations to an expert**

Where an expert assessment is arranged outside a public forensic institution, the judge explains to the expert the rights and obligations provided by subsections 1 and 2 of § 98 of this Code. An expert who has not been sworn in is cautioned that rendering a knowingly false expert opinion will make them liable to a criminal sentence and their corresponding signed acknowledgement is taken, if this has not been done already in the case.

**§ 284. Announcing the panel of the court, explaining the right to file motions for recusal, and disposing of motions or applications**

(1) The judge announces the panel of the court and the names of the prosecutor, defence counsel, representatives, experts, specialist witnesses, translators or interpreters and the judicial hearing clerk and explains, to the parties to judicial proceedings, the right to file motions of recusal on the grounds and in accordance with the rules provided by §§ 49–59, 97, 157 and 162 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) Having disposed of any motions for recusal, the judge asks whether the parties wish to make any other motions or applications before the examination of evidence.

(3) The court disposes of any motions or applications by an order.

# Subchapter 4
# Examination of Evidence

**§ 285. Commencement of the examination of evidence**

(1) The judge announces the commencement of the examination of evidence and invites the prosecutor to make their opening speech.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

(2) The prosecutor gives an overview of the charges and of the evidence to support the charges, which the prosecutor intends to move to be examined at examination of the evidence.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) After the prosecutor’s speech, the judge asks whether the accused has understood the charges and whether they plead guilty to the charges. Following this, the judge invites the defence counsel to present their opinion as to whether the charges are justified.

(4) Where a civil court claim or statement of a public-law claim has been filed in the criminal case, the judge invites the victim or their representative to provide an overview of the claim and of any evidence to support it which was not discussed by the prosecutor in their opening speech, or presents the claim themselves.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(5) After the speech of the victim or their representative – or the presentation, by the court, of the civil court claim or statement of a public-law claim – the judge invites the accused, defence counsel, civil defendant and civil defendant’s representative to state their opinion as to whether the claim is justified.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

**§ 286. Order of examining the evidence**

(1) The examining of evidence begins with examination of the evidence offered by the prosecutor, followed by examination of the evidence offered by the defence counsel and other parties to judicial proceedings.

(2) The parties to judicial proceedings may agree on an order of examination of evidence that differs from what is prescribed by subsection 1 of this section. In such a situation, the court determines the order of examination of evidence according to the agreement of the parties by an order that is entered in the record of the trial.

**§ 286[1]. General conditions for accepting an item of evidence**

(1) The court only accepts, and arranges collection of, items of evidence that have relevance in the case.

(2) In addition to what has been provided by subsection 1 of this section, the court may refuse to accept an item of evidence and return it, or refuse to collect such an item, if:
1) the evidence is not available – above all, if the particulars of a witness or location of a document are unknown, or if the importance of the evidence is disproportionate to the time required for collecting it or to any other difficulties related to such collection;
2) the evidence was not listed in the statement of charges or statement of defence and the party has not provided a significant reason for not having been able to make the corresponding motion earlier;
3) reasons have not been provided for the need to offer or collect the evidence;
4) any of the grounds for refusing to accept an item of evidence that are mentioned in this Subchapter applies.

(3) The court refuses to accept an item of evidence, or to collect such an item, by an order which is entered in the record of the trial.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 286[2]. Previous adversarial examination in the case or in another criminal case**

(1) Testimony given by a person during a previous hearing in the criminal case is admissible as evidence provided it would be admissible if given at the trial of the case.

(2) Testimony given by a person at a hearing in another criminal case is admissible as evidence under the same circumstances as deposition testimony or in situations mentioned in § 294 of this Code.

(3) Testimony given during a previous adversarial examination is admissible as evidence, except where a higher court has excluded it due to violation of the rules of such examination or of other rules of procedure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 287. Hearing of witnesses**

(1) A witness is examined following § 288 of this Code.

(2) A witness is examined without the presence of witnesses who have not been examined.

(3) [Repealed – RT I 2008, 32, 198 – entry into force 15.07.2008]

(4) A witness to whom a pseudonym has been assigned is examined by telephone following the rules provided by subsection 5 of § 67 and clause 2 of subsection 2 of § 69 of this Code. The parties to proceedings put their questions to such a witness through the judge.

(5) On a motion of a party or of its own motion, the court may allow a distance examination following the rules provided by § 69 of this Code or use a partition that prevents the witness form being seen by the accused. Save for the situation provided for by subsection 4 of this section, distance examination by telephone is allowed only with the consent of the accused.
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

(6) Witnesses who have been examined may leave the courtroom only with permission of the court.

**§ 287[1]. Lead-in to a witness examination**

(1) The judge verifies the identity of the witness and ascertains the nature of the relationship between the witness and the accused, between the witness and the victim and between the victim and the accused.

(2) Where, in order to ensure their safety, a witness has been anonymised according to § 67 of this Code, the witness's personal particulars are not disclosed.

(3) At the start of examination, the court explains to the witness the lawful grounds for refusal to give testimony, the obligation to speak the truth in court, and takes a corresponding signed acknowledgement from the witness.

(4) The judge cautions a witness of at least fourteen years of age that refusal to give testimony without lawful grounds or the giving of knowingly false testimony will make them liable to criminal prosecution.

(5) A witness who has been acquitted or convicted of the same criminal offence as a joint principal offender or as an accomplice is not cautioned regarding criminal liability; they are explained their right to refuse to testify.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 288. Adversarial examination**

(1) In an adversarial examination, the party to judicial proceedings on whose motion a witness was summoned is the first to conduct a direct examination of the witness. If several parties to proceedings have made a motion to summon the witness and they do not reach an agreement concerning the right to be the first to conduct a direct examination, the party to be the first to conduct such an examination is determined by the court.

(2) During direct examination, leading questions may not be asked without permission of the court. Direct examination is followed by cross-examination by the adverse party.

(3) During cross-examination, leading questions may be asked in order to verify the testimony given at direct examination. During cross-examination, leading questions may not be asked about new facts without permission of the court.

(4) The party who conducted direct examination of the witness may re-examine the witness in order to clarify any testimony given during cross-examination. Leading questions may be posed without permission of the court only concerning new facts discussed during cross-examination.

(5) The court may, on a motion of a party to judicial proceedings, exclude any impermissible or irrelevant questions put to a witness during adversarial examination. The court may, of its own motion, exclude questions which demean the witness.

($5^1$) The provisions of § $288^1$ of this Code are followed when asking leading questions in an adversarial examination and when permission is granted by the court.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(6) The court has a right to put questions to a witness whose adversarial examination has been completed.

(7) Having regard to the mental or physical state of a witness, the court may prohibit adversarial examination and examine the witness of its own motion or based on written questions prepared by the parties to judicial proceedings.

(8) In an adversarial examination, § 66 and subsections 3 and 6 of § 68 of this Code are observed.

(9) During adversarial examination, a party to judicial proceedings may:
1) use visual aids which do not constitute evidence yet help to present the testimony of the witness, provided they are not misleading;
2) offer items of physical evidence and documents to the court and question the witness about their authenticity and origin as well as about connections between such items or documents;
3) provide an opportunity for a witness who does not recall any facts constituting the subject matter of evidence to examine a document or another object which may help the witness recall such facts regardless of the admissibility of the document or object as evidence.

(10) Where, during an adversarial examination, a witness refuses to answer a question of a party to judicial proceedings, with the exception of the situation mentioned in subsection 5 of this section, the court interrupts the examination and decides, on a motion of the party, whether to admit – under clause 2 of subsection 1 of § 291 of this Code – the witness's earlier testimony as evidence, regardless of the substance of the testimony given during the examination. In a situation mentioned in this subsection, any testimony obtained by the interrupted adversarial examination is admitted as 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) The court may allow to leading questions during direct examination if the witness is clearly hostile against the person conducting the examination, clearly tries to conceal the truth or evades the questions.

(2) To ensure that an examination runs as smoothly as possible, the court may allow leading questions in other cases, provided:
1) the parties accept this;
2) the question pertains to a fact or contains an assertion which is not contested;
3) the question is required to introduce the subject matter of examination;

4) due to the age or state of health of the witness, it is difficult for them to understand non-leading questions;
5) the witness states that they have poor recollection of the circumstances which are the subject matter of the examination.

(3) If a party has not made a motion to the court to exclude a question before the witness begins their reply, the party is deemed to have accepted the question and the court is not required to grant a separate permission for a leading question.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 288[2]. Rights of the victim, civil defendant, third party and accused in adversarial examination**

(1) The victim, civil defendant, third party and accused have priority of direct examination in respect of a witness they have moved to be summoned, provided the prosecutor or the defence counsel have not moved to summon the same person.

(2) In a situation not mentioned in this section, the victim, civil defendant, third party and accused may, with permission of the court, put questions to a witness when the witness's adversarial examination has been completed, provided denial of such a motion would significantly harm the interests of the party.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 289. Verification of witness credibility**

(1) In order to verify the credibility of a witness's testimony, the court may, on a motion of a party to judicial proceedings, during adversarial examination, order disclosure of any statements made by the witness during pre-trial proceedings if such statements contradict the testimony given at the examination.

(2) Statements given by the witness during pre-trial proceedings may be disclosed if the witness has already given testimony concerning those statements during adversarial examination.

(3) To verify witness credibility, other documents or data recordings which contain earlier statements of the witness that contradict the testimony given during adversarial examination may be also disclosed during the examination.

(4) To verify the credibility of a witness, an examination may be conducted of any person to whom the witness has previously made a statement that contradicts the testimony given at adversarial examination.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 289[1]. Admitting a witness's earlier testimony or statement as evidence in court when adversarial examination is possible**

(1) The court may, towards proving a fact constituting the subject matter of evidence, admit a witness's earlier testimony or statement used on a basis mentioned in subsection 9 of § 288 of this Code, if:
1) the testimony has been made as a deposition; or
2) the statement concerns harm caused to the witness by the criminal offence that is the subject matter of proceedings, the testimony was given immediately after the commission of the offence and there is reason to believe that the person's recall of the fact in question was considerably better at the time they gave the statement than during judicial proceedings.

(2) The court admits earlier testimony disclosed on a basis mentioned in § 289 of this Code towards proving a fact constituting the subject-matter of evidence provided the testimony has been given as deposition.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 290. Special rules for examining an underage witness**

(1) Adversarial examination is not used to examine a witness of less than fourteen years of age.

(2) To examine a witness of less than fourteen years of age, the court may use the assistance of a child protection official, social worker, teacher or psychologist of who may put questions to the witness with the permission of the judge.
[RT I, 11.07.2013, 1 – entry into force 01.09.2013]

(3) The judge invites an underage witness of less than fourteen years of age to tell the court everything they know concerning the criminal case.

(4) After an underage witness of less than fourteen years of age has testified, they are examined by the prosecutor and defence counsel in the order determined by the court. The accused may put questions to the witness through the defence counsel.

(5) The court excludes any inadmissible or irrelevant questions. With permission of the court, leading questions may be put to the witness.

(6) Taking into consideration the mental or physical condition and age of the witness, the court may interrupt their examination by the parties to judicial proceedings and examine the witness of its own motion or based on written questions submitted by the parties.

(7) If the presence of an underage witness is not required after they have been examined, the court removes the witness from the courtroom.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 290[1]. Special rules concerning statements made during pre-trial proceedings by an underage witness**

(1) On a motion of a party to judicial proceedings, the court may decide not to summon a minor and to allow a statement made by the minor during pre-trial proceedings to be presented as evidence, provided the statement was video recorded and the defence counsel had the opportunity to put questions to the witness during pre-trial proceedings about the facts constituting the subject matter of evidence, where:
1) the witness is younger than ten years of age and repeated questioning may have a harmful effect on their mental well-being;
2) the witness is younger than fourteen years of age and the interview is related to domestic violence or sexual abuse;
3) the witness has a speech or sensory impairment or an intellectual disability or suffers from mental disorders.

(2) If the court, having examined an item of evidence mentioned in subsection 1 of this section, finds that it is necessary to question a minor about any further circumstances, the court may question the witness of its own motion or based on written questions submitted by the parties to judicial proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 291. Admitting a witness's earlier testimony or statement in court when adversarial examination is not possible**

(1) On a motion of a party to judicial proceedings, the court may admit as evidence a statement previously made by a witness, provided:
1) the witness has died;
2) the witness refuses to testify during the examination of evidence;
3) the witness is unable to testify due to the state of their health;
4) attempts to ascertain the whereabouts of the witness have been unsuccessful regardless of reasonable efforts having been applied;
5) the witness cannot appear in court due to another impediment which is permanent or whose elimination would entail disproportionately large costs, and the party that filed the motion has made all reasonable efforts to have the witness brought to court.

(2) In a situation mentioned in subsection 1 of this section, the court allows earlier testimony or an earlier statement to be presented as evidence, provided it has been given by way of deposition following the rules provided by § 69[1] of this Code or if the previous interview was conducted by a competent authority of a foreign state under a request for assistance and the person cannot be examined by way of distance examination.

(3) In situations provided for by clauses 1−3 of subsection 1 of this section, the court may, as an exception, admit the person's previous statement that was not given as a deposition, provided all of the following conditions are met:
1) the circumstances surrounding the giving of the statement as well as considerations related to the witness do not raise any doubts as to reliability of the evidence;
2) a party to judicial proceedings has moved for admission of the statement into evidence in order to prove a fact material to the criminal case as a whole;
3) the party adverse to the party who moved to admit the evidence has sufficient opportunity to submit objections to such a statement;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
4) the statement has been obtained by means of a first-hand interview or an audio and video recorded distance interview with the person.
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

**§ 292. Presentation of an expert's report and examination of the expert**

(1) A party to judicial proceedings may move that the court admit an expert's report into evidence. The offering, and presenting, of an expert's report as evidence takes place in accordance with subsections 2–4 of § 296 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) On a motion of a party to judicial proceedings, the court may order examination of the expert in order to clarify or supplement the substance of the expert's report.

(3) An expert is examined in court in accordance with §§ 286[2]–289[1] and § 291 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 292[1]. Examining a specialist witness**

(1) A specialist witness is examined in court in accordance with §§ 286[2]–289[1] and § 291 of this Code.

(2) Where a person gives testimony in a criminal case both as a specialist witness and as a witness, their examination is conducted, where possible, as a single procedural operation.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 293. Examining the accused**

(1) The accused is examined in court in accordance with § 286[2] and §§ 288–289[1] of this Code.

(2) When leading in the examination of the accused, the court verifies the identity of the accused, explains to the accused the legal grounds for refusal to testify, the obligation to speak the truth in court, and takes the accused's signed acknowledgement concerning the explanation.

(3) Unless the parties have agreed otherwise, the defence counsel is the first to question the accused. After the defence counsel and the prosecutor have questioned the accused, the other accused and their defence counsel may put questions to the accused.

(4) The court may question the accused after their adversarial examination.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 294. Previous statement or testimony of the accused where adversarial examination is not possible**

Where it is not possible to conduct an adversarial examination of the accused at trial, the court may, on a motion of a party to judicial proceedings, allow a statement made by the accused during pre-trial proceedings – or testimony given during a previous trial or hearing in the same or another criminal case – to be presented as evidence, provided:
1) the accused refuses to testify at trial;
2) the trial takes place without the accused being present.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 295. Expert assessment in court**

(1) The court may commission an expert assessment on a motion of a party to judicial proceedings or of its own motion.

(2) The parties to judicial proceedings put their questions to an expert through the court and in writing. The court reviews the questions, excludes those that are irrelevant or beyond the scope of the expert's specialised knowledge, and draws up the final version of the questions to be put to the expert.

(3) The court presents the final version of the questions put to the expert and makes an order concerning expert assessment following § 106 of this Code.

(4) An expert may participate in the examination of the evidence related to the subject matter of expert assessment and, with permission of the court, put questions to parties to proceedings concerning circumstances that are relevant to the assessment.

(5) An expert assessment is carried out in accordance with §§ 99–104 and 107–108 of this Code.

**§ 296. Offering of data recordings, physical evidence or documents as evidence**

(1) A party to judicial proceedings may move that the court admit, as evidence, a data recording, an item of physical evidence or a document, having regard to the restrictions provided by §§ 289[1], 290[1], 291, 292 and 294 of this Code.

(2) To present the report of an investigative operation or any other document of the criminal file, the prosecutor offers it to the court of their own motion or at the motion of the other party to judicial proceedings.

(3) If the court admits the evidence mentioned in subsection 1, the party to judicial proceedings that offered the evidence reads it out in full or in part or presents it by another method, having regard to the nature of the particular item of evidence and the purpose of its use. Presentation of the item may be forgone if the parties so agree, provided the court finds that this is not contrary to the principle of public access to judicial proceedings.

(4) A party to judicial proceedings may, when presenting an item of evidence, use visual aids which do not constitute evidence yet facilitate its presentation, provided such aids are not misleading. When presenting the evidence, the party may also offer items of physical evidence and documents to the court.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 296[1]. Offering of evidence in proceedings on a civil court claim and statement of a public-law claim**

(1) To obtain a disposition concerning a civil court claim or statement of a public-law claim, a party to proceedings may additionally offer evidence which is not material to determining whether the accused is or is not guilty of the offence.

(2) The court may invite a party to proceedings to offer additional evidence which is relevant to disposing of a civil court claim or statement of a public-law claim provided such evidence does not affect disposition of the issues provided by clauses 1 and 2 of subsection 1 of § 306 of this Code.

(3) When offering an item of evidence, a party to proceedings must show which facts material to the case the party intends to prove by the item.

(4) Evidence must be offered within the time limit set by the court.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

**§ 296[2]. Dismissal of a civil court claim or statement of a public-law claim**

(1) The court may dismiss a civil court claim or statement of a public-law claim if:
1) the person in whose interests or against whom such a claim was filed, or the relief sought by the claim, does not comply with the conditions provided by subsections 1 or 2 of § 38[1], § 37[1]or subsection 1 of § 39 of this Code;
2) the victim has withdrawn the civil court claim;
3) the victim has not paid the statutory fee, if payment of the fee is mandatory under the law;
4) criminal proceedings are terminated;
5) any other grounds mentioned in the law apply.

(2) Dismissal of a civil court claim or statement of a public-law claim is issued as a court order.

(3) The court explains to the victim that dismissal of a civil court claim or statement of a public-law claim does not preclude the filing of the claim under the rules of civil or administrative court procedure or the issue, in administrative proceedings, of an administrative decision concerning the obligation which was the cause for the statement of the public-law claim.

(4) The victim may withdraw a civil court claim without the consent of the accused or the civil defendant until commencement of the trial. With the consent of the accused or the civil defendant, the victim may withdraw the claim before the court withdraws to the deliberation room. Without such consent, the victim may withdraw the claim before the court withdraws to the deliberation room, provided the court finds that this is necessary for a decision concerning the claim to be rendered within a reasonable time.

(5) The victim may withdraw a statement of a public-law claim until commencement of the trial.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

**§ 297. Collecting additional evidence during the examination of evidence**

(1) Having concluded examination of the evidence offered by a party to judicial proceedings, the court may, on a motion of such a party or of its own motion, order the collection of additional evidence.

(2) In their motion, a party to judicial proceedings must state the reasons for the need to collect additional evidence and for not making a motion to collect such evidence previously. The court disposes of the motion by an order.

(3) On the grounds provided by § 286[1]of this Code, the court may refuse to grant a motion to collect additional evidence.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 298. Concluding the examination of evidence**

(1) When concluding the examination of evidence, the judge asks the parties to judicial proceedings whether they wish to make any motions to supplement the examination. The court disposes of the motions by an order.

(2) Once any additional operations that were required have been completed, the examination of evidence is concluded and the closing arguments commence.

(3) On a motion of a party to judicial proceedings, the court calls a recess before the closing arguments.

# Subchapter 5
# Closing Arguments and Final Statement of the Accused

**§ 299. Rules for closing arguments**

(1) The closing arguments commence by a closing speech from the prosecutor. The victim, civil defendant and defence counsel are also given the floor.

(2) The parties to judicial proceedings have a right to make a reply. The defence counsel or the accused has the right to a final reply.

**§ 300. Content of closing arguments**

(1) In their closing arguments, the parties to judicial proceedings may rely only on evidence that has been examined during the examination of evidence.

(2) The duration of a closing speech is not limited. The judge may interrupt such a speech if it digresses to circumstances that are beyond the scope of the criminal case.

(3) Before the court withdraws to the deliberation room, the parties to judicial proceedings may file the text of their closing speech to be appended to the record of the trial.

**§ 301. Withdrawal of charges by the prosecutor**

If, during the stage of closing arguments, the prosecutor withdraws the charges, the court enters a judgment of acquittal without continuing the proceedings.

**§ 302. Resumption of the examination of evidence**

(1) Where, in relation to a closing argument, new evidence needs to be offered which may have a material effect on the disposition of the criminal case, the court may, on a motion of a party or of its own motion, make an order by which its resumes the examination of evidence in the case.

(2) When the resumed examination of evidence has been completed, the closing arguments recommence.

**§ 303. Final statement of the accused**

(1) After the closing arguments, the judge offers the accused the right to make a final statement.

(2) The duration of a final statement is not limited. The judge may interrupt the speech of the accused if the final statement digresses to circumstances that are beyond the scope of the criminal case.

(3) No questions may be put to the accused during their final statement.

(4) If, in their final statement, the accused reveals new facts material to the criminal case, the court resumes the examination of evidence in the case. When the resumed examination of evidence and the new closing arguments have been completed, the accused, again, has a right to a final statement.

(5) In a situation mentioned in subsection 3 of § 267 of this Code, the accused does not have a right to a final statement.

**§ 304. Withdrawal of the court to the deliberation room**

After the final statement of the accused, the court announces the time of pronouncement of the judgment and withdraws to the deliberation room.

# Subchapter 6
# Rendering of Judgment

**§ 305. Confidentiality of judicial deliberations**

(1) When a judgment is being deliberated, only the judicial panel that tried the criminal case and the court official to draw up the judgment may be present in the deliberation room.

(2) Any opinions that are expressed in the deliberation room when a judgment is being deliberated remain confidential.

**§ 305[1]. Lawful and reasoned judgment**

(1) A judgment must be lawful and reasoned.

(2) The court founds its judgment exclusively on evidence which was the subject matter of the examination of evidence and which the parties had the possibility to examine, as well as on circumstances concerning which the parties had an opportunity to make their submissions.

(3) Acceptance of an item of evidence does not preclude its being declared inadmissible at the time when judgment is rendered in the case.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 306. Issues to be determined when considering judgment; the signing of judgment**

(1) When considering its judgment, the court makes a determination concerning 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 what must be the legal designation of the offence with a reference to a specific section, subsection and clause of the Penal Code;
4) whether the accused is guilty of commission of the offence;
5) whether any mitigating or aggravating circumstances are present;
6) what is the sentence that must be imposed on the accused;
6[1]) whether the sentence must be reduced due to a reasonable time of proceedings having been exceeded;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
7) whether the accused must be exempted from serving the sentence or whether a substitutional sentence must be imposed;

(7[1]) [Repealed – RT I, 05.07.2013, 2 – entry into force 15.07.2013]
8) whether an underage accused must be sentenced for the criminal offence they have committed or whether other measures are to be imposed in the case;
9) whether – where the judgment is a judgment of conviction – a new compliance enforcement measure must be chosen or the current one maintained, varied or revoked;
10) – where the judgment is a judgment of conviction by which a sentence of imprisonment is imposed – which measures must be taken with regard to any underage children and any property of the accused that will be left unsupervised;
11) whether and to what extent a civil court claim or statement of a public-law claim must be granted or compensation ordered for harm caused by the offence;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
12) whether steps need to be taken to give interim protection to a civil court claim or statement of a public-law claim, or an order of confiscation or of substitutional confiscation;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
12[1]) whether an amount ordered to be paid by way of substitutional confiscation must be paid as a lump sum or in instalments – in this regard, they court may, giving consideration to the financial situation and re-socialisation prospects of the convicted offender, defer by up to two years the due date for the payment, as a lump sum or by instalments, of such an amount, or order its payment by instalments due on specified dates;
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]
13) what measures must be taken with regard to any items of physical evidence as well as any other objects that have been seized or attached or that are subject to confiscation in criminal proceedings;
[RT I 2007, 2, 7 – entry into force 01.02.2007]
14) what the costs of criminal proceedings amount to and who is to bear them;
15) whether a document that is mentioned in subsection 4[1]of § 145 or subsection 3 of § 159 and that contains the particulars required to pay the claim must be appended to the judicial disposition;
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]
16) whether and to what extent, under the Compensation for Harm Caused in Offence Proceedings Act, a person's application for compensation for harm caused in offence proceedings must be granted.
[RT I, 20.11.2014, 1 – entry into force 01.05.2015]

(2) The issues listed in subsection 1 of this section are determined separately with respect to each accused and each criminal offence.

(3) When the issues listed in subsection 1 of this section have been determined, the judgment or the operative part of the judgment is drawn up and digitally signed by all members of the panel. The assistance of a court official may be employed to draw up the judgment.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(3[1]) Where it is not possible to observe the requirements provided by subsection 3 of this section due to reasons beyond the control of the court or a member of the panel, the court may draw up and sign its judgment on paper.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(4) A judge whose position reflects the minority view presents their dissenting opinion in writing; such an opinion is included in the file but is not publicly presented when the judgment is pronounced.

(5) After signing a judgment, the court may, of its own motion or on that of a party to judicial proceedings, rectify any spelling or calculation errors or obvious inaccuracies in the judgment which do not affect its substance. Such errors are corrected by an order a copy of which is sent to all persons who were issued a copy of the judgment that contained the errors.

**§ 307. Resumption of trial proceedings**

(1) When considering its judgment, the court may, by order, resume the examination of evidence or the closing arguments, provided:
1) there is a need to obtain further particulars regarding a fact material to disposing of the criminal case;
2) grounds provided by subsection 6 of § 268 of this Code have come to light;
3) the court has identified an error in the proceedings which is material to the rendering of judgment and which can be rectified.

(2) In a situation mentioned in clause 2 of subsection 1 of this section, the court may conduct the additional operations under written procedure, setting a reasonable time limit for the parties to to respond to the court's questions. A hearing is held on a motion of the accused or of the defence counsel.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 308. Imposition of corrective measures on minors and young adults**

[RT I, 05.12.2017, 1 – entry into force 01.01.2018]
Where, as a result of trying a criminal case, the court finds that a person who committed a criminal offence as a minor or – under the conditions provided by subsection 7 of § 87 of the Penal Code, when the person was under the age of twenty-one – can be rehabilitated without subjecting them to a sanction, the court imposes one or several of the measures provided by § 87 of the Penal Code.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

**§ 309. Types and the entry of judgment**

(1) A judgment may be either a judgment of acquittal or a judgment of conviction.

(2) A judgment of acquittal is entered in the case if no criminal act or criminal offence is established at the trial, or if commission of the criminal offence by the accused has not been proved or the prosecutor withdraws the charges.

(3) A judgment of conviction is entered in the case if the trial results in a verdict that declares commission of the criminal offence by the accused to have been proven.

**§ 310. Judgment concerning a civil court claim or statement of a public-law claim**

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

(1) Where the court enters a judgment of conviction, it grants the civil court claim or statement of a public-law claim in full or in part, or denies or dismisses the claim.

(2) Where the court enters a judgment of acquittal or terminates criminal proceedings, it dismisses the civil court claim or statement of a public-law claim.

(3) Where it is not possible to ensure disposition of a civil court claim or statement of a public-law claim without unreasonably adjourning the trial of the criminal case, the court may, until the entry of judgment in the case, direct that the entirety or a part of such a claim be disposed of in a separate judgment. In such a situation, the court may initially enter a part judgment in which it disposes of the issues mentioned in clauses 1–10 and 12–14 of subsection 1 of § 306 of this Code.

(4) In a situation provided for by subsection 3 of this section, the court – as its original panel or, by decision of the president, as a different one – continues proceedings on the civil court claim or statement of a public-law claim after the entry into effect of the part judgment of conviction. When disposing of the claim, any facts established in the part judgment are deemed to have been proven.

(5) The parties to the judicial proceedings provided for by subsection 4 of this section include the victim, the accused, the civil defendant and any third parties whose rights or obligations may be the subject of a decision in those proceedings – as well as the Prosecutor's Office, if the victim is the State, a local authority or another public authority and the Prosecutor's Office has filed the civil court claim or statement of a public-law claim in

the stead of a representative of the State or of such an authority in accordance with subsections $3^1$, $3^2$or $3^3$of § $38^1$of this Code.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

(6) Where a part judgment of conviction is set aside as a result of proceedings on appeal or proceedings on appeal to the Supreme Court and the criminal case is remanded for retrial or for a new hearing, concerning the issue of whether the person is guilty or not guilty of the offence, to a lower court before which separated proceedings on the civil court claim or statement of a public-law claim are pending, such proceedings and the criminal case are joined back together.

(7) Where the court enters a judgment provided by subsection 3 of this section, the victim may, until commencement of separate proceedings on their civil court claim or statement of a public-law claim, withdraw that claim.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

**§ $310^1$. Decision concerning a restraining order**

(1) On an application of the victim and for the protection of their private life or other personal rights, the court may, under § 1055 of the Law of Obligation Act, impose a restraining order for a period of up to three years on an offender convicted of a criminal offence against the person or against a minor.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

($1^1$) The court may impose a restraining order together with the electronic monitoring provided for by § $75^1$of the Penal Code if the suspect or accused agrees to this. Electronic monitoring may be imposed for up to twelve months.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(2) The court disposes of an application for a restraining order in accordance with the rules provided by § 310 of this Code.

**§ 311. Introductory part of a judgment**

The introductory part of a judgment states:
1) that the judgment is rendered in the name of the Republic of Estonia;
2) the date on and place at which the judgment was rendered;
3) the name of the court which rendered the judgment, the composition of the judicial panel and the given names and surnames of the prosecutor, defence counsel, interpreters, translators and of the judicial hearing clerk;
4) the name, residence or seat and address, personal identification number (or, where the accused does not possess one, their date of birth) and the place of work or educational institution of the accused;
5) previous convictions of the accused;
6) the section, subsection or clause of the Penal Code that defines the criminal offence for which the accused has been committed to answer the charges or which they are reproached with in the charges modified under § 268 of this Code.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 312. Body of a judgment**

The body of a judgment states:
1) the facts that were found to be proven at the trial and the evidence relied on;
2) any items of evidence which the court deems to be unreliable and the reasons for such an assessment;
3) any facts of which the court has taken judicial notice and on which it relies in its judgment;
4) any mitigating or aggravating circumstances;
5) the reasons for the sentence imposed on the accused;
6) the reasons for amendment of the charges, exemption from sentence, imposition of a substitutional sentence, imposition of a sentence below the minimum prescribed in the Penal Code or for deferring the enforcement of the judgment;

($6^1$) [Repealed – RT I, 05.07.2013, 2 – entry into force 15.07.2013]
7) the reasons for the imposition, varying or revocation of a compliance enforcement measure;
8) the decision made concerning the civil court claim or statement of a public-law claim;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
$8^1$) the decision concerning an application to compensate for harm caused in offence proceedings according to the Compensation for Harm Caused in Offence Proceedings Act;
[RT I, 20.11.2014, 1 – entry into force 01.05.2015]
9) the provision of procedural law that is followed when entering judgment in the case.

**§ 313. Operative part of a judgment of conviction**

(1) The operative part of a judgment of conviction states:
1) the name of the accused;
2) the conviction of the accused under the relevant section, subsection and clause of the Penal Code;

3) the type and term or amount of the sentence imposed on the accused for each criminal offence, and the combined sentence to be served;
4) the duration of the period of probation and a list of the obligations imposed on the accused – where the imprisonment that has been imposed on the accused is suspended;
5) reduction of the sentence by one third according to subsection 2 of § 238 of this Code – if the case was dealt with under the abridged procedure;
$5^1$) reduction, according to subsection 3 of § $205^1$ of this Code – if applicable – of a sentence imposed for a criminal violation of competition law rules;
[RT I 2010, 8, 34 – entry into force 27.02.2010]
6) the time of commencement of service of the sentence;
$6^1$) [Repealed – RT I, 05.07.2013, 2 – entry into force 15.07.2013]
7) circumstances related to enforcement of the judgment;
8) any compliance enforcement measures chosen by the court or variation or revocation of any measures that had been imposed previously;
9) the measures to be taken in respect of any unsupervised children and property of the convicted offender;
10) a decision concerning the civil court claim or statement of a public-law claim and any interim measures to protect such a claim;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
$10^1$) a note stating whether the victim has filed an application provided for by clause 2 or 4 of subsection 5 of § 38 of this Code;
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]
11) the measures to be taken with regard to any items of physical evidence and other objects seized or attached in the course of criminal proceedings in the case;
12) a decision concerning costs of criminal proceedings;
$12^1$) a decision concerning an application to compensate for harm caused in offence proceedings according 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 and time limit for appealing the judgment.

(2) Where charges have been brought against the accused for several criminal offences or under several sections of the Penal Code, the operative part of the judgment must state of which charges the accused is acquitted and of which they are convicted.

**§ 314. Operative part of a judgment of acquittal**

The operative part of a judgment of acquittal states:
1) the name of the person acquitted;
2) the acquittal of the accused under the relevant section, subsection and clause of the Penal Code;
3) revocation of any compliance enforcement measures that have been imposed;
4) revocation of any interim measures for the protection of a civil court claim or statement of a public-law claim;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
5) the measures to be taken with regard to any items of physical evidence and other objects seized or attached in the course of criminal proceedings in the case;
$5^1$) removal of the data entered 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 concerning an application to compensate for harm caused in offence proceedings according to the Compensation for Harm Caused in Offence Proceedings Act;
[RT I, 20.11.2014, 1 – entry into force 01.05.2015]
7) the rules and time limit for appealing the judgment.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 315. Pronouncement of the judgment and explanation of the right of appeal**

(1) The judge or, in a situation mentioned in subsection 1 or 3 of § 18 of this Code, the presiding judge, pronounces the judgment at the time announced according to § 304 of this Code.

(2) If the accused is not proficient in the language of criminal proceedings, the judgment is interpreted or translated for them after its pronouncement.

(3) The judge asks the person who has been acquitted or convicted whether they understand the judgment and, if this is needed, explains the substance of the judgment to the person.

(4) The court may decide to pronounce only the operative part of the judgment, providing an oral explanation of the main reasons for the judgment on its pronouncement.

(5) Having pronounced a judgment or the operative part of a judgment, the judge or presiding judge:
1) where the operative part of a judgment was pronounced, announces the date on which the judgment will be available at the court for the parties to judicial proceedings to acquaint themselves with it, and makes a corresponding note in the record of the trial or hearing;
2) announces the time limit for appeal against the judgment and explains the rules for appeal provided by § 318 of this Code and the possibility to waive the right of appeal;
3) explains that intention to exercise the right of appeal must be notified to the district court in writing within seven days following pronouncement of the operative part of the judgment, and explains the consequences of such notification according to the second sentence of subsection 1 of § 319 of this Code.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(6) A waiver of the right of appeal is entered in the record of the trial or hearing. Defence counsel may only waive the right of appeal with the written consent of the person they are defending.

(7) Where all parties to judicial proceedings waive the right of appeal or where, during the time limit provided by clause 2 of subsection 5 of this section, none of the parties gives notification of the intention to exercise that right, only the particulars provided for by § 311 and § 313 or § 314 of this Code are stated in the judgment.

(8) Where the parties to judicial proceedings have not waived the right of appeal, a full judgment must be drawn up within fifteen days following the date on which intention to exercise the right of appeal was notified to the district court.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

### § 315[1]. Announcing and deferring the time of pronouncement of the judgment and the time when the judgment is to be made available

(1) The time of pronouncement of the operative part of the judgment and the time when the judgment is to be made available to the parties, as well as any variation of such time, is published on the website of the court without delay once it has been determined, stating the number of the criminal case and the name or initials of, respectively, the accused who is a legal adult or the underage accused, as well as the legal designation of the criminal offence of which the person is accused according to the relevant section, subsection and clause of the Penal Code. Where the judgment was rendered in closed proceedings, only the time when the judgment is to be made public is published, as well as any variation of such time, with the number of the criminal case and a note stating that proceedings were conducted as closed proceedings. The time when the judgment is to be made public is removed from the website when 30 days have passed following publication of the judgment.

(2) Any variation of the time of pronouncement of the judgment or of its operative part, as well as of the time when the judgment is to be made available to the parties must be issued as an order that states the new time of such pronouncement or of such availability. The order must be available to the parties for examination at the court not later than on the date which had initially been appointed as the date of the pronouncement or availability.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

### § 316. Release – on the rendering of judgment – of an accused who has been committed in custody

An accused who has been committed in custody is released in the courtroom without delay if they:
1) are acquitted;
2) are exempted from the sentence;
3) have not been sentenced to imprisonment.

### § 317. Provision of copies and printouts of judgments

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

(1) After a judgment has been pronounced or made public, a person may acquaint themselves with it at the court. On an application of a party to judicial proceedings, they are provided with a copy or printout of the judgment. The court sends a copy of its disposition to a party to judicial proceedings who did not attend the pronouncement of the judgment.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) If the accused has been committed in custody, a copy or printout of the judgment is sent or handed to them without delay after the judgment has been pronounced or made public by the court.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

# Chapter 11
# PROCEDURE FOR APPEALS

## Subchapter 1

# Appealing to the Circuit Court of Appeal

**§ 318. Right of appeal**

(1) If a party to judicial proceedings does not agree with the judgment of the court of first instance, the party has a right to file an appeal. In proceedings on the appeal, the party who filed that appeal is the appellant.

(2) A civil defendant may file an appeal concerning the civil court claim or statement of a public-law claim.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

($2^1$) A third party may file an appeal against a judgment insofar as the judgment affects their 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 also if they find that they should have been joined to proceedings as a victim or third party. In such a situation, the circuit court of appeal decides, by an order made in preliminary proceedings, whether the person is to be so joined.
[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 rendered under the abridged or fast-track procedure;
2) by the Prosecutor's Office against a judgment of conviction rendered under the abridged or fast-track procedure, except insofar as a civil court claim or statement of a public-law claim is denied or it is granted in part, if the victim is the State, local authority or another public authority and the Prosecutor's Office has filed the civil court claim or statement of public-law claim instead of the representative of the State or authority in accordance with subsection $3^1$, $3^2$or $3^3$of § $38^1$of this Code;
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]
3) against a judgment rendered under the summary procedure;
4) against a judgment rendered under the plea agreement procedure, except in situations mentioned 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 rendered on the ground provided by § 301 of this Code.

(4) A party to judicial proceedings may file an appeal against a judgment rendered under the plea agreement procedure in a situation where the provisions of Subchapter 2 of Chapter 9 or subsection 1 of § 339 of this Code have been violated. The accused and the defence counsel may also file an appeal against a judgment rendered under the plea agreement procedure if the act described in the plea agreement is not a criminal offence, the legal designation of the offence according to the Penal Code is incorrect or if a sentence which is not prescribed by law has been imposed on the accused.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 319. Time limit for appeal**

(1) Intention to exercise the right of appeal is notified in writing to the court that pronounced the operative part of the judgment within seven days following the pronouncement. If a party to judicial proceedings gives notice of their intention to exercise the right of appeal during the specified time limit and does not waive that right, the remaining parties to those proceedings have the right of appeal regardless of whether they themselves have given notice of their intention to exercise it. Notice of the intention to exercise the right of appeal may also be given by electronic means.

(2) An appeal is filed with the circuit court of appeal in writing within 15 days following the judgment having been made public.

(3) An accused who has been committed in custody, or their defence counsel, may file an appeal within 15 days counting from the day following the day on which a copy of the judgment was handed to the accused.

(4) If the time limit for appeal has not been respected, the appeal is dismissed and returned by order of the court.

(5) The time limit for appeal is suspended when an application is made for State-funded legal aid. In such a situation the run of the time limit resumes when the order disposing of the application is served on the defence counsel or when the aid is denied.

(6) If the court, when resolving a criminal case, declares, in the operative part of its judgment, a legislative or regulatory instrument that falls to be applied in the case unconstitutional and refuses to apply it, the time limit

for appeal is calculated from pronouncement by the Supreme Court of the disposition rendered in constitutional review proceedings concerning the instrument.

(7) The circuit court of appeal may reinstate the time limit for appeal on an application of the appellant if the court finds that there was a valid reason for the appellant's not having respected the time limit. The court reinstates, or denies reinstatement of, a time limit by an order.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 320. Instruction to transmit the court file and acquainting oneself with the file**

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

(1) When it receives an appeal, the Circuit Court of Appeal, without delay, instructs the district court that dealt with the case to transmit the corresponding court file to the Circuit Court of Appeal. Having received such an instruction, the District Court transmits the file to the Circuit Court of Appeal without delay.

(2) The accused has a right to acquaint themselves with the court file through their defence counsel.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 321. Appeal**

(1) An appeal is filed as a typewritten or word-processed document. An accused who has been committed in custody may also make their appeal in clearly legible handwriting. An appeal that is filed by the Prosecutor's Office or by the defence counsel is also transmitted to the court electronically.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(2) An appeal states:
1) the name of the circuit court of appeal to which the appeal is addressed;
2) the name, procedural status, 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 that rendered the judgment, the date of the judgment, and the name of the accused in whose respect the judgment is contested;
4) the part of the judgment that is contested, the substance of and reasons for the motions or applications of the appellant, and the relief sought;
5) the evidence to be examined in the circuit court of appeal on a motion of the appellant, and the name and residence or seat and address of any person to be summoned to the hearing before the court of appeal on the appellant's motion;
$5^1$) whether or not the appellant is making a motion for 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 case before the Circuit Court of Appeal or makes a motion for the case to be heard without their participation;
7) whether the accused elects to choose their defence counsel in the appeal proceedings themselves or makes a motion for the court to appoint a defence counsel for them;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
8) a list of the documents appended to the appeal.

(3) An appeal is signed and dated by the appellant.

(4) If the accused elects to choose their defence counsel themselves, the address and the telephone number of the defence counsel are stated in the appeal.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(5) An appeal is filed together with copies for each accused whose interests are affected by the appeal. An accused who has been committed in custody is not required to include such copies with their appeal.

(6) In an appeal, the appellant may only rely on the district court not having examined an item of evidence if they had offered that evidence in the district court and the evidence was not accepted or if they were unable to offer the evidence in the district court for a valid reason beyond their control.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ $321^1$. Amendments to the appeal**

(1) Until the end of the time limit for appeal, the appellant may amend or supplement the appeal that they have filed, including extending the appeal to parts of the judgment that were initially not appealed. When amending an appeal, the provisions concerning appeals are observed.

(2) The provisions of subsection 1 of this section do not preclude or limit the appellant's right to make submissions concerning interpretation of the law as well as objections to any submissions made by the other party to appeal proceedings in those proceedings, or the right to introduce new facts or circumstances which arose or became known to the appellant after expiry of the time limit for appeal.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 322. Providing notification of the appeal**

(1) Within three days following reception of an appeal, the Circuit Court of Appeal provides, to any party to judicial proceedings whose interests are affected by the appeal, notification of the fact that an appeal has been filed.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) Together with the notification, a copy of the appeal is sent to any accused whose interests are affected by that appeal.

(3) Within seven days following reception of notification concerning the fact that an appeal has been filed, a party to judicial proceedings has a right to file written explanations and objections with the Circuit Court of Appeal.

(4) The objections filed by a party to judicial proceedings must state whether or not the party makes a motion for an oral procedure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 323. Provisional refusal to consider, or dismissal of, an appeal by the court that rendered the judgment**

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

**§ 324. Sending the court file over to the Circuit Court of Appeal**

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

# Subchapter 2
# Preliminary Proceedings in the Circuit Court of Appeal

**§ 325. Preparation of the case for hearing in the circuit court of appeal**

(1) When it prepares a criminal case for hearing, the court:
1) verifies whether it has jurisdiction over the case and whether the requirements provided by §§ 318, 319, 321 and 322 of this Code have been complied with;
2) if the grounds provided by § 327 of this Code are present, holds a preliminary hearing.

(2) If the requirements provided by §§ 318, 319, 321 and 322 of this Code have been complied with and the grounds for holding a preliminary hearing are absent, the judge schedules the case for hearing and performs the operations provided for by §§ 329 and 330 of this Code.

**§ 326. Provisional refusal to consider, or dismissal of, an 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 by § 321 of this Code, the judge makes an order by which they provisionally refuse to consider the appeal and set a time limit for its defects to be cured.

(2) The judge makes an order dismissing the appeal and returns the appeal to the appellant if:
1) the appeal was filed after expiry of the time limit for appeal provided by § 319 of this Code and no application for reinstatement of the time limit has been filed or the court has refused to reinstate the time limit;
2) during the time limit provided by subsection 1 of § 319 of this Code the appellant has not provided written notification to the court that rendered the judgment of their intention to exercise the right of appeal – where provision of such notification was mandatory;
3) the appeal was filed by a person who, under § 318 of this Code, does not have the right of appeal;
4) the appellant has not cured the defects of the appeal within the time limit they have been set or provided any reasons for not doing so;
5) by the time the hearing begins, the appeal has been abandoned.

(3) The circuit court of appeal may also dismiss an appeal if the judicial panel dealing with the criminal case unanimously finds that the appeal is clearly unfounded.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 327. Grounds for convening a preliminary hearing in the circuit court of appeal**

(1) A preliminary hearing is convened:

1) if a material violation of the law of criminal procedure provided by § 339 of this Code has been established and the violation cannot be eliminated in appeal proceedings;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
2) in other situations where the judge considers it necessary to convene such a hearing.

(2) A preliminary hearing is held according to subsections 2–4 of § 259, §§ 260 and 261 of this Code by a panel of at least three judges.

**§ 328. Powers of the court in preliminary proceedings**

(1) The judge or – in a preliminary hearing – the court:
1) makes an order for the criminal case to be heard under the rules of appeal, provided there are no circumstances that represent an obstacle to the proceedings or provided such circumstances can be eliminated;
2) sets aside the judgment by an order and remands the criminal case to the court of first instance for retrial on the grounds provided by § 339 of this Code;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
3) by an order, disposes of any other issues relating to preparation of the hearing.

(2) Within three days following the making of an order, a copy is sent to the parties to judicial proceedings whose interests the order affects.

**§ 329. Making an order for a criminal case to be heard in the circuit court of appeal**

(1) An order for a criminal case to be heard under the rules of appeal states:
1) the date and place of the hearing;
2) the name of any person summoned to the hearing;
3) whether the hearing to be held will be an open or a closed one.

(2) Any motion or application that has been denied is mentioned in the order. A denial cannot be appealed but the motion or application may be repeated at the hearing.

**§ 330. Summoning to the hearing**

The parties to judicial proceedings are summoned to the hearing by a summons according to §§ 163–169 of this Code.

# Subchapter 3
# Hearing in the Circuit Court of Appeal

**§ 331. Rules for and scope of hearing a criminal case under the rules of appeal**

(1) When it hears a criminal case under the rules of appeal, the circuit court of appeal follows the provisions of Chapter 10 of this Code without prejudice to special rules provided by this Subchapter. The hearing of the case in the circuit court of appeal is not subject to the provisions of §§ $163^1$ and $268^1$ of this Code.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

($1^1$) As a rule, the circuit court of appeal considers a criminal case by written procedure. In such a case, the court determines and announces the following to the parties to appeal proceedings:
1) the judicial panel;
2) the time limit during which the parties to appeal proceedings may make written submissions, motions of recusal as well as other motions or applications to the court, and the method for making these;
3) the time and method of public pronouncement of the court's judgment;
4) other circumstances which the court deems necessary.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

($1^2$) A criminal case is considered by oral procedure if a corresponding application has been made by a party to appeal proceedings or if this is deemed necessary by the circuit court of appeal.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

($1^3$) If it is not possible to serve the summons on the appellant using the contact particulars that have been stated in the appeal, the court may make an order by which it dismisses the appeal or may consider the appeal by written procedure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) The circuit court of appeal hears a criminal case within the scope of the appeal that has been filed.

(3) If the circuit court of appeal discovers a material violation of the law of criminal procedure, or an incorrect application of substantive law which has aggravated the situation of the accused, it extends the scope within

which it hears the criminal case to all of the accused regardless of whether or not an appeal has been filed in their respect.

(4) When a criminal case is heard in the circuit court of appeal, the appellant or any other party to judicial proceedings in the case does not have a right to raise issues that are beyond the scope of the appeal.

**§ 332. Lead-in to the hearing before the circuit court of appeal**

(1) To lead in the hearing before the circuit court of appeal, the presiding judge:
1) opens the hearing and announces the criminal case to be heard and the name of the person who filed the appeal;
2) ascertains who of the persons summoned have appeared;
3) ascertains the reasons for any non-appearance;
4) if this is needed, enlists the assistance of an interpreter or translator according to subsection 1 of § 161 of this Code;
5) ascertains the identity of the accused, explains to the accused their rights as prescribed in § 35 of this Code and verifies whether, following reception of a copy of the appeal, the accused and their defence counsel have had sufficient time to prepare for the hearing;
6) performs 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 judicial panel presents the substance of the appealed part of the judgment, the reasons for the appeal and the applications or motions made in it, and gives an overview of the documents that have been received.

(3) After the presentation, the presiding judge explains, to the appellant, their right to abandon the appeal and the consequences of such abandonment according to § 333 of this Code and asks whether the appellant maintains the appeal or abandons it in its entirety or in part.

**§ 333. Abandonment of the appeal**

(1) An appellant has a right to abandon their appeal in its entirety or in part before the presentation of concluding statements has been completed. The circuit court of appeal is bound by the abandonment, except in situations provided for by subsection 6 of this section.

(2) Defence counsel may abandon an appeal that has been filed by the accused only with the written consent of the person defended.

(3) An authorised representative may abandon an appeal only on a written application of the principal.

(4) An accused has a right to abandon an appeal that has been filed by their defence counsel, except in situations in which the participation of defence counsel in criminal proceedings is mandatory under subsection 2 of § 45 of this Code.

(5) Where an appeal has been abandoned by the time the hearing begins, such an appeal is dismissed by an order of the court. If the appeal is abandoned during the hearing, appeal proceedings are terminated by an order of the court.

(6) If the circuit court of appeal ascertains that the court of first instance has incorrectly applied substantive law when disposing of the criminal case and has thereby aggravated the situation of the accused, or that the court of first instance has materially violated the law of criminal procedure, the hearing of the criminal case proceeds regardless of the appeal's having been abandoned.

(7) Where an appeal is dismissed or appeal proceedings are terminated due to abandonment of the appeal, the judgment of the court of first instance enters into effect as of the making of the court's order, provided there are no other appeals.

(8) An appellant who has abandoned their appeal does not have a right to contest the judgment of the circuit court of appeal by appealing to the Supreme Court unless the circuit court of appeal has, under subsection 3 of § 331 of this Code, extended the scope within which it heard the criminal case.

**§ 334. Participation of the accused and of other parties to judicial proceedings in the hearing before the circuit court of appeal**

(1) The circuit court of appeal may hear a criminal case without the participation of the accused with regard to whom the judgment has been contested, if:
1) the accused has received the summons and a copy of the appeal and has notified the court that they do not wish to participate in the hearing;

2) the accused has received the summons and a copy of the appeal and has made a motion to adjourn the hearing for a reason which the court does not consider a valid one;
3) the accused has received the summons and a copy of the appeal but has not appeared for the hearing;
4) the accused has been removed from the courtroom under subsection 1 of § 267 of this Code;
5) [Repealed – RT I, 20.12.2019, 1 – entry into force 30.12.2019]

(2) Whether there is a need for other parties to judicial proceedings to participate in the hearing before the circuit court of appeal is decided by the court following the rules provided by §§ 270–273 of this Code.

(3) The circuit court of appeal may arrange participation of a party to judicial proceedings in the hearing by means of a technical solution which complies with the requirements mentioned in clause 1 of subsection 2 of § 69 of this Code.
[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

(4) If the appellant does not appear for the hearing, and has not notified the court of a valid reason for non-appearance, or has not substantiated it, the court may dismiss the appeal by an order or hear the criminal case without the appellant's participation.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 335. Examination of evidence in the circuit court of appeal**

(1) Examination of evidence in the circuit court of appeal is conducted according to the provisions of §§ 286–298 of this Code.

(2) During the examination of evidence, the circuit court of appeal may publicly present the record of the trial or hearing before the court of first instance.

**§ 336. Concluding statements**

(1) Concluding statements commence by the appellant's making of their closing arguments. After that, the other parties to judicial proceedings are given the floor in the order determined by the court. A party to judicial proceedings has a right to reply to another party's arguments. The defence counsel and the accused have the right of the last reply.

(2) The duration of closing arguments is not limited. The presiding judge may interrupt the arguments if the party speaking raises issues that are beyond the scope of the appeal.

(3) When concluding statements have been made, the court announces the date on which its disposition will be available at the circuit court of appeal to the parties to judicial proceedings. The court may pronounce its judgment or the operative part of its judgment immediately after having completed its deliberations.

**§ 337. Powers of the circuit court of appeal when rendering a disposition in the case**

(1) The circuit court of appeal may, by judgment:
1) affirm the judgment of the court of first instance and deny the appeal;
2) affirm the substantive part of the judgment of the court of first instance, making corrections of detail;
3) vary the main part of the judgment of the court of first instance, leaving out certain circumstances set out in that judgment;
4) set aside the judgment of the court of first instance in its entirety or in part and enter a new judgment in the case.

(2) The circuit court of appeal may, by order:
1) where circumstances precluding criminal proceedings according to clauses 2–6 of subsection 1 of § 199 of this Code are present – set aside the judgment and terminate criminal proceedings in the case;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
2) set aside the judgment in its entirety or in part and remand the criminal case to the court of first instance for retrial;
[RT I 2004, 46, 329 – entry into force 01.07.2004]
3) set aside the judgment entered under the plea agreement procedure in its entirety and return the criminal file to the Prosecutor's Office.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 338. Grounds for setting aside a judgment under the rules of appeal**

The grounds for setting aside a judgment under the rules of appeal are:
1) one-sidedness or inadequacy of the examination of evidence;
2) incorrect application of substantive law;
3) material violation of the law of criminal procedure;
4) incompatibility, with the gravity of the criminal offence or with the person of the offender, of the sentence or other corrective measure imposed in the case.

**§ 339. Material violation of the law of criminal procedure**

(1) Violation of the law of criminal procedure is regarded as material when:
1) the disposition in a criminal case has been rendered by an unlawful judicial panel;
2) the criminal case was heard without the accused being present, although the latter's participation in the trial was mandatory;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
3) judicial proceedings in the case were conducted without the participation of defence counsel, although participation of such counsel was mandatory;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
4) judicial proceedings in the case were conducted without the participation of the prosecutor, although participation of the prosecutor was mandatory;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
5) the confidentiality of judicial deliberation was violated when the judgment was being rendered;
6) the judgment has not been signed by all members of the judicial panel;
7) the judgment does not include its reasons;
8) the conclusions presented in the operative part of the judgment are incompatible with the facts established with regard to the subject matter of evidence;
9) the criminal case was heard in a language in which the accused is not proficient and without the participation of an interpreter or translator;
10) there is no record of the trial or hearing, with the exception of cases heard under the 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 proceedings was violated during the trial.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) The court may also rule to be material any other violation of the law of criminal procedure which leads or may lead to the rendering of an unlawful or unfounded judgment.

**§ 340. Entry of new judgment in the circuit court of appeal**

(1) The circuit court of appeal enters a new judgment based on the relief sought by the appeal – or without having regard to such – if the court ascertains an incorrect application of substantive law or a material violation of the law of criminal procedure which has aggravated the situation of the accused.

(2) When the circuit court of appeal enters a new judgment in the case, the court may:
1) acquit the accused of all criminal offences charged;
2) acquit the accused of certain of the criminal offences charged and impose a more lenient sentence, or affirm the sentence;
3) convict the accused of a lesser criminal offence and impose a more lenient sentence, or affirm the sentence;
4) set aside the judgment as regards the sentence that has been imposed on the accused and impose a more lenient sentence;
5) set aside the judgment in the part dealing with the civil court claim or statement of a public-law claim;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
6) set aside the judgment as regards matters provided for by §§ 313 and 314 of this Code.

(3) When the court has ascertained an incorrect application of a provision of substantive law, it must apply the provisions of subsection 1 of this section also with regard to the other accused in the case, regardless of whether or not they have filed an appeal.

(4) On the basis of an appeal filed by the Prosecutor's Office or by the victim, the circuit court of appeal may:
1) convict the accused of a more serious criminal offence and impose a more severe sentence, or affirm the sentence;
2) set aside a judgment of acquittal and enter a judgment of conviction;
3) convict the accused of the criminal offence of which they were acquitted, and impose a sentence;
4) set aside the judgment of the court of first instance as regards the sentence imposed and impose a more severe sentence;
5) set aside the judgment as regards matters provided for by §§ 313 and 314 of this Code.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 341. Remanding a criminal case to the court of first instance for retrial**

(1) Where the circuit court of appeal has ascertained a material violation of the law of criminal procedure according to clauses 1–5 or 9–10 of subsection 1 of § 339 of this Code, it sets aside the judgment that has been entered and remands the criminal case to the district court for retrial by a different judicial panel.

(2) Where the circuit court of appeal has ascertained a material violation of the law of criminal procedure according to clauses 6–8 or 11 of subsection 1 of § 339 of this Code, it sets aside the judgment that has been entered and remands the criminal case to the district court for retrial by the same or a different judicial panel.

(3) Where the circuit court of appeal has ascertained a material violation of the law of criminal procedure according to clause 12 of subsection 1 or subsection 2 of § 339 of this Code, which cannot be eliminated in appellate proceedings, it sets aside the judgment that has been entered and remands the criminal case to the district court for retrial by the same or a different judicial panel.

(4) When it remands a criminal case for retrial by the same judicial panel, the circuit court of appeal determines the extent to which proceedings before the district court are to be supplemented or redone. If the material violation of the law of criminal procedure only concerns the rendering of judgment, the circuit court of appeal remands the case to the district court for the judgment to be rendered anew. Regardless of what is stated in the order of the circuit court of appeal, the district court, when retrying the case, additionally performs any procedural operations that the court finds necessary for disposing of the case justly.

(5) Where the circuit court of appeal has set aside a judgment exclusively on an appeal of the accused or of the defence counsel, the court of first instance, when retrying the criminal case, may convict the accused of a more serious criminal offence but may not impose a sentence that is more severe than the one imposed by the judgment of the court of first instance that was set aside. In a situation mentioned in the previous sentence, the court is, likewise, disallowed from applying, in respect of the accused, any other legal consequences that would aggravate their situation compared to the judgment of the court of first instance that was set aside.

(6) Where, among other things, a judgment is set aside by the circuit court of appeal on an appeal which has been filed by the Prosecutor's Office or by the victim and which seeks aggravation of the situation of the accused, the court of first instance may aggravate such situation when retrying the criminal case. When it retries the case, the court of first instance may aggravate the situation of the accused also if this was sought in an appeal which was filed by the Prosecutor's Office or by the victim and whose justifiability the circuit court of appeal was unable to assess when remanding the case for retrial.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 341[1]. Setting aside a judgment rendered under the plea agreement procedure and returning the criminal file to the Prosecutor's Office**

The circuit court of appeal sets aside a judgment rendered under the plea agreement procedure and returns the criminal file to the Prosecutor's Office if it ascertains that:
1) the act described in the plea agreement is not a criminal offence or the legal designation of the act according to the Penal Code is incorrect;
2) a sentence which is not prescribed by law has been imposed on the accused for the criminal offence in question;
3) the provisions of Subchapter 2 of Chapter 9 or of subsection 1 of § 339 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 the circuit court of appeal**

(1) When rendering judgment, the circuit court of appeal follows §§ 305–314 of this Code, without prejudice to special rules provided by this section.

(2) The introduction of a judgment of the circuit court of appeal states:
1) the judgment that has been appealed;
2) the substance of the appealed part of the judgment of the court of first instance and the substance of the relief sought by the appellant.

(3) Where, under clauses 1 and 2 of subsection 1 of § 337 of this Code, the circuit court of appeal affirms a judgment of the court of first instance, it may:
1) in its judgment, forgo restating the facts that have been set out in the main part of the judgment of the court of first instance and, if this is needed, add its own reasons;
2) only provide the introduction and operative part of its judgment, as well as the provisions of procedural law that it followed when giving it.

**§ 342[1]. Mandatory nature of the disposition of the circuit court of appeal**

The opinion stated by the circuit court of appeal, in a disposition by which it sets aside a judgment of a district court, concerning the interpretation and application of a statutory provision is mandatory for the court that entered the judgment that has been set aside when it retries the case.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 343. Pronouncing a judgment of the circuit court of appeal and delivering a copy of the judgment**

(1) When the concluding statements in the case have been made, the circuit court of appeal announces the time of pronouncing its judgment or the day on which its disposition will be made available at the court to the parties to judicial proceedings.

(2) If the circuit court of appeal pronounces its judgment or the operative part of the judgment immediately after having completed its deliberations, §§ 315 and 316 of this Code are followed.

(3) When delivering a copy of a judgment of the circuit court of appeal, § 317 of this Code is followed.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 343[1]. Returning the criminal file when remanding a criminal case dealt with under regular rules of procedure for retrial to the court of first instance**

(1) When the circuit court of appeal remands a criminal case that is being dealt with under regular rules of procedure to the court of first instance for retrial by a different judicial panel, the circuit court of appeal sends to the district court, together with its order, only such materials of the case as are mentioned in § 226 and in subsection 2 of § 268 of this Code. The remaining part of the court file is returned to the Prosecutor's Office, to be included in the criminal file.

(2) The parties to judicial proceedings have a right to acquaint themselves – following the rules provided by § 224 of this Code – with materials of the court file that have been included in the criminal file.

(3) In situations not falling under subsection 1 of this section, the entire court file is sent to the district court when the order of the circuit court of appeal enters into effect.

(4) Should it turn out in the district court that it is not possible for the criminal case to be retried by the same judicial panel, the court returns, to the Prosecutor's Office, any materials of the criminal case that have not been mentioned in the first sentence of subsection 1 of this section.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

# Chapter 12
# PROCEDURE FOR APPEALS TO THE SUPREME COURT

## Subchapter 1
## Appealing to the Supreme Court

**§ 344. Right to appeal to the Supreme Court**

(1) A party to judicial proceedings has a right to appeal to the Supreme Court – on the grounds provided by § 346 of this Code – if:
1) the right of appeal has been exercised in the interests or against the party;
2) the circuit court of appeal has varied or set aside the judgment of the district court in the case.

(2) A person who filed a civil court claim or a statement of a public-law claim – and the civil defendant – have a right to appeal to the Supreme Court regarding the civil court claim or statement of the public-law claim.
[RT I, 05.02.2019, 2 – entry into force 15.02.2019]

(2[1]) A third party may file an appeal to the Supreme Court against a judgment insofar as the judgment concerns their rights or freedoms that are protected by law.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

(2[2]) A person may also file an appeal to the Supreme Court if they find that they should have been joined to proceedings as a victim or third party. In such a situation, the Supreme Court, when ruling to accept the appeal, also decides whether the person is to be so joined.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(3) The right of filing an appeal to the Supreme Court is exercised by:
1) the Prosecutor's Office;
2) the defence counsel who is an attorney;
3) other parties to judicial proceedings – through an attorney.

(4) The prosecutor or attorney who filed an appeal to the Supreme Court or who supports such an appeal at the hearing before the Supreme Court is an appellant for the purposes of proceedings before the Supreme Court.

(5) The parties to proceedings on appeal to the Supreme Court are the appellant, the Prosecutor's Office and the defence counsel or representative – who is an attorney – of the party to judicial proceedings affected by the appeal.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) As a victim, civil defendant or third party, the Republic of Estonia may also file an appeal to the Supreme Court and participate in proceedings on such an appeal without the assistance of a representative who is an attorney.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 345. Time limit for appeal to the Supreme Court**

(1) Intention to exercise the right to appeal to the Supreme Court is notified to the circuit court of appeal in writing within seven days following pronouncement of the operative part of that court's judgment or its communication by the court's office. If a party to judicial proceedings notifies their intention to exercise the right during the specified time limit and does not waive it, the other parties to such proceedings have the same right regardless of whether they themselves have made the corresponding notification. Intention to exercise the right to appeal may also be notified by electronic means.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) An appeal to the Supreme Court is filed with the Court in writing within 30 days following the judgment's having been made public.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(3) If the time limit for filing an appeal to the Supreme Court has not been respected, the appeal is dismissed and returned by resolution of the Court.

($3^1$) When an application for State-funded legal aid is made, the time limit for appealing to the Supreme Court is suspended. In such a situation, the time limit starts to run again when the order disposing of the application is served on the defence counsel or when the aid is denied.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) If the circuit court of appeal, when disposing of a criminal case, declares, in the operative part of its judgment, a legislative or regulatory instrument to be applied in the case to be unconstitutional and refuses to apply such an instrument, the time limit for appealing to the Supreme Court is counted from pronouncement of the disposition rendered by the Supreme Court in constitutional review proceedings concerning the instrument whose application was refused.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(5) On a motion of the appellant, the Supreme Court may reinstate the time limit for appeal if the Court finds that there was a valid reason for not having respected the time limit.

(6) Reinstatement of the time limit or a refusal to reinstate it is rendered as an order of the Supreme Court.

**§ 346. Grounds for appealing to the Supreme Court**

The grounds for appealing to the Supreme Court are:
1) incorrect application of substantive law;
2) material violation of the law of criminal procedure as listed in § 339 of this Code.

**§ 347. Appeal to the Supreme Court**

(1) An appeal to the Supreme Court is filed in typewritten form. The appeal is filed together with an electronic copy.

(2) An appeal to the Supreme Court states:
1) the name, procedural role, address of the seat, phone number and other telecommunications numbers of the appellant;
2) the name of the court whose disposition is being contested, and the date of the disposition;
3) the name of the party to judicial proceedings in whose interests or against whom the appeal is filed, and the address of their residence or seat, phone number and other telecommunications numbers;
4) grounds for the appeal according to § 346 of this Code and a reference to the relevant provisions of substantive law or of the law of criminal procedure;
5) the facts as ascertained by a judgment or the evidence that was examined in court and which the appellant invokes to argue that substantive law has been applied incorrectly or the law of criminal procedure has been materially violated;
6) a list of documents which the appellant considers necessary to offer additionally in proceedings before the Supreme Court to establish a material violation of the law of criminal procedure;
7) the substance of and reasons for the relief sought by the appellant;

8) [Repealed – RT I, 23.02.2011, 1 – entry into force 01.09.2011]
9) reasons for why an oral procedure is required – if the appellant makes a motion for such a procedure;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
10) a list of documents appended to the appeal.

(3) A document proving the appellant's authority of representation is appended to the appeal if the appellant is an attorney and the power of attorney does not appear in the court file.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) An appeal to the Supreme Court is signed and dated by the appellant.

**§ 347[1]. Amending an appeal to the Supreme Court**

(1) An appellant may amend or supplement their appeal to the Supreme Court – including also extending the appeal to parts of the judgment which were initially not appealed – until the end of the time limit for its filing. When amending the appeal, the provisions concerning appeals to the Supreme Court are observed.

(2) The provisions of subsection 1 of this section do not exclude or restrict the appellant's right to make submissions concerning interpretation of the law or objections against any submissions made by the other party to proceedings before the Supreme Court.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 348. Instruction to transmit the court file and acquainting oneself with the file**

[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(1) Having received an appeal, the Supreme Court, without delay, instructs the circuit court of appeal that dealt with the case to transmit the court file. Having been instructed to transmit the file, the circuit court of appeal transmits it to the Supreme Court without delay.

(2) Persons who have a right to file an appeal to the Supreme Court have a right to acquaint themselves with 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]. Providing notice of appeal to the Supreme Court; response to the appeal**

(1) Having received an appeal which meets the requirements, the Supreme Court sends a copy of such an appeal to a person mentioned in subsection 3 of § 344 of this Code whose interests the appeal affects, and notifies such a person of the following circumstances:
1) the time that the appeal was received at the Court;
2) the person's obligation to respond to the appeal within the time limit set by the Court;
3) what their response must include.

(2) A response to an appeal to the Supreme Court must, among other things, state the following:
1) whether there are any circumstances to preclude proceedings on the appeal;
2) whether or not the appeal should be accepted;
3) whether the party to proceedings on the appeal considers the appeal to be justified or opposes it;
4) any objections to the appeal;
5) reasons for why an oral procedure is required – if the person filing the response is applying for such a procedure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 349. Deciding on acceptance or rejection of appeal to the Supreme Court**

(1) Within a reasonable period following expiry of the time limit set for responding to an appeal to the Supreme Court, the Court makes an order by which it decides to accept or reject the appeal.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) Where an appeal to the Supreme Court is clearly justified or clearly unjustified, acceptance or rejection of the appeal may be decided without sending it to any other persons or before expiry of the time limit mentioned in subsection 1 of this section.

(3) An appeal to the Supreme Court is accepted if at least one justice of the Court finds that:

1) the arguments made in the appeal are such as to give reason to believe that the circuit court of appeal has applied substantive law incorrectly or has materially violated the law of criminal procedure;
2) the appeal alleges an incorrect application of substantive law or seeks the judgment of the circuit court of appeal to be set aside due to material violation of the law of criminal procedure, and a judgment of the Supreme Court is essential for uniform application or development of the law.

(4) Acceptance or rejection of an appeal to the Supreme Court is rendered as an order of the Supreme Court without stating the reasons for the acceptance or rejection.

(5) The outcome of disposing of an application to accept an appeal to the Supreme Court are published on the Court's website without delay, stating the number of the court case, names of the parties to proceedings and the legal designation of the criminal offence that constitutes the substance the charges. In respect of a decision concerning an application to accept an appeal that was made in closed proceedings, only the outcome of disposition and the number of the court case together with a reference to closed proceedings are published on the website. Rejection of an appeal for the reason that it did not meet the requirements provided by law and was therefore returned is not published on the website. Particulars concerning disposition of an application to accept an appeal are removed from the website when 30 days have expired from their publication.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 350. Provisional refusal to consider, and dismissal of, an appeal to the Supreme Court**

(1) If a defect is present that precludes consideration of an appeal to the Supreme Court, yet it is likely that the defect can be cured, the Court makes an order by which it sets the appellant a reasonable time limit for curing the defect and provisionally refuses to consider the appeal.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) The Supreme Court makes an order dismissing an appeal to the Supreme Court and returns the appeal to the appellant if:
1) the appeal was filed after expiry of the time limit for filing it as provided by § 345 of this Code and the appellant has not applied for reinstatement of the time limit, or the Supreme Court has decided not to reinstate the limit;
2) the appeal has been filed by a person who does not have a right to do so under subsection 3 of § 344 of this Code;
3) the appellant has not cured the defects of the appeal within the set time limit;
$3^1$) the appellant has not notified the circuit court of appeal in writing of the intention to exercise the right of appealing to the Supreme Court during the time limit provided by subsection 1 of § 345 of this Code, if notification was mandatory;
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]
4) the appeal is abandoned before the beginning of its hearing before the Court.

**§ 351. [Repealed – RT I, 23.02.2011, 1 – entry into force 01.09.2011]**

# Subchapter 3
# Consideration of Criminal Cases by the Supreme Court

**§ 352. Rules for consideration of criminal cases under the procedure for appeals to the Supreme Court**

(1) In proceedings on appeals to the Supreme Court, the Court observes the provisions of Chapter 10 of this Code, unless those proceedings have been otherwise provided for and provided those provisions are not incompatible with the nature of the proceedings.

(2) As a rule, the Supreme Court considers a criminal case by written procedure. Where this is the case, the Court determines and notifies the following to the parties to proceedings before it:
1) the judicial panel;
2) the time limit during which the parties may make, to the Court, written submissions as well as applications for recusal and other motions, and the method by which such submissions, applications and motions are to be made;
3) the time at and method by which the judgment will be publicly announced;
4) other circumstances which the Court deems necessary.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

($2^1$) If a copy of an appeal to the Supreme Court has not been sent to the parties to judicial proceedings in accordance with the rules provided by subsection 1 of § $348^1$ of this Code, it is appended to the notification.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(3) A criminal case is considered by oral procedure if the Supreme Court deems this necessary. Where the Court decides to consider an appeal by oral procedure, it sends a summons to the parties to proceedings. Where the Court deems this necessary, it may also summon, to the hearing, a party to judicial proceedings who is not a party to proceedings on the appeal filed with the Court. The non-appearance, at the hearing, of a party to

proceedings on the appeal – or of any other party to judicial proceedings – who has received the summons does not preclude consideration of the case, unless the Supreme Court finds otherwise.

(4) Parties to proceedings on an appeal to the Supreme Court have a right to acquaint themselves with the court file at the Court and to make copies of the file at their own expense.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 352[1]. Making a 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, in conformity with Protocol No. 16 to the Convention on the Protection of Human Rights and Fundamental Freedoms, to give an advisory opinion on questions of principle relating to the interpretation or application of the rights and freedoms defined in that Convention or any of its protocols.

(2) The request must state its reasons 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 that proceedings are conducted concerning the request.

(5) The Supreme Court resumes the proceedings suspended under subsection 4 of this section on receiving an advisory opinion concerning the request, on learning of its request having been denied or on withdrawing the request. The Supreme Court may also resume its proceedings earlier if the conduct of proceedings on the request mentioned in subsection 1 of this section is disproportionately delayed.

(6) Should proceedings be suspended, the running of the procedural time limit provided by subsection 7 of § 363 of the Code of Criminal Procedure is interrupted and, when the suspension ends, the time limit starts to run again in its entirety.

(7) Translation of a request into the English or the French language and translation into the Estonian language of the disposition of the European Court of Human Rights that has been received concerning the request is arranged 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. Judicial panel considering a criminal case under the procedure for appeals to the Supreme Court**

In the Supreme Court, a criminal case is considered under the procedure for appeals to the Supreme Court:
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 the Special Panel of the Supreme Court;
4) by the Supreme Court *en banc*.

**§ 354. Consideration of a criminal case by the full panel of the 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 an opinion stated by the Criminal Chamber in an earlier disposition regarding application of the law may require to be varied, the criminal case is referred by order for consideration by the full panel of the Criminal Chamber, which must consist of at least five justices of the Supreme Court.

(2) When a criminal case is considered by the full panel of the Criminal Chamber, the presiding justice is the President of the Criminal Chamber or, in their absence, the longest serving member of the Criminal Chamber or, in a situation in which the members' length of service is equal, the member who is senior in age.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 355. Consideration of a criminal case by the Special Panel of the Supreme Court**

(1) If the Criminal Chamber of the Supreme Court, when considering a criminal case, finds that an opinion stated regarding interpretation of the law by another chamber of the Supreme Court or by the most recent

disposition of the Special Panel needs to be varied – or where this is necessary for ensuring uniform application of the law – the criminal case is referred by order for consideration by the Special Panel of the Supreme Court.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) The Special Panel of the Supreme Court is convened by the Chief Justice of the Court.

(3) The members of the 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 the chamber of the Supreme Court whose opinion concerning application of the law is contested by the Criminal Chamber.

(4) At the hearing of the Special Panel, the case is presented by a member of the Criminal Chamber.

**§ 356. Consideration of a criminal case by the Supreme Court *en banc***

A criminal case is referred to be disposed of by the Supreme Court *en banc*if:
1) a majority of the full panel of the Criminal Chamber adopts an opinion that diverges from a legal principle or opinion concerning application of the law that has been followed by the Supreme Court *en banc*;
2) a majority of the full panel of the Criminal Chamber considers disposition of the criminal case by the Supreme Court *en banc*to be essential for uniform application of the law;
3) disposing of the criminal case requires disposing of an issue to be considered under the Constitutional Review Procedure Act.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 356[1]. Referral of a criminal case in the Supreme Court**

(1) A court order stating a decision to refer a criminal case to be disposed of by the full panel of the Criminal Chamber, by the Special Panel or by the Supreme Court *en banc*is transmitted to the parties to proceedings on appeal to the Supreme Court.

(2) If the case is to be considered at a hearing, the parties to proceedings on appeal to the Supreme Court are notified of the time and place of the hearing of the full panel of the Criminal Chamber, of the Special Panel or of the Supreme Court *en banc*.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 357. Lead-in to a hearing of the Supreme Court**

(1) To lead in a hearing of the Supreme Court, the presiding justice:
1) opens the hearing and announces the criminal case to be considered and the name of the person who filed the appeal to the Supreme Court in the case;
2) ascertains whether the parties to proceedings on appeal to the Supreme Court and any other persons summoned to the hearing are in attendance and verifies their authority of representation;
3) where this is needed, enlists the assistance of an interpreter or translator;
4) announces the composition of the Court's panel and asks the appellant and the other parties to proceedings on the appeal whether they wish to make any recusal motions or any other motions or applications;
5) asks the appellant whether they wish to proceed with the appeal or abandon it. The appellant certifies the abandonment by a signature on the appeal.

(2) Any motions or applications are dealt with in accordance with the rules provided by subsection 3 of § 284 of this Code.

(3) If circumstances precluding consideration of the criminal case come to light during the hearing, the court makes an order by which it adjourns consideration of the case.

**§ 358. Abandoning an appeal to the Supreme Court**

(1) An appellant may abandon their appeal to the Supreme Court in part or in full before the Supreme Court withdraws from the courtroom to deliberate; where the case is dealt with by written procedure, the appeal may be abandoned until expiry of the time limit granted to the parties to proceedings on the appeal to make their submissions.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) The defence counsel or representative may abandon an appeal to the Supreme Court if the person they are defending or their principal has agreed to this in writing.

(3) A party to proceedings – on an appeal to the Supreme Court that has been filed in their interest – has a right to abandon the appeal by filing a corresponding written application. The accused has a right to abandon an appeal to the Supreme Court filed by their defence counsel, unless participation of the defence counsel in criminal proceedings is mandatory under subsection 2 of § 45 of this Code.

(4) Where an appellant abandons their appeal to the Supreme Court, the Court dismisses their appeal by an order and proceedings on the appeal are terminated.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) If the Supreme Court ascertains that the circuit court of appeal has incorrectly applied substantive law when dealing with the criminal case and this has led to an aggravation of the situation of the accused or that the circuit court of appeal has materially violated the law of criminal procedure, the Court proceeds to consider the criminal case regardless of the appeal's having been abandoned.

**§ 359. Report on materials of criminal case**

(1) When the lead-in stage of the Court's hearing has been completed, the presiding justice or a member of the Court presents a report on the materials of the criminal case.

(2) The reporting justice briefly presents:
1) the facts of the criminal case;
2) the substance of and reasons for the appeal to the Supreme Court;
3) the relief sought by the appellant;
4) any explanations and objections stated in the response to the appeal.

**§ 360. Hearing of opinions of parties to proceedings on the appeal and concluding the Court's hearing**

(1) After a report on the materials of the criminal case has been presented, the Court – in the order determined by it – hears the opinions of the parties to proceedings on the appeal who have appeared at the hearing, starting with the appellant. The defence counsel of the accused is the last to speak, even if they have already spoken as the appellant.

(2) The presiding justice has a right to interrupt a party's speech if, in that speech, the party raises issues that are outside the scope of the appeal.

(3) The Court has a right to put questions to a party to proceedings before it as well as to any parties to judicial proceedings who are not a party to proceedings before the Court and who have been summoned to the hearing.

(4) When the parties to proceedings before the Court have been heard, the presiding justice concludes the hearing and announces the date from which the Court's judgment will be available at the Court's Office. The judgment is published on the Court's website.
[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 the Supreme Court**

(1) To ensure the parties' right to be heard, the Supreme Court has a right, during the entire course of proceedings before it, to put written questions to any party to those proceedings and to any party to judicial proceedings in the case who is not a party to proceedings before the Court. Written questions are signed by a member of the judicial panel considering the case. Written questions state the time limit for providing a response, which must not be shorter than one week.

(2) A response to the Court's written questions is provided in typewritten or word-processed form. The response is signed by the party to judicial proceedings to whom the questions have been addressed.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 360$^2$. Scope of consideration of criminal cases under the procedure for appeal to the Supreme Court**

(1) Criminal cases are considered having regard to the scope of appeal to the Supreme Court filed in the case. When a criminal case is being considered, the appellant does not have a right to raise issues that are beyond the scope of the appeal. The provision of the first sentence of this subsection does not preclude or limit the appellant's right to present arguments concerning interpretation of the law or to make objections to submissions of other parties to proceedings.

(2) The Supreme Court is not bound by the legal reasoning of an appeal.

(3) Where an incorrect application of substantive law, which has aggravated the situation of the accused, or a material violation of the law of criminal procedure is ascertained in the case, the Supreme Court extends the scope of consideration of the criminal case to include all of the accused and all of the criminal offences they are charged with regardless of whether an appeal to the Supreme Court has been filed in the case concerning these.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 361. Powers of the Supreme Court when rendering judgment**

(1) The Supreme Court may, by judgment:
1) affirm the judgment entered by a circuit court of appeal and deny the appeal filed in the case;
2) affirm the judgment of a circuit court of appeal in substance, adding corrections of detail which do not aggravate the situation of the convicted offender;
3) vary the body of the judgment by replacing the legal substantiations stated there by those of its own or by excluding certain circumstances presented there;
4) set aside the judgment and terminate criminal proceedings on the grounds provided by clauses 2–6 of subsection 1 of § 199 of this Code;
5) set aside the judgment of the circuit court of appeal and affirm the judgment of the district court;
6) set aside the judgment in full or in part and refer the criminal case for retrial or for a new hearing to the court which applied substantive law incorrectly or which materially violated the law of criminal procedure;
7) set aside the judgment rendered in a criminal case in full or in part and, without collecting any additional evidence, enter a new judgment which does not aggravate the situation of the convicted offender;
8) set aside a judgment rendered under the plea agreement procedure in full and send the criminal file to the Prosecutor's Office.

(2) When referring a criminal case to a circuit court of appeal or a district court for retrial or for a new hearing or when returning a criminal file to the Prosecutor's Office, the Supreme Court follows the provisions of §§ 341, $341^1$ and $343^1$ of this Code, having regard to special rules that apply under the procedure for appeals to the Supreme Court.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 362. Grounds for setting aside a judgment under the procedure for appeals to the Supreme Court**

The grounds for setting aside a judgment under the procedure for appeals to the Supreme Court are:
1) incorrect application of substantive law;
2) material violation of the law of criminal procedure.

**§ 363. Judgment of the Supreme Court**

(1) The introductory part of a judgment of the Supreme Court states:
1) the number of the case;
2) the date of the judgment;
$2^1$) the judicial panel;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
3) the title of the case considered;
4) the contested disposition;
5) the date of considering the case;
6) whether the case was considered by written or oral procedure;
7) the position title and name of the appellant before the Court;
8) the position titles and names of the parties to proceedings on the appeal and the names of the parties to judicial proceedings and of any interpreter or translator who participated in the hearing of the Supreme Court.

(2) The statement of reasons of a judgment of the Supreme Court sets out the following:
1) a short summary of hitherto judicial proceedings in the case;
2) the part of the judgment that the appellant contests, and the relief sought by them;
3) any explanations and objections submitted in the response to the appeal;
4) the opinions of the parties to proceedings on the appeal that were presented during the hearing and in their replies to any written questions;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
5) the reasons for the Court's conclusions;
6) the legal basis for the Court's conclusions.

(3) The operative part of a judgment of the Supreme Court states the Court's conclusions.

(4) If the Supreme Court affirms a judgment of a circuit court of appeal under clauses 1 or 2 of § 361 of this Code, the Court:
1) is not required to repeat, in its judgment, the reasons given in the judgment of the circuit court of appeal and, where this is needed, may add its own reasons;
2) may state, in its judgment, only the introductory and operative part, as well as the provisions of procedural law that the judgment is based on.

(5) The Supreme Court may not establish circumstances of a factual nature.

(6) Judgments of the Supreme Court enter into force on the date that they are publicly announced 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 must be accessible at the Court's Office not later than thirty days after the hearing of the Supreme Court, or after the date by which, in written procedure, the parties to proceedings on the

appeal were to make their submissions. Where needed, this time limit may be extended by an order to up to 60 days.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 364. Obligation to follow the judgment of the Supreme Court**

The opinions set out in the judgment of the Supreme Court concerning the interpretation and application of a legal rule are to be followed by any court that conducts a new hearing in the case.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

# Chapter 13
# PROCEEDINGS FOR REVIEW OF JUDICIAL DISPOSITIONS THAT HAVE ENTERED INTO EFFECT

**§ 365. Definition of proceedings for review of a judicial disposition that has entered into effect**

(1) Proceedings for review of a judicial disposition that has entered into effect (below in the translation of this Chapter, 'review') mean consideration by the Supreme Court of an application for review of such a disposition in order to decide on the reopening of proceedings in the criminal case in which the disposition was made.

(2) A criminal case in which the reopening of proceedings has been applied for is referred to as the case under review.

**§ 366. Grounds for review**

[RT I, 17.04.2012, 4 – entry into force 10.04.2012 – By judgment of the Supreme Court *en banc,* § 366 of the Code of Criminal Procedure is declared unconstitutional insofar as it does not prescribe, as a ground for review – in a situation in which a sentence of imprisonment was imposed for participation in a criminal act on a person by judgment rendered under regular rules of procedure in the criminal case under review – the entry into effect of a judgment which has been rendered under regular rules of procedure and which ascertains the absence of the criminal act.]
The grounds for review are:
1) the unlawfulness or unfoundedness of a judgment or order, which is due to the false testimony of a witness, a knowingly wrong opinion of an expert, a knowingly false interpretation or translation, or the falsification of documents or fabrication of evidence as ascertained by another judgment that has entered into effect;
2) a criminal offence committed by a judge when hearing or considering the criminal case under review as ascertained by a judgment;
3) a criminal offence committed by an official of the proceedings authority or a prosecutor during proceedings in the case as ascertained by a judgment, provided the offence may have affected the judgment rendered in the case under review;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
4) the setting aside of a judgment or order that served as a basis for rendering the judgment or order in the case under review, provided this would lead to a judgment of acquittal being entered in the case under review, or to mitigation of the situation of the convicted offender;
5) any other fact which is relevant for justly disposing of the case but which the court was not aware of while rendering the judgment or court order in the case under review and which independently or together with the facts previously established would lead to a judgment of acquittal being entered or to mitigation of the situation of the convicted offender or to mitigation of the situation of a third party whose property was confiscated by the judgment or order;
[RT I 2007, 2, 7 – entry into force 01.02.2007]
6) a declaration of unconstitutionality having been made by the Supreme Court under constitutional review procedure in respect of the legislative or regulatory instrument – or a provision in such an instrument – which served as the basis for the judgment or order rendered in the criminal case under review;
7) the granting of an individual application filed with the European Court of Human Rights regarding the judgment or order rendered in the case under review due to a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms or a Protocol to that Convention, provided the violation may have influenced the process of disposing of the case and it is not possible to eliminate it or compensate for the harm caused by it otherwise than by review;
8) the entry into effect of a judgment by which the accused is acquitted of a criminal offence of which, in the case under review, a joint principal offender or an accomplice was convicted under a simplified procedure;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
9) the rendering, under regular rules of procedure, of a judgment that ascertains the absence of a criminal act – where, in the case under review, a person was convicted of participation in such an act.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]
10) confiscation, by judicial disposition, of property 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 file an application for review**

(1) The right to file an application for review is vested in the parties mentioned in subsection 3 of § 344 of this Code and – through an attorney – in any person from whom property was confiscated by a judgment but who was not properly joined to criminal proceedings in the case.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(2) The right to file an application for review on the ground provided by clause 7 of § 366 of this Code is vested in the defence counsel – who is an attorney – of the person who filed the individual application with the European Court of Human Rights, and in the Office of the Prosecutor General, as well as the defence counsel – who is an attorney – of a person who has filed an individual application with the European Court of Human Rights in a similar case and on the same legal basis or who has a right to file such an application in a similar case and on the same legal basis, having regard to the time limit provided by paragraph 1 of Article 35 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
[RT I 2006, 48, 360 – entry into force 18.11.2006]

**§ 368. Time limit for filing an application for review**

An application for review may be filed within six months following a ground provided by § 366 of this Code arising in the case.

**§ 369. Application for review**

(1) An application for review to be filed with the Criminal Chamber of the Supreme Court is filed in typewritten or word-processed form. The application is also transmitted to the Court by electronic means.

(2) An application for review states:
1) the name, position title, address of the seat, telephone number and other telecommunications numbers of the person filing the application;
2) the name of the court that made the disposition whose review is sought, and the date of the disposition to be reviewed;
3) the name of the convicted offender in respect of whom review of the criminal case is applied for;
4) the ground for review according to § 366 of this Code and the reasons for it;
5) materials which should be examined and persons who should be questioned before the Supreme Court in order to ascertain the existence of the ground for review;
6) whether the person filing the application moves for an oral procedure;
7) a list of the documents appended to the application.

(3) The following are appended to an application for review:
1) a document certifying the representation authority of the person filing the application – where the person in question is an attorney;
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]
2) a copy of the application for review for the convicted offender who has been deprived of their liberty and whose interests are affected by the application, and for the Prosecutor's Office;
3) materials which should be examined in the Supreme Court in order to ascertain the presence of the ground for review;
4) address of the residence or seat and telephone number and other telecommunications numbers of persons who should be questioned in the Supreme Court in order to ascertain the presence of the ground for review.

(4) Where review of a criminal case is applied for on the grounds provided by clauses 1–4 and 7 of § 366 of this Code, a copy of the judgment based on which review is applied for is appended to the application for review.

(5) An application for review is signed by the person filing it, stating the date on which the application was filed.
[RT I 2006, 48, 360 – entry into force 18.11.2006]

**§ 370. Deciding on acceptance of an application for review**

(1) The Supreme Court decides on acceptance of an application for review following the provisions of subsections 1–3 of § 349 of this Code.

(2) An application for review is accepted if at least one justice of the Supreme Court finds that the submissions made in the application give reason to assume that a ground for review is present. When it accepts an application for review, the Supreme Court may, where this is needed, suspend enforcement of the judgment or order rendered in the criminal case under review in full or in part.
[RT I 2006, 48, 360 – entry into force 18.11.2006]

(3) Where an application for review is rejected, the application and the order of the Supreme Court are included in the court file, which is returned to the court of first instance. A copy of the order is sent to the person who filed the application and to the person who responded to it.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) Where this is needed, the Supreme Court sends a copy of the application for review and of the materials appended to it to the Office of the Prosecutor General for verification. The Prosecutor's Office arranges verification on a first-hand basis or through a pre-trial proceedings authority, observing the requirements of pre-trial procedure.

**§ 371. Provisional refusal to consider or dismissal of an application for review**

Decisions concerning provisional refusal to consider an application for review, or dismissal of such an application are made following the provisions of § 350 of this Code.

**§ 372. Review proceedings**

Review proceedings are conducted following the provisions of §§ 352–360$^{2}$and 363 of this Code, without prejudice to special rules provided by this Chapter.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 373. Powers of the Supreme Court under the procedure for review**

(1) Where no grounds for review are present, the Supreme Court denies the application for review.

(2) Where the application for review is justified, the Supreme Court enters a judgment by which it sets aside the contested disposition and remands the criminal case for retrial or for a new hearing by the court which rendered the disposition that has been set aside, or returns it to the Office of the Prosecutor General for pre-trial proceedings to be conducted anew.

(2$^{1}$) Where an application for review is justified only with respect to a confiscation decision entered in the case, the Supreme Court may grant the application and set aside the contested disposition only insofar as that decision is concerned, and decide not to review the remaining part of the judgment. In such a situation, the Supreme Court may remand the confiscation decision that has been set aside to the court that rendered the disposition, or to the Office of the Prosecutor General, for confiscation proceedings to be conducted anew following the rules 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 case under review, the Supreme Court, having reviewed the case, may enter a new judgment 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 a criminal case**

(1) Criminal proceedings following review of a criminal case are conducted under regular rules of procedure, except in a situation provided for by the second sentence of subsection 2$^{1}$of § 373 of this Code.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(2) A person may be acquitted without a holding a trial or hearing if:
1) the person is dead;
2) the facts are clear and the Prosecutor's Office does not move for a trial or hearing to be held.

# Chapter 14
# SPECIAL RULES FOR ISSUING A STATEMENT OF CHARGES AND FOR 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 AND OF JUDGES

**§ 375. Scope of application of this Chapter**

(1) The provisions of this Chapter apply to the issuing of a statement of charges and performance of procedural operations mentioned in § 377 of this Code in respect of 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 and of judges.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

(2) The provisions of this Chapter apply to the issuing of a statement of charges and performance of the procedural operations mentioned in § 377 of this Code in respect of any person who held an office mentioned in subsection 1 of this section at the time when a resolution concerning the granting of the consent provided for by § 381 of this Code was adopted, regardless of whether the act was committed prior to assuming the office or during the time in that 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* when the latter is temporarily performing the duties of the President of the Republic under subsection 1 of § 83 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 mandate has been suspended due to their having been appointed 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 the issuing of a statement of charges**

(1) A statement of charges in respect of the President of the Republic, a member of the Government of the Republic, the Auditor General, the Chief Justice of the Supreme Court or a justice of that Court can be issued only at the proposal of the Chancellor of Justice and with the consent of a majority of the members of the *Riigikogu*.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

(2) A statement of charges in respect of the Chancellor of Justice can be issued only at the proposal of the President of the Republic and with the consent of a majority of the members of the *Riigikogu*.

(3) A statement of charges in respect of a judge can be issued only at the proposal of the Supreme Court and with the consent of the President of the Republic.

**§ 377. Special rules for performance of certain 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 arrested as a suspect and subjected to compliance enforcement measures, their property may be attached and they may be subjected to a physical examination only with the consent of the Chancellor of Justice, given on an application 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 arrested as a suspect and subjected to compliance enforcement measures, their property may be attached and they may be subjected to a physical examination only with the consent of the President of the, given on an application of the Prosecutor General.

(3) A person mentioned in subsection 1 or 2 of this section may be arrested as a suspect and subjected to compliance enforcement measures, their property may be attached and they may be subjected to a physical examination without the consent of, respectively, the Chancellor of Justice or the President of the Republic if such a person is apprehended in the act of committing a criminal offence of the first degree.

(4) The Prosecutor General is notified without delay of performance of the procedural operations mentioned in subsection 3 of this section.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

(5) Where this is needed, the President of the Republic or the Chancellor of Justice acquaint themselves with the materials of the criminal file when granting consent for a procedural operation.

(6) The President of the Republic or the Chancellor of Justice grant their consent for performance of a procedural operation or return the application within 10 days following its receipt. Should the application be returned, reasons must be provided.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 378. Application of the Prosecutor General for issuing a statement of charges and the conduct of proceedings concerning the statement**

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

(1) A proposal to issue a statement of charges in respect of 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 is made to the *Riigikogu*by the Chancellor of Justice on an application of the Prosecutor General.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

(2) A proposal to issue a statement of charges in respect of the Chancellor of Justice is made by the President of the Republic on an application of the Prosecutor General.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) A proposal to issue a statement of charges in respect of a judge is made by the Supreme Court on an application 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) Where this is needed, the Chancellor of Justice, the President of the Republic or the Supreme Court acquaint themselves with the materials of the criminal file – without verifying or assessing the evidence that has been collected.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(6) The Chancellor of Justice or the President of the Republic makes a written proposal to the *Riigikogu* –or the Supreme Court to the President of the Republic – to grant consent to issue a statement of charges in respect of the person mentioned in the application of the Prosecutor General, except if the bringing of charges would be politically biased or clearly unjustified for other reasons.
[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 makes the proposal or returns the application within one month following its receipt. Should the application be returned, reasons must be provided.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 379. Making a proposal to issue a statement of charges**

(1) A proposal to grant consent to issue a statement of charges in respect of 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 is made 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 to issue a statement of charges in respect of a judge is made to the President of the Republic in writing by the Supreme Court.

(3) The proposal must be reasoned and it states:
1) the name of the person in whose respect consent to issue a statement of charges is sought from the *Riigikogu*or the President of the Republic;
2) the facts relating to the criminal offence;
3) the substance of the suspicion and the legal designation of the criminal offence;
4) the circumstances stated in the application of the Prosecutor General;
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]
5) any other circumstances that justify the proposal.

(4) The Chancellor of Justice, the President of the Republic or the Supreme Court must not, in the proposal made, respectively, to the *Riigikogu*or the President of the Republic, raise issues that are beyond the scope of the suspicion.

(5) The application of the Prosecutor General is appended to the proposal made by 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 a proposal to issue a statement of charges**

(1) In the *Riigikogu*, proceedings concerning a proposal of the Chancellor of Justice or of the President of the Republic provided for by subsection 1 of § 379 of this Code are conducted according 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 to issuing a statement of charges in respect of 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 must state the information contained in the proposal mentioned in subsection 1 of § 379 of this Code and its annexes.
[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 put by members of the *Riigikogu* and the replies of the Chancellor of Justice or of the President of the Republic must remain within the scope of the material presented to the *Riigikogu*.

(5) [Repealed – RT I, 22.12.2014, 9 – entry into force 01.01.2015]

**§ 381. Consent of the *Riigikogu* or of the President of the Republic; consequences of such consent**

(1) A resolution of the *Riigikogu* to grant consent to issue a statement of charges in respect of 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 effect as of its passing. The resolution is sent without delay to the maker of the proposal, to the Prosecutor General and to the person regarding whom it was made.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

(2) A resolution of the President of the Republic to grant consent to issue a statement of charges in respect of a judge enters into effect when signed.

(3) A resolution of the *Riigikogu* or of the President of the Republic to grant consent to issue a statement of charges in respect of a person mentioned in subsections 1 or 2 of this section suspends performance of official duties by the person concerned until the entry into effect of a judgment rendered in the case.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

(4) If, by resolution, the *Riigikogu* or the President of the Republic grants consent to issue a statement of charges in respect of a person mentioned in subsections 1 or 2 of this section, proceedings in the criminal case are conducted according to the rules of regular procedure prescribed by this Code.

**§ 382. Issuing a statement of charges regarding another criminal offence**

(1) If a statement of charges needs to be issued in respect of a person mentioned in subsection 1 of § 375 of this Code concerning a criminal offence other than the one stated in the proposal of the Chancellor of Justice, of the President of the Republic or of the Supreme Court, such an issue requires a new consent of the *Riigikogu* or of the President of the Republic.

(2) The *Riigikogu* or the President of the Republic grants the consent mentioned in subsection 1 of this section by a resolution at the proposal of, respectively, the Chancellor of Justice, the President of the Republic or the Supreme Court and following the rules provided by this Chapter.

(3) A new consent of the *Riigikogu* or of the President of the Republic is not required for modifying the legal designation of the criminal offence that has been committed, for modifying the statement of charges or for issuing a new statement of charges.

# Chapter 14[1]
# SPECIAL RULES FOR PERFORMANCE OF CERTAIN PROCEDURAL OPERATIONS AND FOR ISSUING A STATEMENT OF CHARGES IN RESPECT OF MEMBERS OF THERIIGIKOGU

[RT I, 22.12.2014, 9 - entry into force 01.01.2015]

**§ 382[1]. Scope of application of this Chapter**

(1) The provisions of this Chapter are to be observed when performing the procedural operations provided by § 382[2] of this Code and when issuing a statement of charges in respect of a member of the *Riigikogu*.

(2) The provisions of this Chapter are to be observed when performing the procedural operations provided by § $382^2$ of this Code and when issuing a statement of charges in respect of persons who have the status of a member of the *Riigikogu* at the time when the decision is made to grant the consent provided for by §§ $382^2$ and $382^9$ of this Code, regardless of whether the act was committed before the person became a member of the *Riigikogu* or during their service as a member of that body.

(3) The provisions of this Chapter concerning members of the *Riigikogu* also apply to any alternate member of the *Riigikogu* who performs the functions of a member.
[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 performed before issuing a statement of charges**

(1) Before obtaining the consent to issue a statement of charges in respect of a member of the *Riigikogu,* compliance enforcement measures – with the exception of committal in custody – may be imposed on such a member, a search of premises may be undertaken in their respect, they may be subjected to a physical examination, their property may be attached or a covert operation may be conducted in their respect only if, based on a reasoned written application of the Prosecutor General, the President of the Tallinn Circuit Court of Appeal has consented to this.

(2) Consent granted by the President of the Tallinn Circuit Court of Appeal for a search of premises does not extend to a search of the buildings of the *Riigikogu* or removal of any items of physical evidence, documents and means of communication found there or the handing over of such items, means or documents when a direction to hand them over is issued.

(3) Before obtaining the consent to issue a statement of charges in respect of a member of the *Riigikogu*, such a member can be detained as a suspect or subjected to compulsory placement in a medical institution for the conduct of an expert assessment, or subjected to a compliance enforcement measure such as committal in custody, forcible bringing-in or a short-term custodial sentence only if, based on a reasoned written application of the Prosecutor General, the Constitutional Committee of the *Riigikogu* has consented to this.

(4) In order to conduct a search in any building of the *Riigikogu* and to remove any items of physical evidence, documents and means of communication found there as well as for handing over any work-related correspondence of a member of the *Riigikogu* that is stored on a server of the *Riigikogu,* the consent of the Chancellor of Justice, granted on the basis of a reasoned written application of the Prosecutor General, is required. A person designated by the President of the *Riigikogu* is present when such operations are performed.

(5) Where a member of the *Riigikogu* is apprehended in the act of committing a criminal offence of the first degree, the consent mentioned in subsections 1, 3 or 4 of this section is not needed for arresting such a member as a suspect or for applying in their respect the compliance enforcement measure of committal in custody, for forcibly bringing such a member in, for their compulsory placement in a medical institution for the purpose of conducting an expert assessment, for conducting a search or a physical examination, for attaching their property, for the conduct of any other procedural operations and for the handing over of the member's work-related correspondence that is stored on a server of the *Riigikogu*.

(6) The Prosecutor General and the President of the *Riigikogu* are notified without delay of the performance of any procedural operations mentioned in subsection 5 of this section.

(7) Where a member of the *Riigikogu* in whose respect consent was already granted previously commences performance of their functions as a member of the *Riigikogu* in the next composition of the same, the consent mentioned in subsections 1, 3 or 4 of this section does not need be applied for anew for performing or maintaining a procedural operation, or applying a compliance enforcement measure, of the same type.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

**§ $382^3$. Application of the Prosecutor General for performance of procedural operations before issuing a statement of charges; proceedings concerning such an application**

(1) A reasoned written application of the Prosecutor General to the President of Tallinn Circuit Court of Appeal, the Constitutional Committee of the *Riigikogu* or the Chancellor of Justice as mentioned in subsections 1, 3 and 4 of § $382^2$ states:
1) the name of the person in respect of whom consent for performing a procedural operation is being applied for;
2) the facts of the criminal offence;
3) the substance and legal designation of the suspicion;

4) the circumstances precluding the possibility of achieving the objective of the procedural operation applied for by means of other less restrictive measures.

(2) Unless performance of the procedural operations provided for, respectively, in subsections 1, 3 and 4 of § 382[2] of this Code would clearly be unjustified, the President of Tallinn Circuit Court of Appeal, the Constitutional Committee of the *Riigikogu* or the Chancellor of Justice grant their consent for the performance of such operations in respect of the person named in the application.

(3) The President of Tallinn Circuit Court of Appeal, the Constitutional Committee of the *Riigikogu* or the Chancellor of Justice decide to grant the consent sought by, or return, the application of the Prosecutor General at the first opportunity following its receipt. Should the application be returned, reasons must be provided.

(4) Where the consent mentioned in subsection 3 of § 382[2] of this Code is applied for in respect of a member of the Constitutional Committee, the member in question does not participate in the discussion or voting of the corresponding agenda item at the sitting of the Committee.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

**§ 382[4]. Consent of the President of Tallinn Circuit Court of Appeal, the Constitutional Committee of the *Riigikogu* or the Chancellor of Justice for performance of certain procedural operations; consequences of such consent**

(1) An order of the President of Tallinn Circuit Court of Appeal by which consent is granted for performance of procedural operations mentioned in subsection 1 of § 382[2] of this Code in respect of a member of the *Riigikogu* before a statement of charges has been issued enters into effect when such an order is signed. The order is sent to the Prosecutor General without delay. An order by which consent is granted for performance of a procedural operation is presented to the person in respect of whom the procedural operation is to be performed, prior to its performance. An order by which consent is granted for the conduct of a covert operation is not presented to the person in whose respect the operation is to be conducted.

(2) A resolution of the Constitutional Committee of the *Riigikogu* by which consent is granted for conducting, in respect of a member of the *Riigikogu*, the procedural operations mentioned in subsection 3 of § 382[2] of this Code before a statement of charges has been issued enters into effect when such a resolution is passed. An extract of the resolution contained in the record of the Committee's proceedings is sent without delay to the Prosecutor General, who presents it to the person in whose respect the procedural operation is to be performed, prior to its performance.

(3) A resolution of the Chancellor of Justice by which consent is granted for performance of procedural operations mentioned in subsection 4 of § 382[2] of this Code in respect of a member of the *Riigikogu* before a statement of charges has been issued enters into effect when such a resolution is signed. The Chancellor of Justice notifies the resolution without delay to the Prosecutor General, who presents it to the person in whose respect the procedural operation is to be performed, prior to its performance.

(4) Where the President of Tallinn Circuit Court of Appeal, the Constitutional Committee of the *Riigikogu* or the Chancellor of Justice has, respectively by their order or resolution, granted consent for performance of procedural operations in respect of a member of the *Riigikogu* before a statement of charges has been issued, proceedings in the criminal case are conducted according to the rules of regular procedure as prescribed by this Code.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

**§ 382[5]. Special rules for issuing a statement of charges in respect of a member of the *Riigikogu***

A statement of charges in respect of a member of the *Riigikogu* can only be issued at the proposal of the Chancellor of Justice and with the consent of a majority of the members of the *Riigikogu*.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

**§ 382[6]. Proposal of the Chancellor of Justice to issue a statement of charges**

(1) Proposal to grant consent for issuing a statement of charges in respect of a member of the *Riigikogu* is made to the *Riigikogu* by the Chancellor of Justice on a reasoned written application of the Prosecutor General.

(2) Where this is needed, the Chancellor of Justice acquaints themselves with the materials of the criminal file and – abstaining from evaluation of the evidence – forms an opinion in the matter.

(3) The Chancellor of Justice makes a written proposal to the *Riigikogu* to grant consent for issuing a statement of charges in respect of the person named in the application of the Prosecutor General, except in a situation where the bringing of charges would clearly be unjustified.

(4) The Chancellor of Justice makes the proposal to the *Riigikogu* or returns the application to the Prosecutor General within one month following its receipt. Should the application be returned, reasons must be provided.

(5) Where the previous *Riigikogu* already granted consent for issuing a statement of charges in respect of a member and the member commences performance of the duties of office as a member of the next *Riigikogu*, a new consent of the *Riigikogu* for issuing the statement of charges in question is not required.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

**§ 382[7]. Making a proposal for issuing a statement of charges**

(1) A proposal of the Chancellor of Justice to grant consent for issuing a statement of charges in respect of a member of the *Riigikogu* must set out its reasons and state:
1) the name of the person in whose respect consent for issuing a statement of charges is sought from the *Riigikogu*;
2) the facts of the criminal offence;
3) the substance and legal designation of the suspicion;
4) the circumstances stated in the application of the Prosecutor General;
5) any other facts that justify the proposal.

(2) In the proposal made to the *Riigikogu,* the Chancellor of Justice may not exceed the substance of the charges.

(3) The application of the Prosecutor General is 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 a proposal to issue a statement of charges**

(1) Proceedings concerning a proposal of the Chancellor of Justice provided for by subsection 1 of § 382[7] of this Code are conducted according to the *Riigikogu* Rules of Procedure and Internal Rules Act.

(2) A report made by the Chancellor of Justice to the *Riigikogu* in order to obtain the latter's consent for issuing a statement of charges in respect of a member of that body must include the particulars contained in the proposal mentioned in subsection 1 of § 3827 of this Code and in any annexes to that proposal.

(3) The President or Vice President of the *Riigikogu* in whose respect consent is sought for issuing a statement of charges may not chair the sitting of the *Riigikogu* when proceedings concerning the corresponding proposal are conducted.

(4) Any questions by members of the *Riigikogu* and responses by the Chancellor of Justice must remain within the scope of the material presented to the *Riigikogu*.

(5) No questions are put to the member of the *Riigikogu* in whose respect consent is sought for issuing a statement of charges and such a member does not participate in the vote. If the member so wishes, they may address the *Riigikogu* for up to five minutes.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

**§ 382[9]. Consent of the *Riigikogu* for issuing a statement of charges in respect of a member of the *Riigikogu*; consequences of such consent**

(1) A resolution of the *Riigikogu* by which consent is granted for issuing a statement of charges in respect of a member of the *Riigikogu* enters into effect when such a resolution is passed. The resolution is sent without delay to the person who made the proposal, to the Prosecutor General and to the person in whose respect it was passed.

(2) A resolution of the *Riigikogu* by which consent is granted for issuing a statement of charges in respect of a member of the *Riigikogu* does not suspend the member's mandate.

(3) Where the *Riigikogu* has by its resolution granted consent for issuing a statement of charges in respect of a member, proceedings in the criminal case are conducted according to the rules of regular procedure as prescribed by this Code.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

**§ 382[10]. Issuing a statement of charges in respect of another criminal offence**

(1) If the circumstances require issuing a statement of charges in respect of a criminal offence which is not the offence stated in the proposal of the Chancellor of Justice, a new consent of the *Riigikogu* needs to be obtained.

(2) The *Riigikogu* grants the consent mentioned in subsection 1 of this section by a resolution following the rules provided by this Chapter at the proposal of the Chancellor of Justice.

(3) A new consent of the *Riigikogu*is not required for specifying the legal designation of the criminal offence and for correspondingly modifying the statement of charges or issuing a new statement of charges.
[RT I, 22.12.2014, 9 – entry into force 01.01.2015]

# Chapter 15
# PROCEDURE FOR DISPOSITION OF INTERIM APPEALS

**§ 383. Definition of interim appeal**

(1) 'Interim appeal' is a means to contest a court order made in pre-trial proceedings, in judicial proceedings before the court of first or of second instance 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 means of an interim appeal may be contested by an appeal, or by an appeal to the Supreme Court, that is filed against the judgment rendered in the case.

**§ 384. Right to file an interim appeal**

(1) The right to file an interim appeal against an order of the district court is vested in the parties to judicial proceedings; such a right also extends to a non-party, if the order restricts their rights or their interests that are protected by law.

(2) The right to file an interim appeal against an order of a circuit court of appeal is vested in the parties listed in subsection 3 of § 344 of this Code; such a right, to be exercised through an attorney, also extends to a non-party, if the order restricts their rights or their interests that are protected by law.

(3) When filing an interim appeal, the provisions of Chapters 11 or 12 of this Code are observed, without prejudice to special rules provided by this Chapter.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 385. Court orders that cannot be contested under the procedure for disposition of interim appeals**

No interim appeal can be filed against the following court orders:
1) [Repealed – RT I, 07.12.2018, 2 – entry into force 17.12.2018]
2) an order enlisting a stand-by judge or a stand-by lay judge in the case;
3) an order referring the criminal case to a court of proper jurisdiction;
4) a recusal order, an order denying a motion for recusal and an order removing a person from proceedings;
5) an order authorising a procedural operation, except an order by which a person is committed in custody or their committal in custody is denied, 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 § $395^{7}$or subsection 7 of § 447 of this Code, of a European prosecutor or a European delegated prosecutor, or by which the corresponding extension is denied, by which extradition custody is authorised, by which compulsory placement of a person in a medical institution is authorised, by which property is attached, by which a postal or telegraphic item is attached, by which a person is suspended from office, by which a temporary restraining order is imposed or by which the court authorises a covert operation;
[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 concerning verification of whether cash bail continues to be justified;
8) an order concerning verification of whether a person's suspension from office continues to be justified;
9) an order concerning verification of whether a temporary restraining order continues to be justified, except where it varies the conditions of the underlying order;
10) an order by which criminal proceedings are terminated or resumed under §§ 201–$203^{1}$of this Code, except by a victim against an order by which criminal proceedings are terminated on the grounds provided by § $203^{1}$of this Code;
11) an order by which a decision is made not to commence criminal proceedings under § 208 of this Code, or by which continuation of criminal proceedings is refused, except an order by which an appeal filed under § $205^{2}$of this Code is denied;
12) an order to forcibly bring a person in;
13) an order by which a person has been declared a fugitive from justice;
14) an order made under § 231 of this Code concerning contestation of the actions of an investigative authority or of the Prosecutor's Office, except an order dealing with a complaint concerning actions in the course of a covert operation, or with an appeal against a decision not to provide notification of such an operation or not to present certain information collected by the operation;
[RT I, 29.06.2012, 2 – entry into force 01.01.2013]
15) an order by which a criminal file is returned to the Prosecutor's Office;
16) an order committing the accused to answer the charges;
17) an order by which the court accepts a civil court claim or statement of a public-law claim or by which it sets a time limit for curing the defects of such a claim;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

17[1]) an order by which a civil court claim or statement of a public-law claim is ordered to be disposed of separately;
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]
18) an order by which a trial or hearing is postponed;
19) an order by which criminal cases are joined or separated;
20) an order by which, in judicial proceedings, an application or motion of a party to those proceedings is disposed of, except an order by which an application to expedite judicial proceedings or a motion to terminate criminal proceedings due to the lapsing of a reasonable time for such proceedings is disposed of;
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 commissioning an expert assessment;
23) an order changing the time of pronouncement of a judgment or of its operative part, or of making a judgment available to the parties;
24) an order by which the court provisionally refuses to consider an appeal;
25) an order for a criminal case to be heard in the circuit court of appeal;
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 order committing a person in custody under the surrender procedure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 386. Interim appeal**

[RT I 2006, 21, 160 – entry into force 25.05.2006]

(1) An interim appeal is filed in writing and states:
1) the name of the court with which the appeal is filed;
2) the name, procedural role, residence or seat and address of the person filing the appeal;
3) the name of the court whose order is contested, the date on which the order was made and the name of the party to judicial proceedings in whose respect the order is contested;
4) in what respect the order is contested;
5) the substance of and reasons for the relief sought by the appeal;
6) a list of any documents annexed to the appeal.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

(2) An interim appeal is signed and dated by the person who files it.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

(3) An interim appeal is included in the court file of the case.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 387. Rules and the time limit for filing an interim appeal**

(1) Unless otherwise provided by subsection 2 of this section, an interim appeal is filed with the court that made the order contested by such an appeal, within 15 days following the day when the person filing it became or should have become aware of the contested order.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) An interim appeal against an order by which a person is committed in custody or their committal in custody is denied, by which the duration for a person's committal in custody is extended on the basis of an application of the Prosecutor General or, under subsection 2 of § 131[1], subsection 7 of § 395[7]or subsection 7 of § 447 of this Code, of a European prosecutor or a European delegated prosecutor or by which the corresponding extension is denied, by which extradition custody is authorised, by which compulsory placement of a person in a medical institution is authorised, by which property is attached, by which a postal or telegraphic item is attached, by which a person is suspended from their office or by which authorisation is granted for a covert operation is filed, within ten days following the date when the person filing it became or should have become aware of the order they are contesting, with:
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]
1) the circuit court of appeal through the district court that made the contested order, if the contested order was made by a district court;
2) the Supreme Court, if the contested order was made by a circuit court of appeal.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(3) If, by an order made in a criminal case, the court declares a legislative or regulatory instrument that falls to be applied in the case to be unconstitutional and decides not to apply it, the time limit for filing an interim

appeal against such an order is counted from pronouncement of the Supreme Court's disposition which is rendered under the rules of constitutional review concerning that instrument.
[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 an interim appeal by the court that made the order contested by such an appeal**

(1) When an interim appeal is being considered in the court that made the order contested by such an appeal, the provisions of Chapters 10 or 11 of this Code are followed without prejudice to special rules provided by this Chapter.

(2) The judicial panel that made the order considers an interim appeal against that order by written procedure within five days following the filing of the appeal, having regard to the scope of the appeal and only in respect of the person concerning whom the appeal was filed.

(3) If the court that made the contested order deems the interim appeal justified, it enters an order by which it sets aside the contested order and, if necessary, makes a new order, notifying this without delay to the person who filed the appeal and to any parties to proceedings whose interests are affected.

(4) If the court that made the contested order deems an interim appeal against the order unjustified, it transmits that order, together with the interim appeal, without delay to a higher court according to jurisdiction.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

**§ 390. Consideration of interim appeal in the higher court**

[RT I 2006, 21, 160 – entry into force 25.05.2006]

(1) When an interim appeal is considered in the higher court, the provisions of Chapters 11 or 12 of this Code are followed without prejudice to special rules provided by this Chapter.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

(2) An interim appeal is considered having regard to its scope and only in respect of the person concerning whom the appeal was filed.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

(3) Unless otherwise provided by subsections 4 or $4^1$ of this section, a circuit court of appeal considers an interim appeal by written procedure within ten days as following its receipt.
[RT I 2009, 39, 261 – entry into force 24.07.2009]

(4) The persons summoned to consideration, by the circuit court of appeal, of an interim appeal filed against an order by which the person concerned is committed in custody or by which their committal in custody is denied, by which the maximum duration for holding the person in custody is extended or by which a corresponding extension is denied, by which extradition custody is authorised, by which compulsory placement of the person in a medical institution is authorised, by which property is attached, by which a postal or telegraphic item is attached or by which the person is suspended from their office are the defence counsel of the suspect or accused or a representative of the minor and the prosecutor. Non-appearance of any of the aforementioned persons does not preclude consideration of the appeal. The circuit court of appeal may arrange participation of such persons in the consideration of the appeal by means of a technical solution which complies with the requirements mentioned in clause 1 of subsection 2 of § 69 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]

($4^2$) When granting an interim appeal against an order denying a motion to expedite judicial proceedings in the case or against an order that applies a measure which is different from the one stated in such a motion, the higher court imposes a measure that presumably allows judicial proceedings in the case to be concluded within a reasonable period of time. When selecting such a measure, the court is not bound by the scope of the appeal.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) The Supreme Court decides on acceptance of an interim appeal against an order of a circuit court of appeal following the provisions of § 349 of this Code. Where an order mentioned in subsection 4 of this section is concerned, the decision on acceptance is made within 10 days. The Supreme Court only accepts an interim appeal against an order of a circuit court of appeal rendered in respect of an interim appeal if the Supreme Court's disposition in the matter is essential for uniform application 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. Suspending the execution of a contested order**

The court that receives an interim appeal may suspend execution of the court order contested by such an appeal if continued execution of the order may result in a grave and irreversible violation of a person's rights.
[RT I 2006, 21, 160 – entry into force 25.05.2006]

# Chapter 16
# PROCEDURE FOR COERCIVE PSYCHIATRIC TREATMENT

**§ 393. Grounds for subjecting a person to coercive psychiatric treatment**

Criminal proceedings are conducted according to the provisions of this Chapter if the person subject to those proceedings has committed an unlawful act in a state of mental incompetence or if the person develops a mental illness or dementia or any other severe mental disorder after the rendering of judgment in their case but before they have served their sentence, or if it is established during pre-trial proceedings or during judicial proceedings that the person suffers from one of the aforementioned conditions, and poses a risk to themselves and to society and is in need of coercive psychiatric treatment.
[RT I, 05.07.2013, 2 – entry into force 15.07.2013]

**§ 394. Facts comprising the subject matter of evidence**

In respect of a person mentioned in § 393 of this Code, the facts comprising the subject matter of evidence are:
1) the unlawful act;
2) the person's state of mental incompetence at the time of commission of the act, the person's development of an illness or disorder after the judgment is rendered but before the full sentence has been served, or development of an illness or disorder during pre-trial proceedings or during judicial proceedings;
[RT I, 05.07.2013, 2 – entry into force 15.07.2013]
3) the person's mental state during criminal proceedings;
4) whether the person's subsequent behaviour may be harmful to themselves or to society;
5) the need to subject the person to coercive psychiatric treatment.

**§ 395. Participation in procedural operations**

A person whose case is dealt with under the procedure for coercive psychiatric treatment participates in procedural operations and exercises the rights of the suspect or accused provided by §§ 34 and 35 of this Code if their mental state allows this.

**§ 395$^{1}$. Committal in custody of a person whose case is dealt with under the procedure for coercive psychiatric treatment**

(1) Committal in custody of a person whose case is dealt with under the procedure for coercive psychiatric treatment constitutes a compliance enforcement measure which consists in such a person being deprived of their liberty under a court order and, under the same order, being held in the medical ward of a prison or in a hospital that provides mental health services until the order by which the person is directed to undergo coercive psychiatric treatment enters into effect or until the grounds for committal in custody mentioned in subsection 2 of this section cease to apply.

(2) A person whose case is dealt with under the procedure for coercive psychiatric treatment may be committed in custody on an application of the Prosecutor's Office by order of the pre-trial investigation judge or by court order if the person poses, or may come to pose during the proceedings, a risk to themselves or to others or if there is a likelihood they will evade criminal proceedings or continue to commit unlawful acts.

(3) When a person whose case is dealt with under the procedure for coercive psychiatric treatment is committed in custody, other circumstances of significance in relation to the imposition of such a compliance enforcement measure are also taken into consideration.

(4) A person whose case is dealt with under the procedure for coercive psychiatric treatment is committed in custody following the rules provided by § 131 of this Code and taking into consideration the person's mental state.

(5) A person who is at liberty and whose case has been sent to court and is dealt with under the procedure for coercive psychiatric treatment, as well as a person who has already been directed to undergo such treatment but

remains at liberty, may be committed in custody by order of the district court or of the circuit court of appeal if they have not appeared when summoned by the court and may continue to evade judicial proceedings or enforcement of the order by which they have been directed to undergo treatment.

(6) A person whose case is dealt with under the procedure for coercive psychiatric treatment may not remain committed in custody for more than six months. Where such a person has been committed in custody in the same criminal case under § 130 of this Code, the period of such custody is included in the period of custody provided for by this section.

(7) Where the criminal case is of particular complexity or particularly voluminous, or in exceptional circumstances arising in relation to international cooperation in criminal proceedings, the pre-trial investigation judge or the court may, on an application of the Prosecutor General or, in a criminal case dealt with under Council Regulation (EU) 2017/1939, on an application of the European Prosecutor or of a European Delegated Prosecutor, extend the six-month period of committal in custody to up to one year.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

(8) The committal in custody of a person whose case is dealt with under the procedure for coercive psychiatric treatment, the provision of notification of such committal, the contestation of the committal as well as the verification of its justifiability proceed in accordance with the provisions of Subchapter 1 of Chapter 4 of this Code, having regard to the person's mental state.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 395$^{2}$. Conditions of detention of persons committed in custody under the procedure for coercive psychiatric treatment**

(1) A person committed in custody under the procedure for coercive psychiatric treatment is placed in the medical ward of a prison where they are held in custody, or in a hospital's coercive psychiatric treatment ward that is subject to reinforced supervision, having regard to the mental state of the person and to special rules provided by this Subchapter.

(2) When placing a person in a coercive psychiatric treatment ward, the person's age, sex, state of health and personality are taken into consideration.

(3) A person committed in custody under the procedure for coercive psychiatric treatment is placed in the medical ward of a prison following the rules of the Imprisonment Act that govern pre-trial confinement.

(4) A person committed in custody under the procedure for coercive psychiatric treatment is placed in a hospital following the rules for coercive psychiatric treatment.

(5) On arrival in the hospital, a person is required to undergo medical examination, which is performed by a physician.

(6) No health care services are provided to a person committed in custody under the procedure for coercive psychiatric treatment, except where the person has granted consent for such services or where it is necessary to provide emergency care – within the meaning of the Health Care Services Organisation Act – to the person. The person must not be subjected to clinical trials or to the 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 committed in custody under the procedure for coercive psychiatric treatment**

(1) A person committed in custody under the procedure for coercive psychiatric treatment is treated in a manner that respects their human dignity and ensures that their being held in custody does not cause them more suffering or inconvenience than is necessarily entailed by custody.

(2) The liberty of a person committed in custody under the procedure for coercive psychiatric treatment is subjected to restrictions as provided by law. The restrictions must correspond to the objective of the committal and to the principle of human dignity and must 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 committed in custody under the procedure for coercive psychiatric treatment and limitations on such rights**

(1) A person committed in custody under the procedure for coercive psychiatric treatment has the same rights as a person committed in custody under the rules provided by § 130 of this Code, as well as the rights provided by the Imprisonment Act, having regard to the person's mental state and the specific conditions of the hospital or prison.

(2) On the grounds and following the rules provided by this Code, a person committed in custody under the procedure for coercive psychiatric treatment may, by order of the Prosecutor's Office or of the court, be

subjected to the same additional restrictions as are allowed to be imposed on a person committed in custody under the rules provided by § 130 of this Code.

(3) Disciplinary matters concerning a person committed in custody under the procedure for coercive psychiatric treatment are dealt with following the rules that apply to dealing with such matters when they arise in relation to a person who has been committed in custody and who is suffering from a mental disorder, or to a person receiving coercive treatment, having regard, in particular, to the person's mental state.

(4) A person committed in custody under the procedure for coercive psychiatric treatment may be subjected to measures provided by the Imprisonment Act for ensuring the security of the prison.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 396. Summary of pre-trial proceedings for coercive psychiatric treatment**

(1) If a competent official of the investigative authority is convinced that the evidentiary information required in the criminal case has been collected, they draw up, without delay, a summary of pre-trial proceedings in the case according to § 153, in which they present the facts comprising the subject matter or evidence in accordance with § 394 of this Code.

(2) The summary of pre-trial proceedings is included in the criminal file which is then sent to the Prosecutor's Office.

**§ 397. Operations performed by the Prosecutor's Office on receiving the criminal file**

(1) The Prosecutor's Office that receives a criminal file for coercive psychiatric treatment follows the provisions of subsections 1–3 of § 223 of this Code.

($1^1$) The defence counsel may, within the time limit mentioned in § 225 of this Code, file an application with the Prosecutor's Office to send the criminal case to court for trial under regular rules of procedure.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) If the Prosecutor's Office declares pre-trial proceedings to have been completed, it makes an order by which the criminal case is sent to court for the person to be subjected to coercive psychiatric treatment as provided for by the Penal Code.

**§ 398. Order by which the criminal case is sent to court**

(1) The introductory part of an order by which the criminal case is sent to court states:
1) the date and place of making the order;
2) the position title and name of the prosecutor;
3) the title of the case;
4) the name of the person who committed the unlawful act and their personal identification number (or, where the person does not possess such a number, their date of birth), nationality, education, residence, place of work or educational institution, native language.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(2) The body of the order states:
1) the facts of the unlawful act;
2) evidence to prove the unlawful act;
3) the reasons for directing the person to undergo coercive psychiatric treatment;
4) any representations made by the defence counsel or by other parties to proceedings, who have contested the need to direct the person to undergo coercive psychiatric treatment.

(3) The final part of the order presents the prosecutor's proposal to direct the person to undergo coercive psychiatric treatment and states whether or not the defence counsel or the prosecutor moves for the criminal case to be tried under regular rules of procedure. The order is included in the criminal file.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) The criminal file is sent to court.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 399. Preparations for the hearing of the case**

When making preparations for the hearing of the case, subsection 1 of § 257 of this Code is followed.

**§ 400. Hearing of the case**

(1) The hearing is conducted following the provisions of this Code that govern the abridged procedure, without prejudice to special rules provided by this Chapter. If the defence counsel or Prosecutor's Office has made a corresponding motion, the hearing is conducted following the provisions of the regular procedure, without prejudice to special rules provided by this Chapter.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) Directing a person to undergo coercive psychiatric treatment is decided by the judge sitting alone.

(3) The examination of evidence begins with the presentation of the order by which the criminal case was sent to court.

(4) The person regarding whom a proposal to direct them to undergo coercive psychiatric treatment has been made is summoned to the hearing. The court may decide not to summon such a person if the person's mental state does not allow them to participate in the hearing. The court must give reasons for its decision not to summon the person; the reasons are stated in the record of the hearing.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 401. Issues to be disposed of in the deliberation room**

(1) The court disposes of the criminal case by an order made in the deliberation room.

(2) When rendering its order, the court must make a determination concerning the following issues:
1) whether an unlawful act has been committed;
2) whether the act was committed by the person regarding whom a proposal to subject them to coercive psychiatric treatment has been made;
3) whether the person committed the unlawful act in a state of mental incompetence or whether they developed an illness or disorder after the judgment was rendered but before they had served the sentence, or whether they developed the illness or disorder during pre-trial proceedings or during judicial proceedings;
[RT I, 05.07.2013, 2 – entry into force 15.07.2013]
4) whether or not the person is directed to undergo coercive psychiatric treatment.

**§ 402. Order by which the person is directed to undergo coercive psychiatric treatment**

(1) If the court deems it to have been proved that an unlawful act was committed by a person mentioned in § 393 of this Code, the court enters an order by which it terminates criminal proceedings in the case under clause 1 of subsection 1 of § 199 of this Code and, where this is needed, directs the person to undergo coercive psychiatric treatment as prescribed in the Penal Code.

(2) If the court finds that the mental incompetence of the person who committed the unlawful act has not been ascertained or that the nature of the person's illness or disorder is such that they are able to comprehend the prohibited nature of their act or to regulate their conduct according to such comprehension, the court enters an order by which it returns the criminal case to the Prosecutor's Office for proceedings to be continued under regular rules of procedure.

**§ 402[1]. Varying the order by which a person is directed to undergo coercive psychiatric treatment**

(1) Taking into consideration the opinion of the psychiatrist or medical committee that examined the person directed to undergo coercive treatment, coercive in-patient treatment may be replaced by coercive out-patient treatment or coercive out-patient treatment by coercive in-patient treatment, provided a corresponding application is made by a person who – for the purposes of subsection 1 of § 71 of this Code – is a close person to the person receiving treatment, or by a statutory representative, health care provider or defence counsel of the person undergoing treatment, without prejudice to the special rule provided by subsection 4 of this section.

(2) Where the risk posed by a person directed to undergo treatment – either to the person themselves or to society – has increased, they do not observe the requirements related to their treatment, or where directing the person to undergo in-patient treatment is necessary to achieve the objectives of the treatment, the health care provider that carries out coercive out-patient treatment is required to file, without delay, an application with the court for the person's coercive out-patient treatment to be replaced by coercive in-patient treatment.

(3) Variation of the order by which a person is directed to undergo coercive psychiatric treatment is decided, with the participation of the prosecutor and the defence counsel, by an order of the court in whose service area the health care provider is located. Where coercive in-patient treatment is to be replaced by coercive out-patient treatment, the person receiving treatment and their guardian are summoned to the hearing, yet their non-appearance does not preclude the hearing of the matter. When deciding on variation of the order by which a person was directed to undergo coercive psychiatric treatment, the court may, where this is needed, enlist the assistance of other parties or commission an expert assessment.

(4) Where a person undergoing coercive out-patient treatment is admitted to the psychiatry department of a hospital for emergency psychiatric care and the court has made a decision mentioned in subsection 2 of § 11 of the Mental Health Act, the person's coercive treatment is continued as in-patient treatment.

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

**§ 403. Termination 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 they have undergone or, according to the opinion of the psychiatrist or medical committee that has examined the person receiving such treatment, there is no need for the person to continue under the corrective measure in question, the court terminates the treatment at the proposal of the health care provider.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) Where coercive psychiatric treatment is terminated in respect of a person who developed an illness or disorder after the judgment was rendered but before the person had served their full sentence, the court decides, on an application of the Prosecutor's Office, whether the person should continue to serve their sentence.
[RT I, 05.07.2013, 2 – entry into force 15.07.2013]

(3) Where coercive psychiatric treatment is terminated in respect of a person who developed the illness or disorder during pre-trial proceedings or during judicial proceedings, the Prosecutor's Office decides whether or not to continue criminal proceedings under regular rules of procedure.

(4) Taking into consideration the opinion of the psychiatrist or medical committee that has examined the person undergoing treatment, the court may terminate the corrective measure in question, provided a corresponding motion is made by a person who – for the purposes of subsection 1 of § 71 of this Code – is a close person to the person undergoing treatment, or by a statutory representative or defence counsel of the person undergoing treatment.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(5) Termination of coercive psychiatric treatment is decided, with the participation of the prosecutor and the defence counsel, by an order of the court in whose service area the health care provider is located. The person receiving such treatment and their guardian are summoned to the hearing, yet their non-appearance does not preclude the hearing of the matter. When deciding on termination of coercive psychiatric treatment, the court may, where this is needed, enlist the assistance of other parties or commission an expert assessment.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

# Chapter 16[1]
# PROCEDURE FOR CONFISCATION OF INSTRUMENTALITIES OR PROCEEDS OF CRIME OR OF OBJECTS OR MATERIAL CONSTITUTING AN ELEMENT OF THE CRIMINAL OFFENCE

[RT I, 31.12.2016, 2 - entry into force 10.01.2017]

**§ 403[1]. Initiating the procedure for confiscation of instrumentalities or proceeds of crime or of objects or material constituting an element of the criminal offence**

[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

(1) Where the circumstances related to a confiscation matter are particularly complex or voluminous, the Prosecutor's Office may conduct preparations for filing a confiscation application under §§ 83, 83[1] and 83[2] of the Penal Code as separate proceedings according to the provisions of this Chapter.
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

(2) The severance of confiscation proceedings into a new file is effected by an order of the Prosecutor's Office. A copy of the order by which the proceedings were separated is included in the new file.

(3) An application for a decision on confiscation is filed with the court not later than two years following the entry into effect of a judgment in criminal proceedings concerning the offence based on which confiscation was applied for.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

**§ 403[2]. Confiscation procedure: facts comprising the subject matter of evidence**

Under the confiscation procedure, the facts comprising the subject matter of evidence are facts that constitute the prerequisites for confiscation.
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

**§ 403[3]. Pre-trial proceedings under the confiscation procedure**

(1) Pre-trial proceedings under the confiscation procedure are conducted according to the provisions of this Code unless otherwise provided by this Chapter.

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

(3) It is prohibited to impose a compliance enforcement measure for the purpose of securing a confiscation.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

**§ 403[4]. Operations of the investigative authority on completion of pre-trial proceedings under the confiscation procedure**

[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

(1) If a competent official of the investigative authority is convinced that the evidentiary information required under the confiscation procedure has been collected, they transmit the confiscation file – together with the evidence – to the Prosecutor's Office.

(2) If the Prosecutor's Office so directs, the official provides the Prosecutor's Office with a summary of confiscation proceedings which states:
1) the name, residence or seat and address, personal identification number 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 number or, in the absence thereof, date of birth of the third party;
3) a reference to the title of the criminal case and the judgment of the criminal offence which is the basis for confiscation if a judgment has been made in the criminal case which is the basis for confiscation;
4) information concerning attachment of the property to be confiscated or concerning any other steps taken as an interim measure to achieve a confiscation or substitutional confiscation;
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]. Operations of the Prosecutor's Office on receiving a confiscation file**

[RT I, 31.12.2016, 2 – entry into force 10.01.2017]
The branch of the Prosecutor's Office that received a confiscation file files a confiscation application, instructs the investigative authority to perform additional operations or terminates confiscation proceedings by an order following the rules provided by subsection 1 of § 206 of this Code due to the inapplicability of the grounds for confiscation or to its impossibility.
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

**§ 403[6]. Sending a confiscation application to court**

(1) A confiscation application states:
1) the name, residence or seat and address of the accused or the convicted offender as well as their personal identification number or, where they do not possess such a number, their date of birth;
2) the name, residence or seat and address of the third party, as well as their personal identification number or, where they do not possess such a number, their date of birth;
3) a reference to the title of the criminal case concerning the offence based on which confiscation has been applied for, and to the judgment rendered in the case;
4) particulars concerning attachment of the property to be confiscated or concerning any other steps taken as an interim measure to achieve a confiscation or a substitutional confiscation;
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]
5) the description and location of the property to be confiscated;
6) whether substitutional confiscation according to § 84 of the Penal Code is applied for;
7) a list of the items of evidence.

(2) A copy of the confiscation application is sent to the accused or the convicted offender, their defence counsel and the third party and the application is transmitted to court. The application is also transmitted to the court by electronic means.

(3) Where this is needed, the Prosecutor's Office performs the operations provided by § 240 of this Code for the case to be dealt with under the plea agreement procedure, without prejudice to the special rules of the confiscation procedure. The third party must grant their consent to the plea agreement procedure following the

rules provided by § 243 of this Code. If the Prosecutor's Office and the accused or the convicted offender reach an agreement concerning the extent to which property is to be confiscated, the agreement is sent to the court.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

**§ 403[7]. Confiscation proceedings in court**

(1) The court decides on confiscation by an order made on an application of the Prosecutor's Office after the entry into effect of a judgment of conviction concerning the criminal offence based on which confiscation was applied for.

(2) The parties summoned to the hearing are the prosecutor, the accused or the convicted offender, their defence counsel and third party. Non-appearance of the third party does not preclude the hearing of the case or consideration of the confiscation application. If the accused or the convicted offender does not appear, the provisions of § 269 of this Code are followed.

(3) Confiscation is decided by the judge sitting alone.

(4) The hearing of the case is conducted following the provisions of Subchapter 2 of Chapter 9 or Chapter 10 of this Code, without prejudice to special rules of the confiscation procedure.

(5) Where the accused, the convicted offender or the third party makes a written representation to the Prosecutor's Office or the court to the effect that they have no objections to the confiscation of their property, their non-appearance does not preclude consideration of the confiscation application. In such a situation, the court has a right to dispose of the confiscation application by written procedure.

(6) If the confiscation application was filed with the court before the entry into effect of the judgment and the judgment that enters into effect is a judgment of acquittal, the court enters an order by which it terminates confiscation proceedings.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

**§ 403[8]. Issues of confiscation proceedings to be disposed of in the deliberation room**

(1) The court disposes of a confiscation application by an order made in the deliberation room.

(2) When giving the order, the court must make a determination concerning the following issues:
1) whether the property whose confiscation has been applied for is linked, under the conditions provided by § 83, 83[1] or 83[2] of the Penal Code, to the criminal offence based on which the application was made;
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]
2) whether the property has been acquired by the third party by a method provided for by subsection 3 of § 83, subsection 2 of § 83[1] or subsection 2 of § 83[2] of the Penal Code;
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]
3) whether and to what extent the property should be confiscated;
4) how to proceed with regard to any property that has been attached or seized but that is not confiscated;
5) the amount of the costs of confiscation proceedings and who is to bear those costs.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

**§ 403[9]. Judicial disposition in confiscation proceedings**

(1) The court renders, in the deliberation room:
1) a confiscation order, or
2) an order by which it denies the confiscation application.

(2) A copy of the order is handed to the convicted offender and the third party.

(3) When disposing of a confiscation application in a situation provided for by subsection 5 of § 403[7] of this Code, a copy of the order is sent to the party to proceedings who did not attend the hearing.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

**§ 403[10]. Contesting a confiscation order**

(1) The prosecutor, the convicted offender or a third party may, following the rules provided by Chapter 15 of this Code, file an interim appeal against a confiscation order or against an order by which a confiscation application is denied.

(2) A court order rendered on consideration of an interim appeal may be appealed to the higher court.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

# Chapter 17
# AUTHORISING AN EARLY RELEASE OF A MINOR FROM A CLOSED CHILD CARE INSTITUTION

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

**§ 404. Authorising the placement of a minor in a school for students who need special treatment due to behavioural problems or an extension of the minor's stay in such a school**

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

**§ 405. Authorising an early release of a minor from a closed child care institution**

[RT I, 05.12.2017, 1 – entry into force 01.01.2018]
A judge authorises an early release of a minor from a closed child care institution on a written motion of the minor, of their statutory representative or of the Head of the closed child care institution. The opinion of a child protection official of the local authority in whose administrative territory the minor's residence is located is appended to the motion.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

**§ 406. Rules for considering the motion**

(1) The judge considers a motion mentioned in § 405 of this Code without delay.

(2) To dispose of the motion, the judge may summon the minor, their statutory representative, a child protection official, social worker or psychologist of the local authority in whose administrative territory the minor's residence is located, and question them to ascertain whether the motion is justified.

(3) The court disposes of the motion by:
1) an order of early release from the closed child care institution in respect of the minor, or
2) an order by which the motion is denied.

(4) An order mentioned in subsection 3 of this section must state its reasons.

(5) Copies of the order are sent to the person who filed the motion, to the minor and their statutory representative, and to the closed child care institution.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

**§ 407. Contesting an authorisation or a denial of authorisation**

Following the rules provided by Chapter 15 of this Code, the minor or their statutory representative may file an interim appeal against an order mentioned in subsection 3 of § 406 of this Code.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

# Chapter 18
# ENTRY INTO EFFECT AND MANDATING THE ENFORCEMENT OF JUDICIAL DISPOSITIONS

## Subchapter 1
## General Provisions

**§ 408. Entry into effect of judgments and court orders**

(1) A judgment or court order enters into effect when it can no longer be contested by any means other than the procedure for review of judicial dispositions that entered into effect.

(2) A judgment enters into effect on expiry of the time limit for filing an appeal or an appeal to the Supreme Court in the case. Where an appeal to the Supreme Court has been filed, the judgment enters into effect on the date on which such an appeal is rejected or on which the operative part of the Supreme Court's judgment is pronounced. Where the time limit for contesting a judgment is reinstated, the judgment is deemed not to have entered into effect.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(3) A judgment rendered under the summary procedure enters into effect on expiry of the time limit for filing an application for the case to be heard under regular rules of procedure.

(4) A court order enters into effect on expiry of the time limit for filing an interim appeal against the order. Where an interim appeal has been filed against an order, the order enters into effect after it has been considered by the court which made the order or by a higher court. Where the time limit for contesting an order is reinstated, the order is deemed not to have entered into effect.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(5) Orders by which a person is committed in custody, by which the time limit for committal in custody is extended, by which a person is committed in extradition custody or subjected to compulsory placement in a medical institution, by which an item of property or a postal or telegraphic item is attached, by which a person is suspended from office or subjected to a temporary restraining, orders mentioned in § 12 of this Code as well as court orders that are not subject to contestation enter into effect at the time they are made.
[RT I, 07.12.2018, 2 – entry into force 17.12.2018]

(6) Where a judgment is contested in part, such a judgment enters into effect insofar as it has not been contested.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 408[1]. Publication of judgments and court orders that have entered into effect**

(1) A judgment or a court order that has entered into effect and that terminates proceedings in a case is published in a dedicated location of the computer network except if pre-trial proceedings are still pending in the criminal case in which the order was made.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) A judicial disposition that is made public states the name and personal identification number of the accused or, if they do not possess such a number, their date of birth. The personal identification number and name or date of birth of an underage accused are replaced by initials or a character sign, except if the disposition to be made public is at least the third one convicting the minor of a criminal offence. The court replaces the names and other personal particulars of other persons with initials or character signs. A disposition does not state a person's residence.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(3) Where the body or statement of reasons of a judicial disposition contains personal data of specific categories or personal data regarding which another access restriction prescribed by law applies and the disposition allows a person to be identified even though their name and other personal particulars have been replaced with initials or character signs, the court, of its own motion or on an application of the data subject, only makes public the operative or final part of the disposition.
[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

(4) Where the body or statement of reasons of a judicial disposition contains information regarding which another access restriction prescribed by law applies, the court, of its own motion or on an application of the data subject, only makes public the introductory and the operative or final part of the disposition.
[RT I 2007, 12, 66 – entry into force 25.02.2007]

(5) The applications mentioned in subsections 3 and 4 of this section are made to the court before the disposition is rendered. The court disposes of the application by an order. A person who made the application may file an interim appeal against an order by which the application is denied.
[RT I 2007, 12, 66 – entry into force 25.02.2007]

**§ 409. Mandatory nature of judgments and court orders**

All persons in the territory of the Republic of Estonia are required to abide by a judgment or court order that has entered into effect.

**§ 410. Permissibility of enforcement of judgments or court orders**

(1) Enforcement of a judgment or court order is mandated when the judgment or order has entered into effect, unless the law provides otherwise.

(2) Where an appeal or an appeal to the Supreme Court has been filed against a judgment in respect of only one of the accused, enforcement of such a judgment is not mandated in respect of the other accused.

**§ 411. Mandating the enforcement of a judgment or court order**

(1) Enforcement of a judgment or order of the court of first instance that has entered into effect is mandated by the district court that rendered the disposition.

(2) Enforcement of a judgment or order of a circuit court of appeal or of the Supreme Court that has entered into effect is mandated by the district court that rendered the first disposition in the criminal case.

(3) In a situation provided for by § 417 of this Code, enforcement of the judicial disposition is mandated by the authority designated by the Minister in charge of the policy sector.
[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

(4) When mandating the enforcement of a judicial disposition, the district court or the authority designated by an administrative decree of the Minister in charge of the policy sector sends a copy of the disposition to the authority that is to enforce it. On such a copy, the court makes a note concerning the entry into effect of the judgment or order.
[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

**§ 412. Time limit for mandating the enforcement of a judgment or court order**

(1) Enforcement of a judgment of acquittal or of a judgment that exempts the accused from serving their sentence is mandated without delay on pronouncement of the operative part of the judgment. If the accused has been committed in custody, the court releases them from custody in the courtroom.

(2) Enforcement of a judgment of conviction is mandated within three days following entry into effect of the judgment or return of the criminal case from the circuit court of appeal or from the Supreme Court.

(3) In a situation provided for by subsection 2 of § 417 of this Code, enforcement of the judgment is mandated within one month following its entry into effect.

(4) Enforcement of a court order is mandated immediately following its entry into effect.

**§ 413. Mandating the enforcement of several judgments**

Where, at the time a judgment is rendered, a sentence which was imposed on the person by a previous judgment and which has not been served in full is not combined with or declared concurrent with the sentence imposed on the person by the new judgment, the court that gave the most recent judgment or the enforcement judge at the court that serves the locality where the judgment is to be enforced makes an order following § 65 of the Penal Code.

# Subchapter 2
# Mandating the Enforcement of a Sentence

**§ 414. Mandating the enforcement of imprisonment**

(1) If the convicted offender was not committed in custody for the duration of judicial proceedings, the district court that mandates the enforcement of the judicial disposition rendered in the case sends the offender a notice drawn up according to the sentence plan, which states the time at and the prison to which the offender must report to serve their sentence. The notice states that in the event of not reporting to the prison at the specified time, the offender will be ordered to be forcibly brought in according to subsection 3 of this section, or arrested on an application of the prison following the rules provided by § 429 of this Code.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) In a situation provided for by subsection 1 of this section, the time at which the offender reports to the prison is deemed to be the time when they begin to serve their imprisonment.

(3) If a convicted offender does not report to the prison at the specified time to serve their imprisonment, the prison transmits an application to the Police and Border Guard Board for the offender to be forcibly brought in.
[RT I, 29.12.2011, 1 – entry into force 01.01.2012]

(4) The process of mandating the enforcement of imprisonment is not suspended by the filing of an application for deferral of such enforcement.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

**§ 415. Deferral of enforcement of imprisonment**

(1) The enforcement judge may defer the enforcement 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 them in prison;
2) by up to one year if the convicted offender is pregnant at the time of enforcement of the judgment.
3) [omitted – RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(2) If a convicted female offender has a small child, the enforcement judge may defer the enforcement of imprisonment by an order until the child has attained three years of age.

(3) The enforcement judge may defer the enforcement of a sentence by an order for up to two months if, due to extraordinary circumstances, prompt commencement of imprisonment may entail serious consequences for the convicted offender or members of the offender's family.

(4) The enforcement judge decides on deferral of enforcement of imprisonment on the grounds mentioned in clause 1 of subsection 1 of this section after hearing the opinion of the prosecutor and of a representative of the prison.

(5) An order by which the enforcement of imprisonment is deferred also states the particulars mentioned in subsection 1 of § 414 of this Code.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(6) When an order has entered into effect, a copy of the order is transmitted to the prison.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

**§ 416. Waiver of enforcement of a sentence of imprisonment**

(1) On a motion of the Prosecutor's Office, the enforcement judge may, by order, waive the enforcement of imprisonment which has been imposed for a specified term or imposed under §§ 70 and 71 of the Penal Code as a converted sentence, if:
1) the convicted offender is extradited to a foreign state or expelled;
2) a convicted offender who is an alien and who has been sentenced to a term of imprisonment for a criminal offence of the second degree has assumed an obligation to leave the Republic of Estonia for a host country and agreed to a prohibition of re-entry for a period of five to ten years and, in the assessment of the Police and the Border Guard Board, they can return to the host country.

(2) When deciding on waiving the enforcement of imprisonment, consideration is given to whether or not the convicted offender has remedied, or commenced to remedy, the harm caused by the criminal offence and paid the costs of criminal proceedings, or paid other public-law claims.

(3) The Prosecutor's Office requests from the Police and Border Guard Board an assessment of whether it is possible for an alien to return to the host country; the Board transmits such an assessment to the Prosecutor's Office within 30 days following receipt of the request.

(4) When waiving the enforcement of imprisonment under clause 2 of subsection 1 of this section, the court order additionally states the following:
1) the period of validity and scope of application of the prohibition of re-entry imposed on the alien;
2) the obligation of the alien to leave the Republic of Estonia for the host country by a determined date;
3) particulars concerning the mandating of enforcement of the obligation to leave if the alien has been committed in custody or is serving a term of imprisonment in Estonia or if their liberty has been restricted on other lawful grounds.

(5) On a motion of the Prosecutor's Office, the enforcement judge may mandate the enforcement of a fixed-term imprisonment or of imprisonment imposed under §§ 70 and 71 of the Penal Code as a converted sentence if the convicted offender who was extradited or expelled under clause 1 of subsection 1 of this section re-enters Estonia before the expiry of ten years following their extradition or expulsion.

(6) On a motion of the Prosecutor's Office, the enforcement judge may mandate the enforcement of a sentence imposed on an alien – to the extent such a sentence has not been served – if the convicted offender does not perform the obligation assumed under clause 2 of subsection 1 of this section to leave from the Republic of Estonia for a host country, they have been declared the suspect in a new criminal offence before having complied with the obligation to leave, or they re-enter Estonia before expiry of the period for which they had been prohibited re-entry.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

**§ 417. Mandating the enforcement of and enforcing a monetary penalty**

(1) A judgment which has entered into effect and by which a monetary penalty has been imposed on a person is sent to the authority designated by administrative decree of the Minister in charge of the policy sector.
[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

(2) If a convicted offender has not, within one month following the entry into effect of the judgment or by the due date, made full payment of the amount of the monetary penalty or forfeiture of property to the prescribed account or if the due date of any instalment of a monetary penalty allowed to be paid by instalments has not been complied with and the time limit for the payment of such a penalty or forfeiture has not been extended or staggered following the rules provided by this Code, a copy of the judgment is sent to an enforcement agent within ten days following the judgment's receipt.
[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(3) If a convicted offender has not paid a monetary penalty or forfeiture of property by the due date or if the due date of any instalment of a monetary penalty allowed to be paid by instalments has not been complied with and such a penalty or forfeiture has not been made payable by instalments, or the time limit for its payment extended or staggered following the rules provided by § 424 of this Code, and the offender has no property on which a levy could be made, the enforcement agent notifies the district court of the impossibility of enforcement at the latest three years after having accepted the penalty or forfeiture for enforcement but not later than seven years after the entry into effect of the judgment. If there are no circumstances to preclude conversion of the sentence, the enforcement judge decides on the conversion of the penalty or forfeiture following the rules provided by §§ 70 and 71 of the Penal Code. The court notifies conversion of the penalty or forfeiture to the offender and the enforcement agent.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

(4) Where a part of the monetary penalty has been paid, it is taken into account – in proportion to the amount paid – when setting the length of the converted sentence. The enforcement judge determines the converted sentence in accordance with the rules provided by subsections 1 and 3 of § 432 of this Code. A copy of the order is sent to the parties to proceedings affected by the order and to the enforcement agent.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

**§ 418. Waiving the enforcement of a monetary penalty**

(1) The enforcement judge at the district court in whose service area the residence of a convicted offender is located may waive the enforcement of a monetary penalty by an order if:
1) a sentence of imprisonment has been imposed on the convicted offender in another criminal case and enforcement of the imprisonment has been mandated;
2) enforcement of the monetary penalty may jeopardise the resocialisation of the offender;
3) circumstances provided for by § 416 of this Code are present.

(2) On the grounds provided by subsection 1 of this section, the enforcement judge may also waive collection of the costs of the case from the convicted offender.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

**§ 419. Mandating the enforcement of and enforcing a sentence of community service**

(1) To mandate the enforcement of a sentence of community service, the corresponding judgment or court order is sent to the probation supervision department that serves the area in which the residence of the convicted offender is located.

(2) The Head of the probation supervision department that receives the judgment or court order appoints a probation supervisor to the convicted offender; the duty of the supervisor is to monitor the performance of community service by the offender and exercise supervision over the offender's compliance with the requirements and obligations stated in the judicial disposition.

(3) Where possible, the Head of the probation supervision department appoints, as the probation supervisor of the convicted offender, the probation officer who drew up the pre-trial report for in the case.

(4) When applying the community service mentioned in clause 1 of subsection 2 of § 201 or clause 3 of subsection 2 of § 202 of this Code, the provisions of this section are followed. Where a person evades community service, the probation supervisor, without delay, files a report with the Prosecutor's Office concerning failure to perform the obligations.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

(5) The rules for preparing, enforcing and supervising community service are enacted by a regulation of the Minister in charge of the policy sector.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 419[1]. Mandating the enforcement of and enforcing electronic monitoring**

(1) To mandate the enforcement of electronic monitoring, the relevant judicial disposition is sent to the probation supervision department that serves the locality in which the residence of the convicted offender is located.
[RT I 2010, 44, 258 – entry into force 01.01.2011]

(2) The Head of the probation supervision department which receives the judicial disposition appoints a probation supervisor for the convicted offender; the duty of the supervisor is to exercise supervision over compliance with the obligations stated in the disposition.
[RT I 2010, 44, 258 – entry into force 01.01.2011]

(3) Where possible, the Head of the probation supervision department appoints, as the probation supervisor of the convicted offender, the probation officer who drew up the report concerning the offender's release on parole.

(4) If a person violates the conditions of electronic monitoring, the probation supervisor, without delay, files a report with the court concerning the person's failure to perform their obligations.

(5) The rules for enforcement of electronic monitoring and for supervision over such monitoring are enacted by a regulation of the Minister in charge of the policy sector.
[RT I 2006, 46, 333 – entry into force 01.01.2007]

**§ 419[2]. Enforcement of a course of treatment**

(1) In order to mandate the enforcement of a course of addiction treatment for drug addicts or of complex treatment for sex offenders, the corresponding judgment or order is sent to the probation supervision department that serves the locality in which the convicted offender has their residence; the department makes the preparations for the offender to follow the course of treatment and refers them to the relevant health care provider.

(2) The rules provided by subsection 1 of this section apply also where a convicted offender agrees to undergo, upon release on probation or parole in accordance with § 74, 76 or 76[1] of the Penal Code, a course of addiction treatment for drug addicts or of complex treatment for sex offenders in accordance with clause 5 of subsection 2 of § 75 of the Penal Code during the period of probation.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(3) The rules for preparation and execution of as well as the exercise of supervision over courses of addiction treatment for drug addicts and of complex treatment for sex offenders are enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(4) Courses of addiction treatment for drug addicts and of complex treatment for sex offenders are provided by the provider of health care services mentioned in subsection 2 of § 6 of the Mental Health Act.
[RT I, 15.06.2012, 2 – entry into force 01.06.2013]

**§ 420. Mandating, deferring or waiving the enforcement of a disqualification from certain professional activities or of an entrepreneurial disqualification**

(1) Enforcement of a disqualification from certain professional activities or of an entrepreneurial disqualification is deemed to have been mandated when the judgment has entered into effect and has been notified to the convicted offender, provided the enforcement of such a disqualification has not been deferred or waived on the grounds mentioned in subsection 2 of this section.

(2) The enforcement judge at the district court in whose service area the residence of a convicted offender is located may, by an order made on an application of the offender, defer – by up to six months – the mandating of enforcement of a disqualification from certain professional activities or of an entrepreneurial disqualification that has been imposed as an ancillary sentence, or waive the enforcement of such a disqualification if such enforcement may entail serious consequences for the convicted offender or members of the offender's family.

(3) When the court imposes an entrepreneurial disqualification and its judgment has entered into effect, it sends a copy of the judgment to the Registrar for particulars of the disqualification to be recorded in the relevant database. Where the mandating of enforcement of an entrepreneurial disqualification that has been imposed as an ancillary sentence is deferred, or its enforcement waived, the court also sends a copy of the corresponding order to the Registrar for the relevant entries to be made in the database.
[RT I 2008, 52, 288 – entry into force 22.12.2008]

**§ 421. Enforcement of other ancillary sentences**

[RT I 2007, 23, 119 – entry into force 02.01.2008]

(1) To mandate the enforcement of an ancillary sentence not mentioned in § 420 of this Code, the relevant judgment or court order is sent to the appropriate authority for the convicted offender to be divested of the rights described in the judicial disposition, or for such rights to be restricted – with any documents that have been issued to the offender for the exercise of those rights to be revoked or reclaimed for safekeeping – or for giving effect, in respect of the offender, to any disqualifications stated in the disposition.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(2) When mandating the enforcement of a forfeiture of property, the provisions of this Code concerning the mandating of enforcement of pecuniary penalties are followed.

(3) The enforcement of expulsions is mandated following the rules provided by the Obligation to Leave and Prohibition of Entry Act.

### § 421[1]. Rules for handing over confiscated property

[RT I, 31.12.2016, 2 – entry into force 01.02.2017]

(1) Unless otherwise provided by law, a copy of the judgment or order and of the procedural document concerning confiscated property is sent to the to the authority empowered to administer such property.

(2) The costs of transferring and of destruction of confiscated property are paid by the convicted offender or a third party.

(3) The rules for handing over confiscated property are enacted 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 Costs of Criminal Proceedings

### § 422. Return of objects and release of attachments imposed on property

(1) Where documents or objects have been seized from a person or where an attachment was imposed on the property of a person's who has been acquitted or in whose respect criminal proceedings have been terminated, the enforcement judge at the district court to mandate enforcement of the judgment sends the judgment or court order, once it has entered into effect, to the appropriate authority for the documents or objects to be returned or for the attachment to be released.

(2) The authority that executed the judgment or court order notifies the court without delay of the execution.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

### § 423. Collection of costs of criminal proceedings

When collecting costs of criminal proceedings or any other monetary claims, the provisions of this Code concerning enforcement of monetary penalties are followed.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

## Subchapter 4
## Disposing of Matters Related to Enforcement of Judicial Dispositions

### § 424. Extension of or staggering the time limit for payment of a monetary penalty

Where valid reasons are present, the enforcement judge of the district court in whose service area the residence of the convicted offender is located may, by an order made on a motion of the offender, extend or stagger by up to one year the time limit for the payment, in full or in part, of a monetary penalty, or direct the penalty to be paid by instalments on specified dates.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

### § 424[1]. Disposing of matters related to enforcement of imprisonment

(1) On a motion of the prison, the enforcement judge of the district court in whose service area a convicted offender is serving their sentence may, on the grounds provided by clauses 1 and 2 of subsection 1 and taking into consideration the provisions of subsection 2 of § 416 of this Code, make an order by which they exempt the offender from serving the remainder of the sentence.

(2) Where a convicted offender is exempted from serving the remainder of their sentence on the grounds provided by clause 2 of subsection 1 of § 416 of this Code, the court order additionally states the particulars listed in subsection 4 of § 416.

(3) Where a convicted offender who was extradited or expelled according to clause 1 of subsection 1 of § 416 of this Code re-enters Estonia before ten years have expired following their extradition or expulsion, the enforcement judge may, on a motion of the Prosecutor's Office, mandate enforcement of the remainder of the offender's imprisonment.

(4) If a convicted offender does not comply with an obligation to leave the Republic of Estonia for a host country that they assumed under clause 2 of subsection 1 of § 416 of this Code or has been declared the suspect in the commission of a new criminal offence before having complied with such an obligation or re-enters

Estonia before expiry of the prohibition of re-entry imposed on them, the enforcement judge may, on a motion of the Prosecutor's Office, mandate enforcement of the remainder of the offender's imprisonment.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

**§ 425. Compassionate release of a convicted offender**

(1) Where a convicted offender has become incurably and seriously ill during the service of their sentence, the enforcement judge of the district court in whose service area the place where the sentence is being enforced is located, based on a proposal of the Head of the authority enforcing the sentence and on the verdict of a medical committee, makes an order according to § 79 of the Penal Code by which the convicted offender is exempted from serving the remainder of their sentence.

(2) Where a convicted offender has developed a mental illness or dementia or any other severe mental disorder after the rendering of judgment in their case but before having served their sentence in full, the enforcement judge of the district court in whose service area the place where the sentence is being enforced is located makes an order by which they waive the enforcement of the sentence or exempt the offender from serving the remainder of their sentence. In such a situation, the enforcement judge directs the offender to undergo coercive psychiatric treatment as provided for by § 86 of the Penal Code.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

**§ 426. Release on parole**

(1) The enforcement judge of the district court in whose service area the sentence is enforced may release a convicted offender on parole after the offender has served their sentence as provided for by § 76, subsection 1 of § $76^1$or § 77 of the Penal Code. The enforcement judge releases on parole a convicted offender who was younger than eighteen years of age at the time of commission of the criminal offence, and sets a probationary period for such an offender, after they have served their sentence as provided for by subsection 2 of § $76^1$of the Penal Code.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(2) Where the enforcement judge denies a convicted offender's release on parole, the judge may, having regard the requirements provided by subsection 3 of § 76 of the Penal Code, set a time limit for a new hearing concerning such release, which is:
1) longer or shorter than the six-month period provided by subsection 3 of § 76 of the Imprisonment Act;
2) longer or shorter than the one-year period provided by subsection 4 of § 76 of the Imprisonment Act; or
3) shorter than the two-year period provided by subsection $4^1$of § 76 of the of the Imprisonment Act.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(3) An enforcement judge may, in their order, waive supervision in respect of a convicted offender released under §§ 76, $76^1$or 77 of the Penal Code if the offender is extradited to a foreign state or expelled.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(4) Where a convicted offender who has been extradited or expelled re-enters Estonia before the expiry of ten years following their extradition or expulsion, the enforcement judge may mandate enforcement of the remainder of their sentence.
[RT I 2006, 46, 333 – entry into force 01.01.2007]

**§ $426^1$. Post-sentence supervision of offenders**

The enforcement judge of the district court in whose service area the sentence is enforced makes a decision concerning post-sentence supervision of the offender within one month following arrival of the file in court. To order post-sentence supervision of an offender, the court has regard to the grounds for such orders as provided by § $87^1$of the Penal Code and to the conduct of the offender during service of their sentence.
[RT I 2009, 39, 261 – entry into force 24.07.2009]

**§ $426^2$. Verification of justifiability and termination of post-sentence custody**

[Repealed – RT I, 05.07.2013, 2 – entry into force 15.07.2013]

**§ 427. Disposing of matters related to enforcement of supervision**

(1) A decision on whether to impose additional obligations on a convicted offender, or alleviate or revoke the offender's existing obligations, or extend the offender's probationary period, or mandate enforcement of their sentence under subsection 4 of § 74, subsection 3 of § 75, subsection 7 of § 76, subsection $3^1$of § 77 or

subsections 4 or 5 of § 87[1] of the Penal Code is made, by order, by the enforcement judge of the district court in whose service area the residence of the offender is located.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(2) A decision on whether to revoke a convicted offender's release on parole and direct them – under subsections 4, 5 or 6 of § 74, subsections 7 or 8 of § 76 or subsections 3[1] or 4 of § 77 of the Penal Code – to resume serving their sentence is made, by order, by the enforcement judge of the district court in whose service area the residence of a convicted offender is located.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(3) The enforcement judge considers an extraordinary report filed by a probation officer within ten days following arrival of the report in court.

(4) [Repealed – RT I 2007, 11, 51 – entry into force 18.02.2007]

(5) The enforcement judge may, by their order, waive the mandating of enforcement, or the enforcement, of the supervision ordered in respect of a convicted offender under § 74 of the Penal Code if the offender is extradited to a foreign state or expelled.

(6) Where a convicted offender who has been extradited or expelled re-enters Estonia before ten years have expired following their extradition or expulsion, the enforcement judge may mandate enforcement of their imprisonment which had been suspended under § 74 of the Penal Code.
[RT I 2006, 46, 333 – entry into force 01.01.2007]

**§ 427[1]. Disposing of matters related to the performance of obligations**

Where, after the termination of criminal proceedings and imposition of an obligation on a person under subsection 2 of § 201, subsection 2 of § 202 or subsection 3 of § 203[1] of this Code circumstances come to light that significantly complicate performance of the obligation, the Prosecutor's Office or the court may, by an order and with the person's consent, vary the obligation imposed on them or release them from it. Where an obligation was imposed under subsection 3 of § 203[1] of this Code – except for the obligation to pay the costs of the case – the consent of the victim is required in order to vary such an obligation or to release the person from it.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

**§ 427[2]. Enforcing the obligation to leave the Republic of Estonia**

(1) Within three days of rendering a judgment or order, the court notifies the Police and Border Guard Board of the judicial disposition under which a convicted alien has assumed an obligation to leave the Republic of Estonia for a host country together with a prohibition of re-entry for a period of five to ten years, and of the need to enforce the obligation.

(2) Where a convicted alien has been committed in custody or is serving a period of imprisonment in Estonia or where their liberty has been restricted on other lawful grounds, their obligation to leave is enforced in accordance with the rules provided by § 20[2] of the Obligation to Leave and Prohibition of Entry Act.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

**§ 428. Disposing of matters related to performance of community service**

(1) Where a convicted offender evades community service, does not comply with the requirements of supervision or perform the obligations imposed on him or her, the probation officer files an extraordinary report with the court for the imposition of additional obligations on the convicted offender according to subsection 2 of § 75 of the Penal Code or for extending the period during which such service should be performed or for mandating the enforcement of imprisonment imposed on the offender.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(2) A decision on whether to revoke the community service order and to mandate, under subsection 6 or 7 of § 69 of the Penal Code, enforcement of the imprisonment to which the convicted offender was sentenced is made, within ten days following arrival in court of the probation officer's report, by order of the enforcement judge of the district court in whose service area the residence of the offender is located.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

**§ 428[1]. Disposing of matters related to undergoing of a course of treatment**

(1) If a convicted offender evades or abandons a course of addiction treatment for drug addicts or of complex treatment for sex offenders that they have been directed to undergo, the person administering the course, without delay, addresses a communication to the probation officer in which they inform the officer of the offender's refusal to be treated.

(2) A probation officer has a right to acquaint themselves with particulars concerning the offender's treatment and diagnosis.

(3) A probation officer who ascertains a violation provided by subsection 1 of this section files an extraordinary report with the court which contains the particulars concerning the circumstances of the violation, the period during which the convicted offender underwent the treatment, a summary of any explanations provided by the offender and a proposal concerning the imposition of additional obligations or concerning discontinuation of the treatment and the mandating of enforcement of the sentence. An extraordinary report is also filed when the offender does not comply with the requirements of their supervision or perform the obligations imposed on them.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(4) Where, due to an illness or a family situation, a convicted offender cannot undergo a course of addiction treatment for drug addicts that they have been directed to undergo, the probation officer makes a motion to the court to suspend the running of the course period. The motion must contain particulars concerning the grounds of suspension and a proposal concerning its duration. When suspending the running of the period and setting the duration of the suspension, the court must have regard to the overall limit applicable to the duration of the course that the offender has been directed to undergo.
[RT I, 15.06.2012, 2 – entry into force 01.06.2013]

**§ 428[2]. Verification of the justifiability of the prohibition on re-entry imposed on an alien**

The court that imposed a prohibition of re-entry on an alien may, by an order made on a motion of the alien, revoke such a prohibition, shorten its duration or suspend it, provided the stay of the alien in Estonia is justified by consideration relating to the protection of the person's fundamental rights and does not pose a threat to public order or national security.
[RT I, 17.12.2015, 3 – entry into force 27.12.2015]

**§ 429. Grounds and rules for committing a convicted offender in custody**

(1) On an application of a prison, a probation supervisor or an enforcement agent, or on receiving, from judicial authorities competent to engage in international cooperation in criminal matters, information indicating that a convicted offender is present in a foreign state, the enforcement judge may commit such an offender in custody if the offender evades or may evade enforcement of the judgment of conviction and the court has sufficient reason to believe that:
1) enforcement of the offender's suspended imprisonment will be mandated;
2) in a situation where the offender was released on parole, enforcement of the remainder of their imprisonment will be mandated;
3) enforcement will be mandated in respect of a period of imprisonment that had been converted into community service;
4) a monetary penalty will be converted to a short-time custodial sentence, imprisonment or community service;
5) a forfeiture of property will be converted to imprisonment; or
6) the offender that has been sentenced to imprisonment finds themselves outside the territory of the Republic of Estonia.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

(2) In situations provided for by subsection 1 of this section, a convicted offender may be held in custody until the entry into effect of an order that mandates enforcement of, or converts, their sentence.

(3) When committing a convicted offender in custody, the provisions of §§ 131–136 of this Code are followed.

**§ 430. Varying the type, conditions and term of corrective measures applicable to minors**

[RT I, 05.12.2017, 1 – entry into force 01.01.2018]
When the probation officer, the Head of the authority carrying out a corrective measure imposed under subsection 8 of § 87 of the Penal Code or the authority that conducted proceedings concerning the offence for which the sanction was ordered has presented a notification to the enforcement judge of the district court in whose service area the residence of the convicted offender is located concerning the offender's failure to comply with an obligation imposed as a sanction, the matter of varying the type, conditions and term of a corrective measure or of imposing, under subsection 2 of § 75 of the Penal Code, additional obligations to be complied with under supervision is decided by the enforcement judge by an order.
[RT I, 05.12.2017, 1 – entry into force 01.01.2018]

**§ 431. Disposing of matters related to enforcement of a judicial disposition**

(1) Matters not regulated by §§ 424–428[1] and § 430 of this Code as well as any other doubts and ambiguities that arise in the course of enforcement of a judicial disposition are disposed of, by order, by the court that rendered the disposition or by the enforcement judge of the district court that mandates enforcement of the disposition.

[RT I, 23.02.2011, 2 – entry into force 05.04.2011]

(2) The provisions of subsection 1 of this section also apply in relation to what has been provided by subsection 2 of § 5 of the Penal Code.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(3) The prison in which a person mentioned in subsection 2 of § 5 of the Penal Code serves their sentence informs such a person of the retroactive effect of an alleviating Act within 15 days following the entry into force of such an Act and presents the particulars to the enforcement judge for a decision concerning the person's release.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(4) A person mentioned in subsection 2 of § 5 of the Penal Code has no right to file a claim for compensation for the sentence they have served or for a reversal of any other obligations they have performed.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

**§ 432. Rules for consideration of matters related to enforcement of judicial dispositions**

(1) Unless otherwise provided by subsection 3 of this section, the enforcement judge disposes of a matter related to enforcement of a judicial disposition by an order made under written procedure without summoning the parties to judicial proceedings.

(2) Where a matter pertains to enforcement of a part of a judgment that concerns a civil court claim or statement of a public-law claim, the enforcement judge notifies this ahead of time to the victim and civil defendant who have a right to make written submissions within the time limit set by the court. Where a motion is filed for varying an obligation imposed under subsection 3 of § $203^1$ of this Code or for a person to be released from such an obligation, the enforcement judge notifies this to the victim who must make their written submissions within the time limit set by the court.
[RT I, 06.01.2016, 5 – entry into force 01.01.2017]

(3) Matters provided for by §§ 425–$426^1$ of this Code and matters related to depriving a convicted offender of their liberty are disposed of by the enforcement judge with the offender present. With the exception of the situations provided for by subsection 3 of § 417, subsections 1 and 2 of § 427 and § 428 of this Code, the prosecutor is summoned before the enforcement judge together with – on an application of the convicted offender – the offender's defence counsel, and their opinions are heard. In a matter of compassionate release, participation of the health care professional who provided an opinion concerning such release is mandatory. When making a decision concerning imposition of post-sentence supervision, the court may, if this is needed, enlist the assistance of any other parties or commission an expert assessment.
[RT I, 21.06.2014, 11 – entry into force 01.07.2014]

($3^1$) Where a convicted offender who is outside the territory of the Republic of Estonia has been declared a fugitive from justice, a decision concerning the mandating of enforcement under § 427 or § 428 of this Code of their imprisonment or concerning their committal in custody under subsection 4 of § 131 may be made by written procedure without summoning the parties to judicial proceedings. Not later than on the second day following the day when the offender was transferred to Estonia, they are brought before the enforcement judge for questioning.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

($3^2$) The enforcement judge may arrange participation, in the consideration of matters related to enforcement of a judicial disposition, of the persons mentioned in subsections 2 and 3 of this section by means of a technical solution which complies with the requirements mentioned in clause 1 of subsection 2 of § 69 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

($3^3$) Matters mentioned in §§ 425 and 426 of this Code may be considered by the enforcement judge without the participation of the prosecutor, provided the Prosecutor's Office had transmitted its submissions to the enforcement judge in writing or by electronic means and represented that it does not wish to participate in the consideration of the matter.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

($3^4$) When an enforcement judge is to dispose of a matter related to enforcement of a judgment in a situation where, after the entry into effect of the judgment, the term of imprisonment prescribed for the act in question has been reduced by a new Act, the judge reduces such a term, under subsection 2 of § 5 of the Penal Code, to the maximum term prescribed by the new Act for an act of this type or – if such an act is no longer punishable as a criminal offence, or no longer punishable by imprisonment – makes a decision not to mandate enforcement of the imprisonment, or to release the prisoner.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

($3^5$) Where, in a situation in which a combined sentence has been imposed on a person has been imposed by a judgment which has entered into effect, a new Act precludes the sanctions for one or several of the criminal offences based on which the combined sentence was imposed, precludes their sanctioning by imprisonment or

reduces the applicable terms of imprisonment, the enforcement judge imposes a new combined sentence under subsection 2 of § 5 of the Penal Code.
[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(4) The court sends a copy of an order made under subsection 1 of this section to the parties to proceedings whom the order concerns.

# Chapter 19
# INTERNATIONAL COOPERATION IN CRIMINAL PROCEEDINGS

## Subchapter 1
## General Provisions

### § 433. General principles

(1) International cooperation in criminal proceedings includes the extradition of persons to foreign states, mutual assistance between states in criminal cases, enforcement of judgments of foreign courts, taking over and transferring criminal proceedings that have been commenced, cooperation with the International Criminal Court and Eurojust and the surrendering of persons to Member States of the European Union.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(2) International cooperation in criminal proceedings is conducted according to the provisions of this Chapter unless otherwise prescribed by the international treaties of the Republic of Estonia, by the legislation of the European Union or by generally recognised principles of international law.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(3) International cooperation in criminal proceedings is conducted according to the provisions of other chapters of this Code insofar as this is not contrary to the provisions of this Chapter.

(4) When conducting international cooperation in criminal proceedings, the requirement of confidentiality is observed to the extent necessary for the provision of such cooperation. When not agreeing to comply with such a requirement, corresponding notification must be provided to the requesting state without delay.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

(5) The rules provided by Subchapter 7 of Chapter 4 of the Personal Data Protection Act must be followed when transmitting any personal data to third countries and international organisations within the framework of co-operation in criminal proceedings.
[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

### § 434. Requesting state and requested state

(1) The state that addresses a request for international cooperation in criminal proceedings to another state is the requesting state.

(2) The state to which the requesting state has addressed a request for international cooperation in criminal proceedings is the requested state.

### § 435. Judicial authorities competent to conduct international cooperation in relation to criminal proceedings

(1) The central authority for international cooperation in criminal proceedings is the Ministry of Justice, unless otherwise provided by law or by an international legal instrument binding on the Republic of Estonia.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(2) Within the scope provided by law 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) Where the Penal Code of Estonia is applied in respect of a criminal offence which was committed outside the territory of the Republic of Estonia, this must be notified without delay to the Office of the Prosecutor

General which will initiate criminal proceedings in the case or verify the legality or justifiability of such proceedings having been commenced.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 436. Impermissibility of international cooperation in criminal proceedings**

(1) The Republic of Estonia declines international cooperation if:
1) such cooperation may endanger the security, public order or other material interests of the Republic of Estonia;
2) such cooperation is contrary to general principles of Estonian law;
3) there is reason to believe that the assistance is requested in order to bring charges against, or impose a sanction on, a person on account of their race, ethnicity or religious or political beliefs, or if the person's position may suffer a change for the worse for any of the aforementioned reasons.

($1^1$) Unless provided otherwise by a statute or an international treaty, the Republic of Estonia may not decline international cooperation with a Member State of the European Union for the reason of regarding the criminal offence concerned as a political one, as one connected with a political offence or as one inspired by political motives.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

($1^2$) The Republic of Estonia may not decline international cooperation for the reason of not having enacted any tax or duty of the type, or any taxation or customs or currency exchange regime that is similar to one, that is at issue in the requesting state.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

($1^3$) Where this would be contrary to an international treaty binding on the Republic of Estonia, Estonia may not decline international cooperation based on national economic interests, foreign policy interests or other considerations.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(2) Where the request is one that seeks the summoning of a witness or expert to a foreign court, such a request may not be executed if the requesting state does not guarantee compliance, in respect of the person concerned, with the requirement of immunity based on § 465 of this Code.

(3) The Republic of Estonia may decline international cooperation if it manifest that the state in question, which is external to the European Union, does not ensure an adequate level of data protection. The corresponding decision is made by the Ministry of Justice in consultation 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]

**§ $436^1$. Impermissibility of parallel proceedings concerning criminal offences**

(1) The conducting of criminal proceedings in respect of same person and the same facts of offence in several Member States of the European Union is to be avoided.

(2) If the Prosecutor's Office or, during judicial proceedings, the court becomes aware that criminal proceedings are being conducted in respect of the same person and the same facts of offence in another state, they are required to contact the competent judicial authorities of such a state in a form reproducible in writing in order to centre such proceedings in one state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ $436^2$. Requirement to contact**

(1) Where, in a case of parallel criminal proceedings, Estonia is the contacting country, the Prosecutor's Office or, during judicial proceedings, the court, when making the initial contact, presents, in writing, the following information:
1) the name and contact details of the competent judicial authority;
2) a description of the facts which constitute the subject matter of criminal proceedings in the case;
3) the name, residence or seat, address, date of birth, nationality, name and number of identity document as well as the mother tongue of the suspect or accused and, where this is needed, of the victim;
4) information on whether the suspect or accused has been arrested or committed in custody;
5) the procedural stage of criminal proceedings in the case.

(2) When making the initial contact, a time limit for providing a response must be indicated. If the suspect or accused is held in custody, a speedy response must be requested.

(3) Where Estonia does not know which judicial authority of the state that conducts parallel criminal proceedings is vested with competence in the case, the Prosecutor's Office or, during judicial proceedings, the court establishes contact with the Eurojust National Member for Estonia or with the relevant contact points on the European Judicial Network to ascertain the competent judicial authority.

(4) In a case of parallel criminal proceedings, Estonia makes contact and presents the information provided for by subsections 1 and 2 of this section in a language accepted by the Member State concerned.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 436[3]. Requirement to respond to an enquiry

(1) The Prosecutor's Office or, during judicial proceedings, the court is required to respond, in writing, to any enquiry received by Estonia so as to confirm the fact of conducting criminal proceedings that constitute the subject matter of the enquiry or to provide notification of no such proceedings being conducted.

(2) If criminal proceedings that constitute the subject matter of the enquiry are being conducted in Estonia, the following information is stated in their regard in the response:
1) the name and contact details of the competent judicial authority;
2) whether such proceedings are being conducted in respect of some or all of the acts concerning which the enquiry was made or whether such proceedings have been conducted;
3) the name, date of birth, residence or seat, address, nationality, name and number of identity document, as well as the mother tongue of the person in whose respect such proceedings are being or have been conducted;
4) the procedural stage of such proceedings and, in the event a conclusive procedural decision has been reached, the nature of such a decision and the date on which it was rendered;
5) any other information relating to such proceedings, provided its disclosure does not prejudice further conduct of those proceedings.

(3) If the suspect or accused connected with criminal proceedings specified in an enquiry received by Estonia has been committed in custody, the Prosecutor's Office or, during judicial proceedings, the court responds to the enquiry without delay.

(4) If, for reasons of ascertainment of the facts of criminal proceedings in the case, or related to the identification of any persons, it is not possible to respond to the enquiry without delay or within the set time limit, this is notified to the competent judicial authority of the state that transmitted the enquiry, providing notification of the time limit within which the relevant information will be provided.

(5) The response to an enquiry received by Estonia is issued in a language accepted by the Member State concerned and contains the information provided for by subsection 2 of this section.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 436[4]. Consultations for deciding the state to have charge of continuing the proceedings

(1) Where, as a result of information exchange, it has been ascertained that criminal proceedings are being conducted in respect of the same person concerning the same facts of offence in Estonia and in another Member State of the European Union, the Prosecutor's Office or, during judicial proceedings, the court commences consultations with the competent judicial authority of the other state in order to decide on the concentration of such proceedings in one state.

(2) The following are taken into consideration during consultations for deciding on the state to have charge of conducting criminal proceedings in the case:
1) the place of commission of the criminal offence, or a majority of the criminal offences, concerned;
2) the place where the harm, or a major part of the harm, arose;
3) the place where the suspect or accused who has been committed in custody is held;
4) the need to extradite or surrender the suspect or accused in connection with other potential criminal proceedings;
5) the nationality and place of residence of the suspect or accused;
6) the location, and other material interests, of the victims or witnesses;
7) the admissibility of evidence and any other potential delays in continuing the proceedings.

(3) Failing agreement on the state to have charge of continuing criminal proceedings in the case, the Heads of the competent authorities of the states holding the consultations refer the matter to Eurojust for a decision.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 436[5]. Proceedings in case of consultations

(1) During consultations, criminal proceedings must be continued.

(2) During consultations, the competent authorities of the states connected with the consultations present to one another material information in relation to the respective criminal proceedings concerning the procedural operations that are being carried out, with the exception of information classified as a state secret.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 436[6]. Continuation of criminal proceedings on resolution of procedural conflict**

(1) If it is decided that continuation of criminal proceedings hitherto conducted in parallel is to be concentrated in Estonia, the Prosecutor's Office has a right to request, from criminal proceedings of the state that conducted parallel proceedings, any items of evidence that are needed in order to continue and complete the proceedings in Estonia.

(2) Where criminal proceedings hitherto conducted in parallel are concentrated in another state, the Prosecutor's Office or, during judicial proceedings, the court transmits the evidence collected in Estonian criminal proceedings to the competent authority of the state to continue the proceedings at the authority's request.

(3) If criminal proceedings conducted in Estonia as parallel proceedings are concentrated in another state, the proceedings conducted in Estonia are terminated.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 436[7]. Competence of Eurojust when resolving procedural conflicts**

(1) The provisions of §§ 436[1]–436[6] of this Code do not constitute a restriction concerning any opportunities open to Eurojust to participate in the resolution of procedural conflicts.

(2) In a situation provided for by subsection 3 of § 436[4] of this Code, having regard to the provisions of subsection 2 of the same section, the decision of Eurojust is the basis for concentrating the conduct of criminal proceedings hitherto conducted in parallel in two or more states into one of those states.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 437. Subdivision of costs of international cooperation in criminal proceedings**

(1) Unless resolved otherwise by agreement with a foreign state, the Republic of Estonia as the requesting or the requested state bears all costs arising in its territory under an international treaty or any other legal instrument binding on the Republic of Estonia.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(2) As the requested state, the Republic of Estonia takes the necessary steps to collect the following costs from the requesting state:
1) costs related to engaging any experts in Estonia;
2) unless otherwise agreed upon with the requesting state, costs related to arrangement of any distance interview or examination in Estonia and to arranging the attendance of the persons to be interviewed or examined as well as the participation of any translator or interpreter;
3) other material or unavoidable costs incurred by Estonia, whose extent has been agreed upon with the requesting state.

(3) Under a corresponding request by the requesting state, the Estonian government may disburse an advance to any experts or witnesses engaged to participate in international cooperation in criminal proceedings.

(4) The Republic of Estonia as the requesting state bears the costs incurred in the requested state, provided they:
1) have arisen on the grounds and according to the rules mentioned in subsection 2 of this section;
2) relate to the transfer, to Estonia, of a person held in custody.
[RT I 2004, 54, 387 – entry into force 01.07.2004]

# Subchapter 2
# Extradition

## Division 1
## Extraditing a Person to a Foreign State

**§ 438. Permissibility of extradition**

Estonia as the requested state is entitled to extradite a person based on a request for their extradition if criminal proceedings have been initiated and an arrest warrant has been issued in respect of the person in the requesting state or if a sentence of imprisonment has been imposed on the person by a judgment of conviction which has entered into effect.

**§ 439. General conditions for extraditing a person to a foreign state**

(1) Extraditing a person for criminal proceedings to be continued in their respect in a foreign state is permitted provided they are suspected or accused of a criminal offence which is punishable by at least one year of imprisonment according to both the penal legislation of the requesting state and the Penal Code of Estonia.

(2) Extraditing a person for a judgment of conviction rendered in their respect to be enforced is permitted under the condition provided for by subsection 1 of this section provided at least four months of the person's imprisonment remain to be served.

(3) If a person whose extradition is requested has committed several criminal offences and extradition is permitted in respect of one of these, extradition is also permitted in respect of the other offences which do not meet the conditions mentioned in subsections 1 and 2 of this section.

**§ 440. Circumstances precluding or restricting the extradition of a person to a foreign state**

(1) In addition to what is provided by § 436 of this Code, extraditing a person to a foreign state is prohibited if:
1) the ground for the extradition request is a political offence within the meaning of the Additional Protocols to the European Convention on Extradition, except in a situation provided for by subsection $1^1$ of § 436 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 of Estonia, the limitation period for the criminal offence has expired or if an instrument of amnesty precludes the imposition of a sentence.

(2) Where the ground for the extradition request is a military offence within the meaning of the provisions of the European Convention on Extradition and the Additional Protocols to that Convention, extraditing an Estonian citizen is not permitted.

(3) If the death penalty may be imposed in the requesting state as the sentence for the criminal offence which constitutes the ground for the extradition request, the person requested may be extradited only on the condition that, according to an affirmation by the competent authority of the requesting state, the death penalty will not be imposed on that person or, where such a penalty has been imposed before presentation of the extradition request, it will not be carried out.

(4) A request for extraditing a person to a foreign state may be denied if it has been decided not to initiate criminal proceedings on the same charges in respect of the person or if such proceedings have been terminated.

**§ 441. Conflicting requests for extradition**

If the extradition of a person is requested by several states, the state to which the person is to be extradited is 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 have been presented, the nationality of the person requested and the possibility of their subsequent extradition to a third state.

**§ 442. Requirements for requests for the extradition of a person from the Republic of Estonia**

(1) The request for extradition is issued by the competent judicial authority of the requesting state and is addressed to the Ministry of Justice of the Republic of Estonia.

(2) The following are annexed to the request for extradition:
1) information concerning the time and place of commission of, as well as other specific circumstances surrounding, the criminal offence that constitutes the ground for the extradition request, as well as the legal designation of the criminal offence under the penal statutes of the requesting state;
2) an extract from the penal law or from any other relevant legislative or administrative instrument of the requesting state;
3) the original or a certified copy of the arrest warrant or judgment of conviction rendered following the rules prescribed by the procedural law of the requesting state;
4) if possible, a description of the person requested, together with any other information which makes it possible to establish the person's identity.

# Division 2
# Procedure for Extradition of Persons to Foreign States

**§ 443. Stages of 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, judicial verification of the legal permissibility of the extradition and deciding on the extradition, which falls within the competence of the executive branch of government.

**§ 444. Operations of the Ministry of Justice in preliminary proceedings**

(1) The Ministry of Justice verifies whether the request for extradition complies with the requirements, and whether the necessary supporting documents have been provided.

(2) Where this is needed, the Ministry of Justice may set a time limit to the requesting state for presentation of supplementary information.

(3) A request for extradition that meets the requirements is sent to the Office of the Prosecutor General without delay together with any supporting documents.

**§ 445. Operations of the Office of the Prosecutor General in preliminary proceedings**

(1) Where a request for extradition transmitted by a foreign state arrives directly at the Office of the Prosecutor General, this is notified to the Ministry of Justice without delay.

(2) Where a request for extradition has arrived directly at the Office of the Prosecutor General, supplementary information may be requested without going through the Ministry of Justice.

(3) The Office of the Prosecutor General annexes, to the request for extradition, the relevant extract from the Criminal Records Database as well as any other necessary information and ascertains whether criminal proceedings have been initiated in Estonia in respect of the person requested.

(4) A request for extradition that meets the requirements, together with the supporting materials mentioned in subsection 3 of this section, is sent by the Office of the Prosecutor General to the court without delay.

**§ 446. Jurisdiction to verify the legal permissibility of extradition**

Jurisdiction to verify the legal permissibility of extraditing a person to a foreign state is vested in Harju District Court.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

**§ 447. Committal in extradition custody**

(1) Once the legal permissibility of extraditing a person to a foreign state has been recognised, the requested person may be committed in extradition custody on an application of the Prosecutor's Office.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(2) In cases of urgency, the pre-trial investigation judge may commit a person in extradition custody on an application of the Prosecutor's Office before the arrival of the request for extradition, provided the requesting state has:
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]
1) certified that an arrest warrant has been issued or a judgment of conviction has entered into effect with regard to the person in the requesting state;
2) undertaken to dispatch, without delay, the request for extradition.

(3) Under a request for arrest transmitted through the International Criminal Police Organisation (Interpol) or under an alert in the Schengen Information System, a person may be arrested according to the rules provided by subsection 1 of § 217 of this Code before arrival of a request for their extradition.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(4) A person may not be committed in extradition custody if legal impediments to their extradition have come to light.

(5) A person committed in extradition custody may be released if the requesting state fails to send the request for extradition within eighteen days following the person's committal in such custody. A person committed in extradition custody is released if the request for extradition has not arrived within forty days following their committal in custody.

(6) A person's release from extradition custody in situations provided for by subsection 5 of this section does not – where the request for extradition arrives at a later date – preclude the person's subsequent committal in such custody, or their extradition.

(7) A person must not be held in extradition custody for more than one year. The pre-trial investigation judge may extend the one-year time limit for holding the person in custody on an application of the Prosecutor General – or, in a criminal case dealt with under Regulation (EU) 2017/1939 of the Council, on an application of the European Prosecutor or a European Delegated Prosecutor – only in exceptional cases.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

(8) An order on extradition custody may be contested following the rules provided by Chapter 15 of this Code.

**§ 448. Participation of defence counsel in extradition proceedings**

(1) The defence counsel in extradition proceedings is an attorney.

(2) The participation of defence counsel in extradition proceedings is mandatory starting from the arrest of the person concerned under subsection 3 of § 447 of this Code.

**§ 449. Simplified extradition procedure**

(1) Based on written consent provided by an alien in the presence of their defence counsel, they may be extradited to the requesting state under simplified rules, without verification of the legal permissibility of their extradition.

(2) A proposal to consent to be extradited under simplified rules is made to the person requested at the time of their arrest. The corresponding consent is sent without delay to the Minister in charge of the policy sector who decides on the person's extradition following the rules provided by § 452 of this Code.

(3) A decision of the Minister in charge of the policy sector concerning the simplified extradition of an alien is transmitted without delay to the Police and Border Guard Board for execution and, for information purposes, to the Office of the Prosecutor General. A decision by which simplified extradition is denied is sent to the Office of the Prosecutor General which decides on whether to present a request to the foreign state in question to transfer its criminal proceedings to Estonia.
[RT I 2009, 27, 165 – entry into force 01.01.2010]

(4) If an alien, before the court and in the presence of their defence counsel, makes a written declaration that they agree to be extradited without the corresponding extradition proceedings being conducted, their extradition is decided by the Minister in charge of the policy sector based on the corresponding request without the documents provided for by subsection 2 of § 442 of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 450. Judicial verification of the legal permissibility of extradition**

(1) In order to carry out judicial verification of the legal permissibility of extradition, a hearing is convened within ten days following arrival of the extradition request in court.

(2) Proceedings to verify the legal permissibility of extradition are conducted by the judge sitting alone.

(3) The following persons are required to participate in the hearing:
1) the prosecutor;
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]
2) the Estonian citizen whose extradition is requested, or the alien whose extradition is requested, unless the latter has consented to simplified extradition or unless a proposal to consent to simplified extradition has not been made to them at the time of their arrest;
3) the defence counsel of the person requested.

(4) At the hearing, the court:
1) explains the extradition request and the rules of extradition procedure including, among other things, that any circumstances that concern the legal permissibility of extradition must be invoked before Harju District Court or before the corresponding circuit court of appeal and that, if such circumstances are not invoked in due time, they will not be considered in extradition proceedings;
[RT I, 23.02.2011, 3 – entry into force 01.01.2012]
2) hears the submissions of the person requested, of their defence counsel and of the prosecutor concerning the legal permissibility of extradition.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(5) The court may, through the Ministry of Justice, set a time limit to the requesting state for transmission of supplementary information.

**§ 451. Judicial dispositions upon verifying the legal permissibility of extradition**

(1) When disposing of a request for the extradition of a person to a foreign state, the court makes one of the following orders:
1) to declare the extradition legally permissible;
2) to declare the extradition legally impermissible.

(2) The order states:
1) the name, personal identification number or, in the absence of such a number, the date and place of birth of the person subjected to extradition proceedings;

2) the substance of the request that has been considered;
3) the submissions of the persons who participated in the hearing;
4) the court's ruling, and its reasons, concerning the legal permissibility of the extradition;
5) the court's ruling, and its reasons, concerning extradition custody.

(3) A copy of the order is sent without delay to the person subjected to extradition proceedings, to their defence counsel, to the Office of the Prosecutor General and to the Ministry of Justice.

(4) Where the court declares a person's extradition to be legally permissible, in addition to a copy of the corresponding order, also the extradition request and any other materials of extradition proceedings are sent to the Ministry of Justice.

(5) Where the court declares the extradition of a person legally impermissible, a copy of the corresponding order together with the extradition request as well as any supporting materials is sent to the Ministry of Justice, which notifies this to the requesting state.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

(6) Where the competent judicial authority of the foreign state terminates an international search for a fugitive and abandons its request for the person's extradition or provides notification of such a request having been revoked, the court terminates extradition proceedings by an order.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 451[1]. Contestation of orders made upon verifying the legal permissibility of extradition**

(1) An appeal against an order by which extradition is declared legally permissible or impermissible may be filed following the rules provided by § 386 of this Code within ten days following receipt of the order.

(2) An appeal against the order is filed with Tallinn Circuit Court of Appeal through Harju District Court.

(3) An appeal against the order is considered in the Circuit Court of Appeal by written procedure within ten days following arrival of the case at that Court.

(4) The order of the Circuit Court of Appeal is final and not subject to further appeal.
[RT I, 23.02.2011, 3 – entry into force 01.01.2012]

**§ 452. Deciding on the extradition**

(1) The extradition of an Estonian citizen is decided by the Government of the Republic. The proposal for the extradition decision is drawn up, and presented to the Government of the Republic, by the Ministry of Justice.

(2) The extradition of an alien is decided by the Minister in charge of the policy sector.

(3) A reasoned decision to extradite or to refuse extradition is made without delay.

(4) A copy of the decision is sent to the custodial institution where the person requested is kept in extradition custody and the person is informed of the decision against signed acknowledgement.

(5) A decision to extradite a person enters into effect if it has not been appealed according to § 452[1] of this Code or if it has been affirmed as a result of judicial proceedings and the relevant judicial disposition has entered into effect. A decision to refuse to extradite a person enters into effect at the time it is made.
[RT I, 23.02.2011, 3 – entry into force 01.01.2012]

(6) A decision to extradite a person that has entered into effect is transmitted without delay to the Police and Border Guard Board to arrange its execution.
[RT I 2009, 27, 165 – entry into force 01.01.2010]

(7) Where extradition is denied, the person concerned is released from extradition custody.

(8) The Ministry of Justice notifies a decision to extradite or to refuse extradition to the requesting state without delay.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 452[1]. Contesting a decision to extradite**

(1) A complaint against a decision to extradite a person to a foreign state is filed with the administrative court within ten days following notification of the decision.

(2) The court considers a complaint that has been filed concerning extradition in conformity with the requirements within thirty days following its receipt.

(3) When disposing of the complaint, the administrative court disregards any circumstances that concern the legal permissibility of extradition, except where it was not possible to invoke such circumstances before Harju District Court or before the Circuit Court of Appeal.

(4) An appeal against the judgment of the administrative court must be filed with Tallinn Circuit Court of Appeal through Harju District Court within ten days following the public pronouncement of that judgment.

(5) The Circuit Court of Appeal considers an appeal that conforms to the requirements within thirty days following its receipt.

(6) An appeal to the Supreme Court against the judgment of the Circuit Court of Appeal is filed with the Supreme Court within ten days following public pronouncement of the judgment.

(7) An appeal to the Supreme Court that conforms to the requirements is considered by the Supreme Court within thirty days following its receipt.
[RT I, 23.02.2011, 3 – entry into force 01.01.2012]

**§ 453. Postponing of extradition and temporary extradition**

(1) The Ministry of Justice may, at the proposal of the Office of the Prosecutor General, postpone the execution of an extradition decision which has entered into effect if this is required in relation to criminal proceedings conducted in Estonia, or in order to enforce a judgment rendered in respect of the person requested.

(2) By agreement with the requesting state, a person whose extradition has been postponed may be temporarily extradited to the requesting state.

**§ 454. Transfer of the person requested**

(1) An extradition decision which has entered into effect is sent to the Police and Border Guard Board who notifies the requesting state of the time and place of transferring the person requested and arranges the transfer.
[RT I 2009, 27, 165 – entry into force 01.01.2010]

(2) The person requested may be released from extradition custody if the requesting state has not accepted their transfer within fifteen days following the due date determined such a transfer. The person must be released from extradition custody if the requesting state has not accepted their transfer within thirty days following the due date for such a transfer.

**§ 455. Extending the extradition**

(1) If the state to which a person has been extradited requests permission to perform procedural operations or enforce a judgment in respect of the person for an offence other than the one for which they were extradited, such a request is disposed of following the provisions of §§ 438–452 of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(2) To extend the extradition, a judicial hearing is convened with the participation of the prosecutor and the defence counsel.
[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 where a request to extradite a person to a third state has been presented.

**§ 456. Permission for transit of an extradited person**

(1) Permission for the transit, through the territory of the Republic of Estonia, of a person extradited by a third state is granted by the Minister in charge of the policy sector.

(2) A request for transit must meet the requirements of § 442 of this Code.

(3) Permission for transit is not granted if:
1) the act for which the person has been extradited is not punishable under the Penal Code of Estonia;
2) Estonia considers the act which is the ground for the extradition to be a political or a military offence;
3) the death penalty may be imposed on the extradited person in the requesting state and the state has not provided an affirmation that such a penalty will not be imposed or carried out.

# Division 3

# Requesting an Extradition from a Foreign State

**§ 457. Initiation of proceedings for requesting the extradition of a person from a foreign state**

(1) The extradition of a person from a foreign state is requested where the person, being the suspect or accused, is present in the foreign state and evades criminal proceedings, and continuation of the proceedings without the participation of the suspect or accused is materially complicated or impossible or where the enforcement of a judgment of conviction rendered in respect of the person presupposes their extradition.

(2) The principles provided by §§ 438–442 of this Code are taken into account when requesting the extradition of a person from a foreign state.

(3) A request for the extradition of a person, to be presented to a foreign state, is issued, in observance of the requirements provided by § 458 of this Code, by:
1) the Prosecutor's Office, during pre-trial proceedings;
[RT I 2008, 19, 132 – entry into force 23.05.2008]
2) the court, during proceedings before it;
3) the Office of the Prosecutor General, when the judgment has reached the enforcement stage.

(4) In pre-trial proceedings, on an application of the Prosecutor's Office, the pre-trial investigation judge may, by order, impose extradition custody before the request for extradition has been presented.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(5) If the extradition of a person from a foreign state is requested during judicial proceedings, the warrant for the person's arrest is issued by the court that deals with the criminal case.

(6) [Repealed – RT I 2008, 19, 132 – entry into force 23.05.2008]

(7) A request for extradition is transmitted to the Ministry of Justice.

**§ 458. Requirements for request to a foreign state to extradite a person**

(1) A request for the extradition of a person, to be presented to a foreign state, is addressed to the competent judicial authority of that state.

(2) The request states:
1) the name, personal identification number and citizenship of the person requested;
2) the facts relating to, and the legal designation of, the criminal offence in relation to which the person is requested to be extradited as the suspect, accused or convicted offender;
3) the date on which, as a compliance enforcement measure, the person was committed in custody;
4) the date on which the person was arrested in the foreign state;
5) a reference to the European Convention on Extradition or to the relevant agreement on legal assistance.

(3) The documents listed in subsection 2 of § 442 of this Code are included with the request for the extradition of a person, which is to be presented to the foreign state, together with a translation, into a language determined by the requested state, of the request and of its annexes.

**§ 459. Presenting a request for extradition**

(1) A request for extradition is presented to the requested state by the Minister in charge of the policy sector.

(2) In situations of urgency, given the consent of the Office of the Prosecutor General, the foreign state may be requested, through the International Criminal Police Organisation (Interpol) or the central authority responsible for the national section of the Schengen Information System, to commit the person requested in extradition custody before the corresponding request for extradition is presented.
[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 states:
1) the name of the authority making the request;
2) the substance of the request;
3) the name, address and, where possible, other contact details of the person regarding whom the request is transmitted;
4) the facts relating to and the legal designation of the criminal offence concerning which the request is transmitted.

(2) The following are annexed to a request for assistance:
1) extracts from the relevant legislation or administrative decisions;
2) a translation of the request and of the supporting materials into a language determined by the requested state.

**§ 461. Impermissibility of executing a request for assistance**

Execution of a request for assistance is not permitted and is denied on the grounds provided by § 436 of this Code.

**§ 462. Proceedings in respect of a request for assistance received from a foreign state**

[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(1) The Ministry of Justice verifies whether a request for assistance received from a foreign state complies with the requirements. A request for assistance that complies with the requirements is transmitted to the Office of the Prosecutor General without delay.

(2) The Office of the Prosecutor General verifies whether execution of the request for assistance is permissible and possible and executes the request or transmits it to a judicial authority that is competent to execute it.

(3) Requests for assistance received by investigative authorities are transmitted to the Office of the Prosecutor General. In a situation of urgency, given the corresponding authorisation from the Office of the Prosecutor General, a request for assistance presented through the International Criminal Police Organisation (Interpol) or an alert in the Schengen Information System may be executed before arrival of a corresponding request for assistance at the Ministry of Justice.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 463. Executing a request for assistance received from a foreign state**

(1) A request for assistance is executed based on the provisions of this Code. Unless this is contrary to the principles of Estonian law, at the request of a foreign state, a request may be executed based on procedural rules that differ from those provided by this Code.

($1^1$) If the summoning of a person to the court is necessary for executing the request for assistance, the service of the corresponding summons is arranged by the court.
[RT I 2008, 32, 198 – entry into force 15.07.2008]

(2) Any materials obtained as a result of having executed the request are transmitted to the requesting state using the same channel that was used to send that request, except where the requesting state requests the sending of such materials directly to the initiator of the request.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

($2^1$) Where, during execution of a request, it becomes apparent that it would be expedient to carry out additional operations which have not been requested, this is notified to the requesting state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(3) Unless otherwise agreed with Eurojust, any materials obtained as a result of executing a request for assistance from a foreign state that was transmitted through Eurojust are sent to the requesting state through that agency.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

**§ $463^1$. Notifying the Council of the European Union of execution of a request for assistance having been denied**

Where execution of a request for assistance transmitted to the Republic of Estonia under the Additional Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union is denied and the requesting state maintains the request, the Office of the Prosecutor General presents, through the Ministry of Justice, a substantiated decision concerning the denial to the Council of the European Union for information.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ $463^2$. Notifying Eurojust of execution of a request for assistance having been denied**

Where execution of a request for assistance transmitted to the Republic of Estonia under the Additional Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union is denied, the Ministry of Justice or the Office of the Prosecutor General may notify this to Eurojust in order for a solution to be provided by the matter.

[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 463[3]. Request for assistance to serve court documents**

(1) A request of a foreign state to serve court documents is transmitted directly to the district court that serves the locality of the residence or seat of the person concerned.

(2) The district court that serves the locality of the residence or seat of the person concerned makes arrangements to execute the request for assistance and to serve court documents on the person named in those documents.

(3) The district court that serves the locality of the residence or seat of the person concerned notifies the foreign authority that transmitted the request for assistance and dispatches a confirmation concerning its execution or non-execution. Where the request is not executed, the reasons for non-execution are stated.

(4) A request for assistance to a foreign state for the service of court documents is issued and transmitted to the competent authority of that state by the court that requests such service.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 464. Transmitting a request for assistance to a foreign state**

(1) Unless otherwise prescribed by an international treaty or any other legislative or administrative instrument binding on the Republic of Estonia, a request for assistance is presented to the Office of the Prosecutor General which verifies whether such a request meets the requirements. The Office of the Prosecutor General transmits a request that meets the requirements to the Ministry of Justice or to the central authority provided by the relevant international treaty or other legislative or administrative instrument, or to 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 makes a decision, without delay, on whether to transmit or refuse to transmit the request to the foreign state, notifying its decision to the judicial authority that presented the request. In the event of non-transmission, the corresponding reasons are stated.

(3) In a situation of urgency, a request may be transmitted also through the International Criminal Police Organisation (Interpol), dispatching the request at the same time through the judicial authorities mentioned in subsection 1 of this section. In order to ensure the taking of measures necessary for executing a request for legal assistance, the central authority responsible for the national section of the Schengen Information System has a right to enter an alert in that system before issuing the corresponding request for assistance.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) Where protection is requested for a witness, the measures for such protection are agreed upon separately.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(5) In a situation of urgency, a request for assistance in the criminal offences listed in subsection 2 of § 491 of this Code may be presented to a Member State of the European Union through Eurojust.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(6) In a situation of urgency, Eurojust's National Member for Estonia may issue a request for assistance in a criminal case in which proceedings are to be conducted in Estonia and transmit such a request to a foreign state.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(6[1]) In a situation of urgency, where an offence in the field of customs is concerned, the request for assistance may be transmitted by the Tax and Customs Board.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(7) Competence to transmit a request for assistance to a foreign state is vested:
1) in pre-trial proceedings, in the prosecutor assigned to conduct proceedings in the criminal case;
2) at the stage of judicial proceedings, in the court or the prosecutor who, in the case, represents public prosecution before the court.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 465. Immunity of a person who has arrived in Estonia under a request for assistance transmitted to a foreign state**

(1) A witness or expert appearing before a judicial authority on a summons contained in a request for assistance may not be committed to answer any charges, prosecuted, committed in custody or arrested as a suspect in connection with any criminal offence that was committed before their departure from the territory of the requesting party and that was not specifically stated in the summons.

(2) The accused who appears before a judicial authority on a summons contained in a request may not be committed to answer any charges, prosecuted, committed in custody or arrested as a suspect in connection

with any criminal offence that was committed or any charges that were brought before their departure from the territory of the requesting party and that was or were not specifically stated in the summons.

(3) The immunity provided by subsections 1 and 2 of this section ceases to apply when the witness, expert or accused has remained in Estonia during 15 consecutive days after the day on which their presence was no longer required by the judicial authority concerned, regardless of the fact that they have had an opportunity to leave or, having left, have returned.

**§ 466. Temporary transfer to a foreign state of a person subjected to a restriction of their personal liberty**

(1) Where a person is held in custody or imprisonment, or their personal liberty has otherwise been restricted in Estonia in a lawful manner, the person may, under a request from a foreign state and by decision of the Minister in charge of the policy sector, be temporarily transferred to that state for the purposes of being interviewed or examined as a witness or of performing any other procedural operation with the person's participation.

(2) A person may be temporarily transferred if the requesting state has affirmed that:
1) the person to be transferred will not be committed to answer any charges or subjected to any restriction of their fundamental rights in connection with any criminal offence that was committed before their departure from the territory of the requesting state and that was not specifically stated in the summons;
2) the transferred person is returned to Estonia immediately after the performance of the procedural operations concerned.

(3) A person is not transferred temporarily to a foreign state if:
1) they do not agree to the transfer;
2) they are required to be present in Estonia in relation to ongoing criminal proceedings;
3) the transfer may lead to an extension of the statutory time limit for restricting personal liberty;
4) there is another material reason for refusing the transfer.

(4) A transferred person is subject to the conditions of custody applicable in the requesting state and the time that they spend in the foreign state is counted as part of the term of serving the sentence imposed on them in Estonia.

**§ 467. Requesting temporary transfer to Estonia of a person who is present in a foreign state and subjected to a restriction of their personal liberty**

(1) Where a person is held in custody or imprisonment, or their personal liberty has otherwise been restricted in a foreign state in a lawful manner, and where it is necessary, in ongoing criminal proceedings in Estonia, to interview or examine such a person as a witness or to perform any other procedural operations with the person's participation, the competent judicial authorities may request temporary transfer of the person to Estonia, having regard to the requirements provided by § 465 of this Code.

(2) The request states:
1) the time and place of its issue;
2) the name, personal identification number or, in the absence of such a number, the date and place of birth of the person to be temporarily transferred to Estonia;
3) the name of the procedural operation in connection with which the presence of the person is required in Estonia;
4) the procedural-law basis for the request.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 468. Distance interviewing or examination of a person present in a foreign state**

(1) Distance interviewing or examination of a person present in a foreign state may be requested on the grounds provided by subsection 1 of § 69 of this Code. The request states the reasons for distance interviewing or examination the person, the name and procedural role of the person to be interviewed or examined, and the position title and name of the person to conduct the interview or examination.

(2) Where audio-visual distance interviewing or examination is requested, the request must contain an affirmation that the suspect or accused to be interviewed or examined agrees to undertake the distance interview or examination.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(3) Where distance interviewing or examination by telephone is requested, the request must contain an affirmation that the witness or expert to be interviewed or examined agrees to such a distance interview or examination.

(4) Distance interviewing or examination of a suspect or accused by telephone is not allowed.

(5) Distance interviewing or examination is presided over and directed by a representative of the competent judicial authority of the requesting state according to the procedural law of that state. The summoning of persons to the distance interview or examination is based on the procedural law of the requested state. The person being interviewed or examined may base a refusal to give a statement or testimony also on the procedural law of the requested state.

(6) The competent judicial authority of the requested state to arrange the distance interview or examination:
1) determines and provides notification of the time of such an interview or examination;
2) ensures that the person to be interviewed or examined is summoned to and appears for the interview or examination;
3) is responsible for verifying the identity of the person interviewed or examined;
4) is responsible for observance of the laws of the state it represents;
5) where this is needed, ensures the participation of an interpreter.

(7) A distance interview or examination is recorded by the competent judicial authority of the requesting state, but may additionally be recorded by the competent judicial authority of the requested state.

(8) The report of an audio-visual distance interview or examination is filed by the competent judicial authority of the requested state. The report of a distance interview or examination held by telephone is filed by the competent judicial authority of the requesting state.

(9) The report of a distance interview or examination states:
1) the time and place of the distance interview or examination;
2) the form of the distance interview or examination and the names of the technical devices used;
3) a reference to the request for assistance that served as the ground for the distance interview or examination;
[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 of the requested state who participated in the distance interview or examination;
5) the procedural role of the person interviewed or examined and their name, personal identification number or, if the person does not possess such a number, their date of birth, residence or seat and address as well as their telecommunications number or e-mail address;
6) a note concerning the provision of an explanation to the person interviewed or examined concerning their rights;
7) an acknowledgement by the person interviewed or examined that they have been cautioned concerning the liability that attaches to refusing to give statements or testimony and to the giving of knowingly false statements, or that they have taken an oath concerning the statements or testimony, should such an obligation be prescribed by procedural law.
[RT I 2004, 46, 329 – entry into force 01.07.2004]

**§ 469. Reclaiming property from a foreign state**

(1) A foreign state may be requested to place certain property located in its territory at the disposal of Estonia if:
1) the property to be so placed has been acquired by a criminal offence in respect of which proceedings are being conducted in the requesting state, or is to be used as physical evidence in criminal proceedings in the requesting state;
2) the act that serves as the ground for the request is punishable as a criminal offence according to both the Penal Code of Estonia and the penal law of the requested state.

(2) In Estonia, third party rights to the property to be placed at Estonia's disposal are preserved and the property is transmitted to the non-party entitled to it at the request of such a non-party after the entry into effect of the corresponding judgment.

(3) The procedural determination that constitutes the ground for the reclaiming of property or a certified copy of such a determination, or an affirmation by the competent judicial authority of the requesting state that such a procedural determination would be made if the property were located in Estonia, is appended to the request for the property to be placed at Estonia's disposal that is transmitted to a foreign state.

(4) In a situation of urgency, attachment of property or the carrying out of a search may be requested before transmission of a request to place the property at Estonia's disposal.

**§ 470. Placing property at the disposal of a foreign state**

(1) The placing of property located in Estonia at the disposal of a foreign state on the grounds provided by § 469 of this Code is decided by order of a judge of the district court that serves the locality in which the property is located; the decision is made by the judge sitting alone.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

(2) The order states:
1) the name and location of the property to be placed at the disposal of the foreign state 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 substance of the request that was considered;
3) the substance of and reasons for the order;
4) its procedural-law grounds;
5) the determination of the court and the rules for appealing it to a higher court.

(3) When the order has entered into effect, the court sends a copy of that order to the Ministry of Justice which notifies the requesting state of the execution of the request or of such execution having been refused.

(4) The placing of property at the disposal of the requesting foreign state is arranged by the competent judicial authority.

(5) In a situation of urgency, at the request of a foreign state certain property may be attached or a search may be conducted before reception of the request to place such property at the disposal of such a state. Reports are filed concerning the aforementioned operations following the rules provided by this Code.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(6) An item for which a search has been declared may be seized and attached on the basis of a request transmitted through the International Criminal Police Organisation (Interpol) or of an alert in the Schengen Information System. When such an item is seized, a corresponding report is filed. The item is attached for two months in accordance with the rules provided by § 142 of this Code. If the foreign state concerned does not transmit a request to place the property at issue at its disposal during the aforementioned time limit, attachment of the item is released.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

**§ 471. Inter-state investigation team**

(1) In the interests of efficiency of pre-trial investigation of criminal offences, for a specific purpose and for a limited period the setting up of an inter-state investigation team may be requested. The request must contain a proposal concerning composition of the team.

($1^1$) In Estonia, the competence to transmit, to a foreign state, a request for the setting up of a joint investigation team is vested in the Office of the Prosecutor General and in the Eurojust National Member for Estonia. The decision concerning the setting up of a joint investigation team based on a proposal transmitted to Estonia is taken by the Office of the Prosecutor General or, with the authorisation of the Office, by the Eurojust National Member for Estonia, who also concludes a corresponding agreement with the competent judicial authority of the foreign state concerned.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

(2) A joint investigation team carries out its operations based on the laws of the state in which it operates. The competent judicial authority of such a state appoints the leader of the team and provides the organisational and technical conditions for the team's operation.

(3) Procedural operations may also be performed by members of a joint investigation team who come from a foreign state, subject to this being known to the leader of the team and agreed by the competent judicial authorities of the states that participate in the team.

(4) Where, in the operation of the investigation team, a need arises to carry out procedural operations outside the territory of the state in which the team operates, a member of the investigation team may request that the relevant procedural operation in the territory of a state that participates in the team be carried out by the competent investigative authority of such a state according to the procedural law of that state.

(5) Information that a member of a joint investigation team has received and that is not otherwise available to the competent authorities of the participating states may be used:
1) unconditionally, for a purpose for whose attainment the joint investigation team was set up;
2) with the consent of the state which made the information available, for ascertaining the facts in relation to any other criminal offences that fall within the scope of proceedings for which the investigation team was set up. Such consent may be withdrawn where the information prejudices the joint investigation or where circumstances become apparent which preclude provision of mutual legal assistance;
3) in order to prevent an immediate and serious threat to public security, provided criminal proceedings have already been initiated and use of the information is not contrary to the conditions stated in clause 2 of this subsection;
4) for other purposes, according to an agreement between the states that have set up the joint investigation team.

**§ 472. Cross-border surveillance**

(1) In connection with pre-trial proceedings concerning an extraditable criminal offence and provided the person concerned is being kept under surveillance in relation to being suspected of a criminal offence or in

relation to a need to identify a suspected person or ascertain the whereabouts of such a person, the surveillance may be continued in the territory of another Member State that is party to the Convention signed at Schengen on 19 June 1990 to implement the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders (hereinafter, 'Schengen Member State'), provided the latter has authorised such cross-border surveillance in response to a request for assistance that has been made in advance and that states its reasons. Ancillary conditions may be attached to the authorisation.

(2) Competence to transmit a request for cross-border surveillance to another Schengen Member State is vested in the Office of the Prosecutor General; in a situation of urgency, a request may be transmitted by a District Prosecutor's Office. Authorization for granting a request for cross-border surveillance transmitted to Estonia is issued by the Office of the Prosecutor General. Conditions may be attached to the granting of the request.

(3) Transmitting a request for cross-border surveillance to another Schengen Member State is permitted in relation to pre-trial proceedings concerning the criminal offences specified in subsection 2 of § $126^2$ of this Code. As the state in whose territory the person concerned finds themselves, Estonia may not deny a request if it is presented 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 a situation of urgency, cross-border surveillance as part of pre-trial proceedings may be commenced without prior authorisation from the state in whose territory the person concerned finds themselves provided the subject of such proceedings is one of 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) destruction 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) Where cross-border surveillance has been commenced in a situation of urgency as part of a pre-trial investigation of a criminal offence mentioned in subsection 4 of this section without prior authorisation from the state in whose territory the person concerned finds themselves:
1) that state is must be notified without delay of the fact 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 by subsection 1 of this section must be transmitted without delay to that state, setting out the reasons for the unauthorised crossing of the border.

(6) When conducting cross-border surveillance:
1) the laws of the state in whose territory the surveillance is conducted and the instructions of the representatives of its authorities are complied with;
2) a document authorising cross-border surveillance is carried, except in a situation provided for by subsection 4 of this section;
3) at the request of a competent authority of the state in whose territory surveillance is conducted, proof is provided of acting in an official capacity;
4) service weapons may be carried with the consent of the state in whose territory the surveillance is conducted, and may be used only for self-defence;
5) private property or any other places not intended for public use may not be entered, and the person under surveillance may not be stopped, questioned or apprehended;
6) the competent judicial authority of the state in whose territory the surveillance is conducted is notified of each surveillance operation and, at the request of the competent judicial authority of the aforementioned state, the officer carrying out such surveillance must appear in person in order to provide explanations;
7) at the request of the competent judicial authority of the state in whose territory the surveillance is conducted, assistance must be provided in the conduct of the relevant criminal proceedings in that state.

(7) Cross-border surveillance is terminated:
1) when the purpose of the corresponding operation has been achieved;
2) at the request of the state in whose territory the surveillance is conducted;

3) where, within five hours following the crossing of the border in order to commence cross-border surveillance following the rules prescribed in subsection 5 of this section, the state in whose territory such surveillance is conducted has not granted authorisation for cross-border surveillance.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

**§ 473. Spontaneous transmission of information**

Within the framework of mutual assistance in criminal matters, a competent judicial authority may, without having been requested to do so, transmit to a foreign state and, in relation to criminal offences listed in subsection 2 of § 491 of this Code, to Eurojust, information obtained by procedural operations where such information may constitute an indication for commencing criminal proceedings in that state or may facilitate the ascertaining of the facts of a criminal offence in criminal proceedings that have already been commenced.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

# Subchapter 4
# Transfer of Criminal Proceedings to and from Estonia

**§ 474. Transfer of criminal proceedings to a foreign state**

(1) The transfer to a foreign state of criminal proceedings that have been commenced in respect of a person suspected or accused of a criminal offence may be requested where:
1) the person is a citizen, or resides permanently in the territory, of that state;
2) the person is serving a sentence of imprisonment in that state;
3) criminal proceedings concerning the same or any other criminal offence have been commenced in respect of the person in the state to receive the request;
4) the evidence or the more significant items of evidence are located in that state;
5) it is found that it is not possible to ensure the presence of the accused during the hearing of the criminal case and that their presence for the hearing of the case will be ensured in the requested state.

(2) A transfer request is sent to the Office of the Prosecutor General together with the criminal file, or a certified copy of such a file, as well as with other relevant materials.

(3) The Office of the Prosecutor General verifies whether the transfer of criminal proceedings to the foreign state is justified and sends the materials to the Ministry of Justice who transmits these to the foreign state concerned.

(4) When a request for the transfer of criminal proceedings to a foreign state has been transmitted, charges cannot be brought against the person concerned for the criminal offence which is the subject of the proceedings whose transfer was requested, and a judgment previously imposed on the person for the same criminal offence cannot be enforced.

(5) The right to bring charges and enforce the judgment reverts to Estonia where:
1) the request for transfer is not granted;
2) the request for transfer is not accepted;
3) the requested state decides not to commence or to terminate the proceedings;
4) the request is withdrawn before the requested state has given notice of its decision to grant the request.

**§ 475. Transfer of criminal proceedings to Estonia**

(1) A request from a foreign state to transfer criminal proceedings to Estonia is transmitted by the Ministry of Justice to the Office of the Prosecutor General, who decides on the transfer.

(2) In addition to the conditions provided for by § 436 of this Code, acceptance of a request to transfer criminal proceedings to Estonia may be refused in full or in part if:
1) the suspect or accused is not an Estonian citizen or does not reside permanently in Estonia;
2) the criminal offence that is the subject of criminal proceedings whose transfer to Estonia the request that has been transmitted concerns represents a political or a military offence within the meaning of the provisions of the European Convention on Extradition and the Additional Protocols to that Convention;
3) the criminal offence was committed outside the territory of the requesting state;
4) the request is contrary to the principles of Estonian criminal procedure.

(3) Proceedings in respect of a criminal case that has been transferred to Estonia are conducted by the district court that serves the locality of residence of the accused or, in the absence of such residence, by the court in whose service area the corresponding pre-trial proceedings were completed.
[RT I 2005, 39, 308 – entry into force 01.01.2006]

# Subchapter 5
# Recognition and Execution of Judgments of a State Not Participating in Cooperation in Criminal Matters among Member States of the European Union

[RT I, 21.06.2014, 11 - entry into force 01.01.2015]

### § 475[1]. Cooperation in criminal matters outside the European Union

The provisions of this Subchapter apply to international cooperation in criminal matters which is based on an international treaty and which is not subject to the provisions of the European Union's measures on cooperation in criminal matters.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 476. Assistance in recognition and enforcement of a judgment rendered in a foreign state

Assistance may be provided to a requesting state in its enforcement of a sentence imposed for an offence provided a corresponding request has been transmitted to the Ministry of Justice together with an annex containing the relevant judgment, which has entered into effect, or with a certified copy of such a judgment.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 477. Scope of assistance

(1) In addition to what has been set out in § 436 of this Code, no assistance may be provided to a requesting state in enforcing a sentence or any other corrective measure imposed in that state if:
1) the judgment on which the request is founded has not entered into effect;
2) the judgment was not rendered by an independent and impartial court;
3) the judgment was rendered *in absentia*;
4) the accused was not ensured the right of defence or criminal proceedings in their case were not conducted in a language understandable to them;
5) the act for the commission of which the sentence or other corrective measure was imposed is not punishable as a criminal offence under the Penal Code of Estonia, or that Code does not prescribe such a sentence or measure;
6) an Estonian court has convicted the person concerned on the same charges, or it has been decided not to commence criminal proceedings in their respect or such proceedings have been terminated;
7) according to Estonian law, the limitation period for enforcing the judgment or the decision of another authority has lapsed;
8) the judgment or decision was rendered in respect of a person of less than fourteen years of age;
9) the judgment or decision was made in respect of a person who enjoys immunity or privileges under clause 2 of § 4 of this Code.

(2) Where a person has been sentenced to imprisonment in a foreign state, a request for assistance towards enforcement of their sentence may be granted if the person is a citizen of Estonia and their written consent to being transferred in order to continue serving their sentence in Estonia has been annexed to the request. Such consent cannot be waived after a final decision has been made concerning the transfer.

(3) Where a judgment rendered in respect of a citizen of the Republic of Estonia, or an administrative decision relating to such a judgment contains a direction to expel the person from the territory of the state concerned directly upon their release from imprisonment, the transfer in question may be agreed to regardless of the person's consent.

(4) Where a confiscation order made in the requesting state concerns a non-party, its execution is prohibited if:
1) the third party concerned has not been provided the opportunity to protect their interests or
2) the order is incompatible with a judicial disposition entered in the same case according to Estonian law under the Code of Civil Procedure.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 478. Proceedings concerning a request to execute a judgment received from a foreign state

(1) The Ministry of Justice verifies whether the request complies with the requirements and whether the required supporting documents are present, and transmits a request that complies with the requirements to the relevant court and to the Office of the Prosecutor General without delay.

(2) The transfer to Estonia of a person sentenced to imprisonment, or refusal of such transfer, is decided by the court.

(3) In respect of a person who has been sentenced to imprisonment in the requesting state, the enforcement of the corresponding judgment is continued without any changes, provided the length of the imprisonment imposed

on the person in the requesting state corresponds to the sentence prescribed for the same criminal offence by the Penal Code of Estonia.

(4) Where this is needed, supplementary information is requested from the foreign state through the Ministry of Justice, setting a time limit for replying to the request.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 479. Committing, and holding, a person in custody in order to execute a judgment rendered in a foreign state**

(1) Where a request to execute a judgment is received from a foreign state, a person who is present in Estonia and in whose respect execution of the judgment is requested – the judgment in question being one by which the person has been sentenced to imprisonment – may be committed in custody, on an application of the prosecutor by order of the pre-trial investigation judge, provided there is reason to believe that the person is evading enforcement of the judgment.

(2) Committing a person in custody is forgone where it clear that the judgment may not be executed.

(3) The person is released from custody if within three months following their being committed in custody the court has not made a decision to recognise, and mandate the enforcement of, the judgment of the requesting state.

(4) An interim appeal against an order committing the person in custody may be filed by the person concerned, their defence counsel or the Prosecutor's Office.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 480. Participation of defence counsel in recognising and executing a judgment rendered in a foreign state**

(1) Participation of the defence counsel in proceedings concerning recognition and execution of a judgment of a foreign court is mandatory when the issue to be decided is:
1) recognition of a judgment by which confiscation is ordered;
2) committal of the person concerned in custody and holding them in custody in order to execute a judgment rendered in a foreign state;
3) recognition of a sentence of imprisonment imposed on the person concerned;
4) the transfer of the person concerned to a foreign state to serve their sentence.

(2) The person concerned has a right to apply for the participation of the defence counsel also in situations not mentioned in subsection 1 of this section.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 481. Jurisdiction to recognise a judgment rendered in a foreign state**

The recognition of a judgment rendered in a foreign state is decided by Harju District Court.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 482. Recognising a judgment rendered in a foreign state: procedure in court**

(1) Recognising a judgment rendered in a foreign state is decided by the judge sitting alone. The hearing of the matter of recognition is held within thirty days following arrival of the corresponding request in court.

(2) Where this is needed, supplementary information is requested from the foreign state through the Ministry of Justice, setting a time limit for replying to the request.

(3) A non-party whose interests the judgment to be made affects may be summoned to the hearing if they are present in Estonia. Where confiscation is to be decided, the participation of the third party concerned or of their authorised representative is mandatory.

(4) The participation of the prosecutor in the hearing is mandatory.

(5) A record is made of proceedings at the hearing.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 483. Court orders made when recognising, and mandating the enforcement of, a judgment rendered in a foreign state**

(1) When deciding on the recognition of a judgment rendered in a foreign state, the court makes one of the following orders:

1) an order declaring the execution of the judgment rendered in a foreign state to be permissible;
2) an order declaring the execution of the judgment rendered in a foreign state to be impermissible, or
3) an order terminating the proceedings, if the person concerned has discharged their obligations before the hearing.

(2) If the execution of a judgment is not permitted, the court sends a copy of the corresponding court order to the Ministry of Justice. The Ministry of Justice notifies the refusal of execution to the foreign state concerned.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 484. Particularising the sentence imposed in a foreign state**

(1) When the court declares the execution of a judgment rendered in a foreign state to be permissible, it fixes the sentence to be enforced in Estonia. The sentence imposed in the foreign state is compared to the sentence prescribed for the same act by the Penal Code of Estonia.

(2) In terms of its nature, a particularised sentence must correspond as much as possible to the sentence imposed in the foreign state. The court takes into account the severity of the sentence imposed in the foreign state, yet it must not exceed the upper limit prescribed by the sanctioning frame of the corresponding section of the Penal Code of Estonia.

(3) If the duration of the sentence has not been fixed in the foreign state, it will be fixed by the court following the principles of the Penal Code of Estonia.

(4) It is not permitted to aggravate a sentence imposed in a foreign state.

(5) Where, in the foreign state, enforcement of the sentence has been conditionally postponed or the person concerned has been released on parole, the court applies the corresponding provisions of the Penal Code of Estonia.

(6) A monetary penalty, forfeiture of property and the amount to be confiscated are converted into euro based on the exchange rate effective on the day of particularising the sentence.

(7) When the sentence is particularised, the time spent in imprisonment in the foreign state or in custody under § 479 of this Code are counted as time served under the sentence.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 485. Order particularising the judgment rendered in a foreign state**

(1) The court decides the particularisation of a judgment rendered in a foreign state by order.

(2) The order states the extent to which the judgment rendered in a foreign state is recognised and fixes the particularised sentence that will be enforced in Estonia.

(3) When the order has entered into effect, the court sends a copy of that order to the Criminal Records Database and to the Ministry of Justice. The Ministry of Justice notifies execution of the request and the particularised sentence to the foreign state concerned.

(4) An interim appeal against an order provided for by subsection 1 of this section may be filed by the accused and their defence counsel, by a third party and by the Prosecutor’s Office.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 486. Enforcement of a particularised sentence**

(1) The sentence is enforced following the rules provided by Estonian laws.

(2) Enforcement of the sentence is not authorised if the competent authority of the foreign state has provided notification that the circumstances that constituted the grounds for imposition of the sentence are no longer present.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 487. Disposing of property received as a result of executing a judgment rendered in a foreign state**

(1) Unless the parties have agreed otherwise, any monetary penalty or forfeiture of property is charged to the revenue of the Estonian State.

(2) Unless the parties have agreed otherwise, any confiscated property is entered in the revenue account of the Estonian state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 487[1]. Terminating the enforcement of a judgment rendered in a foreign state

Enforcement of a judgment rendered in a foreign state is terminated forthwith when the requesting state provides notification of granting a pardon or amnesty or of a request to vary the sentence or of any other determination under which it is not possible to enforce the judgment.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

# Subchapter 6
# Requesting Recognition and Execution of Estonian Judgments and of Determinations of Other Estonian Authorities

[RT I 2008, 33, 201 - entry into force 28.07.2008]

### § 488. Requesting a foreign state to recognise and execute an Estonian judgment or a determination of another Estonian authority

[RT I 2008, 33, 201 – entry into force 28.07.2008]

(1) Estonia may request a foreign state to execute a sentence or any other sanction imposed on a person under the Penal Code of Estonia or under any other statute if:
1) the convicted person is a citizen or permanent resident of the requested state or is present in the territory of the requested state and is not extradited;
1[1]) the convicted person is a legal person whose registered office is in the requested state;
2) execution of the sentence or other sanction in the foreign state is mandated by the interests of the convicted person or of the public.
[RT I 2008, 33, 201 – entry into force 28.07.2008]

(2) If the convicted person is present in Estonian territory, a foreign state may also be requested to execute their sentence of imprisonment, provided the person consents to be transferred to that state. The consent is given in writing and cannot be withdrawn.
[RT I 2008, 33, 201 – entry into force 28.07.2008]

(3) Where the judgment rendered concerning the convicted person, or an administrative decision issued in relation to such a judgment, contains a direction to expel them from the national territory forthwith on being released from imprisonment, the transfer of such a person to a foreign state may be requested regardless of their consent.
[RT I 2008, 33, 201 – entry into force 28.07.2008]

(4) A person sentenced to imprisonment may be transferred to another state for continuation of their sentence, provided, at the time of receipt of the corresponding request, they still have at least six months of imprisonment to serve.
[RT I 2008, 33, 201 – entry into force 28.07.2008]

(5) A transfer to another state of a person sentenced to imprisonment, or a refusal of such a transfer, is decided by the Minister in charge of the policy sector.
[RT I 2008, 33, 201 – entry into force 28.07.2008]

(6) In order to obtain recognition and execution of a judgment that has entered into effect, a corresponding request – to which the relevant judgment or a certified copy of such a judgment together with its translation is annexed – is sent to the Ministry of Justice who transmits these to the requested state by letter, e-mail or any other method reproducible 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 the International Criminal Court

(1) Unless otherwise provided for by an international treaty, cooperation with the International Criminal Court is based on this Code.

(2) When the Office of the Prosecutor General receives, from the International Criminal Court, a request for an arrest, it arranges the arrest of the person concerned following the rules provided by § 217 of this Code and the person's committal in custody following the rules provided by § 131 of this Code.

(3) When performing procedural operations in Estonia, a prosecutor of the International Criminal Court has all the rights and obligations of prosecutors as prescribed in this Code.

(4) Where a request for assistance from the International Criminal Court is incompatible with a request for assistance from a foreign state, the request is resolved in accordance with the rules provided by the relevant international treaty.
[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) Unless otherwise provided for by the legislation of the European Union, cooperation with the EU Judicial Cooperation Unit Eurojust is based on this Code.

(2) Within the territory in which this Code applies, the prosecutor appointed as the Eurojust National Member for Estonia has all the rights and obligations of a state prosecutor as prescribed in this Code.

(3) In a situation of urgency, the Eurojust National Member for Estonia may commence criminal proceedings in a criminal case in which proceedings are to be conducted in Estonia and, having performed the initial procedural operations, send the materials of the criminal case to the Office of the Prosecutor General who transmits the materials according to investigative jurisdiction.
[RT I 2008, 19, 132 – entry into force 23.05.2008]

# Subchapter 8
# Cooperation in Criminal Matters between the 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 matters under European Union measures

The provisions of this Subchapter apply to international cooperation in criminal matters which is conducted under European Union measures on cooperation in criminal matters and where the other party to the cooperation is a state that has acceded to such measures.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 489[3]. Ensuring the protection of personal data in international exchange of data within the framework of cooperation in criminal matters

[Repealed – RT I, 13.03.2019, 2 – entry into force 15.03.2019]

### § 489[4]. Transmission to a competent authority of a third state and to an international organisation of personal data received from a Member State within the framework of cooperation in criminal matters

[Repealed – RT I, 13.03.2019, 2 – entry into force 15.03.2019]

### § 489[5]. Transmission to an individual of personal data received from a Member State within the framework of cooperation in criminal matters

[Repealed – RT I, 13.03.2019, 2 – entry into force 15.03.2019]

**§ 489[6]. Scope of assistance**

(1) Recognition and execution, under the provisions on cooperation in criminal matters within the European Union, of a judgment or decision of another authority is permitted regardless of the punishability of the act under the laws of Estonia, provided a maximum sentence of at least three years' imprisonment is prescribed 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) the counterfeiting of money;
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) intentional homicide, grievous bodily injury;
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) criminal fraud;
21) extortion;
22) manufacturing of pirate copies and counterfeiting of products as well as trafficking in such copies and products;
23) forgery of administrative documents and trafficking in such documents;
24) 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 within the jurisdiction of the International Criminal Court;
31) hijacking of an aircraft or a ship;
32) sabotage.

(2) In relation to criminal offences other than those mentioned in subsection 1 of this section, the recognition and execution, under the provisions of cooperation in criminal matters within the European Union, of a judgment or of a decision of another authority is permitted only if the corresponding act is punishable as a criminal offence in Estonia.

(3) The recognition and execution, under the provisions of cooperation in criminal matters within the European Union, of a judgment or of a decision of another authority is permitted subject to the grounds for refusal provided by § 436 of this Code not being operative and subject to the requirements provided by § 477 being met.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 489[7]. Recognition and enforcement of decisions rendered*in absentia***

(1) Recognition and enforcement of a decision rendered *in absentia*is permitted if:
1) it has been ascertained that the party to proceedings was notified of the judicial hearing of their case and of the fact that a decision may be entered in the case also if they do not appear at the hearing;
2) the decision was served on the person and the person was informed of their right to apply for a new consideration of the case or to appeal the decision, and of their right to participate in the judicial hearing that allows for a new consideration of the case on its merits and which may lead to the initial decision being set aside, and the person provided notification of not contesting the decision;
3) the person did not apply for a new consideration of the case or appeal the decision during the prescribed period of time;

4) the person was aware of the judicial hearing of their case and authorised the defence counsel of their choosing or one appointed under the rules of state-funded legal aid to represent them at the hearing, and such a counsel participated in that hearing.

(2) In addition to what has been provided by subsection 1 of this section, the recognition and enforcement of a decision entered *in absentia* is permitted only if allowed by the provisions of this Subchapter.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 489[8]. Conduct of proceedings on requests received from a Member State of the European Union

(1) Unless otherwise provided by this Subchapter, the central authority for cooperation in criminal matters within the European Union is the Ministry of Justice.

(2) The Ministry of Justice verifies whether a request that has arrived complies with the requirements and whether the required supporting documents are present, and transmits the request, according to its substance, to the Office of the Prosecutor General or to the court.

(3) Where a request for assistance is transmitted through Eurojust, the Eurojust National Member for Estonia verifies whether the request complies with the requirements and whether it is permissible and possible and transmits it to the competent Estonian judicial authority for execution. The National Member sends a copy of the request to the Office of the Prosecutor General and to the Ministry of Justice.

(4) The transfer to Estonia of a person sentenced to imprisonment or refusal of such a transfer is decided by the court.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 489[9]. Recognising a judgment rendered in a Member State or a decision of another authority of a Member State: procedure in court

(1) Recognising a judgment rendered in a Member State is decided by the judge sitting alone. The hearing of the matter of recognising such a judgment is arranged within thirty days following arrival of the corresponding request in court.

(2) Where this is needed, supplementary information is requested from the Member State through the Ministry of Justice, setting a time limit for replying to the request.

(3) A non-party whose interests the judgment to be entered affects may be summoned to the hearing if they are present in Estonia.

(4) The participation of the prosecutor in the hearing is mandatory.

(5) A record is made of proceedings at the hearing.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 489[10]. Participation of defence counsel in the recognition and execution of judgments

(1) The participation of defence counsel in proceedings concerning the recognition and execution of a judgment rendered in a Member State is mandatory if the following matters are to be decided:
1) recognising a confiscation order;
2) committing, or holding, a person in custody in order to execute a judgment rendered in a Member State;
3) transferring a person to a Member State to serve their sentence.

(2) The person concerned has a right to make a motion for the participation of the defence counsel also in situations not specified in subsection 1 of this section.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 489[11]. Orders to be made by the court when recognising and mandating enforcement of a judgment or of a decision of another authority rendered in a foreign state

(1) When deciding on the recognition of a judgment rendered in a foreign state, the court makes one of the following orders:
1) declares execution of the judgment of the Member State to be permissible;
2) declares execution of the judgment of the Member State to be impermissible;
3) terminates the proceedings if the person concerned has performed the obligations imposed on them by the judgment or other decision.

(2) Where execution of a judgment rendered in a Member State is not permitted, the court sends a copy of its order to the Ministry of Justice. The Ministry of Justice notifies the Member State concerned of the refusal to execute its request.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 489[12]. Particularising a sentence imposed in a Member State

(1) **When the court declares the execution of a judgment rendered in a foreign state to be permissible, it fixes the sentence to be enforced in Estonia. The sentence imposed in the Member State is compared to the sanction prescribed for the same act by the Penal Code of Estonia.**

(2) In terms of its nature, a particularised sentence must correspond as much as possible to the sentence imposed in the Member State. The court takes into account the severity of the sentence imposed in the Member State, yet it must not exceed the upper limit prescribed by the sentencing frame of the corresponding section of the Penal Code of Estonia.

(3) Where the duration of the sentence has not been fixed in the Member State, it is fixed by the court following the principles of the Penal Code of Estonia.

(4) It is not permitted to aggravate a sentence imposed in a Member State.

(5) Where, in the Member State, enforcement of the sentence has been conditionally postponed or the person concerned has been released on parole, the court applies the corresponding provisions of the Penal Code.

(6) Where the convicted person produces a certificate concerning payment, in part or in full, of an amount of money, the Ministry of Justice consults with the competent judicial authority of the Member State that rendered the decision. The part of any monetary penalty, forfeiture of property or amount to be confiscated that has been paid in the other state is deducted from the amount of the monetary penalty or fine to be collected.

(7) A monetary penalty, forfeiture of property or an amount to be confiscated is converted into euro based on the exchange rate effective on the day of particularising the sentence.

(8) When the sentence is particularised, the time spent in imprisonment in the foreign state or in custody under § 479 of this Code are counted as time served under the sentence.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 489[13]. Conversion of a monetary penalty or fine imposed in a Member State

Where it is not possible to enforce a monetary penalty or fine imposed in a Member State, the court may, with permission of the requesting state, convert it, following the rules provided by §§ 70 and 72 of the Penal Code, into imprisonment, a short-term custodial sentence or community service. The term of imprisonment, short-time custodial sentence or community service must not exceed the upper limit prescribed in the requesting state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 489[14]. Order particularising a judgment rendered in a Member State

(1) The court decides the particularisation of a judgment rendered in a Member State by order.

(2) The order states the extent to which the judgment imposed in the Member State is recognised and fixes the particularised sentence that will be enforced in Estonia.

(3) When the order has entered into effect, the court sends a copy of that order to the Criminal Records Database and to the Ministry of Justice. The Ministry of Justice notifies execution of the request and the particularised sentence to the foreign state concerned.

(4) An interim appeal against an order provided for by subsection 1 of this section may be filed by the accused and their defence counsel, by a third party or the Prosecutor’s Office.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 489[15]. Enforcement of a particularised sentence

(1) The sentence is enforced following the rules provided by Estonian laws.

(2) Enforcement of the sentence is not authorised if the competent authority of the foreign state has provided notification that the circumstances that constituted grounds for imposition of the sentence are no longer present.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 489[16]. Amnesty, pardon and review of a judgment that has entered into effect

(1) Both the requesting as well as the requested state may grant a pardon or amnesty to the person.

(2) Only the requesting state has the right to decide on reviewing a judgment which has entered into effect and whose enforcement has been mandated.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 489[17]. Methods of presenting a certificate or a request

(1) A certificate or request provided for by this Subchapter is transmitted to the requesting state by letter, e-mail or any other method reproducible in writing.

(2) The certificate or request provided for by this Subchapter is issued in the Estonian language and is translated, by the authority competent to present that certificate or request, into a language determined by the requested state. In the case of a judgment, such a translation is not provided.
[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 Committal in Custody and taken to Ensure Compliance in 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 compliance enforcement measures

A certificate of European compliance enforcement 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 recognise a decision by which a natural person, instead of being committed in custody, is subjected to one or more measures to ensure compliance in criminal proceedings (hereinafter, ‘compliance measure’), and to exercise supervision over observance of such a measure or measures.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

### § 489[19]. General conditions

(1) Recognition of a decision on application of compliance measures according to the provisions of this Division is permitted provided the act which is the cause for the decision is a criminal offence under the Penal Code of Estonia.

(2) Estonia recognises a decision on application of compliance measures regardless of the punishability of the act under the Penal Code of Estonia where the offence is one mentioned in subsection 1 of § 489[6] of this Code.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

### § 489[20]. Criteria for recognising a decision on application of compliance measures

(1) Estonia recognises a decision on application of compliance 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 measures, consents to return to Estonia.

(2) Estonia may recognise a decision on application of compliance measures if the decision is made with regard to a person whose lawful and permanent residence is not in Estonia only where the person subjected to the measures wishes to settle in Estonia and the following conditions are met:
1) the person has applied for the recognition;
2) there are no circumstances to prevent the person’s settling in Estonia and it is possible to issue an Estonian residence permit to the person;
3) the person has family ties or other compelling connections with the Estonian State;
4) it is possible to ensure efficient supervision over observance of compliance measures in Estonia without incurring disproportionately high costs.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

### § 489[21]. Types of compliance measures

(1) Recognition of decisions on application of compliance measures and transmission of certificates of European compliance enforcement measures to competent authorities of the Member States of the European Union according to this Division is permitted only with respect to the following compliance measures:
1) an obligation to inform the competent authority in the requested 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 requested state;
3) an obligation to remain at a specified place, where applicable during specified hours;
4) an obligation containing limitations on leaving the territory of the requested state;
5) an obligation to report at specified times to a specific authority;
6) an obligation to avoid contact with specific persons connected with the offence allegedly committed.

(2) Transmission of certificates of European compliance enforcement measures to competent authorities of the Member States of the European Union according to this Division is also permitted in the case of compliance measures not mentioned in subsection 1 of this section, provided the Member State has consented to exercise supervision over observance of such measures.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

### § 489[22]. Grounds for refusal to recognise a decision on application of compliance measures

(1) Recognition of a decision on application of compliance measures is not permitted if:
1) the person subjected to the measures is not the person mentioned in subsection 1 or 2 of § 489[20] of this Code;
2) the criminal offence is statute-barred according to the Penal Code of Estonia, and Estonian penal law applies to the offence;
3) the act relating to the decision on application of the measures is not a criminal offence according to the Penal Code of Estonia, except in situations provided for by subsection 1 of § 489[6] of this Code;
4) concerning the offence which is the cause of the measures, a judgment or an order on termination of offence proceedings has entered into effect in respect to the person subjected to those measures;
5) the request was not presented using the form of the certificate of European compliance enforcement measures, it is incomplete or clearly does not correspond to the decision on which it is based and its defects have not been cured within a reasonable period of time;
6) the person subjected to the measures is less than fourteen years of age;
7) in the Republic of Estonia, the person subjected to the measures enjoys immunity or privileges prescribed by an international treaty, which make it impossible to exercise supervision over observance of such measures; or
8) the measures applied are not mentioned in subsection 1 of § 489[21] of this Code.

(2) Recognition of a decision on application of compliance measures may be refused if:
1) the person subjected to the measures has been subjected to compliance measures in the Republic of Estonia in connection with the same offence;
2) in the case of any breach of the measures, surrender of the person would be refused for reasons mentioned in § 492 of this Code; or
3) the measures applied are incompatible with the measures to ensure compliance in criminal proceedings in Estonia and their application is ruled out due to the condition provided by subsection 2 of § 489[27] 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 notifies the competent authority of the requesting state in a form reproducible in writing without delay:
1) of the fact that a ground for refusal to recognise the decision on application of compliance measures is present for a reason mentioned in clauses 1–4 of subsection 1 of § 489[22] of this Code and, where this is needed, request to supply any supplementary information;
2) of any change of residence of the person subjected to compliance measures;
3) of the maximum length of time provided by subsection 4 of § 489[30] of this Code during which supervision may be exercised in Estonia over observance of compliance measures;
4) of the fact that an appeal has been filed against recognition of the decision on application of compliance measures;
5) of the fact that it is impossible to exercise supervision over observance of compliance measures for the reason that after transmission to Estonia of the certificate of European compliance enforcement measures and of the decision on application of compliance measures, the person cannot be found in the territory of Estonia;
6) of any breach of compliance measures and other findings which could result in taking any subsequent decision specified in § 48924 of this Code;

7) of the fact that it would be possible to refuse to recognise the decision on application of compliance measures on the ground mentioned in clause 2 of subsection 2 of § 489[22] of this Code but Estonia is nevertheless willing to recognise the decision;
8) of any decision to terminate supervision over observance of compliance measures.

(2) The form of the notice mentioned in clause 6 of subsection 1 of this section is enacted by a regulation of the Minister in charge of the policy sector.

(3) The Prosecutor's Office or court notifies the competent authority of the requested state in a form reproducible in writing without delay:
1) of the fact that a decision mentioned in § 489[24] of this Code has been made;
2) of the fact that an appeal has been filed against the decision on application of compliance measures;
3) of the fact that supervision over observance of compliance measures is necessary for a longer period than that indicated in the certificate of European compliance enforcement measures.

(4) Where this is possible, the Prosecutor's Office or court consults, and exchanges necessary information, with the Member State concerned:
1) during the time of preparing the decision on application of compliance measures or at least before transmission of the decision and of the certificate of European compliance enforcement measures;
2) before application of compliance measures on the ground provided by subsection 1 of § 489[27] of this Code;
3) to facilitate the smooth and efficient supervision over observance of compliance measures;
4) where the person subjected to compliance measures has committed a serious breach of those measures.

(5) The Prosecutor's Office or court notifies the Ministry of Justice of recognising a decision on application of compliance measures or of refusing to recognise it, of withdrawing the certificate of European compliance enforcement measures and of terminating supervision over observance of compliance 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 a decision on application of compliance measures are made by the competent authorities of the requesting state. In particular, such decisions include renewal, review and withdrawal of decisions on application of compliance measures, the varying of the measures and the issuing of an arrest warrant or of any other enforceable judgment having the same effect.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

## Division 2
## Procedure for Recognition and Enforcement 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]. Deciding on recognition

(1) The Ministry of Justice is competent to conduct proceedings on certificates of European compliance enforcement measures presented to Estonia, while the competence to decide on enforcement of such measures is vested in:
1) the district court of the residence of the person subjected to compliance measures, if the measures were applied by the court;
2) the Prosecutor's Office in any situation not mentioned in clause 1 of this subsection.

(2) The Prosecutor's Office or the court makes an order by which it recognises the decision on application of compliance measures or refuses to recognise it; the order is transmitted without delay to the competent authorities of the requesting state. Where it has recognised the decision, the Prosecutor's Office or the court may transmit it for enforcement to the competent authority or itself proceed to enforce the decision.

(3) The Prosecutor's Office or court decides on recognising a decision on application of compliance measures within 20 working days following receipt of the decision and of the certificate of European compliance enforcement measures.

(4) If the requesting state has provided notification of an appeal having been filed against the decision on application of compliance measures, the time limit for recognition of the decision is extended by 20 working days.

(5) Where it is not possible to recognise a decision on application of compliance measures during the time limit provided by subsections 3 and 4 of this section due to exceptional circumstances, the Prosecutor's Office or the

court notifies this to the competent authority of the requesting state without delay and states the reasons for the delay and the estimated time which is required for making a final decision.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 489[26]. Postponing recognition of a decision on application of compliance measures**

Recognition of a decision on application of compliance measures is postponed if the certificate mentioned in § 489[18] of this Code is incomplete or clearly does not correspond to the decision, until a reasonable due date set by the Prosecutor's Office or court for completion or rectification of the certificate.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 489[27]. Adaptation of compliance measures**

(1) Where the compliance measures applied to a person in a foreign state are incompatible with the measures securing criminal proceedings applicable under criminal procedure in Estonia, the measures applied in the foreign state are adapted in such a manner that they would be in compliance with the measures applicable in Estonia. Adapted compliance measures must correspond, as precisely as possible, to the nature of the measures imposed in the requesting state.

(2) Adapted compliance measures must not be more severe than compliance measures applied to the person in the requesting state.

(3) The reasons for and method of adaptation of compliance measures, as well as the impact of their adaptation on supervision over observance of the measures are stated in the order mentioned in subsection 2 of § 489[25] of this Code.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 489[28]. Law applicable to supervision over observance of compliance measures**

Where a decision on application of compliance measures is recognised, supervision over observance of the measures is carried out according to Estonian law.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 489[29]. Contesting a recognition decision**

(1) The person subjected to compliance measures may file an appeal against the order of the Prosecutor's Office or court mentioned in subsection 2 of § 489[25] of this Code within three days following its receipt.

(2) An appeal against the order of the Prosecutor's Office is filed with the pre-trial investigation judge of the district court in whose service area the contested order was made.

(3) An appeal against a court order is filed through the court that made the contested order, with the court which is superior to the court that made the order.

(4) An appeal is considered by written procedure within ten days following arrival of the case in the court which is competent to dispose of the appeal.

(5) The filing of an appeal does not suspend enforcement of the contested order.

(6) The order of the pre-trial investigation judge or circuit court of appeal is final and not subject to further appeal.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 489[30]. Competence of Estonia when supervising observance of compliance measures**

(1) Estonia is competent and required to supervise observance of compliance measures starting from recognition of the decision on application of such measures.

(2) Where compliance measures have been applied, supervision over their observance does not commence before ten days have expired from transmission of the order mentioned in subsection 2 of § 489[25] of this Code to the requesting state. Where the requesting state has agreed to this, supervision may also commence earlier but not before recognition of the decision on application of compliance measures.

(3) Where supervision over observance of compliance measures has commenced, signed acknowledgement of the order mentioned in subsection 2 of § 489[25] of this Code is obtained without delay from the person subjected to such measures.

(4) In pre-trial proceedings, supervision over observance of compliance measures may not be exercised for more than one year. At the request of the requesting state, in a criminal case of particular complexity or volume or in exceptional circumstances that have arisen in international cooperation in criminal proceedings, the Prosecutor's Office or court may extend, up to two years, the time limit for exercising supervision over observance of compliance measure in pre-trial proceedings.

(5) The competence of Estonia to exercise supervision over observance of compliance measures ends and passes to the requesting state in the following situations:
1) after recognition of the decision on application of compliance measures, the person cannot be found in the territory of Estonia;
2) the lawful and permanent residence of the person subjected to compliance measures is not in Estonia;
3) the certificate of European compliance enforcement measures has been withdrawn by the requesting state and Estonia has been duly informed of this;
4) Estonia has refused to exercise supervision over observance of compliance measures due to the reasons mentioned in this Division;
5) the time limit mentioned in subsection 4 of this section has expired.

(6) During supervision over observance of compliance measures, the Prosecutor's Office or court may, through the Ministry of Justice, always invite the competent authorities of the requesting state to provide information about whether such supervision is still needed.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 489[31]. Competence of Estonia on variation of compliance measures**

Where the competent authorities of the requesting state have varied the type or nature of compliance measures, the varied compliance measures may be adapted following the rules provided by § 489[27] of this Code, or supervision over observance with compliance measures may be refused on the ground provided by clause 8 of subsection 1 of § 489[22] of this Code.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 489[32]. Termination of supervision over observance of compliance measures in connection with unanswered notices**

(1) Where several notices mentioned in clause 6 of subsection 1 of § 489[23] of this Code have been presented to the competent authorities of the requesting state but those authorities have made none of the decisions on application of compliance measures mentioned in § 489[24] of this Code, the Prosecutor's Office or court may set a reasonable time limit to the requesting state for making such a decision.

(2) If the competent authorities of the requesting state do not make a decision mentioned in § 489[24] of this Code during the time limit mentioned in subsection 1 of this section, the Prosecutor's Office or court may decide to terminate supervision over observance of compliance measures.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 489[33]. Surrender of a person**

(1) Where 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 compliance measures is surrendered in accordance with the provisions of Division 2 of this Subchapter.

(2) In a situation mentioned in subsection 1 of this section, subsection 1 of § 491 of this Code does not apply.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

# Division 3
# Submission of Certificates of European Compliance Enforcement 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 compliance enforcement measures for recognition and execution**

(1) The Prosecutor's Office is competent to issue certificates of European compliance enforcement measures in pre-trial proceedings; in judicial proceedings, the competence is vested in the court. Certificates of European compliance enforcement measures are transmitted to the requested state through the Ministry of Justice.

(2) A certificate of European compliance enforcement measures may be transmitted to the competent authority of a Member State of the European Union:
1) in which is the person subjected to compliance measures has their lawful and permanent residence, provided the person subjected to such measures – having been informed about their application – consents to return to that state; or
2) in which the person subjected to compliance measures does not have a lawful and permanent residence, provided the person if has applied for it and the authority consents to this.

(3) A certificate of European compliance enforcement measures together with a decision on application of compliance measures is transmitted to only one state at any time.

(4) A certificate of European compliance enforcement measures and a decision on application of compliance measures is issued in Estonian. The Ministry of Justice translates the certificate into the language determined by the requested state.

(5) The form of certificates of European compliance enforcement measures is enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 489[35]. Competence for supervision over observance of compliance measures**

(1) The competence of Estonia for exercise of supervision over observance of compliance measures passes to the requested state as of the time when the requested state recognises the decision on application of compliance measures and duly notifies Estonia of such recognition.

(2) The competence to supervise observance of compliance measures passes to Estonia when:
1) Estonia has withdrawn the certificate of European compliance enforcement measures and duly notified this to the requested state; or
2) the requested state has, for any reason, terminated supervision over observance of compliance measures.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

**§ 489[36]. Applying for an extension of supervision over observance of compliance measures**

When the maximum period of time for the requested state to exercise supervision over observance of compliance measures nears its end, the Prosecutor's Office or court which prepared the certificate of European compliance enforcement measures may present an application to the competent authority of the requested state through the Ministry of Justice to extend supervision over observance of compliance measures.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

# Subchapter 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]]

## Division 1
## General Provisions

### § 489[37]. European Investigation Order

(1) A European Investigation Order (hereinafter, also 'EIO') is a request, which is issued or validated by a judicial authority of a Member State of the European Union, for performing a procedural operation in another Member State to obtain evidence or to transfer or deposit evidence that is located in another Member State in order to prevent a physical object which is used as an item of evidence from being destroyed, transformed, moved, transferred or disposed of.

(2) This Section does not apply to:
1) the activities of investigation teams formed jointly by several States under § 471 of this Code and to the gathering of evidence within the framework of such activities;
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]. Subdivision of costs

(1) Unless otherwise provided by this section, when Estonia is the requesting or the requested state, it bears all costs that are related to the execution, in its territory, of the relevant European Investigation Order.

(2) As a requested state, if the costs involved in executing a European Investigation Order are exceptionally high, Estonia may send information about such costs to the issuing authority and consult with it on whether and how those costs could be shared or the Order modified. The issuing authority may decide to:
1) bear the share of the costs that are deemed exceptionally high by the requested state or
2) withdraw the Order in part or as a whole.

(3) As the requesting state, Estonia bears the costs, provided these:
1) are related, in situations mentioned in §§ 489[39]and 489[40]of this Code, to the transfer to or from Estonia of persons subjected to a restriction of personal liberty;
2) are costs of transcribing, decoding or decrypting of intercepted messages sent through telecommunication networks and have been incurred in a situation falling under subsection 4 of § 489[43]of this Code.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

### § 489[39]. Temporary transfer to the requesting state of persons subjected to a restriction of personal liberty

(1) Where a European Investigation Order is issued in respect of a person who has been committed in custody, imprisoned or whose personal liberty has been otherwise lawfully restricted in the requested Member State, to obtain their temporary transfer to the requesting state for the performance of a certain procedural operation, the person may be temporarily transferred on condition that they are returned within the time limit determined by the requested state. The transfer of a person for the purpose of being interviewed as the suspect or accused is subject to the rules provided by Division 2 of Subchapter 8 of Chapter 19 of this Code.

(2) In addition to the grounds for refusal provided by § 489[51]of this Code, a person is not to be transferred to the requesting state if:
1) they do not consent to the transfer;
2) the transfer may lead to an extension of the statutory period of restriction of personal liberty.

(3) A person who has been temporarily transferred may not be committed to answer any charges, prosecuted, committed in custody or arrested as a suspect, or subjected to any other restrictions of their fundamental rights in connection with any offences that were committed before the person's departure from the territory of the requested state and that were not stated in the European Investigation Order. The immunity provided by this subsection ceases to apply when the temporarily transferred person has stayed in Estonia for 15 consecutive days following the date as of which their presence is no longer required by the judicial authority concerned and they have had the opportunity to leave, or have returned to Estonia after having left.

(4) Where, in order for a person to be transferred, they need to travel via a third Member State, the competent authority of the requesting state transmits a corresponding request, to which all the necessary documents have been appended, to the third Member State to obtain its authorisation.

(5) The exact procedure and conditions of a person's transfer are agreed between the competent authorities of the requested and the requested state. The restriction imposed on the personal liberty of the temporarily transferred person remains in effect in the requesting Member State, except where the competent authority of the requested Member State requests their release. The period during which the temporarily transferred person is held in custody in the requesting state is counted as time served for the purposes of any sentence they are subject to in the requested state.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

### § 489[40]. Temporary transfer to the requested state of persons subjected to a restriction of personal liberty

Where a European Investigation Order is issued in respect of a person who has been committed in custody, imprisoned or whose personal liberty has been otherwise lawfully restricted in the requesting Member State, to obtain their temporary transfer to the requested state for the performance of a certain procedural operation which requires the person to be present in the territory of that state, the provisions of § 489[39] of this Code are observed.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

### § 489[41]. Distance interviewing or distance examination of persons who are in the territory of a foreign state

(1) Where a European Investigation Order is issued for the distance interviewing or examination by means of an audiovisual technical solution – as a witness, an expert, the suspect or accused – of a person who is in the territory of a foreign state, or for the distance interviewing or examination of such a person by telephone as a witness or an expert, the provisions of § 69 of this Code apply without prejudice to special rules provided by this Division.

(2) Audiovisual distance interviewing or examination of a suspect or accused is permitted only subject to their consent. If the suspect or accused does not give their consent for such interviewing or examination, execution of the European Investigation Order mentioned in subsection 1 of this section may be refused.

(3) Specific rules for the distance interviewing or examination of a person and, where this is needed, measures required for their protection are agreed between the competent authorities of the requesting and the requested state. The competent authority of the requested state is required to:
1) notify the witness or expert concerned of the time and place of the interview or examination according to its national law;
2) having regard to the procedural provisions of the requesting state and providing notification, at a proper time, to the suspect or accused, of the rights they have under the law of the requesting state, summon the suspect or accused to the distance interview or examination;
3) ensure identification of the person to be interviewed or examined;
4) where this is needed, ensure the participation of an interpreter in the interview or examination;
5) ensure that fundamental principles of the law of the requested state are not infringed during the distance interview or examination and, if an infringement is detected, immediately take measures to eliminate it.

(4) The distance interview or examination is conducted by or under the direction of the competent authority of the requesting state, having regard to the procedural provisions of that state. The interview or examination is also attended by a representative of the competent authority of the requested state.

(5) Before the distance interview or examination, the suspect or accused is notified of the rights they have according to the law of either the requested or the requesting state. Before the interview or examination, the witness or expert is notified of their right, which they have according to the law of either the requested or the requesting state, to refuse to give statements or testimony. If the person who is interviewed or examined is required to give a statement or testimony but refuses to do so or gives a false statement or false testimony, the requested state follows its procedural provisions.

(6) A representative of the competent authority of the requested state records the following particulars in the report of the distance interview or examination:
1) the time and place of the interview or examination;
2) the procedural role of the person interviewed or examined and their name, personal identification number or, if they do not possess one, their date of birth, residence or seat, address, as well as their telecommunications number or e-mail address;
3) the particulars and position of the representative or representatives of the competent authority of the requested state who attended the interview or examination;
4) the form of the interview or examination and the technical devices used;
5) an acknowledgement by the person interviewed or examined that they were cautioned about the liability that attaches to a refusal to give statements or testimony and to knowingly making a false statement or giving false testimony, or that they took an oath concerning the statements or testimony, if the procedural law prescribes such an obligation.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

### § 489[42]. Cross-border surveillance

Where a European Investigation Order is issued for cross-border surveillance, the provisions of § 472 of this Code apply without prejudice to special rules provided by this Division.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

**§ 489[43]. Covert interception of information**

(1) Where a European Investigation Order is issued for covert interception of messages transmitted via public electronic communications networks or of information communicated by other methods, the provisions of § 126[7] of this Code are followed.

(2) Where a European Investigation Order is issued for covert interception, with the technical assistance of another Member State, of messages transmitted via public electronic communications networks, and if several Member States of the European Union are able to provide the entirety of the technical assistance required for the interception, Estonia issues the European Investigation Order to one Member State only, preferring the Member State in whose territory the person who is the subject of the interception currently is, or will be in future.

(3) A European Investigation Order states why the information mentioned in subsection 1 of this section is material to criminal proceedings. Where a European Investigation Order is issued for covert interception, with the technical assistance of another Member State, of messages transmitted via public electronic communications networks, the Order also states the following:
1) information needed to identify the person who is the subject of the interception;
2) requested duration of the interception;
3) other technical information required for executing the Order.

(4) Specific rules for the covert interception are agreed between the competent authorities of the requesting and the requested state. A European Investigation Order issued for covert interception of messages transmitted via public electronic communications networks may be executed, as per corresponding agreement, in the following ways:
1) by transmitting to the requesting state, without delay, any relevant messages transmitted via the electronic communication networks; or
2) by recording any relevant messages transmitted via the intercepted electronic communications networks and transmitting the recorded information to the requesting state.

(5) When a European Investigation Order is issued or when it is executed, the requesting authority may request transcription, decoding or decryption of any recordings of relevant messages transmitted via public electronic communications networks, if it has valid reasons for such a request and if the executing authority agrees to this. [RT I, 26.06.2017, 70 – entry into force 06.07.2017]

**§ 489[44]. Notification of covert interception of messages transmitted via public electronic communications networks**

(1) Where, in the course of executing a European Investigation Order, on the basis of § 126[7] of this Code the pre-trial investigation judge authorises covert interception of messages that are transmitted via public electronic communications networks and that concern a person who or device which is located in the territory of another Member State (hereinafter, 'notified Member State'), and where no technical assistance is needed from the notified Member State to arrange the interception, the Prosecutor's Office notifies such interception to the competent authorities of that Member State:
1) prior to the interception, in situations where the Prosecutor's Office knows at the time of applying for authorisation for the interception that the person or device subject to the interception is at that moment, or will be at the time of interception, in the territory of the notified Member State;
2) in the course of the interception or, without delay, after the interception, if the Prosecutor's Office has been informed that the person or device subject to the interception is, or has been during the interception, in the territory of the notified Member State.

(2) Where the competent authority of the notified Member State notifies the Prosecutor's Office that the interception would not be authorised in the notified Member State in a similar domestic case, the Prosecutor's Office:
1) terminates such interception in the territory of the notified Member State; and
2) does not use as evidence any information which was obtained as a result of the interception during the time the person or device subject to such interception was in the territory of the notified Member State, except under the conditions which have been specified by the competent authority of that Member State, and for which the Member State has given reasons.

(3) Where another Member State has notified the Prosecutor's Office of the interception of messages that are transmitted via public electronic communications networks and that concern a person who or device which is located in the territory of Estonia, and where such interception would not be authorised in Estonia in a similar domestic case, the Prosecutor's Office, without delay, but at the latest 96 hours after receiving the notification, notifies the Member State that made that notification:
1) that the interception may not be carried out or must be terminated; and
2) that any information obtained as a result of such interception while the person or device subject to the interception was in the territory of Estonia may not be used or may be used under the conditions specified by the Prosecutor's Office, and state the reasons for those conditions.

(4) The form of the notification mentioned in subsection 1 of this section is enacted by a regulation of the Minister in charge of the policy sector.

[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

### § 489[45]. Using an undercover agent

(1) If a European Investigation Order is issued for the purpose of requesting from the requested state the use, in criminal proceedings and for collecting information concerning a criminal offence, of a person acting under a changed identity, the provisions of § 126[9] of this Code are followed.

(2) The European Investigation Order states why the information mentioned in subsection 1 of this section is material to criminal proceedings in the case.

(3) Specific rules concerning the use of undercover agents are agreed between the competent authorities of the requesting and the requested state.

(4) In addition to the grounds for refusal to execute a European Investigation Order specified in this Division, Estonia as the requested state may refuse to execute an EIO if it was not possible to agree on specific rules concerning the use of undercover agents.
[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 a European Investigation Order transmitted to Estonia, to conduct proceedings concerning the EIO and to ensure its execution. The Prosecutor's Office may require an investigative authority to execute the EIO or refer it for execution to another competent judicial authority.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(2) Within seven days following receipt of a European Investigation Order, the Prosecutor’s Office provides a corresponding notification to the competent authority of the requesting Member State.

(3) The form of the notification mentioned in subsection 2 of this section is enacted by a regulation of the Minister in charge of the policy sector.

(4) If the European Investigation Order has not been issued or certified by a judge, court, pre-trial investigation judge or prosecutor of the requesting Member State, the Prosecutor’s Office returns the Order to the requesting Member State. If the Order that has been filed contains defects or if it is found to contain obvious inaccuracies, the Prosecutor’s Office consults with the requesting state regarding the curing of such defects.

(5) When executing a European Investigation Order, the instructions described by the requesting state in the Order are followed, except insofar as compliance with those instructions would contrary to general principles of Estonian law.

(6) A procedural operation requested in a European Investigation Order is performed on the same grounds and as speedily as a procedural operation performed on similar grounds under domestic procedure, following the time limits provided by § 489[47] of this Code.

(7) Where the European Investigation Order requests the carrying out of a procedural operation in order to preserve an item of evidence, the Prosecutor’s Office may, where this is needed, after consulting with the competent authority of the requesting Member State, shorten the duration prescribed in the Order regarding the keeping of the item. The Prosecutor’s Office notifies the competent authority of the requesting state before ceasing to keep the item.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

### § 489[47]. Time limits for recognition and execution of European Investigation Orders

(1) A decision concerning the recognition of a European Investigation Order must be made without delay but not later than 30 days following receipt of the Order. If the Order was issued to preserve an item of evidence, the decision concerning recognition must be made, if possible, within 24 hours following its receipt.

(2) If it is not possible to decide the matter of recognition within the time limit provided by subsection 1 of this section, the Prosecutor's Office notifies this without delay to the competent authority of the requesting state, setting out information concerning the reasons for the delay and the additional time required for reaching a final decision, which may not be longer than 30 days.

(3) If none of the circumstances for postponement provided for by § 489[49] of this Code are present, the procedural operation requested in the European Investigation Order must be carried out and the evidence obtained by it transferred to the requesting state without delay but not later than 90 days after making the decision concerning recognition of the Order under subsections 1 and 2 of this section.

(4) If it is not possible to carry out the procedural operation requested in the European Investigation Order within the time limit provided by subsection 3 of this section, the Prosecutor's Office notifies this without delay to the competent authority of the requesting state, setting out information concerning the reasons for the delay and consulting with the competent authority of the requesting state regarding the time for execution of the Order.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

**§ 489[48]. Transfer of evidence**

(1) Under the European Investigation Order, the Prosecutor's Office transfers to the requesting Member State any evidence which is in the possession of the Prosecutor's Office or of the relevant investigative authority, as well as the evidence that was obtained as a result of the execution of the Order.

(2) The transferring of evidence may be suspended until completion of proceedings on appeal if the procedural operation by which the evidence was obtained has been contested under this Code. The transferring of evidence is not suspended if sufficient reasons have been stated in the European Investigation Order concerning the transferring of the evidence without delay being of material importance for the due performance of a procedural operation or for the protection of the rights of persons, except where the transfer of such evidence may involve a serious and irreversible breach of a person's rights.

(3) By agreement with the competent authority of the requesting Member State, the Prosecutor's Office may temporarily transfer the evidence requested, on condition the evidence is returned to Estonia as soon as it is no longer required in the requesting Member State, or at such other time as may be agreed between the Prosecutor's Office and the competent authority of that 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 execution of a European Investigation Order if:
1) the execution of the Order may prejudice ongoing criminal proceedings in Estonia;
2) the objects, documents or data required to carry out a procedural operation under the Order are already used in other proceedings.

(2) The Prosecutor's Office notify the competent authority of the requesting state of the postponement, under subsection 1 of this section, of execution of the European Investigation Order and of the duration of such postponement.
[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 Order is not prescribed in this Code or
2) performance of the procedural operation requested in the Order is not permitted under Estonian law in proceedings concerning the offence that was stated 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 the operation that was requested is one the following:
1) transmission of the information or evidence which is in the possession of the Prosecutor's Office or of the investigative authorities and which it would have been possible to obtain, under subsection 2 of § 32 of this Code, within the framework of criminal proceedings or of the European Investigation Order;
2) the interviewing or examination, in the territory of Estonia, of a witness, expert, specialist witness, victim, suspect, accused or third party;
3) the procedural operation provided by subsection 1 of § 90[1] of this Code;
4) a procedural operation whose performance does not interfere with the fundamental rights of a person.

(3) Before adjusting the execution of a European Investigation Order under this section, the Prosecutor's Office consults with the competent authority of the requesting Member State and notifies that 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 a European Investigation Order

(1) In addition to what is provided by § 436 of this Code, execution of a European Investigation Order may be refused in part or in its entirety if:
1) in the Republic of Estonia, the person in whose respect the performance of a procedural operation is requested enjoys immunity or is privileged under an international treaty;
2) it is clear from the Order that its execution is not permitted because the person has been finally convicted or acquitted on the same charges or, if the judgment was one of conviction, the sentence that was imposed has been served or, under the laws of the state that issued the Order, it is not possible to order its enforcement;
3) the procedural operation requested in the Order is not permitted under Estonian law in relation to the offence which is the subject of that Order, except for the procedural operations provided by subsection 2 of § 489[50] of this Code, where the Order is issued within the framework of criminal proceedings conducted in the requesting state;
4) the Order is related to an offence which was allegedly committed outside the territory of the requesting state and, in part or in its entirety, in the territory of the Republic of Estonia, and the act that is the subject of the Order is not punishable in Estonia;
5) the act that is the subject of the Order is not punishable in Estonia, except if it constitutes an offence provided by subsection 1 of § 489[6] of this Code or if the Order requests the performance of procedural operations mentioned in subsection 2 of § 489[50] of this Code.

(2) Before refusing the execution of a European Investigation Order under subsection 1 of this section, the Prosecutor's Office consults with the competent authority of the requesting state and notifies the requesting Member State of refusal to execute the Order.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

## Subdivision 3
## Presentation 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]. Issuing and transmitting a European Investigation Order

(1) The Prosecutor's Office is competent to issue European Investigation Orders in pre-trial proceedings; in judicial proceedings, the corresponding competence is vested in the court.

(2) A European Investigation Order is issued and transmitted only if:
1) the issuing of the Order is necessary to achieve the purpose of criminal proceedings and proportionate considering the rights of the suspect or accused;
2) the procedural operation requested in the Order could be performed under the same conditions in domestic criminal proceedings.

(3) If the European Investigation Order is issued in order to preserve evidence, it states whether the evidence is to be transmitted to Estonia or to remain in the possession of the requested state, stating the duration of the keeping of such evidence or the estimated date on which the request to transfer the evidence will be presented.

(4) If a European Investigation Order transmitted for execution is revoked, this must be notified to the competent authority of the requested state without delay.

(5) The form of the European Investigation Order is enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

# Division 1[3]
# Mutual Recognition of Attachment Orders and of Confiscation Orders

### § 489[53]. Implementation of Regulation (EU) 2018/1805 of the European Parliament and of the Council

In relation to the mutual recognition of attachment 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 otherwise.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

### § 489[54]. Recognising, executing and transmitting an attachment order

(1) Competence to deal with and execute an attachment 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 recognise such an order is vested in the courts. The Prosecutor's Office may direct an investigative authority to execute an attachment order.

(2) When recognising an attachment order transmitted by means of a freezing certificate, the attachment of property according to the rules provided by § 142 of this Code is decided by a court order. Competence to recognise an attchment order and to order the attachment of property is vested in Harju District Court. In a situation of urgency, the attachment of property may be ordered by the Prosecutor's Office according to the rules provided by subsection 3 of § 142 of this Code.

(3) The Prosecutor's Office notifies the competent authority of the requesting Member State of having recognised and executed an attachment order, of having decided not to recognise and not to execute such an order, of postponing its execution or of the impossibility of its execution.

(4) When it has executed an attachment order, the Prosecutor's Office notifies the fact that the order has been recognised 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 the 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 by 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 by written procedure.

(5) In pre-trial proceedings, competence to issue a freezing certificate required to transmit an attachment order, and to transmit such a certificate, is vested in the Prosecutor's Office; in proceedings before the court, that competence is vested in the court.
[RT I, 29.12.2020, 1 – entry into force 08.01.2021]

### § 489[55]. Recognising, 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 recognise 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 by Chapter 18 of his Code.

(2) When recognising a confiscation order transmitted by means of a confiscation certificate, the confiscation of property is decided by a court order. Competence to recognise 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 on in written procedure unless the defence counsel of the convicted offender, or a third party or their representative makes a motion for an oral procedure. A judicial hearing held to decide on the recognition and execution of a confiscation order is attended by the prosecutor, the defence counsel for the convicted offender and the 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 recognised and executed the order, of having decided not to recognise and not to execute it, of postponing its execution or of the impossibility of its execution.

(4) When it has recognised an attachment order, the 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 by 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

'European arrest warrant' means a request addressed by a competent judicial authority of a Member State of the European Union to another Member State of the European Union to arrest a person, to commit them in custody, and to surrender them in order for criminal proceedings to be continued or for a sentence of imprisonment imposed by a judicial disposition which has entered into effect to be carried out.
[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, in the requesting state, of criminal proceedings in their respect 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) With respect to the criminal offences provided by subsection 1 of § $489^6$ of this Code, it is permitted to surrender the person regardless of whether or not the act they have committed is punishable under the Penal Code of Estonia.

(3) Under the conditions provided for by subsections 1 and 2 of this section, it is permitted to surrender a person for the purpose of enforcing a judgment of conviction rendered in their respect provided they still have at least four months of their sentence of imprisonment to serve.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 492. Circumstances precluding or restricting surrender of persons

(1) In addition to what has been provided by § 436 of this Code, surrendering a person to a foreign state is not allowed if:
1) the criminal offence in question falls under the Penal Code and, for the criminal offence on which the arrest warrant is based, the imposition of a sentence in Estonia is precluded by an instrument of amnesty;
2) the person has been finally convicted or acquitted on the same charges in another Member State or, if the judgment is one of conviction, the imposed sentence has been, or is being, served according to the laws of the sentencing state, or it is not possible according to such laws to order its enforcement;
3) the person in whose respect the arrest warrant has been issued is under fourteen years of age;
4) the arrest warrant has been issued for the purpose of enforcing a sentence of imprisonment in respect of an Estonian citizen and the person in question applies for enforcement of the sentence in Estonia.

(2) The surrender of a person may be refused if:
1) the act on which the arrest warrant is based and which is not mentioned in subsection 1 of § $489^6$ of this Code is not a criminal offence under the Penal Code of Estonia, except in situations provided for by § 436 of this Code;
2) criminal proceedings have been commenced in Estonia with regard to the person concerning the criminal offence on which the arrest warrant is based;
3) a decision has been made not to commence criminal proceedings in Estonia with regard to the person concerning the criminal offence on which the arrest warrant is based, or such criminal proceedings have been terminated;
4) the criminal offence in question falls under the Penal Code and the limitation period for the criminal offence on which the arrest warrant is based has expired under that Code;
5) the person has been finally convicted or acquitted on the same charges in a state that is not a Member State of the European Union or, if the judgment is one of conviction, the imposed sentence has been served according to the laws of the sentencing state, or it is not possible according to such laws to order its enforcement;
6) the criminal offence on which the arrest warrant is based was committed outside the territory of the requesting state and a criminal offence committed under the same circumstances outside the territory of the Republic of Estonia would not fall under the Penal Code;

7) in a situation provided for by subsection 5 of § 502 of this Code, supplementary information has not been presented by the due date determined by the court.

(3) Under a European arrest warrant, Estonia surrenders its citizens who have a permanent residence in Estonia for the duration of criminal proceedings in the case concerning them, on the condition that any sentence imposed on the person in question in the relevant Member State must be 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 the requesting state as a sentence for the criminal offence on which the arrest warrant is based, the person may be surrendered on the condition that, according to assurances provided by the competent authority of the requesting state, early release of the person will be possible.

(6) If, in the Republic of Estonia, the person whose surrender is requested enjoys immunity or is privileged under an international treaty, execution of the European arrest warrant is suspended until a notice is received from the competent authority according to which the immunity in question has, or the privileges in question have, been withdrawn from that person.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 493. Extension of surrender**

(1) In respect of a person surrendered to Estonia, except for the criminal offence in connection with which the person was surrendered, no criminal proceedings may be commenced and no measures to restrict personal liberty may be applied in relation to any such offence committed before the surrender, and no judgment rendered concerning such an offence may be enforced.

(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 following their final discharge, or if, after having left, they have returned to Estonia;
2) the criminal offence in question is not punishable by imprisonment;
3) the relevant criminal proceedings do not involve measures to restrict personal liberty, with the exception of a converted sentence that restricts such liberty;
4) the sentence does not involve deprivation of liberty, except for converted sentences involving such deprivation;
5) the person voluntarily consents to the surrender and voluntarily waives the application in their respect of subsection 1 of this section, or has agreed to such a waiver after the surrender decision entered into effect;
6) the Member State that surrendered the person has granted its consent to the bringing of additional charges.

(3) The request for an extension of the surrender is presented to the competent judicial authority of the requested state.

(4) A request presented to Estonia to extend a surrender may be granted if it is based on a criminal offence for which it is possible to issue a European arrest warrant.

(5) To consider a request to extend a surrender, the court convenes a hearing within five days following arrival, in court, of the relevant European arrest warrant.

(6) The following persons are required to participate in the hearing held to deal with extending the surrender:
1) the prosecutor;
2) the person whose surrender is requested, provided they have not been transferred to a foreign state and are in the Republic of Estonia;
3) the defence counsel of the person whose surrender is requested.

(7) If the state that has requested an extension of surrender abandons or revokes such a request after it has reached the court but before a decision has been made concerning the extension, the proceedings are terminated by a court order.

(8) An interim appeal against an order to extend, or refuse to extend, the surrender may be filed following the rules provided by subsection 2 of § 387 of this Code within three days following receipt of the order.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 494. Surrender or extradition to a third country**

(1) A person who has been surrendered to Estonia cannot be surrendered on 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 following their final discharge, or, after having left, they have returned to Estonia;
2) the person has agreed to the surrender or extradition;
3) the Member State that surrendered the person grants its consent for the onwards surrender or extradition.

(2) A citizen of the Republic of Estonia who has been surrendered to a Member State of the European Union may not be surrendered further to another Member State of the European Union without the authorisation of the court, or extradited to a non-EU state without the authorisation of the Minister in charge of the policy sector.
[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, the European arrest warrant to be executed is decided by the court. When deciding the matter, the factors taken into account are primarily the seriousness and the time and place of commission of the criminal offences committed by the person, the sequential order in which the European arrest warrants have been presented as well as whether the warrants have been issued with a view to conducting pre-trial proceedings or to mandate the enforcement of a judgment that has entered into effect.

(2) Where this is needed, the court may seek advice from Eurojust.

(3) Where a European arrest warrant and a request for extradition have been presented in respect of the same person, the Minister in charge of the policy sector decides which of these is to be executed, taking into account the circumstances mentioned in subsection 1 of this section.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 496. Permission for transit of surrendered persons**

(1) Permission for the transit, through the territory of the Republic of Estonia, of a person surrendered by another Member State is granted by the Ministry of Justice.

(2) A request for transit must state:
1) the personal particulars and the citizenship of the person concerned;
2) a note stating that a European arrest warrant has been issued in respect of the person;
3) information concerning the facts and the legal designation of the criminal offence.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 497. Surrender of property**

(1) A European arrest warrant may request the surrender of property located in the requested state if such property has been acquired by a criminal offence which is the subject of the European arrest warrant or if such property is to be used as physical evidence in the relevant criminal proceedings.

(2) Property may be surrendered or its surrender requested also if, owing to the death of the person or their escape from the requesting state, it is not possible to issue a corresponding European arrest warrant.

(3) In Estonia, third party rights to the property to be surrendered are guaranteed and such property is returned to the entitled non-party once the judgment rendered in the case has entered into effect.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

# Subdivision 2
# Surrender Procedure

**§ 498. Authorities having jurisdiction to execute European arrest warrants**

(1) The following authorities have jurisdiction to conduct proceedings regarding European arrest warrants presented to Estonia and the competence to make decisions on surrender:
1) Tallinn Courthouse of Harju District Court, if the person has been arrested in Tallinn or in the Counties of Harju, Rapla, Lääne-Viru, Ida-Viru, Järva, Lääne, Hiiu, Saare or Pärnu;
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]
2) Tartu Courthouse of Tartu District Court, if the person has been arrested in the Counties of Jõgeva, Viljandi, Tartu, Põlva, Võru or Valga.

(2) The central authority for cooperation in matters concerning surrender is the Ministry of Justice.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 499. Committal in surrender custody**

(1) In order to ensure the execution of a European arrest warrant, the person concerned may be committed in custody following the rules provided by subsection 8 of § 217 of this Code. The person's committal in surrender custody is decided by the pre-trial investigation judge on an application of the Prosecutor's Office.

(2) A person may be arrested following the rules provided by subsection 1 of § 217 of this Code before arrival of the relevant European arrest warrant on the basis of a request for their arrest transmitted through the International Criminal Police Organisation (Interpol) or of an alert in the Schengen Information System concerning the person being wanted for arrest, provided the request contains an affirmation that a corresponding warrant has been issued.

(3) When the person is arrested, their rights and the grounds for their arrest are explained to them and they are notified of the possibility to consent to their surrender. It is not possible to withdraw the consent once it has been given.
[RT I, 20.12.2019, 1 – entry into force 30.12.2019]

(4) As of their arrest, the person has a right to receive, free of charge, legal aid and the assistance of an interpreter or translator. If the person is a minor, they are treated as having the rights of the underage suspect or accused, with the exception of those provided by clause 3 of subsection $1^1$ of § 34 of this Code.
[RT I, 20.12.2019, 1 – entry into force 30.12.2019]

(5) If the relevant European arrest warrant has not been sent within the time limit provided by subsection 1 of § 500 of this Code, the person must be released without delay.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 500. Channels for transmission of European arrest warrants**

(1) A European arrest warrant is addressed to the Ministry of Justice within three working days following the person's being committed in custody in Estonia. The Ministry of Justice communicates the European arrest warrant without delay to the court that has jurisdiction in the case and to the Office of the Prosecutor General.

(2) After the arrest of the person concerned, a European arrest warrant received through the International Criminal Police Organisation (Interpol) or through the Schengen Information System is sent without delay to the Ministry of Justice who transmits it to the court that has jurisdiction in the case and to the Office of the Prosecutor General.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 501. Participation of defence counsel in surrender proceedings**

Participation of the defence counsel in surrender proceedings is mandatory starting from consideration of the request for the person's committal in custody.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 502. Judicial proceedings concerning surrender**

(1) In order to hear a matter of the European arrest warrant and to decide on the surrender of the person concerned, a hearing is held within ten days following arrival at the court of the European arrest warrant. If the person has given notification of their agreement to the surrender, the hearing is held within five days following such arrival.

(2) Surrender proceedings are conducted by the judge sitting alone.

(3) The following persons are required to participate in the hearing:
1) the prosecutor;
2) the person whose surrender is requested;
3) the defence counsel of the person whose surrender is requested.

(4) At the hearing, the court:
1) verifies whether the person has agreed to the surrender;
2) acquaints the person with the provisions of §§ 493 and 494 of this Code;
3) hears the person, their defence counsel and the prosecutor.

(5) The court may set a time limit to the competent judicial authority of the requesting state for transmission of supplementary information.

(6) Once the hearing concerning the person's surrender has been held, the court makes an order provided by § 503 of this Code without delay.

(7) If it is not possible to render a surrender decision within the prescribed time, the time for the making of the decision extends by thirty days. Such an extension of the surrender proceedings is notified without delay to the presenter of the request and to Eurojust.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 503. Judicial dispositions under surrender procedure**

(1) When deciding on surrendering a person to a foreign state, the court makes one of the following orders:
1) an order by which it grants the European arrest warrant and consents to the person's surrender;

2) an order by which it denies the European arrest warrant and refuses to consent to the person's surrender;
3) an order by which it terminates proceedings – where, before the decision on surrendering the person is made, the requesting state has revoked the European arrest warrant it had issued.

(2) The order states:
1) the name and personal identification number or the date and place of birth of the person subjected to surrender proceedings;
2) the substance of the European arrest warrant that was considered;
3) the submissions of the persons who participated in the hearing and, if the person agrees to be surrendered, their consent to the surrender;
4) the court's decision, together with the corresponding reasons, for consenting or refusing to consent to the surrender;
5) the conditions of the surrender as provided for by subsections 3 and 5 of § 492 and by subsection 1 of § $489^7$ of this Code;
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]
6) the time that the person subjected to surrender proceedings has spent in custody;
7) the rules for appeal.

(3) Where a European arrest warrant contains a request to confiscate any property, the court renders a decision on the request in surrender proceedings.

(4) If the court decides to grant a European arrest warrant and to surrender the person in question, it commits that person in surrender custody until their transfer.

(5) If the court decides to refuse the surrender, the person remains committed in surrender custody until the order to surrender or the order to refuse the surrender enters into effect.

(6) A copy of the order is transmitted to the custodial institution at which the person is held in surrender custody, to the prosecutor and to the person subjected to surrender proceedings and to their defence counsel.

(7) When the order rendered in surrender proceedings has entered into effect, a copy of that order is sent without delay to the Ministry of Justice who notifies it to the requesting state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 504. Contesting an order made in surrender proceedings**

(1) An interim appeal may be filed in accordance with the rules provided by subsection 2 of § 387 of this Code against an order to surrender, or to refuse to surrender, which is made in surrender proceedings, within three days following receipt of the order.

(2) An interim appeal against an order of Harju District Court is filed with Tallinn Circuit Court of Appeal and an interim appeal against an order of Tartu District Court is filed with Tartu Circuit Court of Appeal.

(3) An interim appeal is considered in the circuit court of appeal by written procedure within ten days following arrival of the case in that court.

(4) The judgment of the circuit court of appeal is final.

(5) The person whom the court has decided to surrender to a foreign state may waive their right of appeal by making a corresponding written declaration. In such a situation, the court's order enters into effect on the day the right of appeal was waived.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 505. Transferring the person**

(1) When the order concerning the surrender has entered into effect, a copy of that order is sent by the Ministry of Justice to the Police and Border Guard Board who notifies the requesting state of the time when and the place where the person to be surrendered is to be transferred, and arranges the transfer.

(2) The person who has been surrendered is transferred within ten days following the day on which the order concerning the surrender entered into effect.

(3) If the transfer is prevented by circumstances beyond the control of the requested and the requesting state, the person is surrendered within ten days of the new date that has been agreed.

(4) The transfer may be temporarily postponed if there are sufficient grounds to believe that execution of the order may endanger the life or health of the person to be surrendered. Execution of the European arrest warrant

takes place as soon as these grounds have ceased to apply and the person is surrendered within ten days of the new agreed date.

(5) If the person has not been transferred within the time limit provided by subsections 2–4 of this section, they are released from custody.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 506. Postponing of surrender and temporary surrender**

(1) The Ministry of Justice may postpone execution of an order to surrender that has entered into effect if criminal proceedings are conducted in Estonia in respect of the person or a judgment rendered in their respect is being enforced.

(2) Under the corresponding written agreement with the requesting state, a person whose surrender has been postponed may be temporarily surrendered to that state.

(3) If criminal proceedings against a person temporarily surrendered to Estonia are terminated or the person is acquitted and, in the state that surrendered them to the Republic of Estonia, criminal proceedings are conducted against that person or imprisonment has been imposed on them, the person is held in custody until their transfer to the state that temporarily surrendered them to the Republic of Estonia.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

# Subdivision 3
# Presentation of Arrest Warrants to Member States of European Union

**§ 507. Presentation of European arrest warrants**

(1) In pre-trial proceedings, the competence to issue European arrest warrants is vested in the Prosecutor's Office; in judicial proceedings, the competence is vested with the court that deals with the criminal offence which is the subject of the warrant.

(2) The competence to present a European arrest warrant for enforcing a judicial disposition that has entered into effect is vested in the district court which is to mandate enforcement of the disposition.

(3) In pre-trial proceedings, in order to ensure the surrender, the pre-trial investigation judge may, on an application of the Prosecutor's Office and before the issuing of the corresponding European arrest warrant, impose committal in surrender custody.

(4) If the person's surrender is requested during judicial proceedings, the person's committal in surrender custody is ordered by the court that conducts proceedings in the criminal case.

(5) The competence to revoke a European arrest warrant is vested in the authority that issued the warrant.

(6) A European arrest warrant is issued in the Estonian language and translated by the Ministry of Justice into the language determined by the requested state.

(7) A European arrest warrant is transmitted to the requesting state by the Ministry of Justice.

(8) In situations of urgency, before the corresponding European arrest warrant is presented, a request may be made, with the consent of the Prosecutor's Office, through the International Criminal Police Organisation (Interpol) or through the central authority responsible for the national section of the Schengen Information System, to a Member State of the European Union to commit the person to be surrendered in surrender custody.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508. Substance, form and method of transmission of European arrest warrants**

(1) A European arrest warrant states:
1) the personal particulars and nationality of the person concerned;
2) the name and contact details of the issuing judicial authority;
3) a note concerning the judgment or order on committal in custody that has entered into effect;
4) the facts and the legal designation of the criminal offence;
5) where a judgment that has entered into effect has been rendered in the case, the sentence imposed, or the sentencing scale prescribed by the law of the requesting state for the criminal offence which is the substance of the warrant.

(2) The form of the European arrest warrant is enacted by a regulation of the Minister in charge of the policy sector.

(3) An arrest warrant is transmitted to the requesting state by letter, e-mail or any other method reproducible in writing.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

# Division 3
# Recognition and Execution of Protection Orders

## Subdivision 1
## General Provisions

### § 508[1]. European Protection Order Certificate

'European protection order certificate' means a request presented by a competent authority of a Member State of the European Union to another Member State of the European Union to apply, in respect of a person causing danger, one or several of the following restrictions:
1) prohibition to attend certain defined localities where the protected person resides or which they often visit;
2) prohibition to contact the protected person;
3) prohibition to approach the protected person.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

## Subdivision 2
## Procedure for Giving Effect to European Protection Orders

### § 508[2]. Authorities competent to give effect to European protection orders

(1) The competence to decide on the giving of effect to a European protection order is vested in the district court that serves the protected person's locality of residence.

(2) The central authority to decide on the giving of effect to European protection orders is the Ministry of Justice.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[3]. Deciding to give effect to a European protection order

(1) The decision on the giving of effect to a European protection order is made based on the corresponding European protection order certificate transmitted by the requesting state or at the request of the person seeking the giving of effect to such an order.

(2) A European protection order is given effect if the protected person resides or is staying in Estonia.

(3) The decision on the giving of effect to a European protection order is made without delay.

(4) When deciding whether to give effect to the order, the court assesses the length of the protected person's stay in Estonia and the reasons given concerning the need for protection.

(5) Where effect is given to a European protection order, the protective measures that are applied for protecting the protected person are the same as would be applied in similar circumstances under a restraining order rendered in Estonia.

(6) When deciding whether to give effect to a European protection order, the person with respect to whom the decision on the giving of effect to the order is to be made is joined to proceedings, if they were not joined to proceedings concerning the making of the protection order in the requesting state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[4]. Refusal to give effect to a European protection order

(1) The court may refuse to give effect to a European protection order if:
1) the European protection order certificate is incomplete or has not been supplemented within the time limit set for supplementation;
2) the European protection order relates to a criminal offence which is not recognised as such by the Penal Code of Estonia;

3) the corresponding protective measure has not been provided for by the state that issued the European protection order certificate.

(2) If the court refuses to give effect to a European protection order, it notifies such a refusal, and the reasons for that refusal, without delay to the protected person and to the competent authority of the state which issued the initial protection order. In such a situation, the court also informs the protected person of the possibility of applying for a restraining order under the rules of Estonian civil procedure.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[5]. Notification of giving effect to a European protection order

The court notifies the order giving effect to a European protection order and the potential consequences of violating that order to the person to be protected under the order that has been given effect and to the person who is the subject of the protection order, as well as to the competent authority of the state which decided the issuing of the initial protection order.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[6]. Notification of violations of a European protection order

(1) The court notifies the competent authority of the state which made the initial protection order of any violations of the protective measures applied by the order that gave effect to the corresponding European protection order.

(2) The form of the notice mentioned in subsection 1 of this section is enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[7]. Amendment and revocation of an order made to give effect to the corresponding European protection order

(1) The court may vary the conditions of application of a given protection order if the competent authority of the state which made the initial protection order has varied such conditions.

(2) The court revokes a protection order if the competent authority of the Member State of the European Union that decided the issuing of the initial protection order has revoked the corresponding protection order made by it.

(3) The court may revoke an order giving effect to a European protection order if there is sufficient reason to believe that the protected person does not stay in Estonia or has left the territory of Estonia for good or when three years have expired from the beginning of the application of the protection order.

(4) The court notifies revocation of the order giving effect to a European protection order without delay to the person to be protected under such an order, as well as to the person who is the subject of the protection order, and to the competent authority of the state that decided the issuing of the initial protection order.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

## Subdivision 3
## Presentation of European Protection Order Certificates to Member States of the European Union

### § 508[8]. Presentation of European protection order certificates and form of order giving effect to a European protection order

(1) The issuing and presentation of a European protection order certificate is permitted only in a situation in which a decision has been previously made in the same case concerning the issuing of a restraining order under Estonian law.

(2) A person who seeks a European protection order files a corresponding application with the district court that serves the locality of their residence or with the competent authority of the Member State of the European Union on whose territory they seek the protection order to have effect.

(3) The district court that serves the protected person’s locality of residence issues the corresponding European protection order certificate and transmits it to the Ministry of Justice.

(4) The Ministry of Justice translates the certificate into a language determined by the requested state and transmits it to the competent authority of that state.

(5) The form of the European protection order certificate is enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

# Division 4
# Recognition and Execution of Decisions Concerning Attachment of Property or Preservation of Evidence

## Subdivision 1
## General Provisions

### § 508[9]. European certificate concerning the freezing of property or the preservation of evidence

(1) 'European certificate concerning the freezing of property or the preservation of evidence' (hereinafter, 'European freezing certificate') means a request presented by a competent judicial authority of a Member State of the European Union to another Member State as an interim measure to achieve a confiscation of property or in order to prevent the destruction, transformation, moving, transfer or disposal of certain items of property to be used as evidence.

(2) The following may be attached or preserved under a European freezing certificate:
1) any property which was obtained by the criminal offence in question or property whose value corresponds to that of the property obtained by the offence;
2) any instrumentality of commission of the criminal offence;
3) any object or material constituting an element of the criminal offence;
4) any other items of physical evidence, documents or data recordings which are usable as evidence in criminal proceedings.

(3) A copy of the decision made by the competent judicial authority of the requesting state concerning attachment of property or preservation of evidence is appended to the European freezing certificate.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(4) In situations concerning attachment of property and preservation of evidence, this Division applies exclusively to cooperation 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 a European freezing certificate

A European freezing certificate is presented to the state requested to execute it together with a request seeking:
1) transfer of the evidence to the requesting state; or
2) confiscation of the property in question.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[11]. Circumstances precluding or restricting execution of a European freezing certificate

(1) Execution of a European freezing certificate may be refused if:
1) the act which is the subject of the certificate is not punishable under the Penal Code of Estonia, except in situations provided for by § 489[6] of this Code;
2) in the Republic of Estonia, the person whose property is requested to be attached or preserved enjoys immunity or is privileged under an international treaty;
3) it is clear from the certificate that execution of the request mentioned in § 508[10] of this Code is not permitted because the person has been finally convicted or acquitted on the same charges or, if the judgment was one of conviction, the sentence that was imposed has been served or, under the laws of the state that presented the certificate, it is not possible to mandate its enforcement;
4) the certificate was not presented in the form provided for by § 508[20], is incomplete, does not correspond to the relevant order of the competent judicial authority of the requesting state on which it is based, or is not accompanied by such an order or a copy of such an order.

(2) A refusal to execute a European freezing certificate is notified without delay to the competent judicial authority of the requesting state.

(3) In situations mentioned in clause 4 of subsection 1 of this section, the Office of the Prosecutor General may set a time limit to the competent judicial authority of the requesting state for the curing of the relevant defects or for the presentation of supplementary information.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[12]. Compensation for harm

(1) As the requesting state, Estonia bears all costs incurred by the requested state under the laws of that state in connection with any harm caused to a third party by the execution of a European freezing certificate provided that such harm was not caused by intentional or negligent actions on the part of the requested state. Compensating for the harm is decided by the Ministry of Justice at the proposal of the Office of the Prosecutor General.

(2) As the requested state, Estonia has a right to require compensation from the requesting state for any costs that Estonia has compensated to a third party in connection with harm caused by the execution of a European freezing certificate, provided that harm was not caused exclusively by intentional or negligent actions on the part of Estonia. The presentation to the requesting state of a claim for the compensation of such costs is decided by the Ministry of Justice on an application 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 the execution of, or refusal to execute, a European freezing certificate, or of certain other circumstances, must be performed without delay and the corresponding notification must be presented by letter, e-mail or any other method reproducible 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 a European freezing certificate

(1) The competence to conduct proceedings on a European freezing certificate presented to Estonia and to decide on the execution of such a certificate is vested in the Office of the Prosecutor General. Where this is needed, the Office of the Prosecutor General assigns a district branch of the Prosecutor's Office to assist in the execution of the corresponding decision.

(2) Where the European freezing certificate includes a request mentioned in clause 1 or 2 of § 508[10] of this Code, the Office of the Prosecutor General transmits a copy of the certificate to the Ministry of Justice.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[15]. Deciding on execution of a European freezing certificate

A European freezing certificate must be considered without delay and a decision must be made within 24 hours following its receipt on whether to execute, refuse to execute or postpone the execution of the certificate, or, where this is needed, on requesting supplementary information from the requesting state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[16]. Execution of European freezing certificates

(1) Execution of European freezing certificates is subject to Estonian law. At the request of a foreign state, when executing a request for the preservation of evidence, procedural provisions that differ from what is provided by this Code may be applied, provided this is not contrary to principles of Estonian law.

(2) In order to execute a European freezing certificate following the rules provided by § 142 of this Code, the decision concerning attachment of the property in question is made by an order of the pre-trial investigation judge on an application of the Prosecutor's Office.

(3) The power to decide on attachment of property under a European freezing certificate is vested in Harju District Court.

(4) The Office of the Prosecutor General notifies the execution of a European freezing certificate to the competent judicial authority of the requesting state.

(5) The relevant property is attached and evidence preserved until a decision is made concerning execution of the request provided for by § 508[10] of this Code.

(6) If the competent judicial authority of the requesting state provides notification of revocation of the European freezing certificate, any property that has been attached or any evidence that has been seized under the certificate is returned without delay.

(7) Where it is not possible to execute a European freezing certificate for the reason that the property or evidence has been lost or destroyed, or that it is not possible to ascertain the location of such property or evidence even after consultation with the requesting state, this is notified to the competent judicial authority of that state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[17]. Postponing the execution of a European freezing certificate

(1) The Prosecutor's Office may postpone the execution of a European freezing certificate, if:
1) its execution may harm ongoing criminal proceedings in Estonia;
2) the property or item of evidence mentioned in the certificate has already been attached or preserved in connection with ongoing criminal proceedings in Estonia.

(2) The Prosecutor's Office notifies the competent judicial authority of the requesting state of postponing the execution of the European freezing certificate. In addition to notification of the reasons for such postponement, where this is possible, notification of the estimated duration of the postponement must also be provided.

(3) Where the reasons for postponement have ceased to apply, the Prosecutor's Office takes measures to execute the European freezing certificate without delay and notifies this to the competent judicial authority of the requesting state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[18]. Contesting the decisions made and operations performed when executing a European freezing certificate

(1) In Estonia, third party rights to any property subject to a European freezing certificate are guaranteed. An appeal against an order of the Prosecutor's Office or against the actions of an investigative authority in connection with the execution of such a certificate are filed with the district court that serves the area in which the contested order was made or the contested procedural operation performed. Following the rules provided by subsection 2 of § 387 of this Code, an interim appeal may be filed against an order on attachment of property within three days following its receipt.

(2) It is not possible to contest, in Estonia, a European freezing certificate presented to Estonia, or the order of the competent judicial authority of the requesting state that the certificate is based on. Where the person concerned requests this, the Office of the Prosecutor General transmits to them the contact details that make it possible for them to obtain information concerning the procedure for contesting the certificate in the requesting state.

(3) The filing of an appeal does not stay enforcement of the contested order, unless the authority to dispose of the dispute determines otherwise.

(4) The Prosecutor's Office notifies the competent judicial authority of the requesting state of any appeals that are filed in connection with the execution of the European freezing certificate and of the dispositions made when dealing with those appeals.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

## Subdivision 3
## Issuing a European Freezing Certificate to a Member State of the European Union

### § 508[19]. Issuing a European freezing certificate

(1) The competence to issue a European freezing certificate in pre-trial proceedings is vested in the Prosecutor's Office; in judicial proceedings, the corresponding competence is vested in the court.

(2) The Prosecutor's Office or the court that conducts proceedings regarding the criminal offence which is the subject of an envisaged European freezing certificate issues the corresponding certificate and transmits it together with a copy of the disposition mentioned in subsection 3 of § 508[9] of this Code to the competent judicial authority of the state in which the property or evidence is located. A certificate that is issued by the Prosecutor's Office is transmitted to the requested state through the Office of the Prosecutor General.

(3) Where a European freezing certificate that has been transmitted for execution is revoked, this must be notified to the competent judicial authority of the requested state without delay.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[20]. Form of the European freezing certificate

The form of the European freezing certificate is enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

# Division 5
# Recognition and Execution of Confiscation Orders of Members States of the European Union

## Subdivision 1
## General Provisions

### § 508[21]. European certificate of confiscation

(1) 'European certificate of confiscation' means 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 the definitive deprivation of property based on a court order concerning confiscation of such 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 for execution of confiscation orders

(1) The execution of a confiscation order is permitted if the person concerned has been convicted of an offence which is punishable as a criminal offence under the Penal Code of Estonia and in relation to which, according to Estonian law, the ordering of confiscation is allowed.

(2) In relation to criminal offences provided by subsection 1 of § 489[6] of this Code, the execution of a confiscation order is permitted regardless of whether or not the act is punishable under to the Penal Code of Estonia.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[23]. Circumstances precluding or restricting execution of a confiscation order

In addition to what has been provided by § 436 of this Code, recognition and execution of a confiscation order may be refused if:
1) the corresponding European certificate of confiscation has not been presented or is incomplete or clearly does not correspond to the order;
2) for the same offence, a confiscation order has been rendered and enforced in Estonia or in any other state;
3) the order has been made with regard to a person who enjoys immunities or privileges under clause 2 of § 4 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 on execution of a confiscation order is disposed of as follows:
1) if the amount received is 10,000 euros or less, the confiscated property is transferred to the revenue account of the national budget;
2) if the amount received exceeds 10,000 euros, one-half of the property received on execution of the confiscation order is transferred to the requesting state.

(2) Property other than money, which has been obtained from the execution of a confiscation order, is sold or transferred to the requesting state. Where such property is sold, the proceeds from its sale are disposed of in accordance with subsection 1 of this section. Where the confiscation order prescribes confiscation of an amount of money, such property may only be transferred to the requesting state if that state has consented to the transfer.

(3) If it is not possible to dispose of non-monetary property in the manner specified in subsection 2 of this section, such property is dealt with according to the provisions of § 126 of this Code.

(4) Subsection 3 of this section does not apply to objects or items of cultural value that belong to the cultural heritage of the requested state. It is prohibited to demand the sale or return of such objects or items.

(5) The amount of money to be confiscated is converted into euro based on the exchange rate effective on the day on which the confiscation order was made.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[25]. Compensation for harm

(1) As the requesting state, Estonia compensates for all costs incurred by the requested state, under the law of that state, in connection with any harm caused to a third party by the execution of a European certificate of confiscation provided that such harm was not caused by intentional or negligent actions on the part of the requested state. Compensating for the harm is decided by the Ministry of Justice at the proposal of the Office of the Prosecutor General.

(2) As the requested state, Estonia has a right to require compensation from the requesting state for any costs that Estonia has compensated for to a third party in connection with the harm caused by the execution of a European certificate of confiscation, provided that such harm was not caused exclusively by intentional or negligent actions on the part of Estonia. The presentation of a claim to the requesting state for the compensation of such costs is decided by the Ministry of Justice 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 competence to conduct proceedings concerning a European certificate of confiscation presented to Estonia is vested in the Office of the Prosecutor General; the competence to decide on the execution of such a certificate is vested in Harju District Court. Where this is necessary, the Office of the Prosecutor General assigns related tasks to district branches of the Prosecutor's Office.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[27]. Deciding on the execution of a European certificate of confiscation

The permissibility of execution of a European certificate of confiscation, any refusal to execute, or any postponement of the execution of, such a certificate, or the requesting of supplementary information from the requesting state, is decided without delay.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[28]. Execution of a European certificate of confiscation

(1) Execution of European certificates of confiscation is subject to Estonian law.

(2) The confiscation of property under a European certificate of confiscation is decided by an order of Harju District Court at the proposal of the Office of the Prosecutor General.

(3) The confiscation of property under a European certificate of confiscation is decided by the judge sitting alone.

(4) The hearing held by the court to decide on the conduct of confiscation proceedings is attended by the prosecutor and by the defence counsel of the convicted offender.

(5) Attendance at the hearing is mandatory for any third party or their authorised representative.

(6) The Office of the Prosecutor General notifies the execution of a European certificate of confiscation to the competent judicial authority of the requesting state.

(7) Where the competent judicial authority of the requesting state provides notification of revocation of the European certificate of confiscation, the execution of that certificate is terminated without delay.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[29]. Postponing the execution of a confiscation order

(1) Estonia may postpone the execution of a confiscation order if:

1) Estonia considers it possible that the amount of money obtained from the execution of the confiscation order may exceed the amount determined in that order because the order is being executed in several states at the same time;
2) execution of the confiscation order is contested under § 508[30] of this Code;
3) the execution of the confiscation order may prejudice ongoing proceedings in Estonia;
4) translation of the confiscation order into Estonian is required;
5) the property specified in the confiscation order is already subject to confiscation in Estonia.

(2) If the execution of a confiscation order is postponed, preservation of the property subject to confiscation is to be ensured.

(3) Where the execution of a confiscation order is postponed, the Office of the Prosecutor General notifies this to the competent authority of the requesting state without delay and states the reasons for the postponement and its expected duration.

(4) If the reasons for the postponement cease to apply, the confiscation order is executed without delay.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[30]. Contesting the dispositions made and operations performed in relation to the execution of a European certificate of confiscation**

(1) Estonia guarantees the rights of third parties to any property which they hold and which is the object of a European certificate of confiscation. An appeal against an order of the Prosecutor's Office, or against the actions of an investigative authority, connected to the execution of a European certificate of confiscation is filed with Harju District Court following the rules provided by subsection 2 of § 387 of this Code within three days following receipt of the order.

(2) It is not possible to contest, in Estonia, a European certificate of confiscation presented to Estonia or the disposition or order of the competent judicial authority of the requesting state on which the certificate is based. Where the person concerned applies for this, the Office of the Prosecutor General transmits to them the contact details that make it possible for them to obtain information concerning the procedure for contesting the European certificate of confiscation in the requesting state.

(3) The filing of an appeal does not stay enforcement of the contested order, unless the authority to dispose of the dispute determines otherwise.

(4) The Prosecutor's Office notifies the competent judicial authority of the requesting state of any appeals that are filed in connection with the execution of the European certificate of confiscation and of the dispositions made when dealing with those appeals.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

# Subdivision 3
# Presentation of European Certificates of Confiscation

**§ 508[31]. Issuing and transmitting a European certificate of confiscation**

(1) The Prosecutor's Office or the court that conducts proceedings regarding the criminal offence that is to be the subject of a European certificate of confiscation issues the corresponding certificate and transmits it, together with a copy of the order on which the confiscation is based, to the competent judicial authority of the state in which the property is located.

(2) A European certificate of confiscation is transmitted to the state in relation to which Estonia has reason to believe that the person in whose respect the confiscation order was made has property or income in its territory.

(3) Where it is not possible for Estonia to ascertain the state mentioned in subsection 2 of this section, the European certificate of confiscation is transmitted to the competent judicial authority of the Member State in which the person in whose respect the confiscation order was made has their principal residence or its registered office.

(4) Except where otherwise provided by § 508[32] of this Code, a European certificate of confiscation may only be presented to one Member State at any time.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[32]. Presentation of a European certificate of confiscation to several states**

(1) In a situation in which this is justified, a European certificate of confiscation concerning an amount of money may be presented simultaneously to several states.

(2) A European certificate of confiscation concerning property other than money may be presented simultaneously to several states only in the following situations:
1) Estonia has reason to believe that the property covered by the confiscation order is located in several states;
2) confiscation of the property covered by the certificate requires the adoption of measures in several states; or
3) Estonia has reason to believe that the property covered by the confiscation order is located in a Member State but its exact location is unknown.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[33]. Form of presentation of European certificates of confiscation**

The form of the European certificate of confiscation is enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

# Division 6
# Mutual Recognition and Enforcement of Judgments Imposing Custodial Sentences or Measures Involving Deprivation of Liberty in Member States of European Union

## Subdivision 1
## General Provisions

**§ 508[34]. Certificate of custodial sentence**

'Certificate of custodial sentence of a Member State of the European Union' (hereinafter, 'certificate of custodial sentence') means a request made by a competent authority of a Member State to another Member State of the European Union to recognise a judgment concerning a custodial sentence or any other measure involving deprivation of liberty and to enforce such a judgment.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[35]. General conditions**

(1) The recognition of a judgment according to the provisions of this Division and enforcement, according to those provisions, of the sentence imposed by such a judgment is permitted if the act that the judgment deals with constitutes a criminal offence under the law of the requested state, regardless of the elements making up the definition of the corresponding offence.

(2) Where the offence is one listed in § 489[6] of this Code, Estonia recognises and enforces the sentence imposed, regardless of whether or not it is punishable under the Penal Code of Estonia.

(3) Transmission, according to the provisions of this Division, of a judgment for recognition and enforcement is permitted if, under such a judgment, a custodial sentence has been imposed on the person concerned and the transfer of that sentenced person to another Member State of the European Union for serving their sentence is required in order to facilitate their social rehabilitation.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[36]. Criteria for recognising a judgment**

(1) Estonia recognises and enforces the sentence imposed if the sentenced person is:
1) a citizen of the Republic of Estonia and their real permanent residence is in the Republic of Estonia; or
2) a citizen of the Republic of Estonia whose real permanent residence is not in the Republic of Estonia but who is expelled from the requesting state to the Republic of Estonia under a judgment of conviction or under a determination of any other competent authority.

(2) Estonia may recognise or enforce a sentence that has been imposed if the sentenced person is a citizen of the Republic of Estonia and, although their real permanent residence is not in the Republic of Estonia, they have family ties or other significant connections with the Republic of Estonia, their serving of their sentence in Estonia is consistent with their interests and with those of other persons connected with them, and they have given their consent according to § 508[38] of this Code.

(3) In each case, when making a reasoned decision concerning recognition of the judgment of conviction rendered in respect of the person mentioned in subsection 2 of this section, and concerning enforcement of the sentence imposed on them, the court considers the conditions that have been laid down and takes into account any other relevant circumstances.

(4) An appeal to contest a decision mentioned in subsection 3 of this section may be filed following the rules provided by subsection 1 of § 387 of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[37]. Requesting transmission of a judgment for recognition**

(1) Estonia may request that a foreign state transmit a judgment and the corresponding certificate of custodial sentence for recognition and enforcement, if the serving in Estonia of such a sentence by the person concerned is expedient and consistent with the interests of the person and with those of other persons connected with them, or in other situations.

(2) A sentenced person may apply to the foreign state or the Ministry of Justice for transmission of the judgment rendered in their case and of the corresponding certificate of custodial sentence for commencement of proceedings under this Division.

(3) The application of the sentenced person mentioned in subsection 2 of this section is disposed of by the Ministry of Justice which, having regard to the provisions of this Division, decides whether or not the application is justified, taking into consideration the interests of the person and those of other persons connected with them, the possibilities existing in Estonia for enforcing the sentence, as well as any other relevant circumstances.

(4) The Ministry of Justice makes the decision mentioned in subsection 3 of this section within 30 days following receipt of the person's request. The person may file an appeal against the decision of the Ministry of Justice in accordance with the rules provided by the Code of Administrative Court Procedure.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[38]. Consent and notification of the sentenced person**

(1) Where the sentenced person is a person who falls under subsection 1 of § 508[36] of this Code, or a person who has fled to Estonia or returned to Estonia in any other way in connection with criminal proceedings that have been commenced against them in the relevant foreign state or after having been convicted in that state, their consent is not required for deciding on the recognition of their judgment and on enforcement of the sentence imposed on them.

(2) Where the sentenced person is not a person falling under subsection 1 of this section, their consent is mandatory for their judgment to be transmitted for recognition and their sentence for enforcement.

(3) Regardless of whether or not their consent is required, the sentenced person is notified in a language that they understand of the fact that a decision has been made to transmit their judgment for recognition and enforcement.

(4) The form of the notification to be provided to the sentenced person mentioned in subsection 3 of this section is enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[39]. Circumstances precluding or restricting the recognition of a judgment and enforcement of the sentence**

It is not permitted to recognise a judgment or enforce the sentence imposed by such a judgment on the person concerned if:
1) the act which is the subject of the judgment of conviction is not a criminal offence according to the Penal Code of Estonia, except in situations provided for by § 489[6] of this Code;
2) the request was not presented using the form of the certificate mentioned in § 508[34], is incomplete, does not correspond to the judgment of the requesting state on which it is based, or does not contain, as its annex, the judgment of the requesting state or a copy of such a judgment;
3) the sentenced person is not a person falling under subsections 1 or 2 of § 508[36] of this Code;
4) the limitation period for executing the sentence has lapsed according to the Penal Code of Estonia;
5) in the Republic of Estonia, the sentenced person enjoys immunity or is privileged under an international treaty;
6) the sentenced person is under fourteen years of age;
7) the sentenced person has less than six months of their sentence to serve at the moment of the judgment's arrival in Estonia;
8) the judgment was entered *in absentia*, except in situations provided for by § 489[7] of this Code;
9) the sentence that has been imposed includes a measure of psychiatric care or health care or other measures involving deprivation of liberty which, notwithstanding the provisions of § 508[44] of this Code, it is not possible

to execute in Estonia under the Estonian legal system or due to the way the health care system is organised in Estonia;
10) the judgment relates to a criminal offence which, under the Penal Code of Estonia, is regarded as one that was committed in its entirety or mostly or to a material extent in the territory of Estonia or at 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 persons who are being transferred**

(1) Permission for a person who is being transferred to another Member State to travel through the territory of the Republic of Estonia is granted by the Ministry of Justice. The permission for such a person to be transited through Estonia is granted within seven days following receipt of the request mentioned in subsection 2 of this section.

(2) For transit to be allowed, a corresponding request is presented, with a copy of the certificate of custodial sentence mentioned in § 508[34] of this Code annexed to it.

(3) When Estonia receives a request for permission of transit, notification is provided if it is not possible for Estonia to guarantee that, in its territory, the sentenced person will not be prosecuted, committed in custody or subjected to any other measure restricting their liberty in relation to a criminal offence committed by them or a sentence imposed on them prior to their departure from the territory of the requesting state.

(4) Estonia may hold the sentenced person in custody only for as long as is required for their transit.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[41]. Notification**

The Ministry of Justice notifies the competent authority of the requesting state without delay, in a form reproducible in writing, of:
1) the fact that the judgment and the corresponding certificate of custodial sentence have been transmitted to the competent authority responsible for recognising such a judgment;
2) the fact that in practice it is impossible to execute the sentence because, after transmission to Estonia of the judgment and of the certificate of custodial sentence, the sentenced person cannot be found in Estonian territory and that in such a situation Estonia is not obligated to enforce the sentence;
3) the final decision to recognise the judgment and enforce the sentence, together with the date of such a disposition;
4) the decision to refuse, under the provisions of § 508[39] of this Code, to recognise the judgment and enforce the sentence, together with the reasons for non-recognition;
5) the decision to adapt the sentence according to subsection 2 or subsection 3 of § 508[44] of this Code, together with the reasons for that decision;
6) the decision to refuse to enforce the sentence for reasons mentioned in subsection 1 of § 489[7] of this Code together with the reasons for that decision;
7) the beginning and the end of the period of release on probation or on parole;
8) the sentenced person's escape from the custodial institution;
9) terminating the enforcement of the sentence, as soon as its enforcement has been completed.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

# Subdivision 2
# Procedure for Mutual Recognition and Enforcement of Judgments Imposing Custodial Sentences or Measures Involving Deprivation of Liberty Rendered in a Member State of the European Union

**§ 508[42]. Deciding on recognition and enforcement**

(1) The competence to conduct proceedings concerning a certificate of custodial sentence issued to Estonia by a Member State of the European Union is vested in the Prosecutor's Office; the competence to decide on the enforcement of such a certificate is vested in Harju District Court.

(2) A final decision on recognising a judgment and enforcing the sentence imposed by it must be reached within 90 days after reception, by Harju District Court, of the judgment and the certificate.

(3) Where it is not possible to decide on recognition and enforcement of the judgment during the time limit provided by subsection 1 of this section, the Ministry of Justice notifies this without delay to the competent authority of the requesting state and states the reasons for the delay and the estimated time required for reaching a final decision.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[43]. Postponing recognition of a judgment**

if the certificate mentioned in § 508[34] of this Code is incomplete or clearly does not correspond to the judgment, Estonia may postpone recognition of such a judgment until a reasonable due date set by the Ministry of Justice for completion or rectification of the certificate.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[44]. Enforcing the sentence**

(1) When a judgment has been recognised, it is enforced without delay according to Estonian law.

(2) If the sentence imposed on the person in a foreign state exceeds the maximum sentencing frame provided by the Penal Code of Estonia for acts of that type, such a sentence is adapted and brought into conformity with the sentencing frame provided by the Penal Code of Estonia. The adapted sentence may not be less than the maximum sentence provided by the Penal Code of Estonia for acts of that type.

(3) If the sentence imposed on the person in a foreign state is contrary to Estonian law, it is brought into conformity with the sentence or other sanctioning measure prescribed for acts of that type in the Penal Code of Estonia. In such a situation, the sentence or sanctioning measure to be applied must correspond as precisely as possible to the sentence imposed on the person in the requesting state and may not be converted into a monetary penalty.

(4) An adapted sentence may not, under any circumstances, aggravate the nature or duration of the sentence 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 enforcement of the sentence**

(1) The enforcement of the sentence, including any release on parole or probation, is subject to Estonian law.

(2) When enforcing the sentence, the period of deprivation of liberty that has already been served in connection with the criminal offence dealt with in the corresponding judgment is deducted from the total duration of imprisonment to be served.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[46]. Special obligation**

(1) A person transferred to Estonia to serve their sentence may not be committed to answer any charges, convicted or deprived of liberty in any other way for a criminal offence that was committed before their transfer but is not the offence that constitutes the grounds for the transfer.

(2) The provisions of subsection 1 of this section do not apply if:
1) the sentenced person had an opportunity to leave the territory of Estonia but they did not do so within 45 days after their final discharge or, after having left, they have returned to Estonia;
2) the criminal offence is not punishable by imprisonment or other measures restricting liberty;
3) criminal proceedings do not give rise to the application of a measure restricting personal liberty;
4) a monetary penalty or a measure other than one restricting their liberty may be imposed on the sentenced person, primarily a fine or a measure in lieu of a fine, even if the punishment or measure may give rise to a restriction of their personal liberty;
5) the sentenced person has agreed to the transfer;
6) the sentenced person has, after the transfer, expressly waived the application of the special obligations provided for by subsection 1 of this section in connection with a particular criminal offence or offences committed before the transfer;
7) the requesting state has granted its consent according to subsection 3 of this section.

(3) The consent mentioned in clause 7 of subsection 2 of this section is given only where there is an obligation to surrender the person concerned.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[47]. Committing a sentenced person in custody for the duration of proceedings on recognition of their judgment**

(1) Where the sentenced person is in Estonia, Estonia may, prior to the arrival of the judgment and the corresponding certificate of custodial sentence or before the decision to recognise the judgment and enforce the sentence, at the request of the requesting state, commit such a person in custody or apply other compliance

enforcement measures in their respect in order to guarantee that they remain in Estonia until a decision is reached on recognition of their judgment and enforcement of their sentence.

(2) The period of custody ordered under subsection 1 of this section is deemed to count towards the duration of deprivation of liberty to be served by the convicted offender.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[48]. Terminating the enforcement of a sentence

The enforcement of a sentence is terminated without delay when the competent authority of the requesting state notifies Estonia of a decision or measure as a result of which the sentence is no longer enforceable.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

## Subdivision 3
## Presenting a Judgment Involving a Custodial Sentence or Measure Restricting Personal Liberty to a Member State of the European Union

### § 508[49]. Presenting a judgment for recognition and enforcement

(1) The certificate of custodial sentence of a Member State of the European Union is issued by the prison in which the person concerned is serving their sentence.

(2) The judgment or its copy and the corresponding certificate of custodial sentence is transmitted to the competent authority of a Member State of the European Union by the Ministry of Justice.

(3) The judgment, together with the corresponding certificate of custodial sentence, is only presented to one state at any one time.

(4) A certificate of custodial sentence is issued in the Estonian language. The Ministry of Justice translates it into a language determined by the requested state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(5) The form of the certificate of custodial sentence is enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 23.12.2014, 14 – entry into force 01.01.2015]

### § 508[50]. Withdrawing a certificate of custodial sentence

A certificate of custodial sentence may be withdrawn from the requested state, presenting that state with a statement of the relevant reasons, provided the state has not yet proceeded to enforce the sentence. Where the certificate has been withdrawn, the requested state does not enforce the sentence.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[51]. Transferring the person

(1) A copy of the decision to recognise the judgment is sent to the Ministry of Justice which arranges the transfer of the person concerned.

(2) The person is transferred within 30 days following the making of the final decision recognising the judgment.

(3) Where a transfer is prevented by circumstances beyond the control of the Republic of Estonia or of the requesting state, the person is transferred without delay after such circumstances have ceased to apply. In such a situation, the transfer takes place within ten days of the new date that has been agreed.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[52]. Notification of terminating enforcement of the sentence

Any decision or measure which immediately renders the sentence unenforceable, or renders it unenforceable upon the lapsing of a certain period of time, is notified by the Ministry of Justice without delay to the competent authority of the requested state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[53]. Consequences of transferring the sentenced person**

(1) Where the requested state has proceeded to enforce the sentence, Estonia is no longer allowed to interfere in its enforcement.

(2) Where the requested state notifies Estonia of the sentenced person's escape from the custodial institution, the right to enforce the sentence reverts to Estonia.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

# Division 7
# Mutual Recognition and Enforcement of Decisions Rendered in Member States of the European Union on Conditional Non-Imposition of Custodial Sentences and on Supervision of Probation Measures and Alternative Sanctions

## Subdivision 1
## General Provisions

**§ 508[54]. Certificate of supervision**

'Certificate of a Member State of the European Union of conditional non-imposition of custodial sentence and of supervision of probation measures and alternative sanctions' (hereinafter, 'certificate of supervision') means a request made by a competent judicial authority of a Member State to another Member State of the European Union to recognise a judgment concerning the conditional non-imposition of imprisonment or the application of probation measures or alternative sanctions and to exercise supervision of any such probation measures or alternative sanctions.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[55]. General conditions**

(1) The recognition of a judgment according to the provisions of this Division, and the exercise, according to those provisions, of any supervision that has been ordered is permitted if the act that the judgment deals with is a criminal offence under the law of the requested state, regardless of the elements making up the definition of such an act.

(2) Where the offence is one listed in § 489[6] of this Code, Estonia recognises and enforces the sentence imposed, regardless of whether or not it is punishable under the Penal Code of Estonia.

(3) The recognition of a judgment under the provisions of this Division, and the exercise, under those provisions, of any supervision that has been ordered is permitted only concerning the probation measures or alternative sanctions that are mentioned in § 508[57] of this Code.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[56]. Criteria for recognising a judgment**

(1) Where the lawful and ordinary residence of the sentenced person is in Estonia, Estonia recognises the judgment and exercises any supervision that has been ordered, if the convicted offender has returned, or wishes to return, to Estonia.

(2) Where the lawful and ordinary residence of the sentenced person is not in Estonia, Estonia may only recognise the judgment and exercise any supervision that has been ordered if the person wishes to take up residence in Estonia and:
1) there are no circumstances to prevent their taking up of such residence;
2) it is possible to issue an Estonian residence permit to such a person;
3) the person has family ties or other significant connections with the Estonian state;
4) the person's taking up of residence in Estonia is consistent with the interests of the person and with those of other persons connected with them.

(3) Having regard to the conditions mentioned in subsection 2 of this section and taking into account any other relevant circumstances, the court makes a reasoned decision concerning recognition of the judgment of conviction rendered in respect of the person mentioned in subsection 2 of this section, and the exercise of any supervision that has been ordered.

(4) An appeal may be filed against the decision mentioned in subsection 3 of this section following the rules provided by subsection 1 of § 387 of this Code.

[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[57]. Types of probation measure and of alternative sanction

The recognition of a judgment according to the provisions of this Division, and the exercise, according to those provisions, of any supervision that has been ordered is permitted only with respect to the following probation measures or alternative sanctions:
1) an obligation for the sentenced person to notify a specific authority of any change of their residence or working place;
2) an obligation not to enter, in the requesting state or in Estonia, certain localities or defined areas;
3) an obligation containing limitations on leaving the territory of Estonia;
4) instructions that relate to behaviour, residence, education and training as well as leisure activities or that include limitations on or modalities of a professional activity;
5) an obligation to report at specified times to a specific authority;
6) an obligation to avoid contact with specific persons;
7) an obligation to avoid contact with specific objects which have been used or which the sentenced person is likely to use to commit a criminal offence;
8) an obligation to compensate financially for the prejudice caused by the criminal offence and an obligation to provide proof of compliance with such an obligation;
9) an obligation to carry out community service;
10) an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons;
11) an obligation to undergo a course of therapeutic or withdrawal treatment.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[58]. Circumstances precluding or restricting the recognition of a judgment and enforcement of any supervision ordered

The recognition of a judgment or the enforcement of any supervision that has been ordered may be refused if:
1) the act dealt with by the judgment of conviction is not a criminal offence according to the Penal Code of Estonia, except if it has been provided for by subsection 1 of § 489[6] of this Code;
2) the request was not presented using the form of the certificate of supervision, is incomplete, does not correspond to the requesting state's judgment that underlies it, or does not include the judgment of the requesting state or a copy of such a judgment, and the defects that have been found are not cured within a reasonable time;
3) the sentenced person is not a person falling under subsection 1 or subsection 2 of § 508[56] of this Code;
4) the limitation period for mandating the enforcement of the sentence has lapsed according to the Penal Code of Estonia and is related to an act which is within Estonia's jurisdiction according to its domestic legislation;
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]
5) in the Republic of Estonia, the sentenced person enjoys immunity or is privileged under an international treaty such that this does not allow the supervision defined in § 508[54] to be exercised;
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]
6) the sentenced person is under fourteen years of age;
7) the judgment was entered *in absentia*, except in situations provided for by § 489[7] of this Code;
8) the sentence that has been imposed includes treatment which, notwithstanding § 508[62] of this Code, it is not possible to provide in Estonia under the legislation in force or due to the way the health care system is organised in Estonia;
9) the judgment relates to a criminal offence which is treated as such under the Penal Code of Estonia, is considered to be a criminal offence which was committed in whole or mostly or in an essential part in the territory of Estonia or in a place equivalent to the territory of Estonia, or
10) the duration of the probation measure or alternative sanction is less than six months;
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]
11) in respect of the person, in connection with the offence of which they were convicted, another judgment, or an order terminating the relevant offence proceedings, has entered into effect.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

### § 508[59]. Notifying the state which made the decision

The Ministry of Justice notifies the competent authority of the requesting state without delay, in any form reproducible in writing, of:
1) transmission of a judgment and of the corresponding certificate to the competent authority responsible for its recognition;
2) the fact that in practice it is impossible to exercise the supervision because, after transmission to Estonia of the judgment and of the certificate of supervision, the sentenced person cannot be found in Estonian territory, and Estonia is not obligated to enforce the sentence;

3) the final decision on recognition of the judgment or, where this is needed, of a decision concerning conditional non-imposition of imprisonment, and of the decision to assume responsibility for supervising the probation measures or alternative sanctions;

4) the decision, according to § 508[58] of this Code, not to recognise a judgment and not to exercise supervision, together with the reasons for non-recognition;

5) the decision to adapt the sentence according to subsection 2 or subsection 3 of § 508[62] of this Code, together with the reasons for that decision;

6) the decision not to enforce the sentence due to the reasons mentioned in subsection 1 of § 489[7] of this Code, together with the reasons for that decision.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

# Subdivision 2
# Procedure for Recognition and Enforcement of Judgments Rendered in Member States of the European Union on Conditional Non-Imposition of Custodial Sentence and on Supervision of Probation Measures and Alternative Sanctions

### § 508[60]. Deciding on recognition and enforcement

(1) The competence to conduct proceedings concerning certificates of supervision presented to Estonia is vested in the Ministry of Justice; the competence to decide on execution of such a certificate is vested in Harju District Court.

(2) A final decision on recognition of a judgment and exercise of supervision must be reached within 60 days after reception, by Harju District Court, of the judgment and the certificate of supervision.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(3) Where it is not possible to decide on recognition of a judgment and on the exercise of supervision during the time limit provided by subsection 2 of this section, the Ministry of Justice notifies this without delay to the competent authority of the requesting state and states the reasons for the delay and the estimated time that is required to reach a final decision.
[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

### § 508[61]. Postponing the recognition of a judgment

Estonia may postpone the recognition of a judgment if the certificate of supervision mentioned in subsection § 508[54] of this Code is incomplete or clearly does not correspond to the judgment until a reasonable due date set by the Ministry of Justice for completion and rectification of the certificate.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[62]. Deciding on the nature of a probation measure or alternative sanction and on the duration of the probation period

(1) If the nature or duration of a probation measure or alternative sanction, or of the conditional sentence, imposed on a person in a foreign state is contrary to Estonian law, those measures are applied according to the Penal Code of Estonia such that they conform with the probation measures or alternative sanction that would be imposed under the Penal Code of Estonia for an equivalent criminal offence. An adapted probation measure or alternative sanction must correspond as far as possible to the probation measure, alternative sanction or duration of the probation period imposed in the requesting state.

(2) Where the probation measure, alternative sanction or duration of the probation period imposed on a person in a foreign state is adapted according to subsection 1 of this section for the reason that it exceeds the relevant maximum sentence allowed in Estonia, the adapted measure may not be applied for a period that is shorter than the maximum duration of a corresponding measure that would be imposed for an equivalent criminal offence according to the Penal Code of Estonia.

(3) In no case may the adapted probation measure, alternative sanction or duration of the probation period be more severe than the corresponding measure, sanction or duration imposed on the person concerned in the requesting state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[63]. Recognising a judgment and exercising the supervision

(1) When a judgment is recognised, its enforcement is ordered without delay according to Estonian law.

(2) Any supervision ordered in respect of the person concerned, as well as the mandating of enforcement of the sentence imposed, the duration of any alternative sanctions and any other decisions that relate to the exercise of the supervision are subject to Estonian law.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[64]. End of Estonia's jurisdiction to exercise supervision**

If the sentenced person absconds or no longer has a lawful and ordinary residence in the Republic of Estonia, Estonia transfers jurisdiction in respect of the supervision of any relevant probation measures and alternative sanctions and in respect of all further decisions related to the judgment back to the requesting state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

## Subdivision 3
## Transmitting a Judgment on Conditional Exemption from Sentence and on Relevant Supervision Measures to a Member State of the European Union

**§ 508[65]. Presenting a certificate of supervision for recognition and enforcement**

(1) A certificate of supervision is issued by the probation officer assigned to the person concerned or by the authority applying the alternative sanction ordered in respect of that person.

(2) The corresponding judgment or its copy, and the certificate of supervision, is transmitted to the competent authority of a Member State of the European Union by the Ministry of Justice.

(3) The judgment, together with the certificate of supervision, is only presented to one state at any one time.

(4) The certificate of supervision is issued in the Estonian language. The Ministry of Justice translates it into the language determined by the requested state.

(5) The form of the certificate of supervision is enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[66]. Withdrawing a certificate of supervision**

A certificate of supervision may be withdrawn from the requested state, presenting that state with the relevant reasons, provided the state has not yet proceeded to exercise the supervision. Where the certificate is withdrawn, the requested state does not enforce the judgment or exercise the supervision.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[67]. Notifying termination of enforcement of the sentence**

The Ministry of Justice notifies the competent authority of the requested state without delay of any decision or measure which, immediately or after the lapse of a certain period of time, renders the sentence unenforceable.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[68]. End of Estonia's jurisdiction when a judgment is transmitted for recognition and enforcement**

Estonia's jurisdiction to exercise supervision of a probation measure or alternative sanction ends as soon as the requested state has recognised the corresponding judgment transmitted to it by Estonia and has notified such recognition to the Ministry of Justice.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

# Division 8
# Recognition and Execution of Monetary Penalties or Fines of Member States of the European Union

## Subdivision 1

# General Provisions

### § 508[69]. Certificate of imposition of a monetary penalty or fine

(1) 'Certificate of imposition of a monetary penalty or fine' means a request which is made by a competent judicial authority of a Member State to another Member State of the European Union and which requires a natural or a legal person to pay the amount stated in the relevant judgment or in a decision of any other authority.

(1[1]) A certificate of imposition of a monetary penalty or fine may be issued for recognition of the following monetary obligations:
1) a sum of money imposed for an offence by a judgment of conviction;
2) compensation for an offence imposed by a judgment of conviction for the benefit of the victim where the victim has not filed a civil court claim;
3) a sum of money imposed in respect of the costs related to judicial or administrative proceedings leading to the judgment of conviction;
4) a sum of money imposed for an offence by a judgment on conviction, to be paid to public funds or to a victim support organisation.
[RT I, 26.06.2017, 70 – entry into force 06.07.2017]

(2) The form of the certificate of imposition of a monetary penalty or fine is enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[70]. Scope of assistance

Recognition of and enforcement of monetary penalties and fines is permitted in relation to all offences punishable under Estonian law, as well as regardless of such punishability, provided that, in the requesting state, a penalty is prescribed for the following offences:
[RT I, 31.12.2016, 2 – entry into force 10.01.2017]
1) criminal offences mentioned in subsection 1 of § 489[6] of this Code;
2) offences against traffic regulations, including offences related to the requirements pertaining to working and rest time and to the safety of and driving hours in motor transport;
3) the smuggling of goods;
4) offences against intellectual property;
5) offences against health;
6) offences of causing damage to property as stated in Division 2 of Subchapter 1 of Chapter 13 of the Penal Code;
7) theft;
8) offences created by the requesting 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 or preclude recognition

The recognition and enforcement of a judgment is prohibited if:
1) the request was not presented using the form of the certificate of imposition of a monetary penalty or fine provided by § 508[69] of this Code, is incomplete, does not correspond to the judgment of the requesting state on which it is based or is not presented together with such a judgment or with the decision of another authority of that state or a copy of such a judgment or decision, and the defects that have been found have not been cured within a reasonable time;
2) in respect of the sentenced person, a decision has been adopted and executed for the same offence in Estonia or in any other state, with the exception of the requesting state;
3) the decision was made in respect of an act other than those mentioned in § 508[70] of this Code;
4) under the Penal Code of Estonia, the limitation period for executing the sentence has lapsed and execution relates to an act which falls within Estonia's jurisdiction according to its national law;
5) in the Republic of Estonia, the convicted person enjoys immunity or is privileged under an international treaty;
6) the convicted offender is less than fourteen years of age;
7) the judgment was rendered *in absentia*, except in situations provided for by § 489[7] of this Code;
8) the judgment relates to a criminal offence which, under the Penal Code of Estonia, is treated as a criminal offence which was committed in whole or mostly or in an essential part in the territory of Estonia or in a place treated as such; or
9) the monetary penalty imposed equals, or falls below, 70 euros.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

# Subdivision 2

# Recognition and Execution of Certificates of Imposition of a Monetary Penalty or Fine

**§ 508[72]. Procedure for recognition and enforcement of monetary penalties and fines imposed in a foreign state**

(1) Recognition and enforcement of fines or monetary penalties takes place according to the provisions of §§ 489[6]–489[11] of this Code, subject to the following special rules:
1) recognition of the decision is decided by the district court that serves the locality of residence of the convicted person or, in the absence of such residence, by Harju District Court;
2) the court decides on recognition of the decision of a foreign state by written procedure within 30 days following arrival of the request in court;
3) the amount of the fine or monetary penalty is converted into euro based on the exchange rate effective on the day the decision was made;
4) the requested state may reduce the amount of the monetary penalty or fine to be enforced to the maximum amount of such a penalty or fine as provided for by its national law in respect of acts of that type.

(2) Where it is not possible to enforce a monetary penalty imposed in a foreign state, the court may, with permission of the requesting state, convert it following the rules provided by § 70 of the Penal Code, considering that the duration of the term of imprisonment or of community service thus imposed must not exceed the maximum level prescribed in the requesting state.

(3) If the convicted offender produces a certificate showing that the relevant sum of money has been paid in full or in part, the part that has been paid is deducted from the amount of the monetary penalty or fine to be enforced.

(4) Where the convicted person has, prior to the hearing of the case, paid the monetary penalty or fine in full, the court terminates proceedings by an order.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[73]. Conversion of monetary penalty in the event of failure to pay the sum imposed**

(1) Where it is not possible to enforce the decision either in full or in part, it is converted, in accordance with the Penal Code of Estonia, into a term of imprisonment, a short-term custodial sentence or community service. Conversion is only permitted where it has been permitted by the requesting state. The corresponding permission must be stated in the certificate of imposition of the monetary penalty or fine.

(2) The duration of the converted sentence is set based on the Penal Code of Estonia, but must not exceed the maximum level stated in the certificate of imposition of the monetary penalty or fine transmitted by the requesting state.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

**§ 508[74]. Money received from enforcement of certificates of imposition of pecuniary penalties and fines**

Unless Estonia and the requesting state have agreed otherwise, any money received from enforcing the certificate of imposition of a monetary penalty or fine accrues to the public revenue of Estonia.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

# Division 3
# Presenting a Certificate of Imposition of a Monetary Penalty or Fine

**§ 508[75]. Presenting a certificate of imposition of a monetary penalty or fine for recognition and enforcement**

(1) The certificate of imposition of a monetary penalty or fine is issued by the court that imposed the penalty or the out-of-court proceedings authority that set the fine.

(2) A judgment, or decision of another authority, or a copy of such a judgment or decision, and the corresponding certificate of imposition of the monetary penalty or fine, is transmitted by the Ministry of Justice to the competent authority of a Member State of the European Union for the recognition and enforcement of the judgment concerned.

(3) The judgment, together with the corresponding certificate of imposition of the monetary penalty or fine, is only presented to one state at any time.

(4) The certificate of imposition of the monetary penalty or fine is issued in the Estonian language. The Ministry of Justice translates it into the language determined by the requested state.

(5) The form of the certificate of imposition of a monetary penalty or fine is enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[76]. Notification of termination of enforcement of punishment

The Ministry of Justice notifies the competent authority of the requested state without delay of any decision or measure as a result of which it is no longer possible to execute the penalty.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[77]. End of Estonia's jurisdiction when a judgment is transmitted for recognition and enforcement

Estonia's jurisdiction to conduct enforcement proceedings in the case ends as soon as the requested state recognises the judgment that has been transmitted to it by Estonia, and notifies this to the Ministry of Justice.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

## Division 9
## Exchange of Information and of Information Collected by a Covert Operation between Member States of the European Union

### § 508[78]. Exchange of information and of information collected by a covert operation

(1) For the purposes of detection and prevention of offences and of conducting criminal proceedings, information and information collected by a covert operation may be exchanged with any Member State of the European Union, having regard to the conditions provided by this Code.

(2) To the extent provided by law, the judicial authorities competent to engage in international cooperation with a Member State of the European Union for exchange of information and of information collected by a covert operation (hereinafter, 'information') are the covert operations authorities mentioned in subsection 1 of § 126[2] of this Code.

(3) The central authority for the international cooperation provided for by this Division is the Police and Border Guard Board. Within the scope of its competence, the Tax and Customs Board participates in such cooperation independently.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[79]. Form of request

(1) The following must be stated in an information request presented to a foreign state:
1) the reasons for presenting the request;
2) the reasons for requesting the information;
3) the connection between the reason for presenting the request and the person concerning whom information is requested.

(2) The form of the request is enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[80]. Conditions for fulfilling a request

(1) Fulfilment of a request is not permitted and is refused if:
1) the grounds for refusal provided by § 436 of this Code apply;
2) compliance with the request would prejudice ongoing criminal proceedings or the conduct of a covert operation or the safety of a person;
3) the request is clearly disproportionate or irrelevant in relation to its stated purpose.

(2) When disclosing any information concerning pre-trial proceedings, the provisions of § 214 of this Code are observed.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

### § 508[81]. Fulfilling a request received from a foreign state

(1) The Police and Border Guard Board verifies whether the request received from a Member State complies with the requirements, is admissible and whether it is possible to fulfil it, and transmits it to the authority competent to fulfil that request.

(2) When fulfilling a request, the provisions of this Code are observed. At the request of a Member State, unless this is contrary to the principles of Estonian law, a request may be fulfilled according to procedural rules which differ from the provisions of this Code.

(3) The request is fulfilled and the relevant information communicated to the requesting Member State within 14 days following receipt of that request by the Police and Border Guard Board. If it is not possible for the authority that received the request to fulfil it within that time limit, such an authority states the corresponding reasons using the form provided for by subsection 5 of this section. The reasons are communicated to the Police and Border Guard Board which notifies 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 fulfilling the request is sent by the authority that fulfilled the request without delay to the Police and Border Guard Board which communicates it to the requesting state. If the request was sent from a foreign state to the Tax and Customs Board, the reply is communicated to the requesting state by that Board.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

(5) The form for communicating the information requested is enacted by a regulation of the Minister in charge of the policy sector.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

### § 508[82]. Fulfilling an urgent request received from a Member State

(1) Where the request is an urgent one and the authority that received it has direct access to the information requested, a reply is provided to such a request within eight hours following its arrival 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) Where it is not possible for the competent authority that received the request to respond within eight hours, the authority states the corresponding reasons using the form provided for by subsection 5 of § 508[81] of this Code. The reasons are communicated to the Police and Border Guard Board which notifies the requesting Member State of the delay. If the request is one sent to the Tax and Customs Board, the corresponding information is provided to the requesting Member State by that Board. In such a situation, the request is fulfilled within three days.
[RT I, 19.03.2015, 1 – entry into force 29.03.2015]

### § 508[83]. Presenting a request to a Member State

A request to the competent authority of a foreign state is presented through the Police and Border Guard Board who verifies whether such a request meets the requirements. Within the scope of its competence, the Tax and Customs Board may present requests directly to the competent authority of a foreign state. A request that meets the requirements is presented to the foreign state 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) Without having received a corresponding prior request, a competent authority may communicate to a foreign state relevant and necessary information which may contribute to the detection, prevention and investigation of the criminal offences listed in subsection 1 of § 489[6] of this Code.

(2) The information is sent to the Police and Border Guard Board which communicates it to the foreign state concerned.
[RT I, 21.06.2014, 11 – entry into force 01.01.2015]

# Chapter 20

# IMPLEMENTING PROVISIONS

**§ 509. Entry into force of this Code**

(1) This Code enters into force on 1 July 2004.

(2) The rules for the implementation of this Code are provided by the relevant implementing statute.
[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 cases 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 enforcement 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 cases (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, pp. 1–20). [RT I, 20.12.2019, 1 – entry into force 30.12.2019]