Code of Criminal Procedure

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15.06.2005	RT I 2005, 39, 307	21.07.2005
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07.12.2005	RT I 2005, 68, 529	01.01.2006
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06.12.2006	RT I 2007, 1, 2	30.03.2007
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19.06.2008	RT I 2008, 32, 198	01.01.2010
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06.05.2009	RT I 2009, 27, 165	01.01.2010
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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 for in Article 140 (2) of the Treaty on the Functioning of the European Union, Council Decision 2010/416/EU of 13 July 2010 (OJ L 196, 28.07.2010, p. 24-26).
18.06.2010	RT I 2010, 40, 239	18.06.2010 The decision of the Constitutional Review Chamber of the Supreme Court declares the summary proceedings regulation to be in conflict with the Constitution to the extent that this does not efficiently ensure the right of defence.
16.06.2010	RT I 2010, 44, 258	01.01.2011]
25.11.2010	RT I, 21.12.2010, 1	31.12.2010
27.01.2011	RT I, 23.02.2011, 1	01.09.2011
27.01.2011	RT I, 23.02.2011, 2	05.04.2011
27.01.2011	RT I, 23.02.2011, 3	01.01.2012
17.02.2011	RT I, 14.03.2011, 3	01.09.2011
17.02.2011	RT I, 21.03.2011, 2	01.01.2012 Repealed [RT I, 29.06.2012, 2]
08.12.2011	RT I, 22.12.2011, 3	23.12.2011 Repealed [RT I, 29.06.2012, 2]
07.12.2011	RT I, 28.12.2011, 1	01.01.2012, partially on the tenth day after publication in the *Riigi Teataja*.
08.12.2011	RT I, 29.12.2011, 1	01.01.2012
10.04.2012	RT I, 17.04.2012, 4	10.04.2012 The judgment of the Supreme Court *en banc* declares § 366 of the Code of Criminal Procedure to be in conflict with the Constitution to the extent that this does not prescribe the entry into force of a court judgment made pursuant to general procedure, which establishes the absence of a criminal

Passing	Publication	Entry into force
		act, as grounds for review if a punishment of imprisonment was imposed for participation in such criminal act to a person by a court judgment made pursuant to general procedure in the criminal matter subject to review.
30.05.2012	RT I, 15.06.2012, 2	01.06.2013
06.06.2012	RT I, 29.06.2012, 1	01.04.2013
06.06.2012	RT I, 29.06.2012, 2	09.07.2012, partially 01.01.2013 and 01.01.2015
06.06.2012	RT I, 29.06.2012, 3	01.01.2013, partially 01.07.2012 and 09.07.2012
14.06.2012	RT I, 04.07.2012, 1	01.08.2012
03.07.2012	RT I, 09.07.2012, 2	03.07.2012 The judgment of the Supreme Court *en banc* declares clause 385 26) of the Code of Criminal Procedure to be in conflict with the Constitution and repeals it to the extent that this does not allow to file an appeal against a ruling made by a judge in charge of execution of court judgments at a county court on the basis of subsection 427 (2) of the Code of Criminal Procedure by which a sentence suspended on probation is enforced pursuant subsection 74 (4) of the Penal Code.
13.11.2012	RT I, 16.11.2012, 6	13.11.2012 The judgment of the Supreme Court *en banc* declares clause 385 26) of the Code of Criminal Procedure to be in conflict with the Constitution and repeals it to the extent that this does not allow to file an appeal against a ruling made by a judge in charge of execution of court judgments at a county court on the basis of subsection 427 (2) of the Code of Criminal Procedure by which the part of the punishment which was not served due to release on parole is enforced pursuant subsection 76 (5) of the Penal Code.
05.12.2012	RT I, 21.12.2012, 1	01.03.2013, partially 01.01.2013
13.03.2013	RT I, 22.03.2013, 9	01.04.2013, partially 01.01.2014
27.03.2013	RT I, 16.04.2013, 1	26.04.2013
30.04.2013	RT I, 03.05.2013, 12	30.04.2013 The judgment of the Supreme Court *en banc* declares clause 385 26) of the Code of Criminal Procedure to be in conflict with the Constitution and repeals it to the extent this does not allow to file an appeal against a ruling made by a judge in charge of execution of court judgments at a county court on the basis of subsection 428 (2) of the Code of Criminal Procedure by which the sentence of imprisonment substituted by community service is enforced pursuant to subsection 69 (6) of the Penal Code.

Passing	Publication	Entry into force
10.05.2013	RT I, 15.05.2013, 3	10.05.2013 – The judgment of the Supreme Court *en banc* declares that clause 385 26) of the Code of Criminal Procedure was in conflict with the Constitution at the time of making the ruling of the Tallinn Circuit Court dated 7 January 2013 to the extent this does not allow to file an appeal against a ruling made by a judge in charge of execution of court judgments at a county court on the basis of subsection 428 (2) of the Code of Criminal Procedure by which the sentence of imprisonment substituted by community service is enforced pursuant to subsection 69 (6) of the Penal Code.

Chapter 1
GENERAL PROVISIONS

§ 1. Scope of application of Code

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

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

§ 2. Sources of criminal procedural law

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

§ 3. Territorial and temporal applicability of criminal procedural law

(1) Criminal procedural law applies in the territory of the Republic Estonia. Criminal procedural law also applies outside the territory of the Republic Estonia if this arises from an international agreement or if the object of the criminal proceeding is an act of a person serving in the Defence Forces of Estonia.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) In criminal proceedings, the criminal procedural law in force at the time of performance of a procedural act shall be applied.

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

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

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

Criminal procedural law applies equally to all persons with the following exceptions:
1) the specifications concerning preparation of a statement of charges and the performance of certain procedural acts with regard to members of the *Riigikogu*, the President of the Republic, members of the Government of the Republic, the Auditor General, the Chancellor of Justice and the Chief Justice and justices of the Supreme Court are provided for in Chapter 14 of this Code;
2) Estonian criminal procedural law may be applied to a person enjoying diplomatic immunity or other privileges prescribed by an international agreement at the request of a foreign state, taking into account the specifications provided for in an international agreement.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 5. Principle of state jurisdiction

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

§ 6. Principle of mandatory criminal proceedings

Investigative bodies and Prosecutors' Offices are required to conduct criminal proceedings when facts referring to a criminal offence become evident, unless the circumstances provided for in § 199 of this Code which preclude criminal procedure or unless the basis to terminate criminal proceedings in accordance with subsection 201 (2), § 202, 203, 203^1, 204, 205 or 205^1 of this Code exists.
[RT I 2010, 8, 34 - entry into force 27.02.2010]

§ 7. Presumption of innocence

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

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

(3) A suspicion of guilt regarding a suspect or accused which has not been eliminated in a criminal proceeding shall be interpreted to the benefit of the suspect or accused.

§ 8. Safeguarding of rights of participants in proceedings

Investigative bodies, Prosecutors' Offices and courts shall:
1) in the performance of a procedural act in the cases provided by law, explain to the participants

in the proceeding the objective of the act and the rights and obligations of the participants;
2) provide the suspect and the accused with a real opportunity to defend themselves;
3) ensure the assistance of a counsel to the suspect and the accused in the cases provided for in subsection 45 (2) of this Code or if such assistance is requested by the suspect or the accused;
4) in the cases of urgency, provide a suspect or accused held in custody with other legal assistance at his or her request;
5) deposit the unsupervised property of a suspect or accused held in custody with the person or local government specified by him or her;
6) ensure that the minor children of a person held in custody be supervised or the persons close to him or her who need assistance be cared for.

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

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

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

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

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

§ 10. Language of criminal proceedings

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

(2) The assistance of an interpreter or translator shall be ensured for the participants in a proceeding and the parties to a court proceeding who are not proficient in Estonian.

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

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

(5) If the accused is not proficient in Estonian, the text of the statement of charges translated into his or her native language or a language in which he or she is proficient shall be communicated to him or her.

§ 11. Public access to court sessions

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

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

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

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

§ 12. Restrictions on public access to court sessions

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

(2) A court shall adjudicate restrictions on public access to a court session on the basis provided for in subsection (1) of this section by a ruling made on its own initiative or at the request of a party to the court proceeding.

(3) With the permission of a court, an official of an investigative body, a court official, witness, qualified person, expert, interpreter or translator and a person close to the accused for the purposes of subsection 71 (1) of this Code may observe a court session held in camera.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) If a court session is held in camera, the court shall warn the parties to the court proceeding and other persons present in the courtroom that disclosure of the information relating to the proceeding is prohibited.

§ 13. Restrictions on recording of court sessions

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

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

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

§ 14. Adversarial court procedure

(1) In a court proceeding, the functions of accusation, defence and adjudication of the criminal matter shall be performed by different persons subject to the proceeding.

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

§ 15. Direct and oral court hearing

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

(2) A decision of a circuit court may be based on:
1) evidence which has been orally presented and directly examined in a court hearing by the circuit court and recorded in the minutes;
2) evidence which has been directly examined in the county court and disclosed in appeal proceedings.

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

§ 15^1. Uninterrupted and immediate court hearing

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

Chapter 2
PERSONS SUBJECT TO CRIMINAL PROCEEDING

§ 16. Bodies conducting proceedings and participants in proceedings

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

(2) A suspect or accused, his or her counsel, victim, civil defendant and third parties are the participants in a proceeding.
[RT I 2007, 2, 7 - entry into force 01.02.2007]

§ 17. Parties to court proceeding

(1) A Prosecutor's Office, accused and his or her counsel and victim, civil defendant and third parties are the parties to a court proceeding.
[RT I 2007, 2, 7 - entry into force 01.02.2007]

(2) The parties to a court proceeding have all the rights of participants in the proceedings provided for in this Code.

Division 1
Court

§ 18. Panels of county courts

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

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

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

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

(5) Pre-trial proceedings shall be conducted by a judge sitting alone.

(6) The composition of a court panel adjudicating a criminal matter by way of international co-operation is provided for in Chapter 19.
[RT I 2005, 39, 308 - entry into force 01.01.2006]

§ 19. Panels of circuit court

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

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

§ 20. Panels of Supreme Court

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

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

§ 21. Preliminary investigation judge

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

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

§ 22. Judge in charge of execution of court judgments

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

§ 23. Voting in collegial court panel and dissenting opinion of judge

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

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

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

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

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

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

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

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

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

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

(4) A preliminary investigation judge of a county court in whose territorial jurisdiction the criminal offence was committed shall perform the duties of a preliminary investigation judge. Where it is impossible to clearly determine the place of commission of the criminal offence, a preliminary investigation judge of a county court of the place of performance of the procedural act shall perform the duties of a preliminary investigation judge. Permission for surveillance activities is granted by a judge designated by the division of tasks plan who is not the chairman of the court. For granting of permission for surveillance activities, up to three judges shall be designated by the division of tasks plan in the Harju County Court and two judges in all other county courts.
[RT I, 29.06.2012, 2 - entry into force 09.07.2012]

(5) The jurisdiction of criminal matters heard by way of international co-operation is provided for in Chapter 19.

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

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

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

§ 26. Jurisdiction over joined criminal matter

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

§ 27. Jurisdiction over criminal matters concerning judges

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

(2) If, according to general jurisdiction, the granting of permission for conducting of surveillance activities with regard to a judge falls within the competence of the county court within the territorial jurisdiction of the circuit court of the place of employment of the judge, permission for surveillance activities is granted, at the request of the Public Prosecutor's Office, by the chairman of the county court within the territorial jurisdiction of another circuit court or a judge designated by him or her acting as a preliminary investigation judge.
[RT I 2007, 1, 2 - entry into force 30.03.2007]

§ 27[1]. Jurisdiction of charge proceedings

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

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

§ 28. Verification of jurisdiction and resolution of jurisdictional disputes

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

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

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

§ 29. Procedural assistance between courts

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

Division 2
Prosecutor's Office

§ 30. Prosecutor's Office in criminal procedure

(1) A Prosecutor's Office shall direct pre-trial proceedings and ensure the legality and efficiency thereof and represent public prosecution in court.

(2) The authority of a Prosecutor's Office in criminal proceedings shall be exercised independently by the prosecutor in the name of the Prosecutor's Office and the prosecutor is governed only by law.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

Division 3
Investigative Bodies

§ 31. Definition of investigative body

(1) The Police and Border Guard Board, the Security Police Board, the Tax and Customs Board, the Competition Board, the Military Police, the Environmental Inspectorate and the Prisons Department of the Ministry of Justice and the prison that perform the functions of an investigative body directly or through the institutions administrated by them or through their regional offices are investigative bodies within the limits of their competence.
[RT I, 29.12.2011, 1 - entry into force 01.01.2012]

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

§ 32. Investigative bodies in criminal procedure

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

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

Division 4
Suspect and Accused

§ 33. Suspect

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

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

§ 34. Rights and obligations of suspects

(1) A suspect has the right to:
1) know the content of the suspicion and give or refuse to give testimony with regard to the content of the suspicion;
2) know that his or her testimony may be used in order to bring charges against him or her;
3) the assistance of a counsel;
4) confer with the counsel without the presence of other persons;
5) be interrogated and participate in confrontation, comparison of testimony to circumstances and presentation for identification in the presence of a counsel;
6) participate in the hearing of an application for an arrest warrant in court;
7) submit evidence;
8) submit requests and complaints;
9) examine the minutes of procedural acts and give statements on the conditions, course, results and minutes of the procedural acts, whereas such statements are recorded in the minutes;
10) give consent to the application of settlement proceedings, participate in the negotiations for

settlement proceedings, make proposals concerning the type and term of punishment and enter or decline to enter into an agreement concerning settlement proceedings.

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

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

§ 35. Accused

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

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

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

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

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

A suspect or accused who is a legal person shall participate in the criminal proceeding through a member of the management board or the body substituting for the management board of the legal person and such member has all the rights and obligations of a suspect or accused, including the right to give testimony in the name of the legal person.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

Division 5
Victim, Civil Defendant and Third Party
[RT I 2007, 2, 7 - entry into force 01.02.2007]

§ 37. Victim

(1) A victim is a natural or legal person to whom physical, proprietary or moral damage has been directly caused by a criminal offence or by an unlawful act committed by a person not capable of guilt.

(2) A victim who is a legal person shall participate in the criminal proceeding through a member of the management board or the body substituting for the management board of the legal person and such member has all the rights and obligations of a victim, including the right to give testimony in the name of the legal person.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

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

§ 38. Rights and obligations of victims

(1) A victim has the right to:
1) contest a refusal to commence or termination of criminal proceedings pursuant to the procedure provided for in §§ 207 and 208 of this Code;
2) file a civil action through an investigative body or the Prosecutor's Office not later than by the date provided for in subsection 225 (1) of this Code;
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
3) give or refuse to give testimony on the bases provided for in §§ 71-73 of this Code;
4) submit evidence;
5) submit requests and complaints;
6) examine the minutes of procedural acts and give statements on the conditions, course, results and minutes of the procedural acts, whereas such statements are recorded in the minutes;
7) examine the materials of the criminal file pursuant to the procedure provided for in § 224 of this Code;
8) participate in the court hearing;
9) give consent to the application of settlement proceedings or to refuse to give such consent, to present an opinion concerning the charges and punishment and the damage set out in the charges and the civil action;
10) give consent to the application of temporary restraining order and request application of restraining order pursuant to the procedure provided for in § 310^1 of this Code.
[RT I 2006, 31, 233 - entry into force 16.07.2006]

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

(3) The filing of a civil action for compensation for proprietary damage in a criminal proceeding is exempt from state fees.

(4) An investigative body or a Prosecutor's Office shall explain to the victim his or her s rights, the procedure for filing a civil action, essential requirements for a civil action, term for filing a

civil action and the consequences of allowing such term to expire, and the conditions and procedure for receipt of legal aid ensured by the state.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 39. Civil defendant

(1) A person bearing proprietary liability pursuant to law for damage which has been caused directly by a criminal offence or which a person not capable of guilt has caused by an unlawful act shall be declared a civil defendant by an order or ruling of the body conducting the proceedings.

(2) A civil defendant who is a legal person shall participate in a criminal proceeding through a member of the management board or the body substituting for the management board of the legal person and such member has all the rights and obligations of a civil defendant.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) The provisions applicable to witnesses apply to civil defendants in the performance of procedural acts unless otherwise prescribed by this Code.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 40. Rights and obligations of civil defendants

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

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

§ 40[1]. Third party

(1) The body conducting the proceedings may involve a third party in the criminal proceeding if the rights or freedoms of the person which are protected by law may be adjudicated in the adjudication of the criminal matter or in special proceedings.

(2) A third party who is a legal person shall participate in a criminal proceeding through a member of the management board or the body substituting for the management board of the legal person and such member has all the rights and obligations of a third party.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) The provisions concerning civil defendant apply to third parties on participation in procedural acts, examination of criminal file and failure to appear when summoned by body conducting proceedings unless otherwise provided for in this Code.
[RT I 2007, 2, 7 - entry into force 01.02.2007]

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

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

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

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

§ 41. Representative of victim, representative of civil defendant and representative of third party
[RT I 2007, 2, 7 - entry into force 01.02.2007]

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

(2) A victim, civil defendant or third party who is a legal person may have a contractual representative in a criminal proceeding in addition to the legal representatives specified in subsections 37 (2), 39 (2) and 40[1] (2) of this Code.
[RT I 2007, 2, 7 - entry into force 01.02.2007]

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

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

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

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

Division 6
Counsel

§ 42. Counsel

(1) In a criminal proceeding, the counsel is:
1) an advocate or, with the permission of the body conducting the proceedings, any other person who meets the educational requirements established for contractual representatives by this Act and whose competence in the criminal proceeding is based on an agreement with the person being defended (contractual counsel), or
2) an advocate whose competence in the criminal proceeding is based on an appointment by the Estonian Bar Association at the request of an investigative body, Prosecutor's Office or court (appointed counsel).
[RT I 2009, 1, 1 - entry into force 01.01.2010]

(2) In a court proceeding, a person being defended may, upon agreement, have up to three counsels.

(3) A counsel may defend several persons if the interests of the persons are not in conflict.
[RT I 2005, 71, 549 - entry into force 01.01.2006]

§ 43. Choice and appointment of counsel

(1) In a criminal proceeding, a suspect, accused and convicted offender may choose a counsel personally or through another person.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A counsel shall be appointed by the Estonian Bar Association at the request of an investigative body, Prosecutor's Office or court if:
[RT I 2009, 1, 1 - entry into force 01.01.2010]
1) a suspect or the accused has not chosen a counsel but has requested the appointment of a counsel;
2) a suspect or the accused has not requested a counsel but the participation of a counsel is mandatory according to § 45 of this Code;
3) a counsel chosen by a person cannot assume the duties of defence within 12 hours as of the detention of the person as a suspect or, in other cases, within 24 four hours as of entry into an agreement to defend the suspect or accused or summoning to the body conducting the proceedings and the counsel has not appointed a substitute counsel for himself or herself;
4) a counsel cannot appear at a court session in a matter pursuant to the general procedure in which he or she has assumed the duties of defence, and the counsel has not appointed a substitute counsel for himself or herself,
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) The body conducting proceedings shall notify a suspect or accused immediately of appointment of a counsel to him or her and communicate to him or her the contact details of an advocate who provides state legal aid appointed by the Estonian Bar Association.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) If there is no suspect or accused in a criminal matter but the Prosecutor's Office has applied for deposition of the testimony of a witness, the Estonian Bar Association shall appoint a counsel at the request of a preliminary investigation judge to represent the interests of a potential suspect in the hearing of a witness.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 44. Substitute counsel

(1) A counsel may appoint a substitute counsel to participate in a criminal proceeding instead of the counsel during the period of time when the counsel is prevented from participating in the criminal proceeding.

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

§ 45. Participation of counsel in criminal proceedings

(1) A counsel may participate in a criminal proceeding as of the moment when a person acquires the status of a suspect in the proceedings or in the case provided for in subsection 43 (4) of this Code.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) The participation of a counsel throughout a criminal proceeding is mandatory if:
1) the person was a minor at the time of commission of the criminal offence;
2) due to his or her mental or physical disability, the person is unable to defend himself or herself or if defence is complicated due to such disability;
3) the person is suspected or accused of a criminal offence for which life imprisonment may be imposed;
4) the interests of the person are in conflict with the interests of another person who has a counsel;
5) the person has been held in custody for at least six months;
6) proceedings are conducted in the criminal matter pursuant to expedited procedure.
[RT I 2006, 15, 118 - entry into force 14.04.2006]

(3) The participation of a counsel in a pre-trial proceeding is mandatory as of the presentation of the criminal file for examination pursuant to the procedure provided for in subsection 223 (3) of this Code.

(4) The participation of a counsel in a pre-trial proceeding is mandatory, except in the case an accused does not request a counsel, in the opinion of the court he or she is able to represent his or her own interests and wishes to waive the participation of a counsel:
1) in a court hearing of criminal offence in the second degree in settlement proceedings;
2) upon pronouncement of a court judgment in simplified proceedings;
3) in proceedings in criminal matters sent to court in alternative procedure, if the accused complies with the requirements established by this Act to contractual counsel and submits a reasoned written application to the court for a permission to defend himself or herself.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4^1) Requirements for the form of the waiver specified in subsection (4) of this section shall be established by a regulation of the Minister of Justice.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

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

(4^3) A counsel is required to participate in the settling of the issue concerning detention after service of a sentence.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) An appointed counsel is required to participate in a criminal proceeding until the end of the hearing of the criminal matter by way of cassation proceedings and he or she may refuse to assume the duties of defence on his or her own initiative or waive the duties of defence assumed by him or her on own initiative only on the bases provided for in subsection 46 (1) of this Code.

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

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

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

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

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

(1) A counsel may, on his or her own initiative and with the consent of the management of the law office, refuse to assume the duties of defence or waive the duties of defence assumed by him or her if:
1) the counsel has been exempted from the obligation to maintain a professional secret pursuant to the procedure provided for in subsection 45 (5) of the Bar Association Act or if the suspect or accused has requested the performance of an act which is in violation of law or the requirements for professional ethics;
2) performance of the duties of defence by such counsel would be in violation of the right of defence;
3) the person being defended violates any of the essential conditions of the client contract.

(1^1) A counsel shall refuse to assume the duties of defence in a matter pursuant to general procedure and waive the assumed duties of defence not later than at the preliminary hearing if he or she is unable to participate in the court hearing of the matter within three months as of the preliminary hearing.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

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

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

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

§ 47. Rights and obligations of counsel

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

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

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

§ 48. Waiver of counsel

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

Division 7
Circumstances Precluding Participation in Proceedings

§ 49. Bases for judge to remove himself or herself

(1) A judge is required to remove himself or herself from a criminal proceeding if he or she:
1) has previously made a decision or a judicial decision of a lower court in the same criminal matter which was annulled by a higher court in part or in full, except in the case the higher court referred the criminal matter in the annulment of the decision for a new hearing by the same court panel;
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
2) has made a court ruling specified in §§ 132, 134, 135 or 137 of this Code as a preliminary investigation judge in the same criminal matter, except in the hearing of the criminal matter in settlement and summary proceedings.
[RT I 2004, 46, 329 - entry into force 01.07.2004]
3) has previously been subject to criminal proceedings on another basis in the same criminal matter;
4) is or has been a person close to the accused, victim or civil defendant pursuant to subsection 71 (1) of this Code;
5) [repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]

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

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

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

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

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

§ 49^1. Adjudication of petition of challenge submitted by judge

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

(2) Before the adjudication of the petition of challenge, the judge or the court panel having received the petition of challenge may perform only urgent procedural acts.

(3) The chairman of a court or a judge appointed by the chairman shall adjudicate the petition of challenge by a ruling in written proceedings within three working days as of receipt of the petition.

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

§ 50. Removal of judge

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

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

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

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

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

(6) If a criminal matter is heard by a judge sitting alone, the judge shall adjudicate petitions of challenge himself or herself. If a judge finds that the petition of challenge has to be satisfied for a reason not specified in subsection 49 (1) of this Code, the judge shall refer the petition of challenge to adjudication pursuant to the procedure prescribed in § 49^1 of this Code.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

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

§ 51. Replacement of removed judge

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

§ 52. Bases for prosecutor to remove himself or herself

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

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

§ 53. Removal of prosecutor

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

(2) A petition of challenge submitted against a prosecutor in a pre-trial proceeding shall be adjudicated by an order of the Public Prosecutor's Office within five days as of the submission of the petition.

(3) Petitions of challenge filed in a court proceeding shall be adjudicated by a court.

§ 54. Bases for counsel to remove himself or herself

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

§ 55. Bases for removal of counsel

(1) If the bases provided for in subsection 20 (3^1) of the State Legal Aid Act exist or if a counsel does not remove himself or herself on the bases provided for in § 54 of this Code, the court shall

remove the counsel by a ruling on its own initiative or at the request of a party to the court proceeding.
[RT I 2009, 1, 1 - entry into force 01.01.2010]

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

(3) The court shall remove a counsel if the counsel has violated the provisions of subsection 46 (1^1) of this Code, the violation hinders the counsel from correct performance of his or her duties of defence and the counsel has not appointed a substitute counsel.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

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

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

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

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

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

§ 57. Proceeding for removal of counsel

(1) A proceeding for the removal of a counsel shall be conducted within five days as of receipt of the request for the initiation of the proceeding.

(2) If the person who submitted a request fails to appear in a court session where a proceeding for the removal of a counsel is to be conducted, the counsel shall not be removed.

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

(4) If a counsel who has received a summons fails, without good reason, to appear in a court session where a proceeding for the removal of the counsel is conducted or if the reason for his or her failure to appear is unknown or if he or she fails to appear in a court session which has been adjourned, the proceeding for the removal of the counsel shall be conducted in his or her absence.

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

(6) The decision made in a proceeding for removal shall be formalised by a court ruling.

(7) A counsel who has been removed pursuant to the procedure provided for in this section and § 55 has the right to re-enter the criminal proceeding after the basis for removal provided for in subsection 55 (2) of this Code has ceased to exist.

§ 58. Replacement of removed counsel

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

§ 59. Removal of other persons participating in proceeding

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

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

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

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

(5) Petitions of challenge submitted in a pre-trial proceeding shall be adjudicated by an order of the Prosecutor's Office within three days as of the submission of the petition.

(6) Petitions of challenge filed in a court proceeding shall be adjudicated by a court.

Chapter 3
PROOF

Division 1
General Conditions for Proof and Taking of Evidence

§ 60. Proof and matter of common knowledge

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

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

(3) A fact concerning which reliable information is available from sources not subject to criminal proceedings may be declared a matter of common knowledge by a court.

§ 61. Evaluation of evidence

(1) No evidence has predetermined weight.

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

§ 62. Subject of proof

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

§ 63. Evidence

(1) Evidence means the statements of a suspect, accused, victim, the testimony of a witness, an expert's report, the statements given by an expert upon provision of explanations concerning the expert's report, physical evidence, reports on investigative activities, minutes of court sessions and reports on surveillance activities, and other documents, photographs, films or other data

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

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

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

§ 64. General conditions for taking of evidence

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

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

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

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

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

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

§ 65. Evidence obtained from ships during voyages and from foreign states

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

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

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

Division 2
Hearing of Witnesses

§ 66. Witness

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

(2) A suspect or accused or the official of the investigative body, prosecutor or judge conducting the proceedings in the criminal matter shall not participate in the same criminal matter as witnesses. An official of an investigative body, prosecutor or judge who has been conducting proceedings in the criminal matter may be a witness in the court proceeding in the case specified in subsection 289 (4) of this Code for verifying the reliability of evidence.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

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

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

§ 67. Ensuring safety of witnesses

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

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

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

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

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

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

§ 67[1]. Representative of witness

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

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

(3) If a witness fails to appear for hearing within three working days as of the time of the act specified in the summons of the body conducting proceedings together with a representative in compliance with the requirements of subsections (1) and (2) of this section, the hearing shall be conducted without a representative.

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

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

§ 68. Hearing of witnesses

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

(2) A witness of at least 14 years of age shall be warned against refusal to give testimony without a legal basis and giving knowingly false testimony, and the witness shall sign the minutes of the hearing to that effect. If necessary, it is explained to the witness that intentional silence on the facts known to him or her shall be considered refusal to give testimony.

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

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

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

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

§ 69. Telehearing

(1) A body conducting the proceedings may organise telehearing of a witness if the direct hearing of the witness is complicated or involves excessive costs or if it is necessary to protect the witness or the victim.

(2) For the purposes of this Code, telehearing means hearing:
1) by means of a technical solution as a result of which the participants in the proceeding immediately see and hear the witness giving testimony outside the investigative body, Prosecutor's Office or court directly and may hear the witness through the person conducting the proceedings;
2) by telephone, as a result of which the participants in the proceeding immediately hear the witness giving testimony outside the investigative body or court and may question the witness through the person conducting the proceedings.

(3) Telehearing by telephone is permitted only with the consent of the person to be heard and the suspect or accused. The consent of the suspect or accused is unnecessary for the telehearing of anonymous witnesses by telephone.

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

(5) The provisions of § 468 apply to the hearing of witnesses staying in a foreign state.

(6) The Minister of Justice may establish more specific requirements for organising telehearing. [RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 69[1]. Deposition of testimony

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

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

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

(4) The prosecutor, counsel, suspect and witness shall be summoned to the hearing before a preliminary investigation judge. A suspect shall not be summoned to hearing at the request of a witness or the prosecutor if the presence of the suspect at the hearing poses a threat to the safety of the witness. Summoning of persons to deposition of testimony shall be arranged by the participant in a proceeding who requests the hearing. A counsel may request the assistance of a

preliminary investigation judge for summoning a person to the extent provided for in subsections 163^1 (4) and (5) of this Code.

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

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

§ 70. Specifications concerning hearing of witnesses who are minors

(1) A body conducting proceedings may involve a child protection official, social worker, teacher or psychologist in the hearing of a witness who is a miner.

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

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

(4) A suspect has the right to examine during the pre-trial proceedings the video recordings specified in (3) of this section. The suspect or a counsel has the right to submit questions to witnesses during five days after the examining. A Prosecutor's Office shall review a request within five days as of the receipt thereof. Dismissal of a request shall be formalised by an order a copy of which shall be sent to the person who submitted the request. Dismissal of a request shall not prevent re-submission of the request pursuant to the procedure provided for in § 225 of this Code or in the court proceeding.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 71. Refusal to give testimony for personal reasons

(1) The following persons have the right to refuse to give testimony as witnesses:
1) the descendants and ascendants of the suspect or accused;

2) a sister, stepsister, brother or stepbrother of the suspect or accused, or a person who is or has been married to a sister, stepsister, brother or stepbrother of the suspect or accused;
3) a step or foster parent or a step or foster child of the suspect or accused;
4) an adoptive parent or an adopted child of the suspect or accused;
5) the spouse of or a person permanently living together with the suspect or accused, and the parents of the spouse or person, even if the marriage or permanent cohabitation has ended.

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

§ 72. Refusal to give testimony due to professional or other activities [RT I, 21.12.2010, 1 - entry into force 31.12.2010]

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

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

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

(3) The persons specified in subsection (1) of this section and their professional support staff and the persons specified in subsection (2^1) do not have the right to refuse to give testimony if their

testimony is requested by a suspect or accused.
[RT I, 21.12.2010, 1 - entry into force 31.12.2010]

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

§ 73. Refusal to give testimony concerning state secrets or classified information of foreign states
[RT I 2007, 16, 77 - entry into force 01.01.2008]

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

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

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

§ 74. Minutes of hearing of witness
[RT I 2007, 16, 77 - entry into force 01.01.2008]

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

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

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

(4) After a witness being heard has spoken in his or her own words, he or she may write the testimony in the minutes of the hearing in hand-writing, and a corresponding notation shall be

made in the minutes.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

Division 3
Interrogation of Suspect

§ 75. Interrogation of Suspect

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

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

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

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

(4) Subsections 66 (2^1) and 68 (3)-(6) of this Code apply to interrogation of suspects.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 76. Record of interrogation of suspect

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

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

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

§ 77. Confrontation

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

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

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

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

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

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

§ 78. Record of confrontation

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

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

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

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

§ 79. Comparison of statements to circumstances

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

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

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

§ 80. Report on comparison of statements to circumstances

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

§ 81. Presentation for identification

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

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

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

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

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

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

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

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

§ 82. Report on presentation for identification

(1) A report on presentation for identification shall set out:
1) the names of the object or objects presented for identification;
2) the essential features which were similar for all the objects presented for identification, and where the object presented for identification was located among the other objects;
3) the place chosen by the person presented for identification among the other persons;
4) the proposal made to the identifier to watch the object or objects presented to him or her and say whether he or she recognises the object related to the event under investigation and whether he or she finds the object similar to or different from the other objects;
5) the features by which the identifier recognised the object.

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

Division 5
Inspection and Inquiries to Electronic Communications Undertakings
[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

§ 83. Objective of inspection and objects of inspection

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

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

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

§ 84. Inspection of scene of events

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

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

§ 85. Inspection of body

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

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

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

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

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

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

§ 87. Inspection report

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

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

§ 88. Physical examination

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

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

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

(4) A report on physical examination shall set out:
1) a description of the evidentiary traces of a criminal offence discovered on the body, clothes or

footwear of the person;
2) a description of the specific features or distinctive characteristics of the body of the person;
3) the names of the objects which have been discovered in the course of the procedural act and can be used as physical evidence.

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

§ 89. Seizure and examination of postal or telegraphic items

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

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

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

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

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

§ 90. Report on examination of postal or telegraphic items

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

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

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

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

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

Division 6
Search and Investigative Experiment

§ 91. Search

(1) The objective of a search is to find an object to be confiscated or used as physical evidence, a document, thing or person necessary for the adjudication of a criminal matter, property to be seized for the purposes of compensation for damage caused by a criminal offence or of confiscation, or a body, or to apprehend a fugitive in a building, room, vehicle or enclosed area.
[RT I 2007, 2, 7 - entry into force 01.02.2007]

(2) A search shall be conducted at the request of a Prosecutor's Office on the basis of an order of a preliminary investigation judge or on the basis of a court ruling, taking into account the exceptions listed in subsections (2[1]) and (3) of this section.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2[1]) A search may be conducted on the basis of an order of a Prosecutor's Office, except for searches of a notary's office or advocate's law office or at the persons processing information for journalistic purposes, if there is reason to believe that:
1) the suspect used or uses the site or vehicle to be searched at the time of commission of a criminal act or during the pre-trial proceedings, or
2) a criminal offence was committed at the site or in the vehicle, or it was used in the preparation for or committing of a criminal offence.
[RT I, 14.03.2011, 3 - entry into force 01.09.2011]

(3) In cases of urgency, a search may be conducted on the basis of an order of an investigative body without the permission of a court, but in such case the Prosecutor's Office shall notify a

preliminary investigation judge of the search or the Prosecutor's Office in the case specified in subsection (2^1) of this section within 24 hours, and the preliminary investigation judge or the Prosecutor's Office shall decide on the admissibility of the search.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) A search warrant shall set out:
1) the objective of the search;
2) the reasons for the search.

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

(6) If a search is conducted, the search warrant shall be presented for examination to the person whose premises are to be searched or to his or her adult family member or a representative of the legal person or the state or local government agency whose premises are to be searched and he or she shall sign the warrant to that effect. In the absence of the responsible person or representative, the representative of the local government shall be involved.

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

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

§ 92. Search report

(1) A search report shall set out:
1) a proposal to hand over the object to be found or to show where the body is hidden or the fugitive is hiding;
2) the names of the objects which were handed over voluntarily;
3) the conditions, course and results of the search;
4) the names of the objects found and the characteristics of the objects which are relevant to the adjudication of the criminal matter;
5) the personal data of the apprehended fugitive.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

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

§ 93. Investigative experiment

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

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

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

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

§ 94. Report on investigative experiment

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

Division 7
Ascertainment of Facts Requiring Expertise
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 95. Expert

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

(2) Upon ordering expert assessment, the body conducting proceedings shall prefer a state forensic institution. (2) If the required class of expert assessment is not on the list of the expert assessments conducted by a state forensic institution, the body conducting the proceedings shall

give preference upon appointment of an expert to an officially certified expert but other persons with the relevant knowledge may also be appointed as experts.
[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

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

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

§ 96. Bases for expert to remove himself or herself

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

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

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

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

§ 97. Removal of expert

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

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

§ 98. Rights and obligations of experts

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

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

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

§ 99. Securing of conduct of expert assessment

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

(2) Prints left by papillary skin ridges and data obtained upon analysis of the DNA samples taken in the course of a procedural act shall be entered, if necessary, in the state register of fingerprints and the state DNA register respectively.

(3) Investigative bodies or other competent authorities may preserve non-personal prints and samples taken in the course of a procedural act, unless otherwise provided by law. Investigative

bodies may preserve non-personal prints left by papillary skin ridges and DNA samples taken in the course of investigative activities only in the case they shall not be entered in the state register of fingerprints or state DNA register.
[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

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

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

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

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

(4) The data obtained upon fingerprinting and analysis of the DNA samples of the persons specified in subsections (1) and (2) of this section shall be entered in the respective state register of fingerprints and state DNA register.
[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

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

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

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

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

§ 100. Taking of comparative samples
[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

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

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

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

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

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

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

(6) The data obtained upon fingerprinting persons pursuant to subsection (1^1) of this section shall not be entered in the state register of fingerprints or shall be deleted from the specified register immediately after conduct of the comparative examination. The state forensic institution shall return the comparative samples to the body conducting the proceedings together with the expert's report or examination report. The comparative samples taken on the basis of this section are destroyed upon termination of criminal procedure, expiry of the limitation period of the offence or upon entry into force of the judgment. The comparative samples are destroyed by the body conducting the proceedings in whose possession the comparative samples are at the time of the destruction. The destruction shall be documented in writing and the document confirming destruction shall be included in the file.
[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

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

respective notation in the expert's or examination report.
[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

§ 101. Report on taking of assessment material

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

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

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

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

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

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

§ 103. Exhumation from official place of burial

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

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

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

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

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

§ 104. Report on exhumation

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

§ 105. Arrangement of conduct of expert assessment

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

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

§ 106. Order or ruling on expert assessment

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

(2) The final part of an order or ruling on an expert assessment shall set out:
1) the class of the expert assessment according to the field of special expertise;
2) the need to conduct an expert assessment;
[RT I, 04.07.2012, 1 - entry into force 01.08.2012]
3) the name of the expert or state forensic institution who is to execute the order or ruling on the expert assessment;
4) information concerning the objects of expert assessment related to the criminal act and concerning the comparative samples and the materials submitted for examination;
5) questions posed to the expert;
6) the term of the expert assessment in the case provided for in subsection 95 (3) of this Code.

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

(4) The following questions shall not be posed to an expert:
1) questions which are of legal nature or fall outside his or her area of expertise;

2) questions which can be answered without expert enquiry or conclusions based on specific expertise.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 107. Preparation of expert's report

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

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

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

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

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

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

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

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

§ 108. Report on refusal to conduct expert assessment

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

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

§ 109. Hearing of experts

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

§ 109^1. Qualified person

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

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

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

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

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

Division 8
Taking of Evidence by Surveillance Activities
[Repealed - RT I, 29.06.2012, 2 - entry into force 01.01.2013]

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

Division 9
Document and Physical Evidence

§ 123. Document

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

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

§ 124. Physical evidence

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

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

(3) Physical evidence or confiscated objects are immediately returned to the owner or former lawful possessor thereof if this does not hinder the criminal procedure.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

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

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

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

§ 125. Storage of physical evidence

(1) Physical evidence shall be stored in a criminal file, physical evidence storage facility of a body conducting the proceedings or in another premises in the possession of or territory guarded by the body or in a forensic institution, or the measures prescribed in § 126 of this Code shall be applied with regard to the physical evidence if this does not damage the interests of the criminal proceedings.

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

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

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

(5) If physical evidence is a document which is necessary for the owner in the future economic or professional activity thereof or for another good reason, the body conducting the proceedings shall make a copy of the document for the owner. The authenticity of the copy shall be certified by the signature of the person conducting the proceedings on the copy.

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

§ 126. Measures applicable to physical evidence and confiscated property

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

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

(2^1) The property seized in order to secure confiscation may be transferred with the consent of the owner of the property and at the request of the Prosecutor's Office on the basis of an order of a preliminary investigation judge. Property may be transferred without the consent of the owner if this is necessary for prevention of decrease in the value of the property. The amount received from transfer shall be seized.
[RT I 2007, 2, 7 - entry into force 01.02.2007]

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

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

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

(6) The procedure for the transfer and destruction of confiscated property and physical evidence transferred into state ownership and for the refund of the money received from the transfer to the lawful possessor of the property from the budget shall be established by the Government of the Republic.

(7) The procedure for registration, storage, transfer and destruction of physical evidence and seized property and for evaluation, transfer and destruction of highly perishable physical evidence and property seized in order to secure confiscation by the bodies conducting the

proceedings shall be established by the Government of the Republic.
[RT I 2008, 19, 132 - entry into force 23.05.2008]

Chapter 3[1]
SURVEILLANCE ACTIVITIES
[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

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

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

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

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

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

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

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

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

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

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

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

(2) On the basis of the provisions of clauses (1) 1) and 4) of this section, surveillance activities may be conducted in the event of criminal offences specified in §§ 89-93[1], 95-97, 99, 101-104, 106, 107, 110-114, 116, 118, 120, 122, 133-137, 138[1] and 141-146, subsections 151 (2) and (4), § 157, subsection 161 (2), §§ 163, 164, 172-179, 183-185, 187-190, 199 and 200, subsection 201 (2), subsections 202 (2) and (3), §§ 204, 206-214, 216[1]-217, 217[2], 222, 224, 227, 231-238, subsections 240 (2) and (3), §§ 241, 243, 244 and 246, subsections 248 (2) and (3), §§ 250 and 251, subsections 252 (2) and (3), §§ 255 and 256, subsections 259 (2) and (3), §§ 263, 291, 291[1], 293 and 294, subsections 295 (2) and (3), subsections 296 (2) and (3), §§ 297-299, §§ 300[1], 300[2], 302-304, 310-313, 315-316[1], subsection 321 (2), subsection 325 (2), §§ 326-328, 331, 331[3], 333-334, 335, 336, 347, subsections 356 (1) and (3), subsections 357 (1) and (3), subsections 361 (1) and (3), subsections 364 (2) and (3), §§ 374-376[2], 384, 389[1]-394, 398, 398[1], § 400, §§ 403-407, 414-416, 418, 418[1], 434, 435, 437-439, subsection 440 (3) and §§ 446 and 449 of the Penal Code.

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

(4) The surveillance activities conduced on the basis provided for in clauses (1) 2)-4) of this section may be also conducted in respect of the person with regard to whom there is good reason to believe that he or she interacts with the person specified in clauses (3) 2)-4) of this section,

communicates information to him or her, provides assistance to him or her or allows him or her to use his or her means of communication, and if the conduct of surveillance activities in respect of such person may provide the data required for the achievement of the objective of the surveillance activities.

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

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

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

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

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

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

§ 126^3. Surveillance activities

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

(2) The Police and Border Guard Board and the Security Police Board may conduct the following surveillance activities on the basis specified in clause 126^2 (1) 1) of this Code upon collection of information concerning the preparation of a criminal offence specified in §§ 244, 246, 248, 255 and 256 of the Penal Code and on the basis specified in clauses 3) and 4):
1) to covertly examine a postal item;
2) to covertly examine or wire-tap information;
3) to use a police agent.

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

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

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

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

§ 126^4. Grant of permission for surveillance activities

(1) Surveillance activities may be conducted with a written permission of a Prosecutor's Office or a preliminary investigation judge. The preliminary investigation judge shall decide the grant of permission by a ruling on the basis of a reasoned application of the Prosecutor's Office. The preliminary investigation judge shall immediately review a reasoned request submitted by a Prosecutor's Office and grant or refuse to grant permission for the conduct of the surveillance activities by a ruling.

(2) In cases of urgency, surveillance activities requiring the permission of a Prosecutor's Office may be conducted with the permission of the Prosecutor's Office issued in a format which can be reproduced in writing. A written permission shall be formalised within 24 hours as of the commencement of surveillance activities.

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

(4) A permission issued in cases of urgency in a format which can be reproduced in writing shall contain the following information:
1) the issue of the permission;
2) the date and time of issue of the permission;
3) surveillance activities for which the permission is issued;

4) if known, the name of the person with regard to whom the surveillance activities are conducted;
5) the term of the permission for surveillance activities.

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

(6) The duration of surveillance activities conduced with respect to a specific person on the basis provided for in clauses 126^2 (1) 1), 3) and 4) of this Code in one criminal matter shall not exceed one year. In the case of particular complexity or extent of a criminal matter, the Chief Public Prosecutor may grant permission or apply for a permission to a court for conduct of surveillance activities for a term of more than one year.
[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

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

(1) A Prosecutor's Office shall issue a permission for covert surveillance of persons, things or areas, covert collection of comparative samples and conduct of initial examinations and covert examination or replacement of things for up to two months. The Prosecutor's Office may extend the term of the permission for up to two months at a time.

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

§ 126^6. Covert examination of postal items

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

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

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

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

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

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

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

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

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

§ 126[8]. Staging of criminal offence

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

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

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

§ 126[9]. Use of police agents

(1) Police agent for the purposes of this Act is a person who collects evidence in a criminal proceeding by using a false identity.

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

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

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

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

§ 126[10]. Documentation of surveillance activities

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

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

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

§ 126[11]. Keeping of surveillance files

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

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

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

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

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

(3) The data obtained by surveillance activities may be used in other surveillance activities, other criminal proceedings, security checks, in deciding, in the cases provided by law, upon hiring persons and grant of permissions or licences to verify the conformity of the person to the requirements provided by law.

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

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

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

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

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

(9) Surveillance files subject to destruction and data recordings collected shall be destroyed by a committee formed by the head of a surveillance agency in the presence of a prosecutor. The committee shall prepare a report concerning the destruction of a file and data recording collected

which shall set out the number of the file or information concerning the destructed data recording and the reason for the destruction thereof.
[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

§ 126[13]. Notification of surveillance activities

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

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

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

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

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

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

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

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

(1) The person who has been notified pursuant to § 126[13] of this Code shall be permitted at his or her request to examine the data collected with respect to him or her and the photographs, films, audio and video recordings and other data recordings made in the course of the surveillance activities. With the permission of a Prosecutor's Office, the following information need not be submitted until the corresponding bases cease to exist:
1) information concerning the family or private life of other persons;
2) information the submission of which may damages the rights and freedoms of another person which are guaranteed by law;
3) information which contains state secrets, classified information of foreign states or secrets of another person that are protected by law;
4) information the submission of which may endanger the life, health, honour, good name and property of an employee of a surveillance agency, police agent, undercover agent, person who has been recruited for secret co-operation or another person who has been engaged in surveillance activities or of persons connected with them;
5) information the submission of which may endanger the right of a police agent, undercover agent and person who has been recruited for secret co-operation to maintain the confidentiality of co-operation;
6) the submission of which may result in communication of information concerning the methods, tactics of a surveillance agency and the equipment used in conduct of surveillance activities;
7) information which cannot be separated or disclosed without information specified in clauses 1-6) of this subsection becoming evident.

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

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

§ 126[15]. Supervision over surveillance activities

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

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

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

§ 126^{16}. Filing of appeals in connection with surveillance activities

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

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

§ 126^{17}. Surveillance activities information system

(1) The surveillance activities information system (hereinafter *information system*) is a database belonging to the State Information Systems maintained for processing of the surveillance activities information provided for in this Code, the objective of which is to:
1) provide an overview of surveillance activities conducted by surveillance agencies;
2) provide an overview of requests of surveillance agencies and Prosecutor's Offices for conduct of surveillance activities;
3) provide an overview of permissions issued by Prosecutor's Offices and courts for conduct of surveillance activities;
4) provide an overview of notification of surveillance activities and submission of information collected by surveillance activities;
5) reflect information concerning the surveillance activities conducted;
6) enable the organisation of the activities of surveillance agencies, Prosecutor's Offices and courts;
7) collect statistics on surveillance activities which are necessary for the making of decisions concerning criminal policy;
8) enable electronic forwarding of data and documents.

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

(3) The chief processor of the information system is the Ministry of Justice. The authorised processor of the information system is the Centre of Registers and Information Systems.

(4) The Minister of Justice may organise the activities of the information system by a regulation.
[RT I, 29.06.2012, 2 - entry into force 01.01.2015]

Chapter 4
SECURING OF CRIMINAL PROCEEDINGS

Division 1
Preventive Measure

§ 127. Choice of preventive measure

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

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

§ 128. Prohibition on departure from residence

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

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

(3) In pre-trial proceedings, the prohibition on departure from residence may be imposed for not longer than one year. In the case of particular complexity or extent of a criminal matter or in exceptional cases arising from international cooperation in a criminal proceeding, a Prosecutor's Office may extend the term of the prohibition on departure from residence in pre-trial procedure

for more than six months.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) A fine may be imposed on a person who violated the prohibition on departure from residence by a court ruling of a preliminary investigation judge at the request of a Prosecutor's Office, or of a court at the request of party to the court proceeding.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 129. Supervision over members of Defence Forces

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

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

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

(2) A suspect or accused may be taken into custody at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling if he or she is likely to abscond from the criminal proceeding or continue to commit criminal offences.

(3) In pre-trial procedure, a suspect or accused shall not be held in custody for more than six months. The term shall not include the time spent in provisional custody and in custody for surrender in a foreign country by a person whose extradition has been applied for by the Republic of Estonia or the time a person was held in custody in pre-trial procedure based on a decision of a competent authority of a foreign state prior to assumption of criminal proceedings by the Republic of Estonia.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3^1) In the case of particular complexity or extent of a criminal matter or in exceptional cases arising from international cooperation in a criminal proceeding, a preliminary investigation judge may extend the term for holding in custody for more than six months at the request of the Chief Public Prosecutor.

(4) An accused who has been prosecuted and is at large may be taken into custody on the basis of a ruling of a city, county or circuit court if he or she has failed to appear when summoned by a court and may continue absconding from the court proceeding.

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

(5) A convicted offender who is at large may be taken into custody by a court pursuant to the procedure provided for in § 429 of this Code in order to secure execution of the court judgment.

(6) A member of the Defence Forces who is a suspect and does not stay in the territory of the Republic of Estonia may, at the request of a Prosecutor's Office, be taken into custody on the bases provided for in subsection (2) of this section in order to bring him or her to the Republic of Estonia on the basis of an order of a preliminary investigation judge.
[RT I 2004, 54, 387 - entry into force 01.07.2004]

§ 131. Procedure for taking into custody

(1) At the request of a suspect or accused, the Prosecutor's Office shall immediately notify his or her counsel of preparation of an application for an arrest warrant.

(2) On the order of a Prosecutor's Office, an investigative body shall convey a suspect or accused with regard to whom an application for an arrest warrant or an application for extension of the term for holding in custody has been prepared to a preliminary investigation judge for the hearing of the application.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) In order to issue an arrest warrant, a preliminary investigation judge shall examine the criminal file and interrogate the person to be taken into custody with a view to ascertaining whether the application for an arrest warrant is justified. The prosecutor and, at the request of the person to be taken into custody, his or her counsel shall be summoned before the preliminary investigation judge and their opinions shall be heard.

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

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

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

§ 132. Arrest warrant

(1) An arrest warrant shall set out:
1) the name and residence of the person to be taken into custody;
2) the facts relating to the criminal offence of which the person is suspected or accused, and the

legal assessment of the act;
3) the grounds for taking into custody with a reference to §§ 130 or 429 of this Code;
4) the reason for taking into custody.

(2) An arrest warrant shall be included in the criminal file and a copy of the warrant shall be sent to the person in custody.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 133. Notification of taking into custody

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

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

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

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

(1) A preliminary investigation judge or court shall set out the reasons for a refusal to take a person into custody in a ruling on the refusal of taking into custody.

(2) If the grounds for holding in custody cease to exist before a statement of charges is sent to a court pursuant to the procedure provided for in subsection 226 (3) of this Code, a preliminary investigation judge or Prosecutor's Office shall release the person held in custody by an order.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 135. Bail

(1) At the request of a suspect or accused, a preliminary investigation judge or court may impose bail instead of taking into custody.

(2) Bail is a sum of money paid as a preventive measure by a suspect, accused or another person on behalf of him or her to the deposit account of the court.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) A suspect or accused shall be released from custody after the bail has been received into the bank account of a court.

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

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

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

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

(6) If a suspect or accused absconds from criminal proceedings or intentionally commits another criminal offence or violates the prohibition on departure from his or her residence, the bail shall be transferred into public revenues on the basis of a court judgment or ruling on termination of the criminal proceeding after deduction of the amount necessary for reimbursement of the expenses relating to the criminal proceeding.
[RT I 2008, 19, 132 - entry into force 23.05.2008]

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

(7) Bail shall be refunded if:
1) the suspect or accused does not violate the conditions for bail;
2) the criminal proceeding is 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 term for holding in custody

A Prosecutor's Office, a person held in custody or his or her counsel may file an appeal pursuant to the procedure provided for in Chapter 15 of this Code against a court ruling by which holding in custody was imposed or refused, extension of the term for holding in custody or refusal to extend the term for holding in custody.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 137. Verification of reasons for holding in custody and bail
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(1) A suspect, accused or counsel may submit a request to a preliminary investigation judge or court to verify:
1) the reasons for holding in custody after two months have expired from the taking into custody;
2) the reasons for bail after four months have expired from the imposition of bail.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A preliminary investigation judge shall hear a request within five days as of receipt of the request. A prosecutor, counsel and, if necessary, the person held in custody or the person on whom bail was imposed shall be summoned before the preliminary investigation judge. A new request may be submitted after expiry of the term provided for in subsection (1) of this section after the review of the previous request.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

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

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

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

(4) If the term for holding a person in custody has been extended for more than six months pursuant to the procedure provided for in subsection 130 (3^1) of this Code, a preliminary investigation judge shall verify the reasons for holding in custody at least once a month by examining the criminal file regardless of whether verification of the reasons has been requested and shall appoint a counsel for the person held in custody if he or she does not have a counsel.
[RT I 2006, 21, 160 - entry into force 25.05.2006]

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

(1) At the request of a suspect or accused, a preliminary investigation judge or court may commute holding in custody to the obligation to submit to electronic surveillance provided for in subsection 75^1 (1) of the Penal Code. The time of electronic surveillance shall not be deemed to be custody pending trial or detention and it is not included in the term of punishment.

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

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

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

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

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

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

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

(9) The requirements established on holding in custody in this Code shall apply to the term of application of electronic surveillance and application of and refusal to apply electronic surveillance, contestation of extension of or refusal to extend the term of electronic surveillance and verification of the reasons for application of surveillance.
[RT I 2010, 44, 258 - entry into force 01.01.2011]

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

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

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

Division 2
Other Means of Securing Criminal Proceedings

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

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

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

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

§ 138[1]. Imposition of fines

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

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

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

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

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

§ 139. Compelled attendance

(1) Compelled attendance means conveyance of a suspect, accused, convicted offender, victim, civil defendant or witness to an investigative body, forensic institution, Prosecutor's Office or

court for the performance of a procedural act and conveyance of a convicted offender to a prison or house of detention for serving the sentence.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

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

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

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

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

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

§ 140. Search

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

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

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

(3) A ruling on declaring a person a fugitive shall be sent for execution to a surveillance agency which conducts or conducted the proceedings in the criminal matter which is the basis for the search. If the proceedings in the criminal matter were conducted by an investigative body which is not a surveillance agency, the ruling on declaring a person a fugitive shall be sent for execution to the Police and Border Guard Board.
[RT I, 29.06.2012, 2 - entry into force 09.07.2012]

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

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

§ 141. Exclusion of suspect or accused from office

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

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

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

§ 141^1. Temporary restraining order

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

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

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

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

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

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

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

§ 141^2. Verification of reasons for exclusion from office and temporary restraining order
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

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

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

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

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

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

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

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

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

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

§ 142. Seizure of property

(1) The objective of seizure of property is to secure a civil action, confiscation or replacement thereof or fine to the extent of assets. Seizure of property means recording the property of a

suspect, accused, convicted offender, civil defendant or third party or the property which is the object of money laundering or terrorist financing and preventing the transfer of the property.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) Property is seized at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling.

(3) In cases of urgency, property, except property which is the object of money laundering, may be seized without the permission of a preliminary investigation judge. The preliminary investigation judge shall be notified of the seizure of the property within 24 hours after the seizure and the preliminary investigation judge shall immediately decide whether to grant or refuse permission. If the preliminary investigation judge refuses to grant permission, the property shall be released from seizure immediately.

(4) Upon seizure of property in order to secure a civil action, the extent of the damage caused by the criminal offence shall be taken into consideration.

(5) A ruling on the seizure of property shall be immediately submitted for examination to the person whose property is to be seized or to his or her adult family member, or if the property of a legal person is to be seized, to the representative of the legal person, and he or she shall sign the ruling to this effect. If obtaining of a signature is impossible, the ruling shall be sent to the person whose property is to be seized or to the representative of the legal person who is the owner of the property to be seized. If property is seized in the courses of performance of a procedural act, the representative of the local government shall be involved in the absence of the responsible person or representative.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(6) If necessary, an expert or qualified person who participates in a procedural act shall ascertain the value of the seized property on site.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(7) Seized property shall be confiscated or deposited into storage with liability.

(8) For the seizure of an immovable, a Prosecutor's Office shall submit an order on seizure to the land registry department of the location of such immovable in order for a prohibition on the disposal of the immovable to be made in the land register.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(9) For the seizure of an immovable or right entered in the state register, a Prosecutor's Office shall submit an order on seizure to the relevant state register.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(10) Property which pursuant to law is not subject to a claim for payment shall not be seized.

(11) If the grounds for the seizure of property cease to exist before the completion of pre-trial proceedings, a Prosecutor's Office or preliminary investigation judge shall release the property

from seizure by an order or ruling.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 143. Report of seizure of property

(1) The report of seizure of property shall set out:
1) the names and characteristics of the seized objects and the number, volume or weight and value of the objects;
2) a list of property taken over or deposited into storage with liability;
3) absence of property to be seized if such property is missing.

(2) A list of seized property may be appended to the report of seizure of property and a notation concerning the list is made in the report. In such case, the report shall not contain the information listed in clause (1) 1) of this section.

§ 143[1]. Additional restrictions applied to persons whose personal liberty has been restricted

(1) If there is sufficient reason to believe that a suspect or accused who is held in custody or imprisoned or serving detention may adversely affect the conduct of criminal proceedings by his or her behaviour, a Prosecutor's Office or court may issue a ruling on the transfer of the suspect or accused for complete isolation from other persons held in custody or prisoners or detained persons. A Prosecutor's Office or court may also, by a ruling, restrict or totally prohibit the following with regard to a suspect or accused:
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
1) right to short or long-term visit;
2) right to correspondence or use of telephone;
3) right to prison leave;
4) right to prison leave under supervision or release.

(2) A ruling shall set out:
1) the name of the suspect or accused;
2) the reasons for and extent of transfer or restriction of rights;
3) the term for application of transfer or restrictions.

(3) The ruling shall be sent to the prison or house of detention for immediate execution. A copy of the ruling shall be sent to the suspect or accused.

(4) The restriction specified in clause (1) 2) of this section shall not extend to the correspondence and use of telephone for communication with state agencies, local governments and their officials and with a criminal defence counsel.
[RT I 2006, 63, 466 - entry into force 01.02.2007]

Chapter 5
PROCEDURAL DOCUMENTS, TRANSLATION, INTERPRETATION AND SUMMONING

Division 1
Procedural Documents

§ 144. Language of procedural documents

(1) Procedural documents shall be prepared in Estonian. If a procedural document is prepared in another language, a translation into Estonian shall be appended thereto.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) Translation into the Estonian language of procedural documents prepared in other languages by investigative bodies and Prosecutors' Offices in terminated criminal proceedings shall be appended at the order of the Prosecutor's Office or at the request of a participant in the proceeding.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 145. Order and ruling

(1) An order or ruling is:
1) a reasoned procedural decision which is be prepared in writing by a body conducting the proceedings;
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
1^1) a decision on termination of criminal proceedings made pursuant to the procedure provided for in subsection 206 (1^1) if this Code;
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
2) in a court proceeding, a procedural decision which is made pursuant to the procedure provided for in § 137 of this Code and entered in the minutes of the court session upon adjudication of a single issue and which is not reasoned.

(2) The introduction of a reasoned order or ruling shall set out:
1) the date and place of preparation thereof;
2) the official title and name of the person who prepared the order or ruling;
3) the title of the criminal matter: the number of the criminal matter and the legal assessment of the criminal offence or the name of the suspect or accused.
[RT I 2006, 21, 160 - entry into force 25.05.2006]

(3) The main part of a reasoned order or ruling shall set out:
1) the reasons for the order or ruling;
2) the basis for the order or ruling under procedural law.

(4) The final part of a reasoned order or ruling shall set out the decision made in the adjudication of the criminal matter or a single issue relating thereto.

(5) An order or ruling shall be prepared in accordance with the additional requirements for the content thereof.

(6) In the cases provided for in this Code, a reasoned order or ruling shall be submitted for examination to a participant in the proceedings and his or her rights and obligations shall be explained to him or her and the participant shall sign the order or ruling to this effect.

(7) An order or ruling made by a body conducting the proceedings in a criminal matter heard by the body is binding on everyone.

§ 146. Report of investigative activities and other procedural acts

(1) Report of the conditions, course and results of investigative activities or other procedural acts shall be made in typewritten form or in clearly legible handwriting. If necessary, the assistance of a secretary shall be used.

(2) The introduction of the report shall set out:
1) the date and place of the investigative activities or other procedural acts;
2) the official title and name of the person preparing the report;
3) the number of the criminal matter and the title of the investigative activities or other procedural acts;
[RT I 2004, 46, 329 - entry into force 01.07.2004]
4) in the cases provided by law, a reference to the order or ruling on the basis of which the investigative activities or other procedural acts were conducted;
5) the status in the proceeding of the person subject to the investigative activities or other procedural acts, the person's name, residence or seat, address, and telecommunications numbers or electronic mail address;
6) the status in the proceeding, name, residence or seat and address of any other person who participated in the investigative activities or other procedural acts;
7) the time of commencement and end of the investigative activities or other procedural acts and other information relating thereto;
8) the performance of the investigative activities or other procedural acts pursuant to § 8 of this Code;
9) the basis of the investigative activities or other procedural acts under procedural law.

(3) If a witness who gives testimony in the course of investigative activities is at least fourteen years of age, the introduction of the report of the activities shall set out that the witness was warned that, pursuant to the Penal Code, refusal to give testimony without a legal basis or giving knowingly false testimony may result in a criminal punishment.

(4) A participant in the proceedings shall sign the introduction of the report in confirmation that his or her rights and obligations were explained to him or her.

(5) The main part of the report shall set out:
1) the course and results of the investigative activities or other procedural acts in such detail as is necessary for the purposes of proof and in compliance with the additional requirements provided for the content of procedural acts by this Code;
2) the technical equipment used.

(6) The final part of the report shall set out:
1) the names of the objects confiscated in the course of the investigative activities or other procedural acts and the manner of packaging of the objects;
2) submission of the report for examination to the persons who participated in the investigative activities or other procedural acts;
3) the annexes to the report.

(7) If the report contains conclusions the comprehension of which requires specific expertise, the report shall set out the method of reaching such conclusions and the personal data of the person who made the conclusions based on specific expertise.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(8) If a witness participates in a procedural act under a fictitious name, a copy shall be made of the minutes of the procedural act where no other personal data besides the fictitious name shall be indicated and the witness shall not sign the copy. The original report shall be placed in an envelope specified in subsection 67 (4) of this Code which is kept separately from the criminal file.

§ 147. Secretary

An investigative body or Prosecutor's Office may use the assistance of a secretary when making report of the conditions, course and results of procedural acts.

§ 148. Annex to report of investigative activities or other procedural acts

(1) If necessary, evidentiary information may be recorded, in addition to the report of the investigative activities or other procedural acts, on a photograph, on film, as an audio or video recording, drawing or in any other illustrative manner.

(2) Photographs, drawings and other illustrative material shall be included in the criminal file together with the report, and films and audio and video recordings shall be packaged and stored with the criminal matter.

§ 149. Photographs

(1) The conditions, course and results of investigative activities or other procedural acts shall be photographed if this is considered necessary by the official of the investigative body or if the obligation to take photographs is provided for in this Code.

(2) If negatives are used in photographing, the negatives shall be appended to the report of the investigative activities or other procedural acts.

(3) Digital photographs shall be included in the minutes of a procedural act or presented as an annex thereto and preserved in the form of computer files in the E-File system. Digital photographs may also be created of single shots of a video recording.
[RT I 2008, 28, 180 - entry into force 15.07.2008]

§ 150. Films and audio and video recordings

(1) An investigative activity or any other procedural act or a distinct part thereof may be filmed or audio or video recorded. The witness or the participant in the proceedings shall be notified thereof before the commencement of the investigative activities or other procedural acts.

(2) The information specified in subsections 146 (2) and (3) of this Code shall be set out at the beginning of an audio or video recording. After the completion of investigative activities or other procedural acts, the recording shall be submitted to the participants in the investigative activities or procedural acts for listening or watching.

(3) Report shall be made of investigative activities or other procedural acts on the basis of an audio or video recording of the activity or act pursuant to the procedure provided for in this Code.

(4) An audio or video recording shall be appended to the criminal file. Later changes to an audio or video recording are prohibited.

§ 151. Drawings

(1) Drawings may be appended to a report of investigative activities in order to illustrate the conditions, course and results of the activities and clarify and supplement the content of the report.

(2) A drawing shall contain a reference to the report of the investigative activities and the time of preparing the report.

(3) A drawing shall be signed by a body conducting the proceedings. If a drawing is made by a qualified person or a person subject to the investigative activities, he or she shall also confirm the authenticity of the drawing by his or her signature.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) If necessary, a body conducting the proceedings shall have another person who participated in the investigative activities sign a drawing in order to confirm the authenticity of the drawing.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 152. Submission of report of investigative activities or other procedural acts for examination

(1) The report of investigative activities or any other procedural acts shall be submitted for reading to the person subject to the activities or acts and to other persons who participated therein or the report shall be read to the persons at their request and a notation to this effect shall be made in the report.

(2) Petitions concerning the conditions, course and results of investigative activities or any other procedural acts or concerning the report of the activities or acts, the requests for amendment of the report and other requests made upon examination of the report shall be entered in the same report.

(3) A copy of a search report or of a report of seizure of property shall be submitted to the person subject to the procedural act or to his or her adult family member or, if the person is a legal person, state or local government agency, to the representative thereof who participated in the procedural act. In the absence of such persons, a copy of the report shall be submitted to the representative of a local government agency.

(4) The report shall be signed by the person conducting the proceedings, qualified persons, persons subject to the act and the persons participating in the act.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) If a person specified in subsection (4) of this section refuses to sign the report or if a person is unable to sign the report due to a physical disability, a notation concerning the refusal and the reasons therefor or concerning the person's inability to sign the report shall be made in the report and confirmed by the official of the investigative body.

§ 153. Summary of pre-trial proceedings

(1) The summary of pre-trial proceedings shall set out:
1) the date and place of preparation thereof;
2) the official title and name of the official of the investigative body;
3) the title of the criminal matter;
4) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship, education, native language and the place of work or educational institution of the suspect;
5) the suspect's criminal record;
6) the preventive measures applied with regard to the suspect and the duration thereof;
7) facts relating to the subject of proof which were ascertained in the pre-trial proceedings, as listed in clause 62 1) of this Code;
8) a list of evidence;
9) a list of physical evidence and recordings, and information concerning the location thereof;
10) information concerning the objects seized in order to secure the confiscation thereof;
11) information concerning a civil action and the measures for securing the action;
12) information concerning property which was obtained by the criminal offence;
13) list of information entered in the state register of fingerprints and state DNA register.
[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

(2) The summary of pre-trial proceedings shall be signed and dated by the official of an investigative body.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 154. Statement of charges

(1) The introduction of a statement of charges shall set out:
1) the date and place of preparation thereof;
2) the official title and name of the prosecutor;
3) the title of the criminal matter;
4) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship, education, native language and the place of work or educational institution of the accused;
5) the criminal record of the accused.

(2) The main part of a statement of charges shall set out:
1) the facts relating to the criminal offence;
2) the nature and extent of the damage caused by the criminal offence;
3) information concerning property which was obtained by the criminal offence;
1) the mitigating and aggravating circumstances;
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
4) the evidence in proof of the facts which are the basis of the charge, and a reference to the facts which are intended to be proven with each piece of evidence;
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
5) the preventive measures applied with regard to the accused and the duration thereof.
6) information concerning the circumstances on the basis of which a fine to the extent of assets is calculated or the circumstances which are the basis for confiscation;
[RT I 2007, 2, 7 - entry into force 01.02.2007]
7) information concerning the circumstances which are the basis for application of detention after service of the sentence if the bases for application of detention after service of the sentence provided for in § 87^2 of the Penal Code exist;
[RT I 2009, 39, 261 - entry into force 24.07.2009]
8) information concerning the circumstances which are the prerequisites for the administration of addiction treatment of drug addicts or complex treatment of sex offenders;
[RT I, 15.06.2012, 2 - entry into force 01.06.2013]
9) information concerning the children and property of the accused requiring supervision;
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
10) information concerning physical evidence and other objects confiscated during criminal proceedings;
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
11) information concerning the expenses relating of the criminal proceedings;
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
12) list of information entered in the state register of fingerprints and state DNA register.
[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

(3) The final part of a statement of charges shall set out:
1) the name of the accused;
2) the content of the charges;
3) the legal assessment of the criminal offence pursuant to the relevant section, subsection and clause of the Penal Code;

(4) A statement of charges shall be signed and dated by the prosecutor.

§ 155. Minutes of court session

(1) The minutes of a court session of a court of first instance or a court of appeal is a procedural document which is prepared in typewritten form and where the clerk of the court session records the conditions and course of the hearing of a criminal matter in his or her own wording or as summarised by the judge.

(2) The minutes of a court session shall set out:
1) the date and place of the session and the time of commencement and end of the session;
2) the name of the court and the composition of the panel of the court;
3) the names of the parties to the court proceeding, the clerk of the court session, translators, interpreters and experts;
4) the title of the criminal matter to be heard;
5) [repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]
6) the names of the court activities in chronological order;
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
7) the questions posed by parties to the court proceeding in a cross-examination and the testimony of the person being cross-examined;
8) the petitions and requests and the results of adjudication thereof;
9) the titles of the rulings made in the court session;
10) the requests submitted by the parties in the summations;
11) the requests submitted in the final statement of the accused;
12) whether the court judgment or ruling was made in chambers;
13) pronouncement of the court judgment or ruling and explanation of the procedure and term for appeal.

(2^1) The clerk of a court session shall take the minutes of the session without interrupting the smooth running thereof.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2^2) If a court session was audio or video recorded, the audio or video recording shall be an integral part of the minutes of the court session. If the minutes contradict the recording, the recordings shall be relied upon.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) The minutes shall be signed and dated by the presiding judge and the clerk of the court session.

§ 156. Audio and video recording of court sessions

(1) Court sessions pursuant to general procedure shall be audio recorded. A court may also video record a court session or a part thereof:
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) If a court session or court activity is audio or video recorded, the court may use the recording in order to supplement and specify the minutes of the court session.

(3) Changes to an audio or video recording are prohibited.

(4) In exceptional cases a court session pursuant to general procedure need not be recorded, if it becomes evident immediately before a session or in the course of a session that recording is technically impossible and if the court is convinced that holding of the court session without recording is appropriate and in line with the interests of the parties to the court proceeding.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) Court sessions are audio or video recorded in digital format.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 156[1]. Examination of recordings and minutes of court sessions

(1) Parties to court proceedings have the right to receive a copy of the minutes of a court session and the recording thereof in the case the court session is recorded.

(2) A court shall notify the parties to court proceedings of the time of signing the minutes and send the minutes immediately after signing thereof by electronic means to a prosecutor and other parties to the court proceeding who have communicated their electronic mail addresses to the court. The parties to the court proceeding may also examine the minutes in the court office.

(3) At the request of a party to court proceedings, a court shall make the signed minutes of a court session accessible to the parties to the court proceeding not later than three days after the day of the court session.

(4) A copy of the audio recording of a court session shall be issued by a court office on a digital data medium or sent by electronic means within three days after submission of the respective request. Audio recordings of court sessions are made accessible to prosecutors by means of the E-File system.

(5) In the case a court session is video recorded, a court shall show the video recording to a party to the court proceeding at the court within three days after submission of the respective request.

(6) A copy of the minutes or recording of a court session held in camera or a part thereof shall be issued by a court only in the case this does not endanger the interests specified in subsection 12 (1) of this Code. The court shall allow a party to the court proceeding to examine the recordings or minutes of a court session held in camera at the court.

(7) The fee chargeable for making the copies specified in subsection (1) of this section in the amount of up to 65 euro cents per page and the procedure for payment thereof shall be established by a regulation of the Minister of Justice.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 156[2]. Making procedural documents available in court proceedings

(1) A court shall make all the procedural documents of court proceedings immediately available to parties to court proceedings in the E-File system regardless of how these are delivered to the parties to court proceedings.

(2) The Minister of Justice may establish more specific requirements by a regulation for making procedural documents available through the information system.
[RT I, 22.03.2013, 9 - entry into force 01.04.2013]

§ 157. Court session clerks

(1) A court session clerk is a court officer whose duty is to conduct the technical preparations for a court session, to organise the audio and video recording thereof in the cases prescribed by law or at the direction of the court and to take minutes of the conditions, course and results of the court session.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A court session clerk is required to remove himself or herself from a criminal proceeding on the bases provided for in subsections 49 (1) and (6) of this Code.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) If a court session clerk does not remove himself or herself on the bases provided for in clauses 49 (1) 3)6) of this Code, the prosecutor, accused, counsel, victim or civil defendant may submit a petition of challenge against the clerk. Petitions of challenge shall be adjudicated pursuant to the procedure prescribed in subsection 59 (6) of this Code.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 158. Request for amendment of minutes of court session

(1) Within three days after signing of the minutes of a court session, the parties to the court proceeding may submit written requests for amendment of the minutes of the session and the requests shall be included in the criminal file.

(2) Requests shall be heard by a judge or presiding judge. If the judge or presiding judge consents to a request, he or she shall amend the minutes and the correctness of the amendments shall be confirmed by the signatures of the judge or presiding judge and the clerk of the court session.

(3) If a judge or presiding judge does not consent to a request for amendment, the request shall be heard in a court session held within five days as of receipt of the request. If possible, the audio

or video recording of a court session shall be heard in order to adjudicate the request. The request shall be adjudicated by a ruling of the judge or presiding judge.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 159. Court judgment

(1) A court judgment is a decision on the merits of a criminal matter made in the name of the Republic of Estonia as a result of a court proceeding.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A court judgment shall be prepared pursuant to §§ 311-314 of this Code.

§ 160. Restoration of document

(1) If a procedural document or another document relevant to the adjudication of a criminal matter is destroyed, lost or removed and restoration thereof is impossible, a copy of the document which has been authenticated by a court or notary is deemed to be equal to the original.

(2) If a procedural document cannot be replaced by an authenticated copy, the procedural document shall be restored on the basis of a draft of the document if such draft exists. A restored procedural document is deemed to be valid if the person conducting the proceedings who initially prepared the document confirms by his or her signature that the restored document corresponds to the original.

§ 160[1]. Criminal file

(1) Criminal file means a set of documents collected in a criminal matter.

(2) A court maintains a court file on every criminal matter which proceedings are conducted by the court and which includes, in chronological order, all the procedural documents and other documentation related to the matter. In the cases prescribed by law, other objects relevant to the proceedings shall be included in the court file.

(3) A court file is kept in the form of a collection of written documents.

(4) A court file may be maintained, in whole or in part, in digital form.

(5) If a court file is maintained in digital format, paper documents are scanned and saved in the E-File system under the relevant proceeding. The E-File system shall automatically record the time of saving a document and the data of the person saving it. Documents saved in the E-File system substitute for paper documents.

(6) The time and procedure for transfer to mandatory maintaining of digital court files, technical requirements for maintaining of digital court files and access thereto and preservation of electronic documents shall be established by a regulation of the Minister of Justice.

(7) More specific requirements for archiving of digital court files and access to archived files and procedural documents shall be established by a regulation of the Minister of Justice.
[RT I, 22.03.2013, 9 - entry into force 01.04.2013]

§ 160[2]. Forwarding of digital documents

(1) Digital applications, appeals and other documents in criminal proceedings shall be forwarded directly or through the E-File system unless otherwise provided for in this Code. A body conducting proceedings shall enter directly sent digital documents in the E-File system.
[RT I 2008, 28, 180 - entry into force 15.07.2008]

(2) For a digital document to be appended to a criminal file, the document shall be printed and included in the file. A body conducting proceedings shall certify the authenticity of the printed document and the correspondence thereof to the digital document by his or her signature and add the identification number of the document in the E-File system thereto.
[RT I 2008, 28, 180 - entry into force 15.07.2008]

(3) Advocates, notaries, bailiffs, trustees in bankruptcy and state or local government agencies shall submit applications, complaints and other documents to a body conducting proceedings by electronic means, unless there is good reason to submit procedural documents in another format.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 160[3]. Requirements for documents

(1) The form of documents of pre-trial procedure of criminal matters shall be established by the Minister of Justice.

(2) The procedure for the preparation, forwarding and preservation of documents signed digitally in criminal proceedings and other digital documents shall be established by the Minister of Justice.
[RT I 2008, 28, 180 - entry into force 15.07.2008]

§ 160[4]. Making of excerpts and obtainment of copies

(1) If a person has the right to examine procedural documents on the basis of this Code, he or she shall be allowed to make excerpts therefrom and receive a copy thereof for a fee, unless otherwise regulated by this Code.

(2) In the interests of the criminal proceedings, a Prosecutor's Office may restrict the right to make excerpts and receive copies by a reasoned ruling for a certain period of time.

(3) The amount of the fee specified in subsection (1) of this section shall be established by the Minister of Justice pursuant to the procedure provided for in this Code subsection 156[1] (7) of this Code.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

Division 2
Translation and Interpretation

§ 161. Translators and interpreters

(1) If a text in a foreign language needs to be interpreted or translated or if a participant in a criminal proceeding is not proficient in Estonian, an interpreter or translator shall be involved in the proceeding.

(2) An interpreter or translator is a person proficient in language for specific purposes or a person interpreting for a deaf or dumb person. Other subjects to a criminal proceeding shall not perform the duties of an interpreter or translator.

(3) An interpreter or translator to whom the oath of interpreters and translators has not been administered shall be warned that he or she may be punished pursuant to criminal procedure for a knowingly false interpretation or translation.

(4) If an interpreter or translator does not participate in a procedural act where the participation of an interpreter or translator is mandatory, the act is null and void.

(5) In order to ensure the correctness of interpretation or translation, an interpreter or translator has the right to pose questions to participants in the proceedings, examine the minutes of procedural acts and make statements concerning the report, and such statements shall be recorded in the minutes.

(6) An interpretation or translation of any aspect of a procedural act rendered by an interpreter or translator shall be precise and complete. If a non-staff interpreter or translator is not sufficiently proficient in language for specific purposes or in the form of expression of a deaf or mute person, he or she is required to refuse to participate in the criminal proceedings.

§ 162. Bases for interpreters and translators to remove themselves and removal of translators or interpreters

(1) An interpreter or translator is required to remove himself or herself from a criminal proceeding on the bases provided for in subsections 49 (1) and (6) of this Code.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

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

(3) Petitions of challenge shall be adjudicated pursuant to the procedure prescribed in subsections 59 (5)-(6) of this Code.

Division 3
Summoning and publication of time of court session
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 163. Summons

(1) A summons shall set out:
1) the name of the person summoned;
2) the official title, name and details of the person issuing the summons;
3) the reason for summoning the person, and the capacity in which the person is summoned;
4) if a legal person is summoned, whether the summons is addressed to a legal representative or a representative;
5) whether appearance is mandatory;
6) the place and time of appearance;
7) the number of the criminal matter;
8) the obligation to give notice of failure to appear and of the reasons for such failure;
9) the consequences of failure to appear.

(2) The final part of a summons shall contain a notice which shall be completed if the summons is served on the person against signature. The notice shall set out the name of the person who received the summons, his or her signature confirming the receipt of the summons, the date of receipt of the summons and the obligation of the person who receives the summons in the absence of the summoned to deliver the summons to the summoned at the earliest opportunity or give notification to the person who issued the summons if forwarding the summons is impossible. If a person refuses to accept the summons, the person serving the summons shall make a notation on the notice in the final part of the summons and confirm the notation by his or her signature.

(3) If a person is summoned to a body conducting proceedings pursuant to the procedure provided for in § 164 of this Code, the notice provided for in subsection (2) of this section shall set out the number of the telephone, facsimile or other means of communication to which the summons was sent.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 163[1]. Summoning pursuant to general procedure in county court

(1) Summoning of a witness, qualified person and expert in proceedings in a criminal matter conducted pursuant to general procedure in a county court shall be organised by the party to the court proceedings who applies for the hearing of the respective person in court.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) Summoning of a victim, civil defendant, third party and the representatives thereof in proceedings in a criminal matter conducted pursuant to general procedure in a county court shall be organised by the Prosecutor's Office.

(3) Summoning of an accused in proceedings in a criminal matter conducted pursuant to general procedure in a county court shall be organised by the counsel or the Prosecutor's Office as agreed in a preliminary hearing. Failing agreement, summoning of the accused shall be organised by the Prosecutor's Office.

(4) At the request of the parties to the court proceeding the court shall issue summonses to the parties in a preliminary hearing and set out the information listed in subsection 163 (1) of this Code in the summonses. The court shall indicate the details of the parties to the court proceeding above the official title and details of the person issuing the summons.

(5) The court shall issue to the counsel, at his or her request, the address of the person in the population register who is summoned to court as a witness at the request of the counsel.

(6) A summons shall be served on a witness, qualified person and expert by a party to the court proceedings or by a third party at the request of a party to the court proceedings.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(7) If a Prosecutor's Office performs the duties prescribed in this section, the rights specified in clauses 213 (1) 5) and 10) of this Code extend to the Prosecutor's Office. A Prosecutor's Office has the right to summon independently persons in court proceedings whose summoning has been decided in a preliminary hearing.
[RT I 2008, 32, 198 - entry into force 01.01.2009]

§ 164. General procedure for service of summonses

(1) A person shall be summoned to an investigative body, Prosecutor's Office or court by a summons communicated by telephone, facsimile or other means of communication.

(2) If there is reason to believe that a person absconds appearance at a body conducting proceedings or a person has expressed a wish to receive a written summons, the person shall be summoned to an investigative body, Prosecutor's Office or court by a written summons.

(3) The notices read by an official of an investigative body, prosecutor or court to the persons present are deemed to be equal to summonses served against signature within the meaning of subsection 165 (2) of this Code if a corresponding notation is made in the report.

(4) A summons shall be communicated to or served on a person in sufficient time for the appearance.

(5) Summonses may be served on any day and at any time.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 165. Procedure for service of written summonses

(1) A written summons may be served against signature on a notice, as a postal item sent by post or by electronic means.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A written summons shall be served on an adult or minor of at least 14 years of age against signature on a notice. The written summons addressed to a person who is less than 14 years of age or suffers from a mental disorder shall be served on his or her parent or any other legal representative or guardian against signature on a notice. If a summons cannot be served on the person summoned, the summons shall be served against signature on a notice on an adult family member living together with the summoned or shall be sent to the place of employment or educational institution of the summoned for forwarding to him or her.

(3) A summons sent by post is deemed to be received by the person on the date indicated in the notice of delivery of the postal service provider.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) A summons may be served on participants in the proceedings by electronic mail at the electronic mail addresses disclosed by the participants in the proceedings to a body conducting the proceedings or by the employer of a participant in the proceedings or published on a personal website. The summons served by electronic mail shall include a notation stating the obligation to confirm the receipt of the summons electronically. In the case no confirmation of receipt of the summons is received within three working days as of serving the summons at the electronic mail address ascertained by the body conducting the proceedings, the summons shall be served as a postal item served against signature or shall be served on the person summoned against signature.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4^1) If a summons is made available through the E-File system, the person summoned shall be notified of the existence of the summons at his or her electronic mail address indicated in a procedural document or published on the Internet. The notice shall include a reference to the digital summons in the E-File system and the term for accessing thereof which is three days as of the moment of sending the summons. A summons shall not be accompanied by digital signature if the sender and the time of sending thereof can be identified through the E-File system. A summons made accessible through the E-File system is deemed delivered if the recipient opens it in the information system or confirms the receipt thereof in the information system without opening the document and in the case this is done by another person to whom access to the documents in the information system is enabled by the recipient. If the summons is not accessed through the E-File system within three days as of the date of sending thereof, the summons shall be sent as a postal item served against signature or it shall be served on the person summoned against signature.
[RT I, 22.03.2013, 9 - entry into force 01.04.2013]

(5) Notices concerning the serving of a summons against signature, notices of delivery issued by postal service providers, the printouts of electronic mails concerning the issue of the summons and the printouts of electronic mails confirming the receipt of the summons shall be included in the criminal file. The fact of the receipt of a summons through the E-File system shall be

registered in the E-File system and no printout shall be included in the criminal file.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(6) The Minister of Justice may establish by a regulation more specific requirements for electronic delivery of procedural documents in court proceedings through the E-File system.
[RT I, 22.03.2013, 9 - entry into force 01.04.2013]

§ 166. Sending of summonses to prisoners

A summons shall be sent to a person held in custody or imprisoned person through the head of the custodial institution who shall arrange for the appearance of the summoned.

§ 167. Sending of summonses to persons serving in Defence Forces

A summons shall be sent to a person serving in the Defence Forces through the direct commander who shall arrange for the appearance of the summoned.
[RT I 2008, 35, 212 - entry into force 01.01.2009]

§ 168. Communication of summonses through notice in newspaper

(1) If there are several victims or civil defendants or if their identities cannot be established, an investigative body, Prosecutor's Office or court may summon such persons through a notice in a newspaper. A summons published in such manner is deemed to be served as of the publication of the notice.

(2) A notice in a newspaper shall set out the information listed in subsection 162 (2) of this Code.

(3) A notice shall be published in the newspaper prescribed for the publication of court notices at least twice with an interval of at least one week.

(4) The text of a notice published in a newspaper shall be included in the criminal file.

§ 169. Communication of summons to persons whose whereabouts are unknown

If a summons cannot be served on a person pursuant to the procedure provided for in §§ 164-167 of this Code, he or she shall be declared a fugitive by an order of an investigative body or Prosecutor's Office or by a court ruling pursuant to the provisions of § 140 of this Code.

§ 169[1]. Publication of time of court session on website of court

The time of a court session is published on the website of a court indicating the number of the criminal matter, the name of the accused who is an adult and the initials of the accused who is a minor and the legal assessment of the criminal offence in which the person is accused pursuant to the corresponding section, subsection or clause of the Penal Code. In the case of a court session in camera, only the time of the session, number of the criminal matter and a notation that the

court session is held in camera shall be published. The time of the court session shall be removed from the website when seven days have passed from the court session.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 170. Good reason for failure to appear when summoned

(1) If a person summoned cannot appear on the specified date, he or she shall immediately give notice thereof.

(2) Good reason for failure to appear is:
1) absence which is not related to absconding from the criminal proceeding;
2) failure to receive a summons or belated receipt of the summons;
3) a serious illness of the person summoned or a sudden serious illness of a person close to him or her which prevents the person from appearing at the body conducting the proceedings;
3^1) participation in a court session prescribed earlier;
[RT I 2008, 32, 198 - entry into force 15.07.2008]
4) other circumstances which the investigative body, Prosecutor's Office or court deems to be a good reason.

(3) If an eyewitness to a criminal offence who has not been identified refuses to participate in a criminal proceeding as a witness, an official of the investigative body may detain the person for identification for up to twelve hours and a report shall be prepared thereon.

(4) A person shall submit a certificate concerning the occurrence of an impediment specified in clause (2) 3) of this section to the body conducting proceedings. The form and the procedure for the issue of certificates shall be established by the Minister of Social Affairs.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

Chapter 6
TIME-LIMITS OF PROCEEDINGS

§ 171. Calculation of time-limit

(1) Time-limits shall be calculated in hours, days and months. A time-limit shall not include the hour or day as of which the beginning of the time-limit is calculated.

(2) If a person is detained as a suspect or taken into custody, the time-limit shall be calculated as of the moment of his or her detention. If a person is sentenced to imprisonment, the time-limit shall be calculated as of the moment of his or her arrival at the prison for serving the punishment unless the time of commencement of the service of the sentence arises from a court judgement.
[RT I 2008, 19, 132 - entry into force 23.05.2008]

(3) Upon the calculation of a time-limit in days, the time-limit shall end on the last working day at twenty-four hours. If the end of a time-limit calculated in days falls on a day off, the first working day following the day off shall be deemed to be the last day of the time-limit.

(4) Upon the calculation of a time-limit in months, the time-limit shall end on the corresponding date of the last month. If the ending of a time-limit falls on a calendar month which lacks a corresponding date, the time-limit shall end on the last date of the month.

(5) If the end of a time-limit calculated in months falls on a day off, the first working day following the day off shall be deemed to be the last day of the time-limit.

(6) If an act is performed by an investigative body, Prosecutor's Office or court, the time-limit shall end at the time of the end of the working hours in the corresponding agency.

(7) A time-limit shall be deemed not to have been allowed to expire, if an appeal is posted or forwarded by commonly used technical communication channels before the expiry of the time-limit. A time-limit shall be deemed not to have been allowed to expire, if a person held in custody submits an appeal to the administration of the custodial institution before the expiry of the time-limit.

§ 172. Restoration of term for appeal

(1) A term for appeal expired with good reason shall be restored by an order of the investigative body or Prosecutor's Office or a ruling of the court which conducts proceedings in the criminal matter.

(2) The following are good reasons for allowing a term for appeal to expire:
1) absence which is not related to absconding from the criminal proceeding;
2) other circumstances which the investigative body, Prosecutor's Office or court deems to be a good reason.

Chapter 7
EXPENSES RELATING TO CRIMINAL PROCEEDINGS

Division 1
Types of Expenses Relating to Criminal Proceedings

§ 173. Expenses relating to criminal proceedings

(1) Expenses relating to criminal proceedings are:
1) procedure expenses;
2) specific expenses;
3) additional expenses.

(2) Procedure expenses shall be compensated for by the obligated person pursuant to this Code to the extent determined by the body conducting proceedings.

(3) Specific expenses shall be compensated for by the person by whose fault the expenses are incurred.

(4) Additional expenses shall be borne by the person who incurs such expenses.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 174. Compensation for expenses of persons not subject to proceedings [RT I, 23.02.2011, 1 - entry into force 01.09.2011]

Expenses incurred by a person not subject to proceedings, except the procedure expenses specified in clauses 175 (1) 1)-3) of this Code, shall not be deemed to be procedure expenses.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 175. Procedure expenses

(1) The following are procedure expenses:
1) reasonable remuneration paid to the chosen counsel or representative and other necessary expenses incurred by a participant in a proceeding in connection with the criminal proceeding;
2) amounts paid to victims, witnesses, experts and qualified persons pursuant to § 178 of this Code, except expenses specified in clause 176 (1) 1) of this Code;
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
3) expenses incurred by a state forensic institution or any other state agency or legal person in connection with conducting expert assessment or establishment of intoxication;
[RT I 2004, 46, 329 - entry into force 01.07.2004]
4) remuneration established for an appointed counsel and the expenses thereof to the justified and necessary extent thereof;
[RT I 2009, 1, 1 - entry into force 01.01.2010]
5) expenses incurred in the making of copies of the materials of the criminal file for a counsel in accordance with subsection 224 (5) of this Code;
[RT I 2004, 46, 329 - entry into force 01.07.2004]
6) storage fees and expenses relating to the forwarding and destruction of evidence;
7) expenses relating to the storage, transfer and destruction of confiscated property:
8) expenses incurred as a result of securing a civil action;
9) compensation levies paid upon a judgment of conviction;
10) other expenses incurred by a body conducting proceedings in the course of conducting criminal proceedings, except expenses considered to be specific or additional expenses pursuant to this Code.

(2) If a participant in a proceeding has several counsels or representatives, procedure expenses shall cover remuneration paid to the counsels or representatives in an amount not exceeding reasonable remuneration normally paid to one counsel or representative.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

(3) If a suspect or the accused defends himself or herself, necessary defence expenses shall be included in procedure expenses. Excessive expenses which would not have occurred if a counsel had participated shall not be included in procedure expenses.

(4) Expenses related to the conduct of expert analyses incurred by persons not subject to proceedings shall be compensated for under the conditions and pursuant to the procedure provided for in the Forensic Examination Act.
[RT I 2010, 8, 35 - entry into force 01.03.2010]

§ 176. Specific expenses

(1) The following are specific expenses:
1) expenses incurred as a result of the adjournment of a court session due to the failure of a participant in the proceeding to appear;
2) expenses relating to compelled attendance.

(2) The procedure for the calculation and the amount of specific expenses shall be determined by the Government of the Republic.

§ 177. Additional expenses

The following are additional expenses:
1) remuneration payable to a person not subject to proceedings for information concerning facts relating to a subject of proof;
2) the costs of keeping a suspect or the accused in custody;
3) amounts paid to interpreters or translators pursuant to § 178 of this Code;
4) amounts paid in criminal proceedings pursuant to the Compensation for Damage Caused by State to Person by Unjust Deprivation of Liberty Act;
[RT I 2004, 46, 329 - entry into force 01.07.2004]
5) expenses which have been incurred by state and local government agencies in connection with a criminal proceeding and which are not specified in clauses 175 (1) 1) and 10) of this Code;
[RT I 2004, 46, 329 - entry into force 01.07.2004]
6) amounts paid to representatives of witnesses pursuant to § 67 of this Code.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 178. Compensation for expenses of victims, witnesses, interpreters, translators, experts and qualified persons
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(1) The following expenses incurred in connection with a criminal proceeding shall be reimbursed to a victim, witness, non-staff interpreter or translator and an expert or qualified person not employed by a state forensic institution:
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
1) lost income in accordance with subsection (4) of this section;
2) daily allowance;
3) travel and overnight accommodation expenses.

(2) Translators and interpreters, experts and qualified persons shall receive remuneration for the performance of their duties, unless they performed their duties as official duties. The hourly fee paid to experts, qualified persons and interpreters or translators shall not be less than the

minimum hourly fee promised to be paid to a person in employment relationship and shall not exceed it more than 50 times.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) Expenses specified in subsection (1) of this section shall also be compensated for in case the court session is adjourned. Neither remuneration nor compensation shall be paid to the person who causes the adjournment.

(4) Victims, witnesses, translators and interpreters, experts and qualified persons whose salaries or wages are not retained shall receive compensation in the amount of their average wages, on the basis of a certificate from the employer, for the full time of their absence from work when summoned by the body conducting the proceedings. If a victim, witness, interpreter or translator, expert or qualified person fails to submit a certificate from the employer, compensation for the time of absence from work shall be calculated based on the established minimum wage.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) By its regulation, the Government of the Republic shall establish the following:
[RT I 2006, 21, 160 - entry into force 25.05.2006]
1) the amount of and the procedure for payment of remuneration payable to victims, witnesses, interpreters and translators, experts and qualified persons;
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
2) the amount of and the procedure for payment of the compensations specified in subsection (1) of this section;
[RT I 2006, 21, 160 - entry into force 25.05.2006]
3) where necessary, specifications upon payment of remuneration or compensation to experts, qualified persons and interpreters and translators residing in a foreign state.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 179. Compensation levies

(1) The amount of compensation levies paid upon a judgment of conviction is:
1) in the case of conviction in a criminal offence in the first degree, 2.5 times the amount of the minimum monthly wage;
[RT I 2008, 19, 132 - entry into force 23.05.2008]
2) in the case of conviction in a criminal offence in the second degree, 1.5 times the amount of the minimum monthly wage.
[RT I 2008, 19, 132 - entry into force 23.05.2008]

(2) If a person is convicted on the basis of several sections of the Penal Code, the person shall pay compensation levies corresponding to the degree of the most serious criminal offence.

Division 2
Compensation for Expenses Relating to Criminal Proceedings

§ 180. Compensation for procedure expenses in case of conviction

(1) In the case of a conviction, procedure expenses shall be compensated for by the convicted offender. In such case, the exceptions provided for in § 182 of this Code shall be taken into consideration.

(2) If several persons are convicted in a criminal matter, the distribution of expenses shall be decided by the court, taking into account the extent of the liability and financial situation of each convicted offender.

(3) When determining procedure expenses, a court shall take into account the financial situation and chances of re-socialisation of a convicted offender. If a convicted offender is obviously unable to reimburse procedure expenses, the court shall order a part of the expenses to be borne by the state. A court may order that the expenses relating to criminal proceedings shall be compensated for in instalments.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 181. Compensation for procedure expenses in case of acquittal

(1) In the case of an acquittal, procedure expenses shall be compensated for by the state, taking into account the exceptions provided for in § 182 of this Code.

(2) A person who has been acquitted shall reimburse any procedure expenses caused by the person's wrongful failure to perform his or her obligations or false admission of guilt.

§ 182. Compensation for procedure expenses related to civil action

(1) If a civil action is dismissed, procedure expenses related to the securing of the civil action shall be compensated for by the victim.

(2) If a civil action is satisfied in full, procedure expenses related to the securing of the civil action shall be compensated for by the convicted offender or civil defendant.

(3) If a civil action is satisfied in part, the court shall divide the procedure expenses related to the securing of the civil action between the victim and the convicted offender or civil defendant, taking into consideration all the circumstances.

(4) Upon refusal to hear a civil action, procedure expenses related to the securing of the civil action shall be compensated for by the state.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 183. Compensation for procedure expenses upon termination of criminal proceedings

If criminal proceedings are terminated, procedure expenses shall be compensated for by the state, unless otherwise provided for in this Code.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 184. Compensation for procedure expenses in case of false report of criminal offence

If criminal proceedings are commenced on the basis of a knowingly false report of a criminal offence, procedure expenses shall be reimbursed by the person who reported the criminal offence.

§ 185. Compensation for procedure expenses in appeal proceedings

(1) If a decision specified in clauses 337 (1) 2)-4) or subsection 337 (2) of this Code is made in appeal proceedings, procedure expenses shall be borne by the state.

(2) If a decision specified in clause 337 (1) 1) of this Code is made in appeal proceedings, procedure expenses shall be borne by the person who incurred the expenses. If the appeal was filed by a Prosecutor's Office, procedure expenses shall be borne by the state.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 186. Compensation for procedure expenses in cassation proceedings and review procedure

(1) If a decision specified in clauses 361 2)-4) of this Code is made in cassation proceedings, procedure expenses shall be borne by the state.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) If a decision specified in clause 361 1) of this Code is made in cassation proceedings, procedure expenses shall be borne by the person who incurred the expenses. If the appeal in cassation was filed by a Prosecutor's Office, procedural expenses shall be borne by the state.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) If a petition for review is dismissed, the reimbursement of procedure expenses may be imposed on the petitioner.

§ 187. Compensation for procedure expenses in proceedings for adjudication of appeals against court rulings

(1) If a court ruling is annulled in the course of proceedings for the adjudication of an appeal against the court ruling, procedure expenses shall be borne by the state.

(2) If an appeal against a court ruling is dismissed, procedure expenses shall be borne by the person who incurred the expenses.

§ 187[1]. Compensation for procedure expenses in confiscation proceedings

(1) If a confiscation request is satisfied, the procedure expenses related to the proceedings of the confiscation of property which was obtained by the criminal offence shall be compensated for by the convicted offender. If a confiscation request is satisfied in part, the court may decide that part of the procedure expenses will be borne by the state.

(2) In case of refusal to satisfy a confiscation request, procedure expenses shall be compensated for by the state.
[RT I 2007, 2, 7 - entry into force 01.02.2007]

§ 188. Obligation of minor to compensate for expenses relating to criminal proceedings

If a minor is required to reimburse the expenses relating to a criminal proceeding, the body conducting the proceedings may impose the reimbursement of expenses on his or her parent, guardian or child care institution.

Division 3
Decision Concerning Compensation for Expenses Relating to Criminal Proceedings

§ 189. Decision concerning compensation for expenses relating to criminal proceedings

(1) In pre-trial proceedings, compensation for expenses relating to criminal proceedings shall be decided by an order of the investigative body or Prosecutor's Office.

(2) In court proceedings, compensation for expenses relating to criminal proceedings shall be decided by a court ruling or judgment.

(3) If compensation for expenses relating to criminal proceedings is prescribed by a court judgment, this may be contested separately from the court judgment in accordance with Chapter 15 of this Code.

(4) A body conducting proceedings may adjudicate the payment of a fee based on acts to an appointed counsel as an inscription on the request submitted by the counsel for ordering the payment of the fee for counselling.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 190. Content of decision concerning compensation for expenses relating to criminal proceedings

In a decision concerning compensation for the expenses relating to criminal proceedings, a body conducting the proceedings shall determine:
1) who shall reimburse the procedure expenses and the size of each part of the procedure expenses required to be paid and expressed as an absolute amount or, if this is impossible, as a fraction;
2) the amount of specific expenses and the person required to reimburse the specific expenses;
3) the number of days during which a person was held in custody without bases, the justification of and bases for the receipt of compensation.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 191. Contestation of decision concerning compensation for expenses relating to criminal proceedings

(1) A Prosecutor's Office or participant in a proceeding who is required to compensate for the expenses relating to the criminal proceeding on the basis of a decision concerning compensation for the expenses relating to criminal proceedings may contest the decision in accordance with the provisions of §§ 228 or 229 of this Code, by an appeal or appeal in cassation or pursuant to Chapter 15 of this Code.

(2) When hearing an appeal filed against a court ruling ordering compensation for the expenses relating to a criminal proceeding, a court may extend the limits of the hearing of the appeal to the entire decision concerning compensation for the expenses relating to the criminal proceeding regardless of the content of the appeal.

(3) When hearing an appeal or an appeal in cassation filed against a court judgment, a circuit court or the Supreme Court may make a new decision concerning compensation for the expenses relating to criminal proceedings regardless of contestation.

§ 192. Determination of compensation for expenses

(1) Compensation for expenses is a sum of money payable by a person on the basis of a decision concerning compensation for the expenses relating to criminal proceedings.

(2) A body conducting proceedings shall determine the amount of compensation for expenses on the basis of a decision concerning compensation for the expenses relating to a criminal proceeding and at the request of a participant in the proceeding or the Prosecutor's Office if:
1) the distribution of procedure expenses is expressed in fractions in the decision concerning compensation for the expenses relating to the criminal proceeding;
2) the distribution of expenses as set out in the decision concerning compensation for the expenses relating to the criminal proceeding is contradictory;
3) expenses the amount of which is not known at the time of determination of the expenses are to be compensated according to the decision concerning compensation for the expenses relating to the criminal proceeding.

(3) A ruling specified in subsection (1) of this section may be contested pursuant to the procedure provided for in subsection 191 (1) of this Code.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

Chapter 8
PRE-TRIAL PROCEDURE

Division 1
Commencement and Termination of Criminal Proceedings

§ 193. Commencement of criminal proceedings

(1) An investigative body or a Prosecutor's Office commences criminal proceedings by the first investigative activity or other procedural act if there is reason and grounds therefor and the circumstances provided for in subsection 199 (1) of this Code do not exist.

(2) If criminal proceedings are commenced by an investigative body, the body shall immediately notify the Prosecutor's Office of the commencement of the proceedings.

(3) If criminal proceedings are commenced by a Prosecutor's Office, the Office shall forward the materials of the criminal matter pursuant to investigative jurisdiction.

§ 194. Reasons and grounds for criminal proceedings

(1) The reason for the commencement of criminal proceedings is a report of a criminal offence or other information indicating that a criminal offence has taken place.

(2) The grounds for a criminal proceeding are constituted by ascertainment of criminal elements in the reason for the criminal proceeding.

§ 195. Report of criminal offence

(1) A report of a criminal offence shall be submitted to an investigative body or a Prosecutor's Office orally or in writing.

(2) A report in which a person is accused of a criminal offence is a complaint of crime.

(3) An oral report of a criminal offence which is submitted directly on site of the commission of the offence shall be recorded in a report, and a report of a criminal offence communicated by telephone shall be recorded in writing or audio recorded.

§ 196. Report of violent death

(1) If there is reason to believe that a person has died as a result of a criminal offence or if an unidentifiable body is found, an investigative body or a Prosecutor's Office shall be immediately notified thereof.

(2) If a health care professional conducting an autopsy suspects that the person died as a result of a criminal offence, he or she is required to notify an investigative body or Prosecutor's Office of such suspicion immediately.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 197. Other information referring to criminal offence

(1) If a Prosecutor's Office or an investigative body receives information released in the press indicating that a criminal offence has taken place, such information may be the reason for the commencement of criminal proceedings.

(2) If an investigative body or a Prosecutor's Office, in the performance of the duties thereof, receives information indicating that a criminal offence has taken place, such information may be the reason for the commencement criminal proceedings.

§ 198. Response to report of criminal offence

(1) An investigative body or Prosecutor's Office shall, within ten days as of receipt of a report of a criminal offence, notify the person who submitted the report of the refusal to commence criminal proceedings in accordance with subsection 199 (1) or (2) of this Code.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

(1^1) The term specified in subsection (1) of this section may be extended by ten days if demanding of additional information from the person who submitted the report on a criminal offence is necessary for deciding on commencement of or refusal to commence criminal proceedings. The person who submitted the report on a criminal offence shall be informed of extension of the term for response, and of the reasons for extension.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) If a complaint of crime is submitted, the investigative body or Prosecutor's Office shall also notify the person concerning whom the complaint was submitted of refusal to commence criminal proceedings, except in the case confidentiality of the fact of notification of a criminal offence is ensured pursuant to law or non-notification is required for prevention of crime.
[RT I, 29.06.2012, 1 - entry into force 01.04.2013]

§ 199. Circumstances precluding criminal proceedings

(1) Criminal proceedings shall not be commenced if:
1) there are no grounds for criminal proceedings;
2) the limitation period for the criminal offence has expired;
3) an amnesty precludes imposition of a punishment;
4) the suspect or the accused is dead or the suspect or accused who is a legal person has been

dissolved;
[RT I 2004, 46, 329 - entry into force 01.07.2004]
5) a decision or a ruling on termination of criminal proceedings has entered into force in respect of a person in the same charges on the bases provided for in § 200 of this Code;
[RT I 2004, 46, 329 - entry into force 01.07.2004]
6) a suspect or accused is terminally ill and is therefore unable to participate in the criminal proceedings or serve a sentence;
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

7) these criminal offences are specified in §§ 414, 415, 418 and 418[1] of the Penal Code and the person voluntarily surrenders the firearms, explosive devices in illegal possession or the substantial part, ammunition or explosive thereof.
[RT I, 16.04.2013, 1 - entry into force 26.04.2013].

(2) Criminal proceedings shall not be commenced if detention of the suspect is substituted for pursuant to § 219 of this Code.

(3) Criminal proceedings shall be continued if commencement of the proceedings is requested for the purposes of rehabilitation by:
[RT I 2004, 46, 329 - entry into force 01.07.2004]
1) a suspect or accused in the cases provided for in clause (1) 2) or 3) of this section;
2) the representative of a deceased suspect or accused in the case provided for in clause (1) 4) of this section;
[RT I 2004, 46, 329 - entry into force 01.07.2004]
3) a suspect, accused or his or her representative in the case provided for in clause (1) 6) of this section.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 200. Termination of criminal proceedings upon occurrence of circumstances precluding criminal proceedings

If circumstances specified in § 199 of this Code which preclude criminal proceedings become evident in pre-trial proceedings, the proceedings shall be terminated on the basis of an order of the investigative body with the permission of a Prosecutor's Office, or by an order of a Prosecutor's Office.

§ 200[1]. Termination of criminal proceedings due to failure to identify person who committed criminal offence

(1) If, in pre-trial proceedings, a person who committed a criminal offence has not been identified and it is impossible to collect additional evidence, the proceedings shall be terminated on the basis of an order of the investigative body with the permission of a Prosecutor's Office, or by an order of a Prosecutor's Office. The proceedings may also be terminated partially in respect of a suspect or a criminal offence.

(2) Where the bases prescribed in subsection (1) cease to exist, proceedings shall be resumed pursuant to the procedure prescribed in § 193 of this Code.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 201. Referral of materials to juvenile committee

(1) If commencement of criminal proceedings is refused or a criminal proceeding is terminated for the reason that the unlawful act was committed by a minor who was incapable of guilt on the grounds of his or her age, the investigative body or Prosecutor's Office shall refer the materials of the criminal matter to the juvenile committee of the place of residence of the minor.

(2) If a Prosecutor's Office finds that a minor who has committed a criminal offence in the age of 14 to 18 can be influenced without imposition of a punishment or a sanction prescribed in § 87 of the Penal Code, the Prosecutor's Office shall terminate the criminal proceeding by a ruling and refer the criminal file to the juvenile committee of the place of residence of the minor.

(3) Prior to referral of materials to a juvenile committee, the nature of the act with the elements of a criminal offence and the grounds for termination of the criminal proceeding shall be explained to the minor and his or her legal representative.

§ 202. Termination of criminal proceedings in case of lack of public interest in proceedings and in case of negligible guilt

(1) If the object of criminal proceedings is a criminal offence in the second degree and the guilt of the person suspected or accused of the offence is negligible, and he or she has remedied or has commenced to remedy the damage caused by the criminal offence or has paid the expenses relating to the criminal proceedings, or assumed the obligation to pay such expenses, and there is no public interest in the continuation of the criminal proceedings, the Prosecutor's Office may request termination of the criminal proceedings by a court with the consent of the suspect or accused.

(2) In the event of termination of criminal proceedings, the court may impose the following obligation on the suspect or accused at the request of the Prosecutor's Office and with the consent of the suspect or the accused within the specified term:
1) to pay the expenses relating to the criminal proceedings or compensate for the damage caused by the criminal offence;
[RT I 2007, 11, 51 - entry into force 18.02.2007]
2) to pay a fixed amount into the public revenues or to be used for specific purposes in the interest of the public;
3) to perform 10 to 240 hours of community service. The provisions of subsections 69 (2) and (5) of the Penal Code apply to community service.
4) not to consume narcotics and to undergo the prescribed addiction treatment.
[RT I, 23.02.2011, 2 - entry into force 05.04.2011]

(3) The term for the performance of the obligations listed in subsection (2) of this section shall not exceed six months, except in the case of the obligation specified in clause 4) which

performance shall be based on the minimum term of addiction treatment provided for in subsection 69^2 (2) of the Penal Code.
[RT I, 23.02.2011, 2 - entry into force 05.04.2011]

(4) A request of a Prosecutor's Office shall be adjudicated by a ruling of a judge sitting alone. If necessary, the prosecutor and the suspect or accused and, at the request of the suspect or accused, also the counsel shall be summoned to the judge for the adjudication of the request of the Prosecutor's Office.

(5) If a judge does not consent to the request submitted by a Prosecutor's Office, he or she shall return the criminal matter on the basis of his or her ruling for the continuation of the proceedings.

(6) If a person with regard to whom criminal proceedings have been terminated in accordance with subsection (2) of this section fails to perform the obligation imposed on him or her, a court, at the request of a Prosecutor's Office, shall resume the criminal proceedings by an order. In imposition of a punishment, the part of the obligations performed by the person shall be taken into consideration.
[RT I 2007, 11, 51 - entry into force 18.02.2007]

(7) If the object of criminal proceedings is a criminal offence in the second degree for which the minimum rate of imprisonment is not prescribed as punishment or only a pecuniary punishment is prescribed as punishment by the Special Part of the Penal Code, a Prosecutor's Office may terminate the criminal proceedings and impose the obligations on the bases provided for in subsections (1) and (2) of this section. The Prosecutor's Office may resume terminated criminal proceedings by an order on the bases provided for in subsection (6) of this section.

§ 203. Termination of criminal proceedings due to lack of proportionality of punishment

(1) If the object of criminal proceedings is a criminal offence in the second degree, the Prosecutor's Office may request termination of the criminal proceedings by a court with the consent of the suspect or accused and the victim if:
1) the punishment to be imposed for the criminal offence would be negligible compared to the punishment which has been or presumably will be imposed on the suspect or accused for the commission of another criminal offence;
2) imposition of a punishment for the criminal offence cannot be expected during a reasonable period of time and the punishment which has been or presumably will be imposed on the suspect or accused for the commission of another criminal offence is sufficient to achieve the objectives of the punishment and satisfy the public interest in the proceeding.

(2) A request of a Prosecutor's Office shall be adjudicated by a ruling of a judge sitting alone. If necessary, the prosecutor and the suspect or accused and, at the request of the suspect or accused, also the counsel shall be summoned to the judge for the adjudication of the request of the Prosecutor's Office.

(3) If a judge does not consent to the request submitted by a Prosecutor's Office, he or she shall return the criminal matter on the basis of his or her ruling for the continuation of the proceedings.

(4) If criminal proceedings were terminated taking into consideration a punishment imposed on the suspect or the accused for another criminal offence and the punishment is subsequently annulled, the court may, at the request of the Prosecutor's Office, resume the criminal proceedings by an order.

(5) If criminal proceedings were terminated taking into consideration a punishment which will presumably be imposed on the suspect or the accused for another criminal offence, the court may, at the request of the Prosecutor's Office, resume the criminal proceedings if the punishment imposed does not meet the criteria specified in clauses (1) 1) and 2) of this section.

(6) If the object of criminal proceedings is a criminal offence in the second degree for which the minimum rate of imprisonment is not prescribed as punishment or only a pecuniary punishment is prescribed as punishment by the Special Part of the Penal Code, the Prosecutor's Office may terminate the criminal proceedings on the bases provided for in subsection (1) of this section. The Prosecutor's Office may resume terminated criminal proceedings by an order on the bases provided for in subsections (4) and (5) of this section.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 203[1]. Termination of criminal proceedings on the basis of conciliation

(1) If facts relating to a criminal offence in the second degree which is the object of criminal proceedings are obvious and there is no public interest in the continuation of the criminal proceedings and the suspect or the accused has reconciled with the victim pursuant to the procedure provided for in § 203[2] of this Code, the Prosecutor's Office may request termination of the criminal proceedings by a court with the consent of the suspect or accused and the victim. Termination of criminal proceedings is not permitted:
1) in criminal offences specified in §§ 122, 133, 134, 136, 138, 139, 141-143, 214 and 263 of the Penal Code;
2) in criminal offences committed by an adult person against a victim who is a minor;
3) if the criminal offence resulted in the death of a person;
4) in crimes against humanity and international security, against the state, criminal official misconduct, crimes dangerous to the public and criminal offences directed against the administration of justice.

(2) A request of a Prosecutor's Office shall be adjudicated by a ruling of a judge sitting alone. If necessary, the conciliator, the prosecutor, the victim, the suspect or accused and, at the request of the suspect or accused, also the counsel shall be summoned to the judge for the adjudication of the request of the Prosecutor's Office.

(3) In the case of termination of criminal proceedings, the court shall impose, at the request of the Prosecutor's Office and with the consent of the suspect or the accused, the obligation to pay the expenses relating to the criminal proceedings and to meet some or all of the conditions of the conciliation agreement provided for in subsection 203[2] (3) of this Code on the suspect or

accused. The term for the performance of the obligation shall not exceed six months. A copy of the ruling shall be sent to the conciliator.

(4) If a judge does not consent to the request submitted by a Prosecutor's Office, he or she shall return the criminal matter on the basis of his or her ruling for the continuation of the proceedings.

(5) If a person with regard to whom criminal proceedings have been terminated in accordance with subsection (1) of this section fails to perform the obligations imposed on him or her, the court, at the request of the Prosecutor's Office, shall resume the criminal proceedings by an order.

(6) If the object of criminal proceedings is a criminal offence in the second degree for which the minimum rate of imprisonment is not prescribed as punishment or only a pecuniary punishment is prescribed as punishment by the Special Part of the Penal Code, a Prosecutor's Office may terminate the criminal proceedings and impose the obligations on the bases provided for in subsections (1) and (3) of this section. The Prosecutor's Office may resume terminated criminal proceedings by an order on the grounds specified in subsection (5) of this section.

(7) A victim has the right to file an appeal against a ruling on termination of the criminal proceeding made on the basis of this section within ten days as of receipt of a copy of an order on termination of the criminal proceedings pursuant to the procedure provided for in §§ 228-232 or §§ 383-392 of this Code.
[RT I 2007, 11, 51 - entry into force 18.02.2007]

§ 203^{2}. Conciliation proceedings

(1) A Prosecutor's Office or court may, on the bases provided for in subsection 203^{1} (1) of this Code, send a suspect or accused and the victim to conciliation proceedings with the objective of achieving conciliation between the suspect or accused and the victim and remedying of the damage caused by the criminal offence. The consent of the suspect or accused and the victim is necessary for application of conciliation proceedings. In the case of a minor or a person suffering from a mental disorder, the consent of his or her parent or another legal representative or guardian is also required.

(2) A Prosecutor's Office or court shall send the order or ruling on application of conciliation proceedings to the conciliator for organisation of conciliation.

(3) A conciliator shall formalise the conciliation as a written conciliation agreement which shall be signed by the suspect or accused and the victim and the legal representative or guardian of a minor or a person suffering from a mental disorder. A conciliation agreement shall contain the procedure for and conditions of remedying of the damage caused by the criminal offence. A conciliation agreement may contain other conditions.

(4) A conciliator shall send a report with a description of the course of conciliation to the Prosecutor's Office. In the case of conciliation, a copy of the conciliation agreement shall be appended to the report.

(5) After the termination of the criminal proceedings, the conciliator shall verify whether or not the conditions of the conciliation agreement approved as an obligation pursuant to the procedure provided for in subsection 203^1 (3) of this Code are met. A conciliator has the right to request submission of information and documents for confirmation of the performance of the obligation. The conciliator shall notify the Prosecutor's Office of performance of the obligation failure to perform the obligation.

(6) A conciliator has the right, in performing his or her duties, to examine the materials of the criminal matter with the permission of and to the extent specified by the court. The conciliator shall maintain the confidentiality of facts which have become known to him or her in connection with the conciliation proceedings. A court or a Prosecutor's Office may summon a conciliator for oral questioning in order to clarify the content of the agreement of the conciliation proceedings.
[RT I 2007, 11, 51 - entry into force 18.02.2007]

§ 204. Termination of criminal proceedings concerning criminal offences committed by foreign citizens or in foreign states

(1) A Prosecutor's Office may terminate criminal proceedings by an order if:
1) the criminal offence was committed outside the territorial applicability of this Code;
2) the criminal offence was committed by a foreign citizen on board a foreign ship or aircraft located in the territory of the Republic of Estonia;
3) an accomplice to the criminal offence committed the criminal offence in the territory of the Republic of Estonia but the consequences of the criminal offence occurred outside the territorial applicability of this Code;
4) a decision concerning extradition of the alleged criminal offender to a foreign state has been made;
5) [repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A Prosecutor's Office may, by an order, terminate criminal proceedings concerning a criminal offence which was committed in a foreign state but the consequences of which occurred in the territory of the Republic of Estonia if the proceedings may result in serious consequences for the Republic of Estonia or are in conflict with other public interests.

(3) Termination of criminal proceedings on the basis of economic interests, interests in the field of foreign policy or other considerations is not permitted if this is contrary to an international agreement binding to Estonia.
[RT I 2008, 33, 200 - entry into force 28.07.2008]

§ 205. Termination of criminal proceedings in connection with assistance received from person upon ascertaining facts relating to subject of proof

(1) The Public Prosecutor's Office may, by its order, terminate criminal proceedings with regard to a person suspected or accused with his or her consent if the suspect or the accused has significantly facilitated the ascertaining of facts relating to a subject of proof of a criminal offence which is important from the point of view of public interest in the proceedings and if, without the assistance, detection of the criminal offence and taking of evidence would have been

precluded or especially complicated.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) The Public Prosecutor's Office may, by its order, resume proceedings if the suspect or the accused has discontinued facilitating the ascertaining of facts relating to a subject of proof of a criminal offence or if he or she has intentionally committed a new criminal offence within three years after termination of the proceedings.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 205[1]. Termination of criminal proceedings concerning criminal offences related to competition

(1) The Public Prosecutor's Office shall, by its order, terminate criminal proceedings with regard to a leniency applicant who complies with the conditions for application of leniency provided for in the Competition Act who is the first to submit a leniency application and the information contained therein referring to a criminal offence provided for in § 400 of the Penal Code enables to commence criminal proceedings. This subsection does not apply if criminal proceedings concerning the criminal offence referred by the leniency applicant have been commenced before submission of the leniency application.

(2) If criminal proceedings concerning a criminal offence provided for in § 400 of the Penal Code have been commenced before the submission of a leniency application, the Public Prosecutor's Office shall, by its order, terminate criminal proceedings with regard to a leniency applicant who complies with the conditions for application of leniency and who is the first to submit a leniency application together with evidence which, according to the Prosecutor's Office, contribute significantly to bringing charges. This subsection applies only if subsection (1) of this section is not applicable with regard to any leniency applicant.

(3) If, pursuant to subsection (1) or (2) of this section, there are no basis for termination of criminal proceedings with regard to a leniency applicant who complies with the conditions for application of leniency, the punishment imposed to the person for a criminal offence provided for in § 400 of the Penal Code shall be reduced in proportion to the assistance received from the person in criminal proceedings.

(4) The Prosecutor's Office, having received a notice from the Competition Authority about leniency application, shall coordinate further activities of the leniency applicant with the investigative body and the leniency applicant. The Prosecutor's Office may grant the leniency applicant a deadline of one month for submission of evidence. If the investigative body and the Prosecutor's Office find after the evaluation of the evidence received through the leniency applicant that there are no basis for the application of leniency pursuant to subsection (1), (2) or (3) of this section, the Prosecutor's Office shall notify the leniency applicant of the rejection of the application.

(5) If circumstances become evident after the order specified in subsection (1) or (2) of this section is made which prevent application of leniency, the Public Prosecutor's Office may, by its

order, resume proceedings with regard to the leniency applicant.
[RT I 2010, 8, 34 - entry into force 27.02.2010]

§ 205[2]. Termination of criminal proceedings in connection with expiry of reasonable time of processing

If it becomes evident in pre-trial procedure that a criminal matter cannot be adjudicated within a reasonable time of proceedings, the Public Prosecutor's Office may terminate the criminal proceedings by an order with the consent of the suspect taking into account the gravity of the criminal offence, complexity and extent of the criminal matter, current course of the criminal proceeding and other circumstances.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 206. Order on termination of criminal proceedings

(1) An order on the termination of criminal proceedings shall set out:
1) the basis for termination of the criminal proceedings pursuant to §§ 200-205[1] of this Code;
[RT I 2010, 8, 34 - entry into force 27.02.2010]
2) annulment of the preventive measure applied or other means of securing criminal proceedings;
[RT I 2006, 63, 466 - entry into force 01.02.2007]
3) how to proceed with the physical evidence or objects taken over or subject to confiscation;
[RT I 2007, 2, 7 - entry into force 01.02.2007]
3[1]) deletion of the information collected in the criminal matter from the state register of fingerprints and the state DNA register upon termination of criminal proceedings on the basis of § 200 of this Code;
[RT I, 04.07.2012, 1 - entry into force 01.08.2012]
4) duration of holding in custody;
5) a decision concerning compensation for the expenses relating to the criminal proceedings;
6) the procedure for appeal against the order on termination of the criminal proceedings.

(1[1]) Upon termination of the criminal proceeding, the reasons listed in clause 145 (3) 1) of this Code need not be stated in the order. A simplified order shall set out the right of the victim to submit a request to a body conducting proceedings within ten days as of receipt of the order for receipt of a reasoned order. The body conducting the proceedings prepares a reasoned order within fifteen days as of receipt of the request.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A copy of an order on termination of criminal proceedings shall be immediately sent to:
1) the person who reported the criminal offence;
2) the suspect or accused and the counsel thereof;
3) the victim or the representative thereof;
4) the civil defendant or the representative thereof.

(2[1]) If any information was collected in the criminal matter which shall be deleted from the state register of fingerprints or the state DNA register, a body conducting proceedings shall notify the Estonian Forensic Science Institute of termination of the criminal proceedings in a format which

can be reproduced in writing.
[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

(3) A victim has the right to examine the criminal file within ten days as of receipt of a copy of the order on termination of the criminal proceedings.

(4) A copy of an order on termination of criminal proceedings may be sent, by way of subordination, to a relevant agency which is to decide on the commencement of a misdemeanour or disciplinary proceeding.

(5) An order on termination of criminal proceedings on the basis of § 202 or 203 of this Code shall be published pursuant to the procedure provided for in § 408^1 of this Code and the names and personal data of the suspect shall be replaced with initials or characters.
[RT I 2008, 32, 198 - entry into force 01.01.2010]

§ 207. Contestation of refusal to commence or termination of criminal proceedings in Public Prosecutor's Office

(1) A victim may file an appeal with a Prosecutor's Office on the bases provided for in subsection 199 (1) or (2) of this Code against refusal to commence criminal proceedings.

(2) A victim may file an appeal with the Public Prosecutor's Office against termination of criminal proceedings or dismissal of an appeal provided for in subsection (1) of this section by a Prosecutor's Office.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) An appeal specified in subsection (1) or (2) of this section may be filed within ten days as of receipt of a notice on refusal to commence criminal proceedings, a copy of an order prepared by a Prosecutor's Office on adjudication of an appeal or a copy of a reasoned order on termination of the criminal proceedings.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) A Prosecutor's Office shall adjudicate an appeal specified in subsection (1) of this section within fifteen days as of receipt of the appeal. The Public Prosecutor's Office shall adjudicate an appeal specified in subsection (2) of this section within one month as of receipt of the appeal.

(5) A Prosecutor's Office or the Public Prosecutor's Office shall prepare a reasoned order on dismissal of an appeal and shall send a copy of the order to the appellant.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 208. Contestation of refusal to commence or termination of criminal proceedings in circuit court

(1) If an appeal or request specified in subsections 207 (1) or (2) of this Code for termination of criminal proceedings on the grounds specified in § 205^2 of this Code is dismissed by an order of the A Public Prosecutor's Office, the person who submitted the appeal or request may contest the

order in a circuit court through an advocate within one month as of receipt of a copy of the order.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) An appeal filed with a circuit court shall set out:
1) the facts relating to the criminal offence;
2) the legal assessment of the criminal offence;
3) the evidence collected in support of the suspicion of criminal offence;
4) a short description of termination of criminal proceedings or the current proceedings in the case of refusal to terminate thereof on the basis of § 205^2 of this Code;
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
5) the procedural acts which performance was refused without basis according to the appellant or the reasons why the appellant finds that the appellant's right to proceeding within a reasonable period of time is violated.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) A circuit court shall prepare a court hearing of the appeal specified in subsection (2) of this section pursuant to the provisions of § 326 of this Code, taking into account the specifications provided for in this section.
[RT I 2006, 21, 160 - entry into force 25.05.2006]

(4) An appeal specified in subsection (2) of this section shall be adjudicated by a circuit court judge sitting alone within ten days as of receipt of the appeal. Before making a decision, the judge has the right to:
1) demand that the materials of the criminal file be submitted;
2) issue orders to the Public Prosecutor's Office to perform additional procedural acts.
[RT I 2006, 21, 160 - entry into force 25.05.2006]

(5) If a judge finds that commencement or continuation of criminal proceedings is unfounded, he or she shall make a ruling which shall set out:
1) the reasons for dismissal of the appeal;
2) an order requiring payment of the procedure expenses by the appellant.
[RT I 2006, 21, 160 - entry into force 25.05.2006]

(6) If a judge concludes that commencement or continuation of the criminal proceedings is justified, he or she shall annul the order of the Public Prosecutor's Office and require the Public Prosecutor's Office to commence or continue criminal proceedings.
[RT I 2006, 21, 160 - entry into force 25.05.2006]

(7) If a judge finds that the right of a suspect to proceedings within a reasonable period of time is violated, he or she shall annul the order of the Public Prosecutor's Office and terminate the criminal proceedings. The judge shall terminate the criminal proceedings in compliance with the requirements of § 206 of this Code.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(8) The positions set out in a decision of the Supreme Court on annulment of the order of the Public Prosecutor's Office on the interpretation and application of a provision of law are

mandatory for the Prosecutor's Office in this criminal proceeding.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(9) In the case specified in subsection (5) of this section, a court may amend the order on termination of criminal proceedings by a ruling thereof.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 209. Archiving of criminal file
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(1) If criminal proceedings are terminated on the bases provided for in §§ 200-205[1] of this Code, the criminal file shall be archived.
[RT I 2010, 8, 34 - entry into force 27.02.2010]

(1[1]) In criminal matters sent to court pursuant to general procedure, the criminal file shall be archived upon entry into force of a decision.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) The procedure for archiving criminal files and the terms for preservation of the files shall be established by a regulation of the Government of the Republic.

§ 210. E-File processing information system

(1) The E-File processing information system (hereinafter E-File system) is a database belonging to the State Information Systems maintained for the processing of procedural information and personal data the objective of which is to:
1) provide an overview of criminal matters in which proceedings are conducted by investigative bodies, Prosecutors' Offices or courts as well as criminal proceedings which were not commenced;
2) reflect information concerning acts performed in the course of criminal proceedings;
3) enable organisation of the activities of the bodies conducting proceedings;
4) collect statistics related to crime which are necessary for making of the decisions concerning criminal policy;
5) enable electronic forwarding of data and documents.

(2) The following information shall be entered in the database:
1) information concerning the criminal matters in which proceedings are conducted, criminal matters not commenced and terminated criminal matters;
2) information concerning acts performed in the course of criminal proceedings;
3) digital documents in the cases provided by this Code;
4) information concerning the bodies conducting proceedings, participants in the proceedings, convicted offenders, experts and witnesses;
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
5) the decisions.

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

(4) The chief processor of the E-File system is the Ministry of Justice. The authorised processor of the E-File system is the person appointed by the Minister of Justice.

(5) The Minister of Justice may issue regulations for organisation of the activities of the E-File system.

(6) On the basis of the data in the E-File system, the Ministry of Justice shall publish, by 1 March each year, a report on crime during the previous year.

(7) Crime statistics shall be published by the Ministry of Justice.

(8) The Government of the Republic shall establish the procedure for publication of crime statistics.
[RT I 2008, 28, 180 - entry into force 15.07.2008]

Division 2
General Conditions for Pre-trial Procedure

§ 211. Objective of pre-trial procedure

(1) The objective of pre-trial procedure is to collect evidentiary information and create other conditions necessary for court procedure.

(2) In pre-trial procedure, an investigative body and a Prosecutor's Office shall ascertain the facts vindicating or accusing the suspect or accused.

§ 212. Investigative jurisdiction

(1) Pre-trial proceedings shall be conducted by a Police and Border Guard Board and the Security Police Board, unless otherwise provided for in subsection (2) of this section.
[RT I, 29.12.2011, 1 - entry into force 01.01.2012]

(2) In addition to the investigative bodies specified in subsection (1) of this section, pre-trial proceedings are conducted by:
1) [Repealed - RT I 2009, 27, 165 - entry into force 01.01.2010]
2) the Tax and Customs Board in the case of tax fraud and criminal offences involving violation of customs rules;
3) the Military Police in the case of criminal offences relating to service in the Defence Forces and war crimes;
[RT I 2008, 35, 212 - entry into force 01.01.2009]
4) [Repealed - RT I 2003, 88, 590 - entry into force 01.07.2004]
5) the Competition Board in the case of criminal offences relating to competition;

6) the Prisons Department of the Ministry of Justice and prisons in the case of criminal offences committed in prisons and criminal offences committed by imprisoned persons;
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
7) the Environmental Inspectorate in the case of criminal offences relating to violation of the requirements for the protection and use of the environment and the natural resources.
[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) The division of investigative jurisdiction between the Police and Border Guard Board and the Security Police Board shall be established by a regulation of the Government of the Republic.
[RT I, 29.12.2011, 1 - entry into force 01.01.2012]

(5) For reasons of expediency, a Prosecutor's Office may alter the investigative jurisdiction provided for in subsections (1) or (2) of this section by an order in a particular criminal matter.
[RT I 2009, 27, 165 - entry into force 01.01.2010]

§ 213. Prosecutor’s Office in pre-trial proceedings

(1) Prosecutors’ Offices shall direct pre-trial proceedings and ensure the legality and efficiency thereof and are competent to:
1) perform procedural acts if necessary;
[RT I 2004, 46, 329 - entry into force 01.07.2004]
2) be present at the performance of procedural acts and intervene in the course thereof;
3) terminate criminal proceedings;
4) demand that the materials of a criminal file and other materials be submitted for examination and verification;
5) issue orders to investigative bodies;
6) annul and amend orders of investigative bodies;
7) remove an official of an investigative body from a criminal proceeding;
8) alter the investigative jurisdiction over a criminal matter;
9) declare a pre-trial proceeding completed;
10) demand that an official of an investigative body submit oral or written explanations concerning the circumstances relating to a proceeding;
11) assign the head of the probation supervision department with the duty to appoint a probation officer;
12) perform other duties arising from this Code in pre-trial proceedings.

(2) When exercising the rights specified in clauses (1) 1) and 2) of this section, a Prosecutor's Office has the rights of an investigative body.

(3) If a Prosecutor's Office finds elements of a disciplinary offence in the conduct of an official of an investigative body in a pre-trial proceeding, the Prosecutor's Office shall submit a written proposal to the person entitled to impose disciplinary penalties that disciplinary proceedings be commenced against the official of the investigative body. The person entitled to impose disciplinary penalties is required to notify the Prosecutor's Office in writing of the results of

resolution of the proposal and of the bases for the resolution within one month as of the receipt of the proposal.

(4) In the case of a suspect who is a minor, a Prosecutor's Office is required to assign the head of the probation supervision department with the duty to appoint a probation officer.

(5) The Chief Public Prosecutor may give general instructions for Prosecutors' Offices and investigative bodies in order to ensure the legality and efficacy of pre-trial procedure. Instructions for an investigative body shall be approved by the head of the investigative body at which the instructions are directed.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

(6) A higher ranking prosecutor may demand that a prosecutor submit oral or written explanations concerning the circumstances relating to a proceeding and revoke an unlawful or unjustified ruling, order or demand of a prosecutor by his or her order. The positions set out in the order of a higher ranking prosecutor on the interpretation and application of a provision of law are mandatory for the Prosecutor's Office in the criminal proceeding.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(7) If an investigative body finds that compliance with an order issued by a Prosecutor's Office is inexpedient due to lack of funds or for another good reason, the head of the investigative body shall inform the Chief Public Prosecutor who decides on compliance with the order thereof and shall notify the Minister of Justice thereof.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 214. Conditions for disclosure of information concerning pre-trial proceedings

(1) Information concerning pre-trial proceedings shall be disclosed only with the permission of and to the extent specified by a Prosecutor's Office and under the conditions provided for in subsection (2) of this section.

(2) Disclosure of information concerning pre-trial proceedings is permitted in the interests of criminal proceedings, the public or the data subject if this, in avoidance of excess:
1) does not induce crime or prejudice the detection of a criminal offence;
2) does not damage the interests of the Republic of Estonia or the criminal matter;
3) does not endanger a business secret or violate the activities of a legal person;
4) does not violate the rights of the data subject or third parties, particularly in the case of disclosure of sensitive personal data.
[RT I 2007, 12, 66 - entry into force 25.02.2007]

(3) In the event of violation of the prohibition on disclosure of information concerning pre-trial proceedings, a preliminary investigation judge may impose a fine on the basis of a court ruling on the participants in the proceedings, other persons subject to the criminal proceedings or persons not subject to the proceedings. The suspect and the accused shall not be fined.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 215. Obligation to comply with orders and demands of investigative bodies and Prosecutors' Offices

(1) The orders and demands issued by investigative bodies and Prosecutors' Offices in the criminal proceedings conducted thereby are binding on everyone and shall be complied with throughout the territory of the Republic of Estonia. The orders and demands issued by investigative bodies and Prosecutor's Offices are binding on the members of Defence Forces engaged in missions abroad, if the object of the criminal proceeding is an act of a person serving in the Defence Forces.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) An investigative body conducting a criminal proceeding has the right to submit written requests to other investigative bodies for the performance of specific procedural acts and for other assistance. Such requests of investigative bodies shall be complied with immediately.

(3) A preliminary investigation judge may impose a fine on a participant in a proceeding, other persons participating in criminal proceedings or persons not participating in the proceedings who have failed to perform an obligation provided for in subsection (1) of this section by a court ruling at the request of a Prosecutor's Office. The suspect and the accused shall not be fined.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 216. Joinder and severance of criminal matters

(1) Several criminal matters may be joined for a joint proceeding if persons are suspected or accused of committing a criminal offence together.

(2) A criminal matter may be severed, concerning one suspect or accused, from criminal matters in which persons are suspected or accused of committing a criminal offence together, or joining of such criminal matter may be refused, if:
1) the location of a person is unknown or he or she absconds the criminal proceedings or he or she serves a custodial sentence abroad or other circumstances exist why he or she cannot be subjected to procedural acts within a reasonable period of time;
2) the person is a citizen of or stays in a foreign state;
3) the person requests, after the completion of pre-trial proceedings, adjudication of the criminal matter pursuant to alternative proceedings or settlement proceedings and application of alternative proceedings or settlement proceedings is impossible due to circumstances respectively referred to in clause 233 (2) 2) or 239 (2) 3).

(3) Several criminal matters may be joined for a joint proceeding if persons are suspected or accused of:
1) commission of several criminal offences;
2) concealment of a criminal offence without prior authorisation or of failure to report a criminal offence.

(4) A criminal matter may be severed from a criminal matter with regard to one or more criminal offences, if this is necessary to avoid the expiry of the limitation period of a criminal offence or to ensure reasonable time of proceedings.

(5) If a minor is suspected or accused of committing a criminal offence together with an adult, the criminal matter of the minor may be severed in the interests of the minor for a separate criminal proceeding regardless of the existence of the conditions for severance specified in this section.

(6) Criminal matters shall be joined and severed by an order of an investigative body or Prosecutor's Office or by a court ruling. A copy of an order or ruling on the severance of a criminal matter shall be included in the new file.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

Division 3
Detention of Suspect

§ 217. Detention of suspect

(1) Detention of a suspect is a procedural act whereby a person is deprived of liberty for up to 48 hours. A report shall be prepared on a detention.

(2) A person shall be detained as a suspect if:
1) he or she is apprehended in the act of committing a criminal offence or immediately thereafter;
2) an eyewitness to a criminal offence or a victim indicates such person as the person who committed the criminal offence;
3) the evidentiary traces of a criminal offence indicate that he or she is the person who committed the criminal offence.

(3) A suspect may be detained on the basis of other information referring to a criminal offence if:
1) he or she attempts to escape;
2) he or she has not been identified;
3) he or she may continue to commit criminal offences;
4) he or she may abscond criminal proceedings or impede the criminal proceedings in any other manner.

(4) A person who is apprehended in the act of committing a criminal offence or immediately thereafter in an attempt to escape may be taken to the police by anyone for detention as a suspect.

(5) An advocate may be detained as a suspect under the circumstances relating to his or her professional activities only at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling.

(6) Section 377 of this Code applies to the detention of the President of the Republic, a member of the Government of the Republic, a member of the *Riigikogu*, the Auditor General, the Chancellor of Justice, or the Chief Justice or a justice of the Supreme Court as a suspect.

(7) An official of an investigative body shall explain the rights and obligations of a person detained as a suspect to the person and shall interrogate the suspect immediately pursuant to the procedure provided for in § 75 of this Code.

(8) If a Prosecutor's Office is convinced of the need to take a person into custody, the Prosecutor's Office shall prepare an application for an arrest warrant and, within forty-eight hours as of the detention of the person as a suspect, organise the transport of the detained person before a preliminary investigation judge for the adjudication of the application.

(9) If the basis for the detention of a suspect ceases to exist in pre-trial proceedings, the suspect shall be released immediately.

(10) A person detained as a suspect is given an opportunity to notify at least one person close to him or her at his or her choice of his or her detention through a body conducting proceedings. If the notification prejudices a criminal proceeding, the opportunity to notify may be refused with the permission of a Prosecutor's Office.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 218. Report on detention of suspect

(1) A report on the detention of a suspect shall set out:
1) the basis for the detention and a reference to subsection 217 (2) or (3) of this Code;
2) the date and time of the detention;
3) the facts relating to the criminal offence of which the person is suspected and the legal assessment of the criminal offence pursuant to the relevant section, subsection and clause of the Penal Code;
[RT I 2006, 15, 118 - entry into force 14.04.2006]
4) explanation of the rights and obligations provided for in § 34 of this Code to the suspect;
5) the names and characteristics of the objects confiscated from the suspect upon detention;
6) a description of the clothing and bodily injuries of the detained person;
7) the petitions and requests of the detained person;
8) in the case the detained person is released, the grounds, date and time of release.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A Prosecutor's Office is immediately informed of the detention of a suspect.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 219. Substitution of detention of suspect

(1) If a person has committed a criminal offence in the second degree for which a pecuniary punishment may be imposed and the person does not have a permanent or temporary place of residence in Estonia, an investigative body may, with the consent of the person, substitute the

detention of the person as a suspect by a payment covering the procedure expenses, the potential pecuniary punishment and the damage caused by the criminal offence into the public revenues.

(2) A statement, a copy of which is sent to the Prosecutor's Office, shall be prepared on the substitution of the detention of a suspect and on the receipt of a payment into the public revenues.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

Division 4
Completion of Pre-trial Proceedings

§ 220. Demand to submit information necessary for calculating average daily income

(1) Before the completion of pre-trial proceedings, an investigative body shall demand that the Tax and Customs Board or, if necessary, an employer or another person or agency submit information necessary for calculating the average daily income of a suspect or accused.

(2) If necessary, Prosecutors' Offices and courts may demand submission of additional information necessary for calculating average daily income.

(3) A person or agency from whom a body conducting proceedings demands information necessary for calculation of average daily income shall respond to the inquiry within seven days as of the receipt thereof.

(4) A suspect or accused has the right to submit information concerning his or her income and debts to the body conducting the proceedings.
[RT I 2003, 88, 590 - entry into force 01.07.2004]

§ 221. Demand to submit information necessary for imposing fines to extent of assets and for confiscation of property which was obtained by criminal offence

(1) If a person is suspected or accused of a criminal offence for which a fine to the extent of the assets of the person may be imposed pursuant to law or confiscation may be applied on the basis of § 83^2 of the Penal Code, an investigative body may assign the collecting of the necessary data by an order to a bailiff.

(2) If necessary, Prosecutors' Offices and courts may demand submission of additional information necessary for calculation of the amount of a fine to the extent of the assets of a person or relating to confiscation.

(3) A bailiff shall ascertain the assets of a suspect, accused or third party and assess the value thereof. Within thirty days as of the receipt of the order, the bailiff shall prepare a statement concerning the financial situation of the person and shall submit the statement together with the

evidence on the basis of which the statement was prepared to the body conducting the proceedings.

(4) A suspect, accused or third party has the right to submit information concerning his or her income and debts to the body conducting the proceedings.
[RT I 2007, 2, 7 - entry into force 01.02.2007]

§ 221[1]. Demand to submit information for administration of addiction treatment of drug addicts and complex treatment of sex offenders

(1) If a person is a suspect or accused in a criminal offence for which imprisonment may be imposed pursuant to law and the imprisonment may be replaced by addiction treatment of drug addicts or replaced in part by complex treatment of sex offenders, an investigative body and a Prosecutor's Office may request, by an examination ruling, the opinion of a forensic psychiatric expert on the need for the administration of addiction treatment or complex treatment to the suspect or accused.

(2) If necessary, a court may demand the submission of additional information required for administration of addiction treatment to drug addicts or complex treatment to sex offenders. If it is necessary based on such information or opinion received from a forensic psychiatric expert, the body conducting the proceedings may request conduct of a forensic medical examination.

(3) A forensic psychiatric expert shall ascertain the state of health of a suspect or accused and prepare an expert's report on it. The expert's report shall be submitted to a body conducting proceedings within thirty days as of the receipt of a ruling.

(4) An investigative body and Prosecutor's Office may contact the probation supervision department of the prison of the residence of a suspect or accused with the request to provide an opinion on the possibility of administration of addiction treatment to drug addicts based on the person of the suspect or accused, his or her living conditions and economic situation.

(5) A probation officer shall prepare an opinion within thirty days as of receipt of the request. To present an opinion, the probation officer has the right to examine the expert's report specified in subsection (3) of this section.

(6) A suspect and accused has the right to obtain information on his or her mental disorder, methods of treatment and diagnosis being used, and the organisation of addiction treatment of drug addicts or complex treatment of sex offenders, and to access his or her medical file.
[RT I, 15.06.2012, 2 - entry into force 01.06.2013]

§ 222. Acts performed by investigative body upon completion of pre-trial proceeding
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(1) If an official of an investigative body is convinced that the evidentiary materials necessary in a criminal matter have been collected, he or she shall immediately send the criminal file which

materials have been systematised and the pages thereof numbered, to a Prosecutor's Office together with the physical evidence, recordings and a sealed envelope containing the personal data of anonymous witnesses. On the order of the Prosecutor's Office, he or she shall submit a summary to a court of the pre-trial proceedings which complies with the requirements of § 153 of this Code. The summary of the criminal proceedings shall be also sent to the Prosecutor's Office by electronic means together with the criminal file on paper.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) If there are several suspects in one and the same criminal matter, a joint summary of the pre-trial proceedings shall be prepared setting out the personal data of each suspect separately.

(3) A statement concerning the expenses relating of the criminal proceedings shall be included in the criminal file sent to a Prosecutor's Office.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 223. Acts performed by Prosecutor's Office upon receipt of criminal files

(1) A Prosecutor's Office which receives a criminal file shall declare the pre-trial proceedings completed, require the investigative body to perform additional acts or terminate the criminal proceeding on the bases and pursuant to the procedure provided for in §§ 200-205[1] of this Code.
[RT I 2010, 8, 34 - entry into force 27.02.2010]

(2) If necessary, a Prosecutor's Office which receives a criminal file shall perform additional acts after the receipt of the file. The Prosecutor's Office has the right to eliminate materials insignificant from the point of view of the criminal matter from the criminal file and, if necessary, re-systemise the criminal file.

(3) If a Prosecutor's Office declares a pre-trial proceeding completed, the Prosecutor's Office shall submit the criminal file for examination pursuant to § 224 of this Code.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) If necessary, a Prosecutor's Office shall perform the acts provided for in § 240 of this Code for the application of settlement procedure.

§ 224. Submission of criminal file to criminal defence counsel, victim and civil defendant for examination
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(1) A Prosecutor's Office shall submit a copy of a criminal file to a criminal defence counsel on electronic data media or, based on a reasoned written request of the counsel, on paper. The counsel may waive the copy of the file. The counsel shall sign to confirm receipt of the copy or waiver thereof.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A Prosecutor's Office shall submit a criminal file to a victim or civil defendant for examination at the request thereof.

(3) A recording made in a criminal proceeding or physical evidence shall be submitted to the counsel, victim or civil defendant for examination at the request thereof.

(4) If examination of a criminal file, recording or physical evidence is manifestly delayed, the Prosecutor's Office shall set a term for the examination.

(5) A victim and civil defendant have the right to make excerpts from the materials of the criminal file and request that copies be made of the materials of the criminal file by the Prosecutor's Office for a charge.

(6) A notation shall be made in a criminal file concerning examination of the criminal file, a recording made in the criminal matter or physical evidence by the counsel, victim or civil defendant.

(7) At the request of a defendant, media containing a state secret or classified information of a foreign state which are used as evidence in a criminal matter and which are not added to the criminal file shall be submitted to him or her for examination pursuant to the procedure provided for in the State Secrets and Classified Information of Foreign States Act. A notation shall be made in a criminal file concerning examination of the media containing a state secret or classified information of a foreign state.
[RT I 2007, 16, 77 - entry into force 01.01.2008]

(8) At the request of a counsel, the material eliminated pursuant to subsection 223 subsection (2) of this Code shall be submitted to him or her for examination and he or she shall be allowed to make copies thereof for a fee.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(9) The amount of the fee specified in subsection (8) of this section shall be established by the Minister of Justice pursuant to the procedure provided for in this Code subsection 156^1 (7) of this Code.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(10) A Prosecutor's Office shall decide upon submission of a file and materials eliminated therefrom to a counsel whether and to what extent the counsel is permitted to make additional copies of the file or materials submitted, taking into account the need to protect personal data. The Prosecutor's Office shall indicate the prohibition to make copies on the documents or files on the copy thereof submitted to the counsel.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 224^1. Submission of file to suspect or accused

(1) A counsel shall submit the materials specified in § 224 of this Code to a suspect or accused at the request of thereof. Materials in the case of which a Prosecutor's Office has prohibited the making of copies shall be presented by the counsel only in his or her office premises.

(2) A counsel is prohibited to hand the copies of the materials specified in § 224 of this Code to other persons, with the exception of a suspect or accused in the case and to the extent permitted in subsection 224 (10) of this Code.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 225. Submission and adjudication of requests [RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(1) Participants in a proceeding may submit requests to a Prosecutor's Office within ten days as of the date of submission of the criminal file to the participants for examination. If a criminal matter is especially extensive or complicated, a Prosecutor's Office may extend this term at a written request of a participant in the proceedings. Refusal to extend the term shall be formalised by an order of the Prosecutor's Office.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(1^1) A Prosecutor's Office shall return a civil action filed after the expiry of the term provided for in subsection (1) of this section by an order and explain to the victim the right of the victim to file an action pursuant to civil procedure.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A Prosecutor's Office shall review a request within ten days as of the receipt of the request.

(3) Dismissal of a request shall be formalised by an order a copy of which shall be sent to the person who submitted the request. Dismissal of a request specified in subsection (1) of this section in pre-trial procedure shall not prevent re-submission of the request in court procedure.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) The materials of a criminal matter which are collected by additional acts shall be submitted for examination pursuant to § 224 of this Code.

(5) The request of a suspect or accused for application of alternative proceedings shall be reviewed pursuant to the procedure provided for in § 235 of this Code.

§ 226. Preparation of statement of charges and sending statement of charges to court

(1) If a Prosecutor's Office has submitted a criminal file for examination and is thereafter convinced that the necessary evidence in the criminal matter has been taken, the Prosecutor's Office shall prepare the statement of charges pursuant to § 154 of this Code.

(2) A list of the persons to be summoned to a court session at the request of the Prosecutor's Office shall be appended to a statement of charges. The list shall contain the given names, surnames of the persons to be summoned and places of residence or seat of the victim, civil defendant, third party and their representatives, the criminal defence counsel and the accused. In the case of an anonymous witness, his or her fictitious name shall be indicated in the list. An extract of the list shall contain only the given names and surnames of the persons to be

summoned.
[RT I 2008, 32, 198 - entry into force 01.01.2009]

(3) A Prosecutor's Office shall send extracts of a statement of charges and of a list provided for in subsection (2) of this section to the accused and the counsel and the statement of charges to the court. The statement of charges shall be also sent to the court by electronic means.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

(4) The following shall be appended to a statement of charges sent to a court:
1) a copy of the report of the criminal offence or another document listed in § 195 or 197 of this Code on the basis of which criminal proceedings were commenced. A copy of a document shall not be appended if the document includes information concerning a leniency application or a fact of notification of an offence and if confidentiality of the fact of notification of a criminal offence is ensured pursuant to law;
[RT I 2010, 8, 34 - entry into force 27.02.2010]
2) an extract from the punishment register containing the information concerning the accused;
3) a copy of an order on application or alteration of preventive measures;
4) a notation concerning appointment of a probation officer.

(5) If a statement of charges is sent to a court, an envelope specified in subsection 67 (4) of this Code shall remain in the Prosecutor's Office. The envelope shall be submitted to the court at the request thereof.

(6) If taking into custody is applied as a preventive measure in a criminal matter and the prosecutor deems it necessary to continue the application of the preventive measure, the Prosecutor's Office shall perform the acts specified in subsection (3) of this section not later than fifteen days before the end of the term provided for in subsection 130 (3) or (3^1) of this Code.
[RT I 2008, 32, 198 - entry into force 15.07.2008]

(7) If a civil action was filed in pre-trial procedure, a Prosecutor's Office shall send it to a court together with the statement of charges. The Prosecutor's Office shall send a copy of the civil action to the accused, the counsel thereof and the civil defendant. No evidence shall be appended to a civil action in a criminal matter sent to a court pursuant to general procedure.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 227. Acts performed by counsel upon completion of pre-trial proceeding [RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(1) After receipt of a copy of a statement of charges, a counsel shall submit his or her statement of defence to a court and a copy thereof to a Prosecutor's Office not later than three working days before the preliminary hearing. In the case of particular complexity or extent of a criminal matter, the court by extend the specified term at a reasoned request of the counsel.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) [Repealed - RT I 2008, 32, 198 - entry into force 15.07.2008]

(3) A statement of defence shall set out:
1) the opinions of the defence concerning the charges and the damage set out in the statement of charges, and which statements and opinions set out in the statement of charges are contested and which admitted;
2) the evidence which the counsel wishes to submit to the court and a reference to the facts which are intended to be proven with each piece of evidence;
(3) a list of the persons to be summoned to a court session at the request of the counsel;
4) other requests of the counsel.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) The standard form of a statement of defence shall be established by a regulation of the Minister of Justice.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) If a counsel fails to submit a statement of defence by the term prescribed in this section, the court shall notify the leadership of the Bar Association immediately thereof and propose to the accused to select a new counsel by the date determined by the court, or contact the leadership of the Estonian Bar Association for appointment of a new counsel pursuant to clause 43 (2) 3) of this Code.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

Division 5
Appeal against Activities of Investigative Body or Prosecutor’s Office

§ 228. Appeal against activities of investigative body or Prosecutor’s Office

(1) Before a statement of charges is prepared, a participant in a proceeding or a person not subject to the proceedings has the right to file an appeal with the Prosecutor's Office against a procedural act or order of the investigative body if he or she finds that violation of the procedural requirements in the performance of the procedural act or preparation of the order has resulted in the violation of his or her rights.

(2) Before preparation of a statement of charges, a person specified in subsection (1) of this section has the right to file an appeal with the Public Prosecutor’s Office against an order or procedural act of the Prosecutor's Office.

(3) An appeal specified in subsection (1) or (2) of this section shall be filed directly with the body who is to adjudicate the appeal or through the person whose order or procedural act is contested.

(4) An appeal shall set out:
1) the name of the Prosecutor's Office with which the appeal is filed;
2) the given name and surname, status in the proceedings, residence or seat and address of the appellant;

3) the order or procedural act contested, the date of the order or procedural act, and the name of the person with regard to whom the order or procedural act is contested;
4) which part of the order or procedural act is contested;
5) the content of and reasons for the requests submitted in the appeal;
6) a list of the documents appended to the appeal.

(5) An appeal filed against the activities of an investigative body or Prosecutor's Office shall not suspend the execution of the contested order or performance of the procedural act.

(6) If a Prosecutor's Office receives an appeal specified in subsections (1) and (2) of this section after the statement of charges have been sent to a court according to subsection 226 (3) of this Code, the appeal shall be communicated to the court which hears the criminal matter.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 229. Adjudication of appeals by Prosecutor's Office or Public Prosecutor's Office

(1) An appeal filed with a Prosecutor's Office or the Public Prosecutor's Office shall be adjudicated 30 thirty days as of the receipt of the appeal.

(2) In the adjudication of an appeal filed against an order or procedural act of an investigative body or a Prosecutor's Office, a Prosecutor's Office or the Public Prosecutor's Office may, by an order:
1) dismiss the appeal;
2) satisfy the appeal in full or in part and recognise violation of the rights of the person if the violation can no longer be eliminated;
3) annul the contested order or suspend the contested procedural act in full or in part, thereby eliminating the violation of the rights.

(3) An appellant shall be notified of the right to file an appeal with the county court pursuant to § 230 of this Code.
[RT I 2005, 39, 308 - entry into force 01.01.2006]

(4) An order prepared in the adjudication of an appeal shall be immediately sent to the investigative body or a Prosecutor's Office which prepared the contested order or performed the contested procedural act and a copy of the order shall be sent to the appellant.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 230. Filing of appeals with county court

(1) If the activities of an investigative body or Prosecutor's Office in violation of the rights of a person are contested and the person does not agree with the order prepared by the Public Prosecutor's Office who reviewed the appeal, the person has the right to file an appeal with the preliminary investigation judge of the county court in whose territorial jurisdiction the contested order was prepared or the contested procedural act was performed.

(2) An appeal shall be filed within ten days as of the date when the person became or should have become aware of the contested ruling.

(3) Appeals shall be filed in writing in accordance with the requirements of clauses 228 (4) 2)-6) of this Code.
[RT I 2006, 21, 160 - entry into force 25.05.2006]

§ 231. Adjudication of appeals by county courts

(1) A preliminary investigation judge shall hear an appeal within 30 days as of the receipt of the appeal.

(2) An appeal shall be heard by way of written proceedings within the limits of the appeal and with regard to the person in respect of whom the appeal was filed.

(3) In the adjudication of an appeal, a court may:
1) dismiss the appeal;
2) satisfy the appeal in full or in part and admit violation of the rights of the person if the violation can no longer be eliminated;
3) annul the contested order or suspend the contested procedural act in full or in part, thereby eliminating the violation of the rights.

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

(5) A ruling of a preliminary investigation judge is final and not subject to appeal, with the exception of rulings made upon adjudication of appeals against the course of surveillance activities, non-notification thereof or refusal to submit information collected thereby.
[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

§ 232. Withdrawal of appeal

An appeal filed against the activities of an investigative body, Prosecutor's Office or the Public Prosecutor's Office may be withdrawn until the adjudication of the appeal.

Chapter 9
SIMPLIFIED PROCEEDINGS

Division 1
Alternative Proceedings

§ 233. Grounds for application of alternative proceedings

(1) At the request of an accused and a Prosecutor's Office, the court may adjudicate a criminal matter by way of alternative proceedings on the basis of the materials of the criminal file without summoning the witnesses or qualified persons.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(1) An accused and a prosecutor may submit a request for the application of alternative proceedings to the court until the commencement of examination by the court in a county court.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) Alternative proceedings shall not be applied:
1) in the case of a criminal offence for which life imprisonment is prescribed as punishment by the Penal Code;
2) in the case of a criminal matter where several persons are accused and at least one of the accused does not consent to the application of alternative proceedings;
3) upon existence of grounds for application of detention after service of the sentence.
[RT I 2009, 39, 261 - entry into force 24.07.2009]

(3) Alternative proceedings shall be applied pursuant to the provisions of Divisions 2, 3, 5 and 6 of Chapter 10 of this Code, taking into account the specifications provided for in this Division.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 234. Request for application of alternative proceedings

(1) A suspect or accused may submit a request to a Prosecutor's Office for the application of alternative proceedings.

(2) If a Prosecutor's Office refuses to apply alternative proceedings, the criminal proceeding shall be continued pursuant to general procedure.

(3) If a suspect or accused, counsel and Prosecutor's Office consent to the application of alternative proceedings before the performance of the acts listed in § 226 of this Code, the Prosecutor's Office shall prepare the statement of charges pursuant to § 154 of this Code and set out in the statement of charges that application of alternative proceedings is requested in the criminal matter. The request of the suspect or accused and the statement of charges shall be included in the criminal file and the file shall be sent to the court.

(4) If a suspect or accused, counsel and Prosecutor's Office consent to the application of alternative proceedings in the course of court proceedings, the Prosecutor's Office shall present the request of the accused and the criminal file to the court during a court session.

(5) The accused may withdraw the request for the application of alternative proceedings until the completion of examination by the court. If the accused withdraws the request for application of alternative proceedings in the course of the court hearing, the court shall make the decision provided for in clause 238 (1) 1) of this Code.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 235. [Repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 235[1]. Prosecution in alternative proceedings
[RT I 2006, 21, 160 - entry into force 25.05.2006]

(1) A judge who receives a criminal file shall verify the jurisdiction over the criminal matter pursuant to the provisions of §§ 24-27 of this Code and make a ruling on:
1) the prosecution of the accused pursuant to the provisions of § 263 of this Code;
2) the return of the criminal file to the Prosecutor's Office if there are no grounds for application of alternative proceedings;
3) the return of the criminal file to the Prosecutor's Office and continuation of the proceedings if the court does not consent to the adjudication of the criminal matter by way of alternative proceedings.
[RT I 2006, 21, 160 - entry into force 25.05.2006]

(2) If the bases provided for in § 258 of this Code become evident, the court shall organise a preliminary hearing which shall be held pursuant to the provided for in subsection 257[1] (2) and §§ 259-262 of this Code.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 236. Participants in court session

(1) A prosecutor, accused, his or her counsel, victim and civil defendant shall be summoned to a court session.

(2) The failure of a victim or civil defendant to appear in a court session shall hinder neither the court hearing of the criminal matter nor the hearing of the civil action.

(3) A court may organise the participation of the participants in a court session in the court hearing in alternative proceedings by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) A prosecutor is not required to participate upon the pronouncement of a court judgment.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 237. Examination by court in alternative proceedings

(1) A judge announces the commencement of examination by the court and makes a proposal to the prosecutor to make an opening speech. The prosecutor gives an overview of the charges and the evidence which corroborates the charges and which the prosecutor requests to be examined by the court.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) After the opening speech of a prosecutor, the judge shall ask whether the accused understands the charges, whether he or she confesses to the charges and whether he or she consents to the

adjudication of the criminal matter by way of alternative proceedings.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) The judge shall make a proposal to the counsel to submit his or her opinion as to whether the charges are justified. Thereafter, the victim and the civil defendant or their representatives shall be given the floor.

(4) In court hearing, the participants in the court session shall rely only on the materials of the criminal file. The court shall intervene if the participants in the proceedings refer to circumstances outside the criminal file.

(5) The accused may request that he or she be interrogated. The interrogation of the accused shall comply with the provisions of § 293 of this Code. If the accused has waived counsel pursuant to clause 45 (4) 3) of the Code, the prosecutor is the first to question the accused, followed by the other participants in the proceedings in the order specified by the judge.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(6) The judge may question the participants in the proceedings.

(7) At the end of examination by the court, the judge shall ask the participants in the proceedings whether they would like to submit requests. The court shall adjudicate the requests pursuant to § 298 of this Code.

§ 237[1]. Commencement of alternative proceedings in court proceedings

(1) If a judge receives the request specified in subsection (4) of this Code, he or she shall continue the court hearing pursuant to the procedure provided for in § 237 of this Code.

(2) If application of alternative proceedings is refused on the basis of clause 235[1] (1) 2) or 3) of this Code, the court shall continue the proceeding pursuant to general procedure.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

§ 238. Decisions in alternative proceedings

(1) The court shall make one of the following decisions in chambers:
1) a ruling on the return of the criminal file to the Prosecutor's Office if there are no grounds for the application of alternative proceedings;
2) a ruling on the return of the criminal file to the Prosecutor's Office if the materials of the criminal file are not sufficient for the adjudication of the criminal matter by way of alternative proceedings;
3) a ruling on termination of the criminal proceeding if the grounds listed in clauses 199 (1) 2)-6) of this Code become evident;
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
4) a judgment of conviction or acquittal with regard to the accused.

(2) If a judgment of conviction is made by way of alternative proceedings, the court shall reduce the principal punishment to be imposed on the accused by one-third after considering all the facts relating to the criminal offence. If a punishment is imposed pursuant to § 64 of the Penal Code, the aggregate punishment to be imposed on the accused shall be reduced by one-third.

Division 2
Settlement Proceedings

§ 239. Grounds for application of settlement proceedings

(1) A court may adjudicate a criminal matter by way of settlement proceedings at the request of the accused or the Prosecutor's Office.

(2) Settlement proceedings shall not be applied:
1) in criminal offences prescribed in §§ 89-91, 95-97, 99-103, subsections 110 (2), 111 (2), 112 (2), §§ 113-114, 118, 125, 135, subsection 141 (2), clauses 151 (2) 1) and (4), clause 200 (2) 5), clause 214 (2) 3), §§ 237, 244, 246, clauses 251 (3) 3), subsection 252 (3), clause 258 (2) 2), subsections 259 (3), 266 (3), § 302, subsections 327 (3), 405 (3), 422 (2), § 435, clauses 441 1), 442 1), 443 1) and clauses 445 (2) 1) and (3) of the Penal Code;
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
2) if the accused, his or her counsel or the Prosecutor's Office does not consent to the application of settlement proceedings;
3) in the case of a criminal matter where several persons are accused and at least one of the accused does not consent to the application of settlement proceedings;
4) if the victim or the civil defendant does not consent to the application of settlement proceedings;
5) upon existence of grounds for application of detention after service of the sentence.
[RT I 2009, 39, 261 - entry into force 24.07.2009]

(3) An accused and prosecutor may submit a request for the application of settlement proceedings to a court until the completion of examination by the court in a county court.

(4) Settlement proceedings shall be applied pursuant to the provisions of Chapter 10 of this Code, taking into account the specifications provided for in this Division.

§ 240. Settlement proceedings commenced by Prosecutor’s Office