Act of 22 May 1981 No. 25
relating to Legal Procedure in Criminal Cases

(The Criminal Procedure Act)

with subsequent amendments, most recently by Act of 17 July 1998 No. 56

Ministry of Justice
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PREFACE

This unofficial translation of the Criminal Procedure Act 1981 (*straffeprosessloven*) was first done in 1991 by Ronald Walford in close cooperation with Einar Høgetveit, who was legal adviser at the Ministry of Justice at the time. Patrick Chaffey and Sandra Hamilton also provided invaluable assistance in this task.

Extensive amendments to this Act, made inter alia by the Criminal Procedure Amendment Act of 11 June 1993 No. 80, have also now been translated by Ronald Walford in close cooperation with Sandra Hamilton and Jane Wesenberg, senior executive officer at the Ministry of Justice, and incorporated into the present translation, which is also a revised version of the 1991 translation.

Finding exact English equivalents for the Norwegian legal terms and concepts involved was no easy task. In come cases the solutions adopted are no more than approximations, since there are no direct equivalents, and on occasion it has been necessary to resort to explanatory notes. Any comments on this and other aspects of the translation would be welcome and should be addressed to:

Sandra Hamilton
Head of Translation Service
Ministry of Foreign Affairs
P.O. Box 8114 Dep
0032 Oslo

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Act of 22 May 1981 No. 25 relating to Legal Procedure in Criminal Cases (The Criminal Procedure Act) with subsequent amendments, most recently by Act of 17 July 1998 No. 56.

Pursuant to Act of 14 June 1985 No. 71, this Act came into force on 1 January 1986. See Act of 1 July 1887 No. 5 relating to Judicial Procedure in Criminal Cases. See also Act of 8 April 1983 No. 14.

Part I. The courts and their decisions

Chapter 1. The scope of the Act

§ 1. Penal cases shall be dealt with pursuant to the provisions of this Act unless otherwise provided by statute.

§ 2. The following cases shall also be dealt with pursuant to the provisions of this Act, regardless of whether at the same time a proposal that a penalty be imposed has been made:

1) cases concerning preventive supervision or preventive detention,

2) public cases concerning confiscation,

3) cases in which it is proposed that a defamatory statement be declared null and void.

In cases concerning the proposals specified in this section, the provisions of this Act concerning the issue of guilt shall apply correspondingly in so far as they are appropriate. Otherwise the provisions concerning the determination of a penalty shall apply.

§ 3. Any legal claim that the aggrieved person or any other injured person has against the person charged may, in accordance with the provisions of chapter 29, be pursued in connection with such cases as are mentioned in section 1 or section 2, provided that the said claim arises from the same act that the case is concerned with. On the said conditions the following claims may also be pursued:

1) claims against the parents of the person charged pursuant to section 1-2 of Act of 13 June 1969 No. 26 relating to damages,

2) claims against the Norwegian Broadcasting Corporation or any other broadcasting institution, or against an owner or publisher of printed matter pursuant to section 3-6 of the said Act,

3) claims against insurance companies pursuant to chapter II of the Motor Vehicle Liability Act of 3 February 1961 and other claims against insurance companies when the person charged has taken out third party liability insurance and the injured person can make a direct claim against the insurance company,

4) recourse claims which an insurance company or any other person that has paid out compensation, insurance or a pension on account of the damage has against the person charged,

5) claims concerning any abrogation of the right of inheritance pursuant to section 73 of Act of 3 March 1972 No. 5 relating to Inheritance.

In connection with criminal proceedings against a public official, the public authorities may put forward a claim for his dismissal pursuant to section 10 of the Act relating to the Entry into Force of the Penal Code.

The claims specified in the first and second paragraphs are deemed to be civil claims and shall be dealt with in accordance with the provisions of chapter 29.

For the purpose of this Act, the term aggrieved person shall also include other injured persons as mentioned in the first paragraph. This does not, however, apply to sections 72, 80, 229, 273 and 295, or to chapters 9 a and 28.

§ 4. The provisions of this Act shall apply subject to such limitations as are recognised in international law or which derive from any agreement made with a foreign State.

Chapter 2. The substantive jurisdiction of the courts

§ 5. All cases under this Act shall be dealt with at first instance by the District Court or the City Court.

The District Court or the City Court, sitting as a court of examination and summary jurisdiction, shall conduct judicial examination and other distinct judicial proceedings,[1] as well as such adjudication as is mentioned in section 248.

§ 6. The jurisdiction of the Court of Appeal extends to:

1) appeals in cases adjudicated by the District Court or the City Court,

2) interlocutory appeals against orders and decisions of the District Court or the City Court and

3) appeals against the acceptance of the option of a fine or confiscation or both.[2]

§ 7. Appeals in cases dealt with by the Court of Appeal shall come under the jurisdiction of the Supreme Court.

§ 8. With the consent of the Interlocutory Appeals Committee of the Supreme Court, an appeal that comes under the jurisdiction of the Court of Appeal may be brought directly before the Supreme Court when the said appeal relates to an issue whose significance extends beyond the case in question, or it is especially important to have the case decided quickly.

An application for such consent shall be submitted together with the notice of appeal and sent with the documents relating to the case to the Interlocutory Appeals Committee. Before such consent is given, the opposite party shall be given the opportunity to express his views.

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[1] For examples of such proceedings see sections 237, 241, 247, 269 and 270.
[2] See chapter 20, sections 255, 256. (Translator’s note)

§ 9. Interlocutory appeals against orders and decisions of the Court of Appeal shall come under the jurisdiction of the Interlocutory Appeals Committee of the Supreme Court.

Chapter 3. The local jurisdiction of the courts. Consolidation and adjournment of criminal cases

§ 10. The main hearing shall be held in the judicial district in which the criminal act is presumed to have been committed or in one of the judicial districts in which it may have been committed.

If the criminal act is committed on board a Norwegian ship or aircraft en route in or outside the realm, the main hearing may be held in the judicial district in which the ship or aircraft has its home port or in which it has its first port of call, or in which the investigation was first instituted. The same applies when the act is committed on a Norwegian drilling platform or a similar floating installation en route in or outside the realm. In the case of aircraft, the owner's place of residence or business premises are to be regarded as the home port.

§ 11. If there is no venue in the realm pursuant to section 10, or if prosecution at any of the said venues would cause considerable inconvenience to the person charged or to witnesses, or would cause disproportionate delay or expense, the main hearing may be held at the place where the person charged resides or is staying, or where it is presumed that the case can most easily be clarified.

§ 12. As a rule distinct judicial proceedings[3] are conducted in the judicial district in which the person who is to be examined resides or is staying, or where the object with which such proceedings are concerned is presumed to be situated.

§ 13. Prosecutions against the same person for more than one criminal act, or against more than one person as accomplices to the same criminal act, shall be consolidated in a single case, provided that this can be done without considerable delay or difficulty. If different persons or authorities are entitled to prosecute, such consolidation may be effected when they so agree.

With the consent of the court, prosecutions for two or more criminal acts may also otherwise be consolidated in a single case, just as consolidated cases may be separated when the court so decides or consents.

§ 14. A prosecution for criminal acts in a case consolidated pursuant to section 13, first paragraph, may be brought in any judicial district in which any one of the said acts could have been prosecuted.

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[3] See footnote 1.

If the case is disjoined after the main hearing has begun, the court shall decide whether it shall proceed to adjudicate that part of the case which has been brought before it solely by reason of the consolidation.

§ 15. The prosecuting authority may, with the consent of the court before which the case has been brought, transfer the proceedings to another place where there is a venue for the case.

§ 16. The rules relating to venue may be departed from with the consent of the person charged. If the person charged duly appears, the court shall not of its own motion inquire whether the case has been brought before its proper venue.

§ 17. When the criminality of an act depends on whether a particular legal relationship subsisted when the act was committed, the court may adjourn the criminal proceedings until this issue has been decided in a civil case. The decision in the civil case is not, however, binding with regard to the decision in the criminal case.

If defamation proceedings are brought against a person who has passed on a statement made by another person, the court may adjourn the case against the former person until any proceedings against the originator of the statement have been decided. The court may also otherwise adjourn criminal proceedings until a disputed matter has been further clarified in another criminal case.

Chapter 4. Court records

§ 18. At every sitting of a court a written record of the proceedings shall be kept.

The court record shall state:

1) the court, the time and place of the sitting, the names of the judges, the members of the jury, the keeper of the record, and of the court invigilator,[4] the parties and the number and subject-matter of the case,

2) which parties are present, who is representing them, the names of the witnesses and experts who appear, and the documents and other evidence submitted.

The course of the proceedings shall be noted forthwith. In particular it must be evident that the forms prescribed by law have been observed.

§ 19. The following matters shall be fully entered in the court record:

1) the contentions of the parties and any declarations that alter the substance of the case or contain an express admission of the opposite party's contention or any part of it,

[4] The court invigilator is a person whose duty it is to observe the proceedings carefully, to see that the legal processes have been duly followed, and to draw the judge's attention to any misconceptions or errors in the understanding or recording of the proceedings. (Translator's note)

2) contentions, applications and objections relating to procedural matters that are made in court and that are not abandoned or immediately acted upon, provided that they may affect the decision or their entry on the record is demanded,

3) judicial decisions that are made or read out at the sitting, and any order made by the court or its president.

When any of the matters specified here is contained in documents that are appended to the record or in any previous court record, it will suffice to include a reference thereto. The court may require that contentions and applications made by the prosecutor or by counsel on behalf of one of the parties shall be reduced to writing in order to be appended to the court record.

§ 20. Outside the main hearing any statements made by the parties, witnesses, or experts in court shall be entered in the court record and then read aloud for confirmation. Any additions and corrections made during the reading aloud shall be entered. Confessions and other especially important utterances should, as far as possible, be recorded in the respondent's own words. Irrelevant or meaningless items shall be omitted.

When a statement wholly or partly corresponds with what the same or another person has previously stated in court, the court may refer to the previous statement and read it aloud for confirmation.

At a court sitting held during preparatory proceedings (section 272) the court shall decide the extent to which statements shall be recorded.

§ 21. During the main hearing the court may decide that statements made by the parties, witnesses, or experts shall be entered in the court record pursuant to the provisions of section 20:

1) when the court assumes that in the event of an appeal hearing in the Court of Appeal it will no longer be possible to conduct an examination or that it will have to be conducted by judicial recording of evidence outside the main hearing,

2) when the statement differs on important points from a previous statement made by the person concerned in court or to the police,

3) when it is otherwise desirable for special reasons.

If any person who has been examined has no evidence to give about the case, this should be noted.

§ 22. When there is reason to believe that an utterance may result in criminal liability for making a false statement or accusation, it should be fully entered in the court record and as far as possible in the speaker's own words.

§ 23. In accordance with further rules to be prescribed by the King, statements and other parts of the proceedings may be recorded stenographically or by mechanical means. The said rules shall prescribe the extent to which such reproduction may replace entry in the court record.

§ 24. When any inquiry is made outside the main hearing, the court record shall give a full account of such inquiry, how it was carried out, the observations made, and what inferences can be drawn from them. An attempt should be made to obtain photographs, drawings, plans and sketches when it may be of relevance to the case.

§ 25. When any inquiry is made during the main hearing, the court may apply the provisions of section 24 when it assumes that in the event of an appeal hearing in the Court of Appeal it will no longer be possible to conduct an inquiry, or that it would be defective because the subject-matter of the inquiry may be destroyed or altered, or that any such inquiry would have to be conducted by judicial recording of evidence outside the main hearing.

§ 26. If any of the parties so requests, the court record shall be read aloud in court or submitted to the parties.

If the court finds that any correction is required, it will make such correction by an addition or marginal note. When a party, a judge, or a court invigilator[5] requires a correction to be made, but such request is refused, a written note of the refusal may be required.

The court record shall be signed by the judges, the keeper of the record, and the court invigilator.

§ 27. Documents produced in court shall be endorsed to show that they have been so produced.

§ 28. An aggrieved person may require a transcript of the court record and other documents in a criminal case that the court has concluded. Such a request may also be submitted by any other person who has a legal interest in doing so.

Any such transcript shall be refused when in the interests of national security or relations with a foreign State it would be inadvisable to provide a transcript, or when there is reason to fear that the transcript will be used in an unlawful manner. The same applies to persons other than the parties when the court has made an order of secrecy.

A transcript of psychiatric reports, social inquiry reports, and other information relating to any person can only be provided to the extent prescribed in regulations made by the King.

The question of entitlement to a transcript shall be determined in relation to each individual document.

If a request for a transcript is refused pursuant to this section, the question may be required to be submitted to the court for decision.

The King may prescribe regulations concerning the inspection and borrowing of the documents in a criminal case, and concerning entitlement to a transcript of the documents in cases that are not covered by the first paragraph. The provisions of the second and third paragraphs apply correspondingly to such regulations.

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[5]See footnote 4, section 18, item 1). (Translator’s note)

§ 29. The King may prescribe further rules concerning the compilation of court records and concerning the safekeeping and destruction of court records and other documents.

Chapter 5. Judgements, orders and other decisions of the court

§ 30. Judgements are the decisions of the court that convict or acquit the person charged, or that otherwise wholly or partly decide the claim with which the case is concerned.

Other decisions are orders when so defined by statute, or when they conclude the case or an independent part of it.

§ 31. If the court has more than one member, it shall carry out its deliberations and voting in camera before judgement is delivered, unless the members immediately agree upon the decision.

Only the keeper of the record is allowed to attend the deliberations and voting unless the president of the court gives special permission to other persons who for the purpose of their legal education or for similar reasons wish to be present.

§ 32. The president shall conduct the proceedings, put the questions, and count the votes. The voting is done orally in the sequence determined by the president.

A judge who has been outvoted shall take part in any subsequent voting that the case calls for unless otherwise provided by statute.

In the Supreme Court the voting takes place publicly in the order determined by the president of the court. The president shall always vote last. Each of the judges shall give reasons for the decision he votes for.

§ 33. The issue of guilt shall be voted on separately. The issue of guilt does not include questions concerning the time-barring of punishment by reason of statutory limitation or an increased penalty for repeated offences, except in so far as concerns the time when the act that is the subject of the charge was committed.

§ 34. A judge who has voted for an acquittal on the issue of guilt shall not take part in the voting as to whether such special circumstances exist as would bring the matter under a more severe or milder penal provision but will be deemed to have concurred with whatever vote is most favourable to the person charged.

§ 35. A decision on the issue of guilt in disfavour of the person charged requires five votes in the Court of Appeal. In cases tried by jury, section 372 applies.

Otherwise all decisions shall be made by an ordinary majority unless otherwise provided. If the votes are tied, in decisions concerning punishment or such sanctions as are specified in section 2, items 1 and 2, the opinion most favourable to the person charged shall prevail; otherwise the president's vote shall be conclusive.

The issue of whether the conditions for declaring a statement null and void are satisfied shall be decided by an ordinary majority. If the votes are tied, the president's vote shall be conclusive.

§ 36. If there are more than two opinions when punishment or other sanctions are to be determined and none of them commands a majority, the votes that are most unfavourable to the person charged shall be combined with those that are nearest in line to them until a majority is reached.

§ 37. Any disagreement as to how the questions shall be put or as to the result of the voting shall be decided by a separate vote. If the votes are then tied, the president's vote shall be conclusive.

As regards the drafting of questions for the jury, the provisions of sections 363 to 367 shall apply.

§ 38. The court cannot go beyond the matter to which the indictment relates, but it is not bound by the particulars as regards time, place, and other circumstances. Only when it finds special reason to do so, will the court try the issue whether circumstances exist that would bring the matter under a more severe penal provision than that specified in the indictment.

With regard to the penal provision applicable to the matter, the court is not bound by the indictment or the contentions that are submitted. The same applies with regard to a penalty and other applicable sanctions. A judgement imposing confiscation or making a declaration that a statement is null and void can only be passed when a claim to this effect has been made, and not to a greater extent than is claimed. A penalty or such sanctions as are specified in section 2, item 1, cannot be imposed in a case that relates only to confiscation or a declaration that a statement is null and void.

Before the court applies a penal provision other than that specified in the indictment or imposes a sanction other than that proposed by the prosecution, it shall give the parties an opportunity to express their views on the matter. The person charged shall be allowed a suitable adjournment when the court finds it desirable for the defence.

As regards the formulation of questions for the jury, the provisions of section 364 shall apply.

§ 39. A judgement shall contain:

1) a short account of the subject-matter of the case with the claims that have been made,

2) the reasons for the decision,

3) the conclusion of the judgement.

Transcripts of the judgement shall also contain information about the court, the judges, the time and place of the delivery of judgement, the parties and their representatives.

The president of the court shall write the judgement unless the court decides otherwise. The judgement shall be signed by the judges who have taken part in the adjudication.

§ 40. In the case of judgements of the Court of Appeal, when the judgement is based on the verdict of a jury, the grounds of the judgement concerning the issue of guilt shall simply consist of a reference to the said verdict.

In other cases, when the person charged is convicted, the grounds of the judgement concerning the issue of guilt shall specifically and fully state the facts of the case that the court has found to be proved as a basis for the judgement and shall refer to the penal provision pursuant to which the person charged has been convicted. When the person charged is convicted, the grounds of the judgement shall also state the reasons to which the court has attached importance in determining the penalty and other sanctions. Information about previous convictions or waivers of prosecution shall only be included in so far as they affect the judgement.

If the court has applied section 63, second paragraph, of the Penal Code, the court shall state what criminal act or acts it has regarded as aggravating circumstances.

If the person charged is acquitted, the grounds of the judgement shall state which conditions for a finding of guilt are deemed to be unfulfilled, or the circumstances that exclude a penalty or any other sanction that has been proposed.

In all cases that have been tried by a composite court,[6] the grounds of the judgement shall state the main points in the court's assessment of the evidence.

§ 41. The grounds of the judgement shall in all cases state whether the judgement is unanimous or, if this is not the case, which of the members of the court do not agree with the conclusion of the judgement, and the points on which there is disagreement.

Judges who do not agree with the conclusion of the judgement or the grounds of the judgement may require an account of their opinion to be included therein. As far as members of the jury who take part in the determination of the penalty and other sanctions are concerned, however, the provisions of section 376 e apply.

Higher courts may in their grounds of judgement rely upon previous judgements in the case.

In Supreme Court cases the voting takes the place of grounds of judgement.

§ 42. The judgement should be delivered immediately after the case has been closed for judgement. If this cannot be done, and it is therefore decided to postpone delivery of the judgement until a subsequent sitting of the court, a time and place for this sitting shall if possible be fixed forthwith. If judgement is not delivered within three days after the case has been closed for judgement, the reason shall be stated in the court record.

§ 43. The judgement shall be delivered at a court sitting. If more judges than one take part in the adjudication, they shall all be present. After deliberation and voting have taken place pursuant to section 31, the court may unanimously decide that only the president of the court needs to be present when the judgement is delivered. In this case the judgement shall be

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[6] *Meddomsrett*: a court composed of one or more professional judges and two or more lay judges who all adjudicate cases on an equal footing, with one of the professional judges acting as president of the court - here translated as "composite court". (Translator's note)

signed by the other judges before the president of the court delivers the judgement by signing it or reading it aloud. Any judge may require that the judgement be delivered at a court sitting at which all the judges are present even though a decision pursuant to the third sentence has been made. When a decision is submitted to a lay judge for his signature pursuant to the fourth sentence, the said judge shall be informed of his right pursuant to the fifth sentence.

If the person charged is present in court, judgement shall be delivered by reading the judgement aloud. It is, however, unnecessary to read aloud the reproduction of the charge or the indictment. As far as the grounds of the judgement are concerned, an oral account of their essential contents may take the place of reading them aloud. If there is a right of appeal, the court shall inform the person charged of any time-limit and of the procedure to be followed. He shall be asked whether he accepts the judgement and whether he desires a transcript of it.

If the person charged is not present, the judgement is deemed to be delivered as soon as it is signed. The court shall ensure that the judgement shall as soon as possible be served on the person charged together with such information as is mentioned in the second paragraph. He shall at the same time be asked whether he accepts the judgement. The court may leave it to the prosecuting authority to arrange for service of the judgement.

The court is bound by its decision once the judgement has been delivered.

§ 44. If the judgement contains clerical or mathematical errors or other obvious errors or omissions, the court itself or the higher court that receives the case shall correct them of its own motion. Should there be any doubt as to how the correction shall be made, the decision shall be made by the court as a whole. Otherwise the president may make the correction.

§ 45. If the grounds of the judgement otherwise contain errors, contradictions, obscurities or deficiencies, they may be corrected on the application of one of the parties, after the other party has been heard. The application must be lodged within two weeks. It shall as soon as possible be decided by the same judges who have delivered the judgement. The lay judges or the members of the jury who took part in determining the penalty or other sanction need not be summoned unless one of the parties so requires.

§ 46. Corrections pursuant to sections 44 and 45 are effected by an addition to the court record. Reference is made to them by a marginal note at the appropriate place.

All transcripts that have been delivered shall be recalled either to be corrected or to be exchanged for new ones.

The court shall ensure that the corrected or new transcripts are served on the person indicted as soon as possible.

§ 47. An interlocutory appeal against decisions made pursuant to sections 44 to 46 can only be lodged on grounds of procedural errors or on the grounds that a correction goes further than is authorised by the Act.

When an application is made for a correction pursuant to section 44 or 45, the time-limit for an appeal does not begin to run until the issue has been decided. If an appeal has been lodged, the superior court shall be informed accordingly.

If a correction has been made pursuant to section 45, a new time-limit for an appeal shall begin to run. The person charged shall be informed of this when the correction is served on him.

§ 48. If something that should have been decided in the judgement has been omitted, a supplementary judgement may be delivered pursuant to the provisions of sections 45 and 46.

The main hearing may be reopened if necessary.

§ 49. If any person has been sentenced by different judgements without the provisions of section 54, subsection 3, or section 64 of the Penal Code being observed, the prosecuting authority shall bring the cases before the court that delivered the last convicting judgement for a joint decision.

The decision shall be made by a judgement. The main hearing may be reopened if the court finds reason to do so. The court shall as far as possible be constituted with the same judges as those who delivered the previous judgement. In the Court of Appeal those members of the jury who took part in the determination of the penalty or other sanction shall not take part unless the main hearing is reopened. If any of them cannot attend, the necessary number shall instead be drawn by lot from among the other members of the jury who served in the case.

§ 50. A judgement becomes legally enforceable when it has been accepted by the parties or the time-limit for an appeal has expired. If an appeal is lodged, the judgement becomes legally enforceable when the case is finally decided in the higher court.

When the judgement becomes legally enforceable, such consequences of the judgement as do not require any execution take effect.

§ 51. If a new case is brought concerning a claim that has been decided by a legally enforceable judgement, the court shall of its own motion summarily dismiss the case.

§ 52. Reasons shall be given for court orders. Moreover sections 31 to 37, 41 and 43 shall apply correspondingly where appropriate. If the court consists of two or more judges all of whom are professional judges, only one of the judges needs to be present at the court sitting at which the order is made. In this case the order shall be signed by the other judges before the last judge makes the order by signing it or reading it aloud. Any judge may nevertheless require that the order be made at a court sitting at which all the judges are present.

The court shall ensure that an order shall as soon as possible be brought to the notice of the person charged or other persons whom it concerns. If there is a right of interlocutory appeal, the court shall inform the person concerned of the time-limit and the procedure to be followed.

Procedural orders may be reversed by the court that has made them when no acquired right is thereby infringed. Otherwise, sections 44 to 48 and 50 shall apply correspondingly to orders.

§ 53. Sections 31, 32, 35 to 37, 41 and 52, second paragraph, apply correspondingly where appropriate to decisions of the court that are not judgements or orders.

A decision may be reversed by the court that has made it when no acquired right is thereby infringed. Otherwise, sections 44 to 48 and 50 shall apply correspondingly.

§ 54. If the court has more than one member and they are not all present at a sitting, the president may make decisions that are not by their nature pertinent to the main hearing or adjudication unless otherwise provided by statute. If the preparation of the case is left to another judge, such decisions may be made by him.

Part II. The parties

Chapter 6. The prosecuting authority

§ 55. The officials of the prosecuting authority are:

1) the Director General of Public Prosecutions and the Assistant Director General of Public Prosecutions,

2) the public prosecutors, deputy public prosecutors, and assistant public prosecutors,

3) the chiefs of police, the deputy chiefs of police, the head of the security service, the assistant chiefs of police, police prosecutors, police intendants I, and police intendants II, in so far as they have a law degree and serve in an office or position that confers the authority to prosecute,

4) the district sheriffs.[7]

The King may decide that a senior police officer or police officer referred to in item 3 of the first paragraph shall serve as a member of the prosecuting authority even though he does not possess a law degree. The same applies to officials at the State Agency for the Recovery of Fines, Damages and Costs.

§ 56. The Director General of Public Prosecutions is a senior state official.[8] He must have a law degree of the highest academic class. In relation to the provision in Article 22 of the Constitution, he is regarded as an official of the highest rank. Section 235 of the Courts of Justice Act shall apply correspondingly.

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[7] *Lensmann*: a public official in rural districts. He is a police officer subordinate to the chief of police and the prosecuting authority. His duties also include acting as a maintenance enforcement officer, an electoral registration officer, an execution and enforcement officer, a state tax collector and a process server. There is obviously no English equivalent, so the term is virtually untranslatable. It may be anglicized as "lensman", by analogy with "ombudsman", or it may be loosely translated as "district sheriff", though this has inappropriate connotations. (Translator's note)

[8] *Embetsmann*: a senior State official appointed by the King pursuant to Article 21 of the Constitution. Normally such an official cannot be dismissed except by a court judgement pursuant to Article 22 of the Constitution. (Translator's note)

The Director General of Public Prosecutions is the chief administrator of the prosecuting authority. Only the King in Council may prescribe general rules and give binding orders as to how he shall discharge his duties.

The King may appoint an Assistant Director General of Public Prosecutions who, when so authorised by the Director General or in his absence, may exercise the Director General's authority on his behalf. Section 57, first paragraph, shall apply correspondingly to the Assistant Director General of Public Prosecutions.

§ 57. The public prosecutors are senior state officials. They must have a law degree. Section 235 of the Courts of Justice Act shall apply correspondingly.

The King determines the number of public prosecutors, their official districts, and the location of their departmental office. Public prosecutors may also be attached to the office of the Director General of Public Prosecutions.

The Ministry may appoint deputy public prosecutors. They must have a law degree. The deputy public prosecutors shall deal with cases assigned to them by the public prosecutors.

When the volume of cases makes it necessary, the King may appoint temporary assistant public prosecutors. They shall deal with cases assigned to them by the Director General of Public Prosecutions or the public prosecutor concerned.

A public prosecutor who is attached to the office of the Director General of Public Prosecutions may when so authorised by the Director General exercise the Director General's authority on his behalf.

§ 58. As prosecuting authority, the chiefs of police rank below the Director General of Public Prosecutions and the local public prosecutor.

The Director General of Public Prosecutions and the public prosecutors may give direct orders to police officers.

§ 59. A superior prosecuting authority may wholly or partly take over the conduct of a case that comes under a subordinate prosecuting authority, or by a decision in the individual case transfer its conduct to another subordinate prosecuting authority.

The Director General of Public Prosecutions may prescribe rules to the effect that the investigation in some categories of cases shall be conducted by an official other than the one the case would otherwise have come under.

§59 a. The following decisions of the prosecuting authority can, subject to the reservations contained in the second paragraph, be appealed by way of complaint to the immediately superior prosecuting authority:

1) a decision not to prosecute,
2) a decision to waive prosecution,
3) the issue of an optional fine,
4) the issue of a bill of indictment,
5) a decision pursuant to section 459 (deferment of sentence).

No complaint can be brought against the decisions of the Director General of Public Prosecutions.

The right to appeal by way of complaint pursuant to the first paragraph can be exercised by:

1) the person at whom the decision is directed,

2) other persons with a legal interest in the complaint,

3) an administrative body provided the decision concerns its area of administrative responsibility.

The right to appeal by way of complaint cannot be exercised by any person who is entitled to bring the decision before the courts. Nor can a person charged appeal by way of complaint against a decision that institutes prosecution before a court.

The time-limit for lodging a complaint is three weeks from the date upon which notice of the decision was received by the complainant. The time-limit for a person who has not received such notice begins to run from the date upon which he has or ought to have become aware of the decision. As regards a decision to waive prosecution or to abandon proceedings that have been instituted, the time-limit for persons other than those towards whom the decision is directed shall expire no later than three months after the date upon which the decision was made.

The decision of the prosecuting authority that hears the complaint cannot be appealed by way of complaint.

§ 60. An official serving the prosecuting authority or acting on its behalf is disqualified when he has such a relationship to the case as is specified in section 106, items 1 to 5, of the Courts of Justice Act. He is also disqualified when other special circumstances exist that are likely to weaken confidence in his impartiality. This is especially the case when the issue of disqualification is raised by one of the parties.

If an official is disqualified, his subordinates in the same office are also deemed to be disqualified, unless his immediate superior decides otherwise.

§ 61. The official himself shall decide whether he is disqualified. When one of the parties so requests and it can be done without considerable loss of time, or the official himself otherwise has reasons to do so, he shall as soon as possible submit the question to his immediate superior for decision. If it is alleged that the Director of Public Prosecutions is disqualified, the Ministry may decide that he is not disqualified.

An official who deems himself to be disqualified shall as soon as possible notify his immediate superior thereof.

When an official is disqualified, his immediate superior shall decide how the case shall be proceeded with.

Even though an official is disqualified, he may take such steps as cannot be postponed without detriment and cannot be left to another.

§ 61 a. Any person who is employed by or performs any service or work for the police or the prosecuting authority is bound to prevent others from gaining access to, or obtaining knowledge of, anything that comes to his knowledge in criminal cases concerning:

1) an individual’s personal affairs, or

2) technical devices and procedures, as well as operational or business matters which for competition reasons it is important to keep secret in the interests of the person whom the information concerns.

The duty of secrecy also applies to other information that it is necessary to keep secret in the interests of the criminal investigation in the particular case.

The duty of secrecy shall continue to apply after the person concerned has terminated his service or work. Nor may he exploit such information as is mentioned in this section in his own business activities or in service or work for others.

§ 61 b. The duty of secrecy pursuant to section 61 a shall not prevent:

1) the information being made known to others in so far as those to whom the duty of secrecy is owed consent thereto,

2) the information being used when the need for protection must be deemed satisfied by the information being presented in the form of statistics or by otherwise eliminating identificatory characteristics, and

3) the information being used when no legitimate interest indicates that it should be kept secret, for example when it is generally known or generally accessible elsewhere.

§ 61 c. The duty of secrecy pursuant to section 61 a shall not prevent:

1) information in a case being made known to the parties or their representatives, and otherwise to those whom the information directly concerns,

2) the information being used to achieve the purpose for which it was provided or obtained; such information may inter alia be used in connection with criminal investigations, preparation of the case, the actual decision, the implementation of the decision, follow-up and control,

3) the information being accessible to other officials within the police and the prosecuting authority in so far as such information will be of significance for their work,

4) the information being used for statistical processing, for the preparation of plans and reports, or in connection with auditing or other forms of control,

5) the information being used to prevent offences or to prevent any activity being pursued in a reprehensible manner,

6) other public bodies being given information concerning a person's connection with the police and concerning decisions that have been made and otherwise such information as it may be necessary to provide in order to facilitate the tasks of the police,

7) information being given to persons other than the parties when this is specially authorised by statute or by general instructions laid down by the King or the Director General of Public Prosecutions, and

8) the public prosecutor, the chief of police, or any person so authorised by them, from giving the public information concerning criminal cases in accordance with rules prescribed by the Director General of Public Prosecutions.

The police or the prosecuting authority may impose a duty of secrecy when witnesses, etc. receive information that is subject to a duty of secrecy in connection with their making a statement or in any other way assisting the police or the prosecuting authority. Breach of the duty of secrecy pursuant to this paragraph is punishable pursuant to section 121 of the Penal

Code provided the person concerned has been warned that any breach may have such consequences.

§ 61 d. The authority concerned shall ensure that the duty of secrecy is made known to those to whom it applies and may require a statement in writing to the effect that they are familiar with and will observe the rules.

Documents and other material which contain information subject to a duty of secrecy shall be kept in safe custody.

§ 61 e. When it is deemed reasonable and no undue inconvenience is caused thereby to other interests, the Director General of Public Prosecutions may decide that a subordinate prosecuting authority may or shall provide information for use in research, and that this shall be done notwithstanding the prosecuting authority's duty of secrecy pursuant to section 61 a.

The provisions of sections 13 d, second and third paragraphs, and 13 e, first and second paragraphs, of the Public Administration Act shall apply correspondingly in so far as they are appropriate.

§ 62. The King in Council will prescribe further rules concerning the organisation of the prosecuting authority.

Chapter 7. Prosecution

§ 63. The courts shall act only on the application of a person who is entitled to prosecute, and shall cease to act when the said application is withdrawn.

§ 64. The King in Council decides whether a prosecution should be brought as regards offences committed in the course of their duties by senior state officials and other officials appointed by the King. Nevertheless the Director General of Public Prosecutions may decide that the prosecution in such a case shall be discontinued because of the state of the evidence or because no penalty can be imposed in the matter.

The King in Council also decides whether to waive a prosecution pursuant to section 69 in the case of:

1) felonies punishable by imprisonment for a term not exceeding 21 years,

2) felonies contrary to chapters 8, 9 or 10 of the Penal Code.

§ 65. If the decision to prosecute is not to be made by the King in Council, the Director General of Public Prosecutions shall decide whether a prosecution should be brought in the case of:

1) felonies punishable by imprisonment for a term not exceeding 21 years,

2) felonies contrary to chapters 8, 9 or 10 or sections 135, 140, 142 or 144 of the Penal Code,

3) felonies committed by printed writing or by a broadcast transmission, except a felony contrary to section 211 of the Penal Code.

§ 66. The public prosecutor shall decide whether to prosecute in cases of felonies unless the decision is to be made by the King in Council or the Director General of Public Prosecutions.

§ 67. The police may investigate and bring a charge in all cases, and may also apply to the court for a decision concerning the use of coercive measures pursuant to chapters 14 to 17 and bring an interlocutory appeal against such decisions.

The police shall decide whether to prosecute in cases of misdemeanours. The King in Council may decide that the police shall decide whether to prosecute in cases of felonies contrary to sections 147, 162, first paragraph, 182, 183, 228, first and second paragraphs, 255 to 258, 260, 270, 271, 271a, 291 and 317 of the Penal Code, and contrary to section 34 of the Military Penal Code, section 31, second paragraph, of the Medicines Act, section 72 of the Value Added Tax Act, and section 12-1 of the Tax Administration Act.

In accordance with further rules to be prescribed by the King, the police may issue a writ giving the option of a fine[9] in cases of felonies which pursuant to statute are punishable by imprisonment for a term not exceeding one year.

The police may decide that cases of felonies shall be remitted to a mediation board for mediation when the question whether to prosecute does not come under the jurisdiction of the King in Council or the Director General of Public Prosecutions. The King in Council may as a provisional arrangement decide that also the district sheriff[10] in specified districts may decide that cases of contravention of sections 147, 257, 258, 260, 291, 391 and 391a of the Penal Code shall be remitted to a mediation board for mediation.

The head of the security service police shall have the authority specified in the first paragraph in such cases as the King so decides.

In cases concerning allegations against senior state officials or officials in the police or the prosecuting authority of the commission of criminal acts in the course of duty, the King may decide that the investigation shall be conducted by special criminal investigation agencies pursuant to further provisions. The same applies when the prosecuting authority finds that there is a suspicion of a criminal act committed in the course of duty which requires the institution of a criminal investigation against any person referred to in the first sentence or when a suspect himself requests a criminal investigation. The public prosecutor shall decide whether to bring a prosecution on the basis of a recommendation from the criminal investigation agencies when the question of prosecution does not come under the jurisdiction of the King in Council or the Director General of Public Prosecutions.

Even if there is no reason to suspect a criminal act, the King may decide that such criminal investigation as is referred to in the sixth paragraph shall be commenced if any person dies or is seriously injured as a result of any performance of duty by the police or the prosecuting authority. The same applies if any person dies or is seriously injured while he is in the care of the police or the prosecuting authority.

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[9] See chapter 20, sections 255, 256. (Translator's note)
[10] See footnote 7, section 55, item 4. (Translator's note)

A police official within the meaning of the sixth and seventh paragraphs includes cadets at the Police College in practical training and manpower mobilised from the police reserve.

§ 68. The decision whether to appeal lies with the authority that has instituted the prosecution unless otherwise provided in this paragraph or in the prosecution instructions. In the cases specified in section 64, first paragraph, such decision shall, however, be made by the Director General of Prosecutions. In cases in which the police have instituted a prosecution pursuant to section 67, second paragraph, second sentence, such decision shall be made by the public prosecutor. If the police have in the same case instituted a prosecution for both a felony and a misdemeanour, the public prosecutor shall make such decision for all the matters. In the cases referred to in the third and fourth sentences, the police may, however, accept the judgement. In other cases in which a prosecution is brought by the police, the chief of police shall make the decision.

An interlocutory appeal against an order of summary dismissal may be lodged by the person or authority who is entitled to appeal. Otherwise the person who conducts the proceedings may lodge an interlocutory appeal.

The Director General of Public Prosecutions shall decide whether to apply for the case to be reopened.

§ 69. Even though guilt is deemed to be proved, a prosecution may be waived provided that such special circumstances exist that the prosecuting authority on an overall evaluation finds that there are weighty reasons for not prosecuting the act.

Waiver of prosecution pursuant to the first paragraph can be made conditional upon the person charged not committing any new offence during the probationary period. The probationary period is two years from the day the decision to waive the prosecution was made, but not longer than the limitation period for the institution of criminal proceedings for the act in question.

Waiver of prosecution can also be made conditional upon such conditions as are specified in section 53 of the Penal Code, subsection 2, subsection 3 litrae a to f, subsection 4, and subsection 5. The person charged shall be given the opportunity to comment on the conditions beforehand. When the circumstances of the person charged provide reason for doing so, the prosecuting authority may during the probationary period terminate or alter conditions that have been laid down and fix new conditions.

§ 70. A prosecution may be waived when the provisions as to sentencing in the case of a concurrence of two or more felonies or misdemeanours entail that either no or only a slight penalty would be imposed.

A prosecution may also be waived when a military reprimand has been imposed for the matter.

§ 71. If the person charged maintains that he is not guilty of an offence for which prosecution has been waived pursuant to section 69, he may require the prosecuting authority to bring the case before the court if the charge is not withdrawn. An application to this effect must be

submitted within one month after the person charged has been notified of the waiver of prosecution and of his right to require that the case be brought. The provisions of section 318, first paragraph, shall apply correspondingly.

§ 71 a. When guilt is deemed to be proved, the prosecuting authority may decide that the case shall be remitted to a mediation board for mediation if it is suitable for this purpose. Both the aggrieved person and the person charged must consent to the case being remitted to the mediation board.

§ 72. A prosecution may be discontinued at any time before judgement is delivered at first instance. The same applies when a judgement is set aside.

When a public prosecution is pursuant to statute dependent on an application from a special authority, the prosecution shall be discontinued if the application is withdrawn. The same applies when a public prosecution is conditional upon an application for a prosecution from the aggrieved person and the said application is validly revoked.

§ 73. If a case is dropped after the main hearing has begun either because of the state of the evidence or because no penalty can be imposed in the matter, the court will pronounce an acquittal.

When a prosecution is otherwise discontinued, written notice of this shall be given to the person charged and to the aggrieved person who has acted as complainant.

§ 74. If a prosecution of a person charged is discontinued because of the state of the evidence, it may be resumed if material evidence is later discovered.

If a prosecution is waived pursuant to section 69, the proceedings may be resumed if a charge is brought for another offence that has been committed before the waiver of prosecution. An indictment must in this case be preferred or an application for judgement in a court of summary jurisdiction must be submitted within one year of the waiver of prosecution. If the person charged is not found guilty of the second offence, the waiver of prosecution will remain in force unless the court finds that the person charged must be acquitted.

If conditions have been imposed for the waiver of a prosecution, the prosecution may also be resumed if such conditions are not fulfilled. The same applies if the person charged avoids supervision that has been ordered or disregards an order from the supervising authority. In this case an indictment must be preferred or an application for judgement in a court of summary jurisdiction must be submitted within three months of the expiry of the probationary period.

If a prosecution is waived pursuant to section 70, the proceedings may be resumed if the person charged is not convicted of the offence or offences that formed the subject of the prosecution.

If the proceedings are discontinued because a necessary application for prosecution or some other prerequisite for proceeding with the case is lacking, the proceedings may be resumed if the deficiency is remedied.

Otherwise proceedings may be resumed only on the reversal of a decision by a superior authority pursuant to section 75, second paragraph, or if the conditions for reopening a case are satisfied.

These provisions do not prevent a decision to waive a prosecution from being reversed for the benefit of the person charged.

§ 75. A prosecution that has been commenced may be dropped by a superior prosecuting authority.

A decision to waive a prosecution or to drop a prosecution that has been commenced against a person charged may be reversed by a superior prosecuting authority within three months.

§ 76. Cases before the Supreme Court may be conducted by the Director General of Public Prosecutions himself or delegated to a public prosecutor, an advocate who is entitled to conduct cases before the Supreme Court, or an official deputy to the Director General of Public Prosecutions.

Cases before the Court of Appeal and the District Court or the City Court shall be conducted by the public prosecutors, police officers attached to the prosecuting authority, or advocates. If the case concerns a felony that pursuant to statute is punishable by imprisonment for a term exceeding six years, it shall be conducted by a public prosecutor. When there are special reasons for doing so, the Director General of Public Prosecutions may, however, assign an advocate, a police officer attached to the prosecuting authority, or an official deputy to the Director General of Public Prosecutions to conduct such a case. Cases of misdemeanours before the District Court or the City Court shall normally be conducted by police officers attached to the prosecuting authority.

When there are special reasons for doing so, the Director General of Public Prosecutions may assign the conducting of cases in the Court of Appeal or in the District Court or the City Court to a police officer who has a law degree, but who is not attached to the prosecuting authority.

In cases before the District Court or the City Court in which a writ giving the option of a fine has been issued,[11] the prosecuting authority may be represented by a police officer who is not attached to the said authority. The same applies to sittings of a court of examination and summary jurisdiction.

§ 77. In order to conduct cases in court pursuant to the prosecuting authority's instructions and on its behalf, the Ministry shall engage in the Supreme Court a sufficient number of advocates who are entitled to conduct cases before the Supreme Court, and in the other courts a sufficient number of advocates.

§ 78. When a case is conducted before the Supreme Court by an official who has no fixed salary, the Court shall determine his remuneration, which shall be paid by the public treasury.

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[11] See chapter 20, sections 255, 256. (Translator's note)

In the other courts the court shall determine such remuneration in accordance with further rules prescribed by the King if a fixed salary has not been specified. An interlocutory appeal may be brought against the court's determination pursuant to the provisions of the Legal Aid Act.

§ 79. When the person who is to conduct a case before the court is unable to attend, his immediate superior may appoint in his place an advocate or official attached to the prosecuting authority.

§ 80. Offences may be prosecuted by the aggrieved person pursuant to the provisions of chapter 28.

§ 81. The court shall of its own motion try the issue whether the person prosecuting the case is entitled to prosecute.

Chapter 8. The person charged

§ 82. A suspect acquires the status of a person charged when the prosecuting authority states that he is charged or when a prosecution against him is instituted in court or it is decided to carry out an arrest, search, seizure or take similar measures against him or such measures have been carried out.

Taking a person to a police station pursuant to section 8 of the Police Act does not confer on him the status of a person charged.

A decision to control a suspect's telephone pursuant to Chapter 16 a does not confer on him the status of a person charged.

The provisions relating to a person charged in this Act shall apply correspondingly to any person against whom a claim is made pursuant to section 2.

§ 83. If a person charged is under 18 years of age, his guardian shall also have the rights of a party to the case. If the guardian cannot or will not look after the said person's interests in the case, a provisional guardian shall be appointed pursuant to section 16 of the Guardianship Act.

§ 84. If a person charged is seriously mentally ill or mentally retarded to a considerable degree and has a guardian, the latter also has the rights of a party to the case.

If a person who is seriously mentally ill or mentally retarded to a considerable degree lacks the ability to understand what the case is about, or if a summons would have a harmful effect upon him, a summons to him to attend court sittings in the case may be dispensed with. In this case, the guardian alone will exercise his rights as a party to the case during the court sittings. The fact that the person charged himself does not attend court shall not be regarded

as a non-appearance in such cases. If he has no guardian, a provisional guardian shall be appointed pursuant to section 90 a of the Guardianship Act.

§ 84 a. If the person charged is a business enterprise, the rights of a party to the case shall be accorded to the person so appointed by the said enterprise. As far as possible no person should be so appointed who is himself charged with the offence with which the case is concerned.

§ 85. After receiving a lawful summons the person charged is obliged to attend the main hearing. The same applies in the case of other court sittings when the court finds that his attendance is necessary in the circumstances of the case.

If the person charged has been arrested or detained in custody, he shall be brought to every sitting of the court that he would have been obliged to attend if he had been at liberty.

§ 86. The person charged shall be summoned to attend court by service of a writ of summons. The writ of summons shall specify the court, place of sitting, time of attendance, what the case is about, and the purpose of the summons. An oral order to attend made while the court is sitting may take the place of a summons.

In the case of a summons to attend the main hearing the person charged is entitled to three days' notice and in the case of a summons to attend other court sittings 24 hours' notice.

If the person charged is serving with an established military unit, his immediate superior shall be informed by means of a copy of the writ of summons. The person who is thus informed of the summons is obliged to ensure that the person charged shall as far as possible be enabled to attend court and shall immediately give notification if this cannot be done.

§ 87. If the attendance of the person charged is necessary according to statute, or is assumed to be necessary in the circumstances of the case, the writ of summons shall state that he may be brought to the court if he fails to appear.

If the attendance of the person charged is assumed to be unnecessary, he shall be informed that the case may proceed even if he fails to appear.

If it appears to be doubtful whether the attendance of the person charged is necessary, the writ of summons shall state that if he fails to appear, he may be brought to the court or the case may proceed in his absence.

According to the circumstances the person charged shall also be informed of his right to consent to the case being adjudicated in his absence.

§ 88. If a person charged who is summoned in accordance with sections 86 and 87, first or third paragraph, fails to appear in court without a lawful excuse being presented, the court may decide that he shall be arrested in order to be immediately brought before the court or to be detained in custody until he can be so brought. Detention in custody may only be used when his attendance is necessary according to statute or is assumed to be necessary in the circumstances of the case.

If the person charged attends court in an intoxicated state, this is deemed to be a failure to appear.

If the circumstances of the person charged provide reason to fear that he will fail to appear at a scheduled main hearing, the court may immediately make a decision pursuant to the first paragraph. If delay entails any risk, the decision may be made by the prosecuting authority. In this case the matter shall as soon as possible be submitted to the court that is dealing with the case.

If the person charged provides security for his attendance pursuant to the provisions of section 188, bringing him to the court may be dispensed with.

§ 89. If there is reason to assume that a person charged is unable to pay the necessary costs of a journey to and from the place where the court sits and of his stay there, the court or the prosecuting authority may allow such costs to be wholly or partly covered by public funds. The same applies in other cases when the costs must according to the circumstances of the person charged be regarded as considerable or other special reasons make it reasonable to do so.

§ 90. The first time the person charged attends the court he shall be asked his name, date of birth, occupation, and place of residence, and he shall be informed of the charge and that he is not obliged to testify.

§ 91. The president of the court shall ask the person charged whether he is willing to testify and urge him in that case to tell the truth.

The person charged shall first be examined by the president of the court. The other members of the court, the prosecuting authority, and defence counsel are then entitled to put questions to the person charged.

The court may leave the examination of the person charged to the prosecuting authority and defence counsel.

The court shall see to it that the examination takes place in a satisfactory manner. Questions that are not relevant to the case shall be disallowed.

§ 92. The examination shall take place in a manner designed to obtain as coherent an account as possible of the matter to which the charge relates. The person charged shall be given an opportunity to refute the grounds on which the suspicion is based and to plead the circumstances that tell in his favour.

Promises, false information, threats or coercion must not be used. The same applies to any means that reduces the level of consciousness of the person charged or his ability to make up his own mind freely. The examination must not aim at tiring out the person charged. He shall be allowed to have the usual meals and necessary rest.

§ 93. During the examination the person charged must not consult with his defence counsel before he answers questions put to him unless the court consents thereto.

If the person charged refuses to answer, or gives a non-committal answer, the president of the court may inform him that this may be considered to tell against him.

Chapter 9. Defence counsel

§ 94. The person charged is entitled to have the assistance of a defence counsel of his own choice at every stage of the case. He shall be so informed. The court may allow the person charged to have his defence conducted by more than one counsel.

When the person charged is under 18 years of age, his guardian shall choose the defence counsel. The same applies if the person charged is seriously mentally ill or mentally retarded to a considerable degree and has a guardian.

§ 95. As defence counsel in the Supreme Court advocates who are entitled to conduct cases before the Supreme Court shall be engaged.

In the other courts any advocate may act as defence counsel. With the special permission of the court some other suitable person may serve as defence counsel.

In all the courts a foreign advocate may act as defence counsel when the court finds this unobjectionable in view of the nature of the case and other circumstances. The King may by regulations prescribe rules concerning the right of foreign advocates to act as defence counsel.

The same person cannot act as defence counsel for two or more persons charged who have conflicting interests.

§ 96. During the main hearing the person charged shall have a defence counsel.

During the main hearing in the District Court or the City Court the person charged is nevertheless not entitled to a defence counsel:

1) in cases pursuant to section 22, first and second paragraphs, and section 24, first paragraph, cf. section 31, of the Road Traffic Act,

2) in cases that are brought pursuant to the provisions of section 268 (writ giving the option of a fine),[12]

3) in cases relating only to confiscation.

If the person charged has in court made an unreserved confession that is corroborated by the other evidence, section 99 applies correspondingly in the case of a main hearing in the District Court or the City Court.

The Court may dispense with the appointment of a defence counsel if it finds this unobjectionable and the person charged expressly renounces his right to a defence counsel.

If the prosecuting authority recommends that preventive supervision or preventive detention be imposed, the person charged shall always have a defence counsel during the main hearing.

If the person charged is seriously mentally ill or mentally retarded to a considerable degree, he shall have a defence counsel at every stage of the case.

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[12] See chapter 20, sections 255, 256. (Translator's note)

§ 97. When the person charged is entitled to a defence counsel during the main hearing, he shall also have one during the judicial recording of evidence for use at the said hearing unless the court finds it unobjectionable to conduct the recording of evidence without a defence counsel. If the court before which the case is brought has not decided whether a defence counsel is necessary or an indictment has not yet been preferred, the decision shall be made by the court that undertakes the recording of evidence.

§ 98. The person charged shall as far as possible have a defence counsel at the court sitting held to decide the question of a remand in custody. He shall have a defence counsel as long as he is in custody. The appointment of a defence counsel can be dispensed with if the court finds this unobjectionable and the person charged expressly renounces his right to a defence counsel.

The person charged shall be allowed to consult his defence counsel before the question of a remand in custody is dealt with. Defence counsel shall as soon as possible and at the latest before the court sitting relating to a remand in custody receive a copy of those of the documents relating to the case that he is entitled to acquaint himself with pursuant to section 242.

The appointment of a defence counsel ceases when the remand in custody ends unless the court otherwise decides in accordance with the provisions of section 100.

§ 99. When a case is remitted to a court of summary jurisdiction for adjudication pursuant to section 248 and it is a question of imposing an unconditional sentence of imprisonment for a term exceeding six months, the person charged shall have a defence counsel. Nevertheless this does not apply in cases pursuant to section 22, first and second paragraphs, cf. section 31, of the Road Traffic Act, or where the court because of the nature of the case and other circumstances finds it unobjectionable that the person charged has no defence counsel.

§ 100. When the person charged is entitled to a defence counsel pursuant to the provisions of sections 96 to 99, the court shall appoint an official defence counsel for him. If the person charged declares that he wishes to be assisted by a private defence counsel whom he has engaged, an official defence counsel shall be appointed only when it is necessary or desirable to have such counsel in addition to the private one.

Apart from the cases referred to in sections 96 to 99, the court may also appoint an official defence counsel for the person charged when there are special reasons for doing so.

§ 101. To serve as permanent official defence counsel the Ministry shall engage at the Supreme Court a sufficient number of advocates who are entitled to conduct cases before the Supreme Court, and at the other courts a sufficient number of advocates.

§ 102. Defence counsel for the particular case or the particular sitting shall be appointed by the court. If the person charged has expressed a wish to have a particular defence counsel, the

latter shall be appointed, unless this would lead to the case being considerably delayed or other circumstances make it inadvisable.

The King will prescribe further rules concerning how the court shall proceed to appoint official defence counsel in cases in which information will be given that according to the Security Instructions can only be made known to persons who are specially authorised.

§ 103. If the person charged has not chosen a defence counsel, one of the permanent defence counsel shall be appointed. If two or more permanent defence counsel are engaged at the same court or within the same jurisdiction, they should normally serve in turn.

If it is not feasible to appoint one of the permanent defence counsel, the court may appoint another person who could have been chosen as defence counsel. The same applies when it is found to be desirable in order to avoid delaying the case.

§ 104. A person who serves as official defence counsel shall withdraw from the case if the person charged chooses another person who is appointed pursuant to the provisions of section 102. The same applies if the person charged engages a private defence counsel unless the court finds it necessary or desirable to have the official defence counsel in addition to the private one.

The court may in all cases decide that the defence counsel previously appointed shall continue to serve if his withdrawal would delay the case without good reason.

§ 105. The court may appoint another person as official defence counsel instead of the person previously appointed if it is considered desirable in the interests of the person charged or in order to avoid delaying the case. The same applies when it is for other reasons considered inadvisable that the person previously appointed should continue to serve as defence counsel, or circumstances have arisen that make it unreasonable to order him to complete the assignment.

§ 106. No one may serve as official defence counsel when he himself has been charged or is an aggrieved person in respect of the offence committed, or when he is or has been married or engaged to or is related by blood or marriage in ascending or descending line or collaterally as close as siblings to the person charged or the aggrieved person.

When there are other circumstances that would have disqualified the defence counsel from being a judge in the case, he shall notify the court thereof, which will then decide whether he may serve as defence counsel.

§ 107. Official defence counsel shall be remunerated by the State. The provisions of section 78 shall apply correspondingly to such remuneration. If in accordance with the wishes of the person charged a defence counsel is appointed who is not permanently engaged at the court or in the jurisdiction in question, the King may prescribe further rules concerning to what extent defence counsel shall be compensated for travel, subsistence and accommodation expenses. In cases before the Supreme Court, the said Court shall decide this question.

A permanent official defence counsel must not receive any remuneration for the performance of his duties beyond that determined by the court. Any other official defence counsel may not claim any remuneration from the person charged for his work unless the latter before defence counsel was appointed has consented to pay and defence counsel has renounced his right to remuneration from the State.

When special circumstances so indicate, the court may award a private defence counsel remuneration from the State as if he had been officially appointed. An application to this effect must be submitted before the case is finally decided.

Chapter 9 a. The aggrieved person's right to an advocate

§ 107 a. In cases concerning contravention of sections 192 to 199, 207, 209 or 212, second paragraph, second and third sentences, of the Penal Code the aggrieved person is entitled to the assistance of an advocate if the said person so desires. In other cases the court may on application appoint an advocate for the aggrieved person if there is reason to believe that as a result of the criminal act he or she will suffer considerable harm to body or health and there is deemed to be a need for an advocate.

The aggrieved person's advocate shall be remunerated by the State pursuant to the provisions of section 107 d.

The police shall inform the aggrieved person of the right to have an advocate when the matter is reported to the police.

§ 107 b. An advocate for the aggrieved person shall be appointed by the court. If the aggrieved person desires a particular advocate, the latter shall be appointed unless this would lead to considerable delay in the case or the circumstances otherwise make it inadvisable. The aggrieved person shall be informed of the rules relating to the remuneration of the advocate.

If it might be detrimental to the investigation to wait for the court to make an appointment, the police may summon an advocate for the aggrieved person. The advocate so summoned shall have the same status as an advocate appointed by the court. The question of appointment shall be submitted to the court as soon as possible.

Otherwise the rules relating to the appointment and revocation of the appointment of a defence counsel for the person charged shall apply correspondingly as far as they are appropriate.

If the aggrieved person is dead or for other reasons is unable to request the appointment of an advocate, the court may in special cases appoint an advocate to look after the interests of the aggrieved person and his or her next-of-kin. If an advocate is appointed and the aggrieved person dies before the case is decided, the court shall decide whether the appointment shall remain in force.

§ 107 c. The aggrieved person's advocate shall look after the said person's interests in connection with the investigation and the main hearing of the case. The advocate shall also give the aggrieved person such additional assistance and support as is natural and reasonable in connection with the case.

The advocate shall be notified of and shall be entitled to be present at the examination of the aggrieved person by the police and the court during the investigation. The advocate is also entitled to be present at the main hearing of the case. When the hearing of the evidence is concluded, the court may decide that the advocate shall withdraw.

At the examination of the aggrieved person, the advocate is entitled to put further questions. The advocate is entitled to object to questions that are not relevant to the case or that are put in an improper manner. During the examination in court the aggrieved person must not without the court's consent consult the advocate before answering questions.

The aggrieved person's advocate shall be allowed to comment on procedural issues that concern the said person. The advocate shall further be allowed to comment on civil legal claims pertaining to the aggrieved person even when the claim is presented by the prosecuting authority.

§ 107 d. Remuneration of the aggrieved person's advocate by the State shall be determined pursuant to the provisions of section 107. If at the request of the aggrieved person an advocate is appointed whose office is outside the jurisdiction, the King may prescribe further rules concerning the extent to which additional expenses arising from such advocate's assistance shall be covered by the State.

Part III. Evidence

Chapter 10. Witnesses

§ 108. Unless otherwise provided by statute, every person summoned to attend as a witness is bound to do so and to give evidence before the court.

§ 109. Every person who has not more than 300 kilometres to travel by a regular transport service or 50 kilometres by any other means, or a corresponding distance partly by the one means and partly by the other, is bound to attend as a witness at the District Court or the City Court.

For a main hearing in the Court of Appeal the said distances shall be doubled.

The Court may extend the duty to attend when it finds this necessary.

The Court or the prosecuting authority may come to an agreement with a witness concerning his attendance when the said witness is not bound to attend or when other special reasons so indicate.

The witness is entitled to an allowance pursuant to a separate Act.

§ 109 a. The Court of Appeal and the District and City Courts may examine witnesses by distant examination.[13] The King may by regulations prescribe further rules for distant examination.

The courts may order witnesses to attend at a specified place for such examination.

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[13] Distant examination means examination of witnesses and experts by means of a telephone or videophone. (Translator's note)

Section 109 and the Courts of Justice Act, section 205, shall apply correspondingly to such examination.

§ 110. A witness shall be summoned by service of a witness summons. The summons shall specify the case and the purpose of the summons, the court, the place of sitting, and the time of attendance. It shall also contain brief information about the rules relating to allowances for witnesses and about the liability for failure to attend. As far as possible the witness should be given at least three days' notice.

If a child under 14 years of age is summoned, the witness summons shall be served on the persons responsible for the child, who shall then be responsible for the child's attendance.

§ 111. Any person who is present at the place of sitting or in its vicinity may be ordered by the court to attend without delay in order to give evidence. In an urgent case the same applies to any person who is bound to attend pursuant to section 109, first and second paragraphs.

The court may order witnesses who attend to return later.

§ 112. Any witness who assumes that he has a valid reason for not attending shall without undue delay notify the court accordingly.

§ 113. Every attempt shall be made to avoid unnecessary inconvenience or waste of time in relation to witnesses.

§ 114. If a serviceman who is serving with an established military unit is summoned as a witness, his immediate superior shall be so informed by means of a copy of the witness summons.

If any person who is deprived of his liberty is summoned, the authority who decides whether he may be brought before the court shall be informed by means of a copy of the summons.

If a person under 18 years of age is summoned as a witness, the persons responsible for him shall usually be so informed by means of a copy of the summons.

Any person who has been informed of a witness summons is bound to ensure that the witness is as far as possible enabled to attend, and shall immediately notify the court if this cannot be done.

§ 115. The court may decide that a witness who fails to attend or who leaves the place of sitting without a valid reason shall be brought before the same or a subsequent sitting of the court. In special cases the court may decide that a witness shall be detained in custody until he can be examined.

If a witness attends in an intoxicated state, the court may decide that he shall be detained in custody until he is sober.

§ 116. The court may order a witness to bring with him documents or other objects that the said witness is bound to produce.

The court may order a witness to refresh his knowledge of the case, e.g., by examining registered account details, accounting materials, letters, documents and objects that are available to the said witness without special inconvenience, and to make notes and bring them to court.

§ 117. The court may not receive evidence concerning anything that is being kept secret in the interests of national security or relations with a foreign State unless the King so permits.

Unless otherwise specified in the said permission, the evidence shall only be communicated to the court and to the parties at a sitting in camera and under an order to observe a duty of secrecy.

§ 118. The court may not receive any evidence that the witness cannot give without breaching a statutory duty of secrecy that he has as a consequence of service or work for the State or a municipality, a supplier of access to a telecommunications network or of telecommunication services unless the Ministry so consents. Consent may only be refused when the revelation may be detrimental to the State or public interests or have unfair consequences for the person who is entitled to preservation of secrecy.

After giving due consideration to the duty of secrecy, on the one hand, and to the clarification of the case, on the other, the court may by order decide that the evidence shall be given even though consent has been refused, or that evidence shall not be received even though the Ministry has consented. Before making such a decision, the court shall give the Ministry an opportunity to give an account of the reasons for its point of view. This account shall not be communicated to the parties.

The provision in section 117, second paragraph, shall apply correspondingly.

§ 119. Without the consent of the person entitled to the preservation of secrecy, the court may not receive any statement from clergymen in the state church, priests or pastors in registered religious communities, lawyers, defence counsel in criminal cases, conciliators in matrimonial cases, medical practitioners, psychologists, chemists, midwives or nurses about anything that has been confided to them in their official capacity.

The same applies to subordinates and assistants who in their official capacity have acquired knowledge of anything that has been confided to the persons mentioned above.

This prohibition no longer applies if the statement is needed to prevent an innocent person from being punished.

If the person who is entitled to the preservation of secrecy does not consent to the examination taking place in public, the statement shall only be communicated to the court and to the parties at a sitting in camera and subject to an order to observe a duty of secrecy.

§ 120. Without the consent of the person entitled to the preservation of secrecy, the court may not receive any evidence concerning the subject-matter of negotiations or evidence in regard to which those present are subject to a duty of secrecy imposed by a court pursuant to statute.

The provisions of section 119, second and fourth paragraphs, shall apply correspondingly.

§ 121. Even if the matter does not come under section 119, the court may exempt a witness from answering questions concerning anything that has been confided to him in the course of spiritual guidance, social welfare work, legal aid pursuant to section 218, second paragraph, of the Courts of Justice Act, or any similar activity. The witness may in all cases require that any evidence concerning such matters shall only be communicated to the court and to the parties at a sitting in camera and subject to an order to observe a duty of secrecy.

§ 122. The spouse, relatives in a direct line of ascent or descent, siblings and equally close relatives by marriage of the person charged are exempted from the duty to testify. The spouse of a relative by marriage is also regarded as such a relative.

The provision concerning spouses also applies to divorced persons and persons who live together in a marriage-like relationship. An adoptive relationship is deemed to be equivalent to a family relationship.

The court may exempt the fiancé(e), foster parents, foster children or foster siblings of the person charged from the duty to testify.

§ 123. A witness may refuse to answer questions when the answer may expose the witness or anyone to whom the witness has any such relationship as is mentioned in section 122, first or second paragraph, to any penalty or loss of civil esteem. The court may exempt the witness in the event of any risk of a considerable material loss of any other kind when on consideration also of the nature of the case, the significance of the evidence for the clarification of the case, and other circumstances, it would be unreasonable to order the witness to give evidence.

The court may exempt the witness from answering questions affecting his or her fiancé(e), foster parents, foster children, or foster siblings in the manner specified in the first paragraph.

§ 124. A witness may refuse to answer questions that cannot be answered without revealing business or industrial secrets.

The court may nevertheless order the witness to give evidence when, after balancing the conflicting interests, the court finds this necessary. In this case the court may decide that the evidence shall only be communicated to the court itself and to the parties at a sitting in camera and subject to an order to observe a duty of secrecy.

§ 125. The editor of a printed publication may refuse to answer questions concerning who is the author of an article or report in the publication or the source of any information contained in it. The same applies to questions concerning who is the source of other information that has been confided to the editor for use in his work.

Other persons who have acquired knowledge of the author or the source through their work for the publishers, editors, press agency or printers in question have the same right as the editor.

The court may nevertheless order the witness to give evidence when it finds it particularly important that such evidence be given. The court shall balance the conflicting interests and in doing so shall, inter alia, attach importance to the nature of the case and the significance of the evidence for the clarification of the case. The provisions of section 124, second paragraph, second sentence, shall apply correspondingly. Such evidence may be required to be given when the article or report in question contains information that must be assumed to have been given in criminal breach of the duty of secrecy, or when the witness is reluctant to give as complete information about the matter as he can obtain from the author or source without revealing who it is.

These provisions apply correspondingly to any director or employee of any broadcasting agency.

§ 126. When evidence is only required concerning questions that the witness cannot answer without permission or consent, the witness should not as a rule be summoned until the necessary permission or consent has been given unless there is reason to assume that the witness can be ordered to give evidence pursuant to section 118, second paragraph.

If a witness is summoned who is entitled to refuse to give evidence concerning the matter that will be asked about, the witness summons may include a notice that attendance is unnecessary if the witness is determined to refuse to give evidence.

If a witness notifies the court in good time before the sitting that he will refuse to give evidence, the witness summons shall be recalled if such refusal is found to be justified.

§ 127. If the court assumes that a witness who has been called is not entitled to give evidence or to answer a question or may refuse to do so, the court shall draw his attention to this point.

If a witness asserts that he is not entitled or bound to give evidence, he must adduce a probable reason. In the absence of other evidence it is sufficient that the witness substantiates this with an affirmation.

If a person who could have refused to give evidence has begun to do so, he may nevertheless refuse to continue or to make an affirmation.

§ 128. Before the examination the president of the court shall admonish the witnesses to tell the whole truth without concealing anything. He shall inform the witnesses of the liability consequent on giving false evidence or making a false affirmation.

When a child under 16 years of age is examined as a witness, the child’s parents or a person responsible for the child should be allowed to be present at the examination unless the person concerned has been reported in connection with the case or there are other reasons to the contrary. Any such person who accompanies the child to the court is entitled to an allowance at the rate fixed for witnesses.

§ 129. Witnesses shall be examined individually. They should not, as a rule, listen to the proceedings in the case before they have been examined in the main hearing.

Witnesses may be confronted with each other when their evidence so justifies. This should not as a rule be done before the main hearing.

§ 130. The president of the court shall ask the witness his name, date of birth, occupation, place of residence and relationship to the person charged and the aggrieved person. Instead of his place of residence, the witness may state his workplace. If it is necessary, the president of the court may order the witness to state his place of residence to the court. If there is special reason to do so, the witness shall also be asked about other circumstances that may affect the assessment of his evidence.

§ 131. Before evidence is given, the president of the court shall ask the witness: "Do you affirm that you will tell the plain and whole truth and not conceal anything?" To this question the witness shall reply standing: "I do so affirm."

§ 132. An affirmation shall not be made by:

1) a witness who is under 14 years of age, or who by reason of mental deficiency or other causes cannot have any clear understanding of the meaning of an affirmation,

2) a witness who is or is suspected of being guilty or an accomplice in matters affected by the case,

3) a witness who may claim exemption from the duty to give evidence.

§ 133. Witnesses shall give evidence orally. The witness shall be encouraged to state coherently as far as possible what he knows about the matter to be proved. Afterwards specific questions may be asked. The witness shall be requested to reveal the source of his knowledge. If a person or object is to be presented to a witness for recognition, the said witness shall first be encouraged to give as exact a description as possible.

The witness may use notes containing figures or any other information to refresh his memory. The witness must state who has made the notes, when this was done, and the purpose for which they were made. Any statement or account that has been written with the case in mind may only be read out when the nature of the evidence so requires.

§ 134. Evidence as to a witness's character or to weaken or strengthen a witness's credibility in general may only be produced in the manner and to the extent the court so permits. This also applies to the production of evidence concerning a witness's previous sexual conduct. Such evidence should be rejected when it is assumed not to be of essential significance. Counter-evidence must always be permitted.

Any questions as to whether the witness has previously been convicted shall, as a rule, be put and answered in writing. The court may rule that the same procedure shall be used in relation to other questions concerning the witness's person or private life.

Written statements concerning a witness's good or bad name and reputation are inadmissible.

§ 135. Each party shall examine the witnesses who are summoned at his request. When the said party has finished examining a witness, the opposite party may further examine the said witness, and subsequently additional questions from both sides may be addressed to the

witness if the president of the court so permits. When the parties have finished their examinations, the members of the court may ask questions.

If neither the prosecuting authority nor defence counsel appears, the president of the court shall conduct the examination. If either the prosecuting authority or defence counsel does not appear, the president of the court shall conduct the examination in his place.

Witnesses summoned by the court of its own motion shall be examined by the president of the court if he does not find reason to leave the examination to the parties.

§ 136. The court shall ensure that the examination is conducted in a manner that is designed to elicit a clear and truthful statement and that shows reasonable consideration for the witness.

Questions that by their form or content prompt an answer in a specific direction must not be asked unless this is done to test the reliability of information that the witness has previously given or it is justifiable to do so for other special reasons.

Questions that are not pertinent to the case shall be rejected. The president of the court shall take over the examination if it is conducted in an unsatisfactory manner or other reasons so indicate.

§ 137. If a witness refuses to give evidence after being ordered to do so by a legally enforceable court order, the court may by a new order decide that the witness shall be kept in custody until he fulfils his obligation. Nevertheless a witness may not be kept in custody for more than three months altogether in the same case or in another case relating to the same matter.

Chapter 11. Experts

§ 138. Any person appointed by the court to serve as an expert is bound to undertake the task.

Before the court appoints any person to serve as an expert, it should, as a rule, ask him whether he is willing to do so. If he declares himself to be unwilling, he should not be appointed if it is possible to appoint someone else.

An expert is entitled to remuneration pursuant to a separate Act.

§ 139. One expert shall be appointed unless the court finds that the case requires two or more experts.

The court may appoint new experts besides that or those first appointed when it finds this necessary.

§ 140. The King may engage experts to serve on a permanent basis in regard to certain kinds of issues.

The permanent experts shall serve unless special circumstances otherwise indicate.

§ 141. Before the court appoints experts, it shall give the parties an opportunity to express their views when this can be done without jeopardising the clarification of the case and without disproportionate delay. If the parties propose the same experts, the latter shall, as a rule, be appointed when they declare themselves to be willing to serve.

The King will prescribe further rules concerning how the court shall proceed in appointing experts in cases in which information will be given that according to the Security Instructions may only be made known to persons who are specially authorised.

§ 142. When it can be avoided, no person should be appointed as an expert who pursuant to section 106 or section 108 of the Courts of Justice Act would be disqualified to serve as a judge.

As a rule persons who have an interdependent relationship to each other should not be appointed as experts.

§ 143. If the experts desire assistance in order to obtain information from the parties or other persons, they may apply to the court. If they have collected information on their own initiative, this should appear from their report.

As a rule the experts shall submit a written report either jointly or individually.

The experts may be summoned to give oral evidence before the court, either instead of submitting a written report or in order to elucidate it further. They are bound to attend subject to the same rules as apply to witnesses.

§ 144. The experts shall be examined according to the rules applicable to witnesses, but they may be present throughout the proceedings. The court may allow them to put questions to the parties, witnesses, and other experts, and to consult each other before they answer.

§ 145. Before an expert gives evidence in court, he shall confirm by affirmation that he has performed and will perform his task conscientiously and to the best of his convictions. If an expert takes part in judicial inquiry proceedings, he shall make the affirmation before the inquiry begins.

§ 146. A commission of forensic medicine shall be established for the whole realm to act as a guiding body in questions of forensic medicine. Its members shall be appointed by the King. The commission may be divided into several departments.

The King will prescribe further rules for the commission and its working procedure.

§ 147. Every person who serves as an expert in questions related to forensic medicine shall immediately send to the commission of forensic medicine a copy of the written report he makes to the court or to the prosecuting authority. This shall not apply to provisional reports pursuant to section 165, third paragraph.

If in the course of the main hearing the expert gives evidence which diverges from the written report or supplements it on any substantial point, he shall send a summary of his oral evidence to the commission of forensic medicine.

The commission shall examine the reports and comments received. If it finds essential defects, it shall bring them to the attention of the court or the prosecuting authority as the case may be.

§ 148. The prosecuting authority may seek assistance from experts for use in the criminal investigation. Experts serving on a permanent basis are bound to assist. The provisions of section 138, second paragraph, section 142 and section 147 apply correspondingly. Experts who assist the prosecuting authority are entitled to remuneration as determined by the said authority in accordance with rules prescribed by the King. The said authority's determination of such remuneration may be reviewed by the Ministry on appeal or of its own motion.

§ 149. Persons whom the parties bring before the court for examination as experts without their being so appointed shall give evidence in accordance with the same rules as apply to witnesses, but they may be present throughout the proceedings and make an affirmation according to the provisions applicable to appointed experts.

§ 149 a. In the case of distant examination[14] of experts, section 109 a, first and second paragraphs, and the Courts of Justice Act, section 208, shall apply correspondingly.

Chapter 12. Inquiry

§ 150. When an inquiry is to be held outside the main hearing, judicial inquiry proceedings may be conducted by the court of examination and summary jurisdiction.

If an inquiry is to be held for use in the main hearing, it may also be carried out by the judge who is preparing the case. The court of judgement may leave the inquiry to one or more of its members.

At the inquiry court records shall be kept pursuant to the provisions of section 24.

§ 151. The court may appoint experts to assist in the inquiry. If experts take part in the inquiry, the court invigilator[15] shall not be summoned.

§ 152. When the nature of the inquiry makes it appropriate, the court may wholly or partly leave it to experts to carry out the inquiry or give an account of the results.

The decision shall state what is to be the subject of the inquiry, the purpose of the inquiry, and the time-limit for its completion.

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[14]See footnote 13, section 109 a. (Translator's note)
[15]See footnote 4, section 18. (Translator's note)

As far as possible the court shall inform the person charged of the inquiry and the time-limit for it.

§ 153. If an inquiry is left to experts, they shall proceed in the manner they find appropriate unless the court has given them further instructions.

When it is possible, the inquiry should be conducted in such a manner that it can be verified by a new inquiry.

The experts shall submit a written report concerning the inquiry pursuant to the provisions of section 143, second paragraph. It shall appear from this report how the inquiry has been carried out, what results the experts have arrived at, and what they have based their findings on.

§ 154. When it can be done without considerable inconvenience or misgiving, the person charged is entitled to allow a privately engaged expert to take part in the inquiry or to undertake an inquiry on his own.

§ 155. When an inquiry is undertaken by experts to whom the prosecuting authority has applied for assistance, the provisions of sections 152 to 154 shall apply correspondingly.

§ 156. An inquiry relating to a house or other private area may be carried out without the consent of the owner or occupier when the conditions for a search or other inspection pursuant to the provisions of chapter 15 are fulfilled.

§ 157. Any person who with just cause is suspected of any act punishable by law with a custodial sentence may be subjected to physical examination when it is deemed to be of significance for the clarification of the case and does not amount to a disproportionate interference. Blood samples may be taken and other examinations may be carried out if they can be done without risk or considerable pain.

With the written consent of the person concerned, biological matter may be obtained for the purpose of undertaking a DNA analysis irrespective of whether there is just cause for suspicion.

These provisions shall apply even if a penalty cannot be imposed by reason of the provisions of section 44 or 46 of the Penal Code.

Without the consent of the suspected person an examination may only be carried out pursuant to a court order. As far as is possible and advisable, he shall be allowed to state his views before the decision is made.

If the purpose of the examination might otherwise be thwarted, an order from the prosecuting authority may take the place of a court order. The order shall be in writing with reasons stated. If delay entails any risk, the order may be given orally, but it shall as soon as possible be reduced to writing.

§ 158. (Repealed by Act of 14 June 1985 No. 71.)

§ 159. An inquiry shall be carried out with as much consideration as possible for those concerned.

The court may impose a duty of secrecy upon those who have taken part in an inquiry with regard to what they have observed.

§ 160. Regardless of the foregoing provisions, fingerprints and photographs of persons who are suspected or convicted of any act punishable pursuant to statute with a custodial sentence may be taken pursuant to further regulations to be prescribed by the King. The provision of section 157, third paragraph, shall apply correspondingly. Fingerprints and photographs may also be taken of persons who are to be deported or extradited to a foreign State.

§ 160 a. The King may decide that a national register of DNA profiles shall be established. Such register may contain the DNA profiles of persons who are convicted of offences or attempted offences contrary to chapters 14, 19, 22 or 25 of the Penal Code. The DNA profiles of persons who cannot be sentenced by virtue of the provisions of sections 44 and 46 of the Penal Code may also be registered. The King may prescribe more detailed provisions concerning registration in the DNA register.

Also after a case has been decided by a legally enforceable judgement, samples of blood, sperm, saliva, hair and other biological matter may be taken from persons registerable in the DNA register if the provisions of the first paragraph are fulfilled. The King may prescribe rules concerning the taking of biological samples from persons specified in the third sentence of the first paragraph after the case has been concluded.

The information contained in the register may only be used for the purpose of criminal proceedings. The King may nevertheless decide that such information may also be used for research purposes and may prescribe rules accordingly.

The King may decide that the register shall also contain information on the DNA profile of persons whose identity is unknown (registration of clues). The King may prescribe further provisions concerning the information that may be stored in the register.

The King may prescribe rules concerning the implementation of this section, including registration and use of the register, deletion of information contained in the register, and access and complaints procedures for persons registered therein.

Chapter 13. Social inquiry and mental observation

§ 161. When it is deemed to be of significance for deciding on a penalty or other precautions, a social inquiry relating to the person charged shall normally be carried out.

The purpose of such inquiry is to obtain information concerning the personality, social circumstances and future prospects of the person charged for use in deciding the case. If the question of imposing a community service order arises, an attempt shall as far as necessary be made in the social inquiry to clarify whether the person charged is suitable for such a penalty and what sort of work is appropriate.

The King may prescribe further regulations concerning when a social inquiry shall be carried out and the procedure to be followed in such inquiries.

§ 162. The prosecuting authority may decide on a social inquiry when the person charged has made a confession, or when he consents to the inquiry, or when the inquiry is to be used at the hearing of an appeal against the sentence or other precautions. Otherwise any such decision shall be made by the court.

§ 163. A social inquiry shall be carried out by a suitable person selected by the appropriate local probation office, unless the court appoints a specific person to carry out the inquiry.

No person may serve as a social inquiry officer if he would be disqualified to serve as a judge pursuant to section 106 or 108 of the Courts of Justice Act.

§ 164. The social inquiry officer shall as a rule submit a written report. He may also be summoned to give evidence before the court of judgement, either instead of submitting a written report or in order to provide further explanation.

When a social inquiry officer is summoned before the court, he shall be examined according to the rules relating to witnesses, but he may be present throughout the proceedings. The provision of section 145, first sentence, shall apply correspondingly.

§ 165. If the court finds it necessary for deciding the case, it may order that the person charged shall be subjected to mental observation by appointed experts.

When an application has been made for mental observation of a person charged who denies having committed the act that the case is concerned with, the court may decide that no decision shall be made with regard to the said application until that particular issue has been decided. The power to decide any such postponement nevertheless does not apply in cases that are to be tried by the Court of Appeal. Otherwise any such decision should normally only be made if the court finds that a postponement of the observation is desirable in the interests of the person charged, and that such postponement gives no grounds for concern regarding the clarification of the case. The decision may be reversed at any time.

If there is any doubt whether mental observation is necessary, the prosecuting authority or the court may decide to obtain a provisional report from an expert as a matter of guidance.

§ 166. If the person charged is in prison, the observation may be carried out during his stay there.

When a person charged who is at liberty does not comply with a summons to present himself for observation by an appointed expert, he may be brought before the said expert by the police. Pursuant to an order of the court he may be detained in custody until he can be brought before the said expert. The same applies if he attends in an intoxicated state.

§ 167. If it is necessary in order to judge the mental state of the person charged, the court may, after hearing counsel for the defence and the appointed experts, order the person charged to be committed for observation at a psychiatric hospital or other suitable place of observation. The court shall at the same time fix a time-limit for the duration of the commitment.

If the person charged is sentenced, the period of commitment shall be deducted from the sentence according to the rules applicable to remand in custody. This also applies when the person charged has allowed himself to be committed for observation without a court order.

§ 168. In so far as it does not conflict with their duty of secrecy, public authorities and civil servants shall assist social inquiry officers and experts with such information as they require for use in the case.

§ 169. A social inquiry or mental observation shall be carried out in such a way that it causes no unnecessary inconvenience or offence to the person charged or other persons. The same rule shall be followed when the inquiry or observation is used as evidence in the case.

§ 170. A social inquiry officer or expert must not disclose to any unauthorised person anything he learns about private matters during his work.

Any breach of the duty of secrecy shall be punishable in accordance with section 121 of the Penal Code.

Part IV. Coercive measures

Chapter 14. Arrest and remand in custody

§ 171. Any person who with just cause is suspected of one or more acts punishable pursuant to statute with imprisonment for a term exceeding 6 months, may be arrested when:

1) there is reason to fear that he will evade prosecution or the execution of a sentence or other precautions,

2) there is an immediate risk that he will interfere with any evidence in the case, e.g. by removing clues or influencing witnesses or accomplices,

3) it is deemed to be necessary in order to prevent him from again committing a criminal act punishable by imprisonment for a term exceeding 6 months,

4) he himself requests it for reasons that are found to be satisfactory.

When proceedings relating to preventive supervision have been instituted, or it is probable that such proceedings will be instituted, an arrest may be made regardless of whether a penalty may be imposed, as long as the conditions in the first paragraph are otherwise fulfilled. The same applies when a judgement in favour of preventive supervision has been pronounced or the question of extending the maximum period for preventive supervision arises.

§ 172. When a person is suspected of a felony punishable by imprisonment for a term of 10 years or more, or of an attempt to commit such a felony, he may be arrested if he has made a confession or there are other circumstances that strengthen the suspicion to a marked degree, even though the conditions of section 171 are not fulfilled. Any increase of the maximum penalty because of any repetition or concurrence of felonies shall not be taken into account.

§ 173. Any person who is caught in the act and does not desist from the criminal activity may be arrested without regard to the penalty imposable.

The same applies to any suspect who is not known to have a permanent place of residence in the realm, when there is reason to fear that he will, by fleeing abroad, evade prosecution or the execution of a sentence or other precautions.

§ 174. An arrest pursuant to sections 171 to 173 shall not be made when it would be a disproportionate intervention in view of the nature of the case and other circumstances.

Persons under 18 years of age should not be arrested unless it is especially necessary.

§ 175. A decision to arrest is made by the prosecuting authority. The decision shall be in writing and shall contain a description of the suspect, a short account of the criminal act, and the reason for the arrest. If delay entails any risk, the decision may be made orally, but shall then be written down as soon as possible.

A decision to arrest may be made by the court if the suspect is staying abroad and the prosecuting authority wishes to apply for his extradition, or if the circumstances otherwise so indicate.

The decision shall be executed by the police or by some person who has been so requested by the prosecuting authority.

§ 176. When delay entails any risk, a policeman may make an arrest without a decision of the court or of the prosecuting authority. The same applies to anyone else if the suspect is caught in the act or pursued when so caught or on finding fresh clues.

Any person not being a member of the police who has made an arrest shall immediately hand over the person arrested to the police.

§ 177. Any person who is arrested shall be informed of the offence of which he is suspected. If there is a written decision for his arrest, he shall be given a copy of the decision.

§ 178. An arrest shall be made as considerately as the circumstances allow.

Anything that the person arrested may use for violence or for making his escape shall be taken from him. For this purpose he may be searched.

§ 179. When any person is arrested without a decision of the court or of the prosecuting authority, the question of ratifying the arrest shall as soon as possible be submitted to one of the officials of the prosecuting authority. If he finds that the arrest should be ratified, he shall issue a written decision containing such details as are specified in section 175, first paragraph.

§ 180. Any person who is arrested shall as soon as possible be permitted to make a statement to the police pursuant to the provisions of sections 230, 232, and 233.

§ 181. The prosecuting authority may forgo an arrest or release the person arrested on condition that he promises to present himself to the police at specified times or not to leave a specified place. The same applies when the suspect consents to other conditions, such as handing over his passport, driving licence, sea service book, record of service, or the like. The promise or consent shall be given in writing.

The suspect may immediately or subsequently require the question to be submitted to the court whether the conditions for arrest pursuant to sections 171 to 173 have been fulfilled, and whether there is good reason to ratify the measures that have been taken. He shall be informed of this right when giving any promise or consent pursuant to the first paragraph.

The decision of the court shall be made by order.

§ 182. When an arrest is made, the prosecuting authority shall ensure that the arrested person's household or any other person he specifies shall be duly notified. If the arrested person does not so wish, no such notification shall be given unless there are special reasons for doing so.

The said notification may be dispensed with if it is deemed that it would be essentially detrimental to the investigation. In this case the question shall be submitted to the court the first time the arrested person is brought before it.

§ 183. If the prosecuting authority wishes to detain the person arrested, it must, as soon as possible and as far as possible on the day following the arrest, bring him before a court of examination and summary jurisdiction at the place where it is most appropriate to do so, with an application that he be remanded in custody. If an arrested person is not brought before a court of examination and summary jurisdiction on the day after the arrest, the reason for this shall be noted in the court record.

The prosecuting authority shall attend the court unless this would entail disproportionate inconvenience.

In a case concerning any violation of chapter 8 or 9 of the Penal Code or the Act of 18 August 1914 relating to defence secrets, the time-limit for bringing an arrested person before a court is one week from the date of the arrest. The second sentence of the first paragraph applies correspondingly.

§ 184. The court of examination and summary jurisdiction before which the arrested person is brought shall by order decide whether he shall be remanded in custody. The decision shall as far as possible be made before the court concludes its sitting.

A remand in custody may be ordered if the conditions prescribed in sections 171, 172 or 173, second paragraph, are fulfilled and the purpose cannot be achieved by measures pursuant to section 188. The provisions of section 174 shall apply correspondingly. The order shall state the statutory authority, briefly mention why just cause for suspicion is deemed to exist, and otherwise explain the reason for the remand in custody.

Without a preceding arrest the court may on application make an order for the remand in custody of a suspect who is present in court. Before any such decision is made, he shall be given an opportunity to speak.

After an indictment has been preferred, also the court dealing with the case may order a remand in custody or a release.

Any order for a remand in custody or a release may at any time be reversed.

§ 184 a. Before the question of a remand in custody is decided, the court shall ensure that the person charged is fully informed as to what the charge and the application for a remand in custody entail.

On being remanded in custody the person charged shall be given written information about the order and what it entails pursuant to further rules made by the Ministry concerned.

If the person charged is present in court when the order for a remand in custody is made, he shall also be given oral information by the judge.

§ 185. If the court decides to remand the person charged in custody, it shall at the same time fix a specific time-limit for such custody if the main hearing has not already begun. The time-limit shall be as short as possible and must not exceed four weeks. It may be extended by order by up to four weeks at a time. If the nature of the investigation or other special circumstances indicate that a review of the order after four weeks will be pointless, the court may fix a longer time-limit. If the main hearing has begun when the person charged is remanded in custody or when the time-limit for the custody expires, the person charged may be kept in custody until judgement is delivered.

If an application for extended custody is made, the prosecuting authority shall state when the investigation in the case is expected to be completed. The date shall be entered in the court record.

The person charged is entitled to be present in court when the question of an extension of the time-limit for custody is dealt with. If the court finds it necessary, the person charged shall be brought before it even though he does not wish to attend.

The prosecuting authority shall submit an application for extension early enough for the person charged and his defence counsel to be notified not later than the day before the court sitting is held. The prosecuting authority shall notify the parties of the sitting within the said time-limit. The prosecuting authority should attend unless it is deemed unnecessary to do so under the circumstances.

If the court at any time finds that the investigation is not proceeding as quickly as it should, and that a continued remand in custody is not reasonable, the court shall release the person charged.

§ 186. A person who is arrested or remanded in custody is entitled to unrestricted written and oral communication with his official defence counsel.

Otherwise the court, to the extent that due consideration for the investigation of the case so indicates, may by order decide that the person in custody shall not receive visits or send or receive letters or other consignments, or that visits or exchange of letters may only take place under police control. This shall not apply to correspondence with and visits from any public authority unless expressly provided in the order. The court may also decide that the person in custody shall not have access to newspapers or broadcasts.

Otherwise the provisions of chapter V of the Prison Act shall apply.

§ 187. If the person charged is on remand in custody when an immediate sentence of imprisonment is passed on him, he may continue to be held in custody for up to four weeks after the passing of the sentence unless the court otherwise decides. The question of extension of custody shall be decided by a court of examination and summary jurisdiction pursuant to the provisions of section 185.

If the person charged is acquitted, he shall be released immediately. The same applies when he receives a suspended sentence or is only sentenced to pay a fine or to a term of imprisonment that has been served by virtue of the time he has spent on remand in custody. If notice of appeal is given on the spot, the court that has pronounced judgement may, when special reasons so indicate, by order decide that the person charged may be kept in custody for a specified period. The question of any subsequent extension of the custody shall be decided by a court of examination and summary jurisdiction pursuant to the provisions of section 185.

§ 187 a. A person who is remanded in custody shall be released as soon as the court or the prosecuting authority finds that the grounds for the remand in custody no longer apply, or when the time-limit for the custody has expired.

§ 188. Instead of a remand in custody the court may decide on such measures as are prescribed in section 181, or on the provision of security in the form of a surety, deposit or mortgage of property.

The provisions of sections 184, 185 and 187 shall apply correspondingly.

§ 189. A person who provides security pursuant to section 188 shall sign a statement concerning the provision of security and the conditions on which the security shall be deemed to be forfeited.

Whether the security provided has been forfeited shall be decided by a court order after all interested parties have as far as possible been given an opportunity to be heard. If the person charged has absconded, but either voluntarily returns or is arrested within one month, the court may decide that the liability shall be reduced or entirely remitted.

Any security that is forfeited accrues to the State. Nevertheless, if the person charged is without means, the aggrieved person's claim for damages or redress shall be met first.

§ 190. Any security that is not forfeited and other precautions that have been taken instead of a remand in custody cease to apply when the person charged has been returned to custody.

A surety is also released when he returns the person charged to custody or has renounced his suretyship in such time as to allow the person charged to be taken into custody. The same applies when the person charged of his own accord submits himself to custody, or when judgement is delivered and there has been sufficient time to effect execution.

§ 191. (Repealed by Act of 4 August 1995 No. 53.)

Chapter 15. Search, etc.

§ 192. If any person is with just cause suspected of any act punishable pursuant to statute with imprisonment, a search may be made of his residence, premises or storage place in order to undertake an arrest or to look for evidence or objects that may be seized.

A search may be made on any other persons' premises when there is just cause for suspecting such an act, and

1) the act has been committed or the suspect arrested there,

2) the suspect has been there under pursuit when caught in the act or on finding fresh clues, or

3) there are otherwise special grounds to assume that the suspect can be arrested, or evidence can be found or objects seized there.

§ 193. Regardless of whether the conditions prescribed in section 192 are fulfilled, for the purpose of a criminal investigation a search may be made of any buildings or premises that by their nature are accessible to all, or are the site of any activity that requires the permission of the police.

In the same way a search may be made of barracks, military vessels, and military buildings and premises. Any person who shall carry out such a search is first obliged to inform the local military commander.

§ 194. If the suspicion relates to an act punishable pursuant to statute with imprisonment for a term of 8 years or more, a search may be made of all houses or premises in a specified area if there are grounds to assume that the offender may be hiding in the area, or that evidence or objects liable to seizure may be found there.

§ 195. If any person is with just cause suspected of an act punishable pursuant to statute with imprisonment, he may be subjected to a personal search if there are grounds to assume that it may lead to the discovery of evidence or of objects that may be seized.

A personal search may be made of persons other than the suspect when the suspicion relates to an act punishable pursuant to statute with imprisonment for a term exceeding six months, and special circumstances warrant the making of such a search.

§ 196. A search pursuant to the foregoing provisions may be made even though the suspect may not be convicted and sentenced because of the provisions of section 44 or 46 of the Penal Code.

§ 197. Without the written consent of the person concerned, a search pursuant to sections 192, 194 and 195 may only be made pursuant to a court decision.

If delay entails any risk, the decision may be made by the prosecuting authority. In the event of a search of editorial offices, the prosecuting authority may only make such a decision if it is probable that the investigation will be considerably impaired by waiting for a court decision.

Any decision pursuant to the first or second paragraph shall as far as possible be in writing and specify the nature of the case, the purpose of the search, and what it shall include. An oral decision shall be reduced to writing as soon as possible.

§ 198. Without a decision as specified in section 197 a police officer may make a search:

1) of a place specified in section 193,

2) when the suspect is caught in the act or pursued when so caught or on finding fresh clues, or

3) when there is strong suspicion of an act punishable pursuant to statute with imprisonment for a term exceeding six months, and there is an immediate risk that the purpose of the search will otherwise be thwarted.

A personal search of persons other than the suspect may nevertheless not be made without consent or a decision as specified in section 197.

A police officer who pursuant to a decision of the prosecuting authority or a court shall arrest a suspect may for this purpose make a search of his residence or premises or of any place where there is special reason to assume that he is staying.

§ 199. The search should be conducted by the police as far as possible in the presence of a witness who must not be disqualified according to the provisions of section 110, second paragraph, of the Courts of Justice Act.

A report of the search shall be drawn up on the spot or as soon as possible and it shall be co-signed by the witness.

§ 200. Before the search is begun, the decision shall be read aloud or produced. If there is no written decision, information shall be given of the nature of the case and the purpose of the search.

If any person’s residence or premises are to be searched, the said person or - in his absence - one of his household or a neighbour shall be summoned when this can be done without delay. If necessary, access may be gained by force. Anything that has been broken open shall, as far as possible, be secured again after the search.

§ 201. The search shall be conducted as considerately as the circumstances permit. Only in urgent cases should a search be conducted on public holidays or at night (between 2100 and

0600 hours) except in the case of a building or premises to which there is general access also at such times.

When considerations of modesty so require, a personal search shall be conducted by a person of the same sex as the person being searched.

§ 202. Inquiries for the purpose of a criminal investigation at a place of another kind than that specified in section 192 may without the consent of the owner or occupier be made pursuant to a decision of the court, the prosecuting authority or - if delay entails any risk - a police official.

§ 202a. If there is just cause to suspect that one or more criminal acts punishable pursuant to statute with imprisonment for a term exceeding six months have been committed, the police may carry out concealed video surveillance of a public place as specified in section 390 b of the Penal Code if such surveillance will be of essential significance for the investigation. Section 196 shall apply correspondingly.

A decision concerning video surveillance pursuant to the first paragraph shall be made by the court. Permission shall be given for a specific period which shall not be longer than is strictly necessary and shall not exceed four weeks.

The decision shall be made without the person charged or any person otherwise affected by the decision being given the opportunity to express his views, and they shall not be notified of the decision.

Chapter 16. Seizure and surrender order

§ 203. Objects that are deemed to be significant as evidence may be seized. The same applies to objects that are deemed to be liable to confiscation or to a claim for surrender by an aggrieved person.

§ 204. Documents or anything else whose contents a witness may refuse to testify about pursuant to sections 117 to 121 and 124 to 125, and which are in the possession either of a person who can refuse to testify or of a person who has a legal interest in keeping them secret, cannot be seized. In so far as a duty to testify may be imposed in certain cases pursuant to the said provisions, a corresponding power to order seizure shall apply.

The prohibition in the first paragraph does not apply to documents or anything else that contains confidences between persons who are suspected of being accomplices to the criminal act. Nor does it prevent documents or anything else being removed from an unlawful possessor to enable them to be delivered to the person entitled thereto.

§ 205. A decision relating to the seizure of objects that the possessor will not surrender voluntarily may be made by the prosecuting authority. The decision shall as far as possible be in writing and specify the nature of the case, the purpose of the seizure, and what it shall

include. An oral decision shall as soon as possible be reduced to writing. The provisions of section 200, first paragraph, shall apply correspondingly.

When the prosecuting authority finds that there are special grounds for doing so, it may bring the question of seizure before a court of summary jurisdiction. The provisions of the second to the fourth sentences of the first paragraph of this section and of section 209 shall apply correspondingly to the court's decision relating to seizure. The provisions of the first and third paragraphs of section 208 shall also apply when seizure has been decided on by the court pursuant to this paragraph.

Documents or anything else that the possessor is not obliged to testify about except by special order of the court may not be seized without a court order unless such a special order has already been made. If the police wish to submit documents to the court for a decision as to whether they may be seized, the said documents shall be sealed in a closed envelope in the presence of a representative of the possessor.

§ 206. Without a decision of the prosecuting authority a police officer may effect a seizure when he carries out a decision for search or arrest, and otherwise when delay entails a risk. Seizure may be effected by any person when the suspect is caught in the act or pursued when so caught or on finding fresh clues.

The seizure shall immediately be reported to the prosecuting authority. If the latter finds that the seizure should be ratified, it shall issue a written decision containing such information as is specified in the second sentence of the first paragraph of section 205.

§ 207. All objects seized shall be accurately recorded and marked in such a way as to avoid confusion.

As far as possible, a receipt shall be given to the person who had the object in his possession.

§ 208. Every person who is affected by a seizure may immediately or subsequently require the question whether it shall be ratified to be brought before a court. The prosecuting authority shall ensure that any such person shall be informed of this right.

The provision of the first sentence of the first paragraph shall apply correspondingly when any person who has voluntarily surrendered any object for seizure demands it back.

The decision of the court shall be made by an order.

§ 209. Seizure may be waived on condition that an assurance is given or security provided that the object will be produced or surrendered on request.

§ 210. A court may order the possessor to surrender objects that are deemed to be significant as evidence if he is bound to testify in the case. The provisions of section 137 and of section 206 of the Courts of Justice Act shall apply correspondingly.

§ 211. Any letter, telegram or other postal item that is in the possession of a postal operator or any telecommunication operator may be seized under a court order if the said item is liable to seizure in the hands of the receiver pursuant to the provisions of sections 203 and 204, and the suspicion relates to an act punishable pursuant to statute with imprisonment for a term exceeding six months.

If delay entails any risk, the prosecuting authority may order the controller of any post or telegraph office to withhold such items until the court has made its decision but not for more than one week.

§ 212. Any mail or telegram that is seized pursuant to the provisions of section 211 may not be opened and examined by persons other than the judge unless the sender consents thereto in writing.

Any postal item that proves to be of no significance in the case shall immediately be forwarded to the addressee. Otherwise the documents shall be surrendered to the prosecuting authority for further action in accordance with the purpose of the seizure. If only a part of the postal item is of significance, the remainder shall be forwarded. The receiver and sender shall be informed of what has been opened and what is being kept under seizure if this may be done without detriment to the investigation.

§ 213. If before the case is finally decided it appears that there is no longer any need for the seizure, it shall be terminated by the prosecuting authority or the court.

Otherwise the seizure shall lapse when the case is finally decided. The court may decide that a seizure of items of evidence shall be ratified even after a legally enforceable judgement has been delivered in the case in so far as and so long as there are grounds to expect that a petition for the case to be reopened may be submitted or other special circumstances so indicate.

§ 214. Objects of which any person has been deprived by a criminal act shall be surrendered to the aggrieved person when the seizure has lapsed. If it is disputed who is entitled to the object, the court shall by order decide whether the said object shall be withheld until there has been an opportunity to have the issue decided by a judgement or whether the object shall be surrendered immediately either subject to or without security being provided.

Other objects shall be returned to the person from whom they have been seized when the seizure lapses. If any other person claims to have the object surrendered to him, the provisions of the second sentence of the first paragraph shall apply correspondingly.

§ 215. The King may prescribe further regulations for the implementation of the provisions of sections 211 and 212.

§ 216. In order to secure evidence the prosecuting authority, or in urgent cases a police officer, may close a building or premises, close off a specific area, prohibit the moving or touching of specific objects, or take similar precautions. The provisions of the first and the last sentence of section 208 shall apply correspondingly.

Chapter 16 a. Telephone control in drug cases

§ 216 a. When any person is with just cause suspected of an act or attempted act that contravenes the Penal Code section 162 or section 317 cf. section 162, the court may make an order permitting the police to listen in to conversations conducted to and from specified telephones, telex apparatus or similar telecommunication apparatus which the suspect possesses or may be expected to use.

The provisions concerning telephone control apply even though a penalty may not be imposed because of the provisions of section 44 or section 46 of the Penal Code.

§ 216 b. If the court finds that there is just cause for suspecting that an act specified in section 216a, first paragraph, has been committed, the court may by order decide that the transmission of conversations to or from specified telephones which the suspect possesses or may be expected to use shall be discontinued or interrupted. Moreover, the court may by order decide that the telephones shall be closed to conversations or that the manager of a telephone agency shall inform the police concerning which telephones shall be or have been connected with a specific telephone during a specific period of time.

The provisions of section 216a, second paragraph, shall apply correspondingly.

§ 216 c. Permission to carry out telephone control may only be given if it must be assumed that such listening-in or control will be of essential significance for the clarification of the case and that such clarification will otherwise be made considerably more difficult.

If the telephone that the suspect is expected to use is available to a large number of persons, permission for telephone control may only be given if there are special grounds for doing so. The same applies to the control of a telephone belonging to a lawyer, medical practitioner, priest or other persons who, as experience shows, conduct conversations of a very confidential nature over the telephone, provided that any such person is not himself a suspect in the case.

§ 216 d. If the investigation will be impaired by delay, an order from the prosecuting authority may take the place of a court order, but not for more than 24 hours. If the time-limit expires on a Saturday, public holiday, or day that is by statute equated with a public holiday, the time-limit shall be extended to the same hour on the nearest subsequent weekday. The decision of the prosecuting authority shall as soon as possible be submitted to the court for approval.

When the police make decisions or request the court’s consent in regard to telephone control pursuant to this chapter, the decision shall be made by the chief of police or deputy chief of police. In the absence of the chief of police his or her permanent deputy may make the decision. The chief of police may, with the written consent of the senior public prosecutor, decide that other officials of the prosecuting authority in

leading positions shall also have the same power as the permanent deputy of the chief of police.

§ 216 e. The matter shall be brought before the court of examination and summary jurisdiction at the place where it is most practical to do so.

The decision shall be made without the suspect or any person otherwise affected by the decision being given the opportunity to express his views, and they shall not be notified of the order.

§ 216 f. Permission for telephone control shall be given for a specific period of time which must not be longer than is strictly necessary. Such permission may not be given for more than four weeks at a time.

The telephone control shall be stopped before the expiry of the time-limit fixed in the court order if the conditions for such control are no longer deemed to exist or if such control is no longer considered to be appropriate.

§ 216 g. The prosecuting authority shall ensure that recordings or notes made during telephone control shall as soon as possible be destroyed in so far as they are of no significance for the investigation of criminal matters or relate to statements that the court would not be able to require the person concerned to testify about pursuant to the provisions of sections 117, 118, 119, 120 and 122 unless the said person is suspected of a criminal act that comes under the penal provisions referred to in section 216a.

§ 216 h. The telephone control committee shall exercise control over the way the police and the prosecuting authority deal with cases pursuant to this Act.

The said committee shall consist of at least three members appointed by the King. One or more deputy members shall also be appointed who shall join the committee in cases of absence. The chairman of the committee shall satisfy the requirements applicable to Supreme Court judges.

The police and the prosecuting authority shall give the committee such information, documents, tape-recordings, etc. concerning telephone control in drug cases as the committee finds necessary in order to exercise control.

The committee may summon for examination any police or prosecuting authority official and also other persons who assist in telephone control. All such persons are obliged to give evidence to the committee regardless of their duty of secrecy.

The King will prescribe further rules concerning the committee's tasks and procedure.

§ 216 i. All persons shall maintain secrecy concerning any application or decision relating to telephone control in any case, and concerning any information derived from such control. The same applies to other information which is of significance for the investigation, and which they become acquainted with in connection with such control or the case. The duty of secrecy shall not prevent the information being used in the course

of investigation of criminal matters, including the examination of suspects or supplying information to the telephone control committee.

All persons shall maintain secrecy vis-à-vis unauthorised persons concerning information about any person's private affairs with which they have become acquainted in connection with telephone control.

Recordings or notes made in connection with telephone control may not be used as evidence in the main hearing. Nor may witnesses testify concerning the information derived from such control.

The suspect has no right to inspect documents concerning telephone control, or containing information derived from such control.

§ 216 j. Every person shall on application be informed whether he or she has been subjected to telephone control in a drug case pursuant to this chapter. Such information may only be given concerning telephone controls authorised after the coming into force of this provision.

Such information may be given not less than one year after the control has ceased. Information shall not be given if an indictment has been preferred and has not been dropped.

The court of examination and summary jurisdiction may by order decide that such information shall be withheld or deferred for a specified period of time if it would be detrimental to the investigation to give the information or other circumstances indicate that the information should be withheld or deferred. The provision in section 216e shall apply correspondingly.

§ 216 k. The King may prescribe regulations to supplement and implement the provisions of this chapter.

Chapter 17. Charge on property. Administration of the property of the person charged

§ 217. In order to secure payment of a fine, a confiscation, the costs of the case, damages or redress for which it is assumed that the person charged will be adjudged liable, the court may on the application of the prosecuting authority decide that a charge for a specific amount be made on capital assets belonging to the said person when there is reason to fear that execution will otherwise be precluded or essentially impeded. If delay entails any risk, the decision may be made by the prosecuting authority.

The person charged may not make an interlocutory appeal against a decision of the court.

§ 218. The decision shall be implemented by the police or the enforcement officer. The prosecuting authority shall immediately notify the court of the implementation of the decision.

The court shall summon the parties to oral proceedings concerning whether the charge on property shall be ratified and if so to what extent. The decision shall be made by court order.

§ 219. The provisions of sections 14-9, 14-10, 14-11 and 14-12 of the Act relating to the enforcement of judgements, orders and specific claims shall apply correspondingly to the implementation of a charge on property.

A charge on property may be avoided if the person charged provides sufficient security.

The charge on property shall cease to apply when the prosecuting authority waives it or when the court by order so decides because the basis for the charge no longer subsists.

§ 220. When any person who is sentenced to imprisonment for a term exceeding six months or who is with just cause suspected of committing an act punishable pursuant to statute with imprisonment for a term exceeding two years flees to avoid execution of the sentence or prosecution, or remains abroad and will not comply with a request to return to the realm, the court may by order decide to put his property under administration.

Defence counsel shall be heard before the decision is made. If the person charged does not already have a defence counsel, one shall be appointed.

§ 221. From the date of the order the person charged loses the right to dispose of his property in any way other than by a revocable will.

The prosecuting authority shall ensure that the order is judicially registered and also published in the manner specified in section 181, second paragraph, of the Courts of Justice Act. If the person charged owns a registered ship or aircraft, the order shall also be recorded in the relevant register.

Vis-à-vis a third party acting in good faith the order shall first take effect from the judicial registration or recording in the relevant register as the case may be. Nevertheless judicial registration shall not prevent lawful acquisition pursuant to Act of 2 June 1978 No. 37 relating to the acquisition in good faith of movable property.

§ 222. The Probate Court shall appoint a supervisor to administer the property and to ensure that income from it does not accrue personally to the person charged. The provisions of section 3 of the Act of 23 March 1961 relating to missing persons shall apply in so far as they are appropriate.

The administration shall be terminated when the person charged comes to the venue or the basis for it otherwise ceases to exist.

Chapter 17 a. Ban on visits, presence etc.

§ 222 a. The prosecuting authority may ban a person from being present at a specific place, or from pursuing, visiting or in any other way contacting another person if,

because of special circumstances, there is deemed to be a risk that the person who is to be subject to the ban would otherwise commit an offence against, pursue or otherwise disturb the peace of the other person. The ban may be imposed at the request of the person who is to be protected thereby or when it is deemed necessary in the public interest. The ban shall apply for a specified period not exceeding one year at a time.

The prosecuting authority must as soon as possible and no later than three days after the decision to impose a ban bring the case before a court of examination and summary jurisdiction which shall decide the matter by court order. Sections 174, 175, first paragraph, 177, 181, second and third paragraphs, 184, and 187 a shall apply correspondingly as far as they are appropriate. The question of a ban may also be brought before the court at the request of the person who is to be protected thereby.

§ 222 b. When there is a risk of violence being used in connection with a confrontation between groups of persons who both employ violent means, the prosecuting authority may impose a ban on the presence of one or more persons belonging to or associated with one of the groups on one or more properties occupied by one of the groups, if by reason of such presence there are grounds to fear that the use of violence may lead to injury to persons living or present in the vicinity of the occupied property. When special reasons so indicate, the ban referred to in the first sentence may also apply to other specified property.

When special reasons so indicate, a ban pursuant to the first paragraph may be imposed on all persons belonging to or associated with such groups as are mentioned in the first paragraph. The ban shall be publicly notified by poster.

The ban shall remain in force for a specified period of time, but in no event for more than one year at a time.

The prosecuting authority must as soon as possible and no later than three days after the decision to impose a ban bring the case before a court of examination and summary jurisdiction which shall decide the matter by court order. Sections 174, first paragraph, 175, first paragraph, 177, 181 second and third paragraphs, 184 and 187 a shall apply correspondingly as far as they are appropriate.

Part V. Individual steps in criminal proceedings

Chapter 18. Criminal investigation

§ 223. Criminal acts shall be reported to the police. If the report is made orally, the person who receives it shall write it down, date it, and if possible obtain the signature of the person making the report.

A report may also be made to the prosecuting authority.

§ 224. A criminal investigation shall be carried out when as a result of a report or other circumstances there are reasonable grounds to inquire whether any criminal matter requiring prosecution by the public authorities subsists.

In the event of a fire and other accidents an investigation may be made of the cause even though there is no reason to suspect a criminal act.

If a child who is under 15 years of age has committed an otherwise criminal act, both a judicial and an extra-judicial investigation may be carried out.

§ 225. Criminal investigation is instituted and carried out by the police. Without a decision from a superior any police officer may take such steps as cannot be postponed without detriment.

The Director General of Public Prosecutions and the public prosecutor concerned may order an investigation to be instituted and how it is to be carried out, and may also order an investigation to be stopped, cf. section 75.

An investigation of criminal acts committed on board a Norwegian ship may also be carried out by Norwegian foreign service officials pursuant to further regulations prescribed by the King.

§ 226. The purpose of the investigation is to obtain the necessary information for deciding whether an indictment should be preferred, and to serve as preparation for the trial of the case.

The provisions of chapter 13 apply to social inquiry and mental observation.

If a specific person is under suspicion, the investigation shall seek to clarify both the evidence against him and the evidence in his favour.

The investigation shall be carried out as quickly as possible and in such a way that no one is unnecessarily exposed to suspicion or inconvenience.

§ 227. Any person who is obliged to report a death shall immediately inform the police if he has reason to suspect that the death has been caused by a criminal act.

§ 228. An expert autopsy shall be carried out when there is reason to suspect that any person's death has been caused by a criminal act. The prosecuting authority may also otherwise decide that an expert autopsy shall be carried out when the cause of death is uncertain and special circumstances require such an examination. The King will prescribe further regulations relating to expert autopsy, including the cases in which such an examination should be carried out.

§ 229. When the prosecuting authority assumes that a criminal act has been committed and an application from a particular authority is required for a prosecution, the prosecuting authority shall immediately bring the available information to the knowledge of the authority concerned in order that it may decide whether to apply for a prosecution.

If an application from an aggrieved person is required for a prosecution and there is reason to assume that he is not aware of the offence, the prosecuting authority shall bring the available information to his knowledge and ask him whether he wishes to apply for a prosecution.

As long as no application for a prosecution is made, only such investigative steps may be taken as cannot be postponed without detriment.

§ 230. The police may take statements from suspected persons, witnesses and experts but may not order any person to make a statement. Public officials and other persons acting on behalf of the State or a municipality are nevertheless obliged to make a statement concerning matters with which they have become acquainted in their position or office if this can be done without breaching any duty of secrecy imposed on them by any statute, regulation, or directive.

The provisions of sections 117, first paragraph, 118, first and second paragraphs, 119, first, second and third paragraphs, and 120 shall apply correspondingly.

The statement shall be written down, read aloud for confirmation, and as far as possible submitted to the person making it for signature. If the person making the statement so desires, he may read through the statement instead of having it read aloud. If he requires any amendments, these shall be made by additions to the report. If there has been no opportunity to write down the statement on the spot, it shall be written down as soon as possible. It must be apparent from the report that the formalities prescribed by statute have been observed.

Pursuant to further regulations to be prescribed by the King, statements may be recorded stenographically or by mechanical means. The said regulations shall prescribe to what extent such reproduction may take the place of a written report.

§ 231. On application from the prosecuting authority Norwegian foreign service officials may record statements abroad if this is permissible in relation to the foreign State. Such statements shall, as far as possible, be recorded in accordance with the provisions applicable to the taking of statements by the police and shall be equated with such statements.

§ 232. Before a suspect is examined, he shall be informed of the nature of the case, and that he is not obliged to make a statement.

If he is willing to make a statement, he shall be encouraged to tell the truth. The provisions of section 92 shall apply correspondingly.

If the suspect is under 18 years of age, his guardian should normally be given an opportunity to be present during the examination and to express his views.

§ 232 a. When a criminal investigation is instituted against a child under 18 years of age and the case is not of a trivial nature, the police shall immediately inform the child welfare service. If the child is in an institution, the institution shall also be informed.

In cases referred to in the first paragraph the child welfare service shall be informed concerning any examination of the suspect if there is an opportunity to do so.

When the child welfare service has so requested, it shall also be given an opportunity to express its views before the question of prosecution is decided.

§ 233. If the suspect admits that he has committed the act with which the investigation is concerned, he shall be asked whether he admits that he is criminally liable. If he has made an unreserved confession and the case may be adjudicated in a court of summary jurisdiction, he shall be asked whether he consents to such adjudication.

§ 234. When witnesses are examined, the provisions of sections 128, 130, 133 and 136, second paragraph, shall apply correspondingly.

The examination of a witness under 14 years of age in cases of sexual felonies or misdemeanours should upon application preferably be carried out pursuant to the provisions of section 239. The same procedure may be used in the examination of a witness who is mentally retarded or similarly handicapped. Repeated examination should as far as possible be avoided.

§ 235. If a witness is exempt from the duty to testify pursuant to section 122, first or second paragraph, the said witness shall be informed of his right before being examined.

When the circumstances provide grounds for doing so, a witness should be informed of the exemption provisions of sections 121, 122, third paragraph, and sections 123 to 125.

§ 236. The first time an aggrieved person is examined, he shall be asked whether he wishes to apply for a prosecution. He shall also be asked whether he has any claims that he wishes the prosecuting authority to include in the case pursuant to section 3. If he claims compensation or redress, the sum in question should be specified and justified.

§ 237. The prosecuting authority may apply for a judicial examination, a judicial inquiry, or the appointment of experts for use in the criminal investigation. The court is bound to grant the application unless it finds that the matter to which the investigation relates is not criminal, or that the criminal liability has lapsed, or that there is no legal power to grant the application. In the event of an application from a district sheriff[16] the court shall nevertheless fully try the issue whether there are sufficient grounds for the application.

Evidence for use at the main hearing may be judicially recorded when the conditions prescribed in section 270, first paragraph, are fulfilled and it cannot without detriment, waste of time, or expense be postponed until the question of preferring an indictment is decided.

The court may of its own motion take such steps as may appropriately be taken in connection with the subject of the application.

§ 238. Statements during the investigation of felonies and misdemeanours in maritime matters and of criminal acts committed on board Norwegian ships may be made abroad before the Norwegian consular court concerned, cf. section 51 of the Courts of Justice Act.

A consular court shall in every respect be equated with a court of examination and summary jurisdiction, but it has no power to adjudicate. It may of its own motion carry out an examination that cannot be postponed without detriment. Expert court invigilators[17] are entitled to put questions to those who are examined. As regards judicial recording of evidence, the provisions of section 50 of the Courts of Justice Act shall apply.

The King will prescribe further regulations to supplement and implement this section. Otherwise the provisions of this Act shall apply as far as they are appropriate.

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[16]See footnote 7, section 55, item 4. (Translator’s note)
[17]See footnote 4, section 18, item 1. (Translator’s note)

§ 239. In the case of an examination of a witness who is under 14 years of age or a witness who is mentally retarded or similarly handicapped in cases of sexual felonies or misdemeanours, the judge shall take the statement separately from a sitting of the court when he finds this desirable in the interests of the witness or for other reasons. The judge shall in such cases as a general rule summon a well-qualified person to assist with the examination or to carry out the examination subject to the judge's control. When it is possible and due consideration for the witness or the purpose of the statement does not otherwise indicate, the examination shall be recorded on a video cassette and if necessary on a separate tape-recorder. On the same conditions the defence counsel of the person charged shall as a general rule be given an opportunity to attend the examination.

The same procedure may also be used in cases concerning other criminal matters when the interests of the witness so indicate.

When the witness's age or special circumstances so indicate, the judge may decide that instead of or prior to an examination pursuant to the first paragraph the witness shall be placed under observation. The provisions of sections 152, 153 and 159 shall apply correspondingly to such an observation. The third sentence of the first paragraph of this section shall apply correspondingly.

Examination pursuant to the first paragraph and observation pursuant to the third paragraph of this section shall be undertaken no later than two weeks after the criminal offence has been reported to the police, unless special circumstances indicate that the examination and/or observation should be undertaken later.

The King may prescribe further regulations relating to the procedure for examinations conducted separately from a court sitting and for observations.

§ 240. When the prosecuting authority applies for a court decision concerning the use of coercive measures (Chapters 14 to 17), the court shall consider whether the statutory conditions have been fulfilled and whether there is sufficient reason to grant the application.

§ 241. A suspect who is the subject of an investigation may apply to the court for the institution of judicial proceedings to dispel the suspicion. The same applies when the investigation is discontinued because of the state of the evidence.

The court is bound to grant the application unless the judicial proceedings applied for must be regarded as unlikely to dispel the suspicion.

§ 242. The suspect, his defence counsel, and the aggrieved person shall on application be permitted to acquaint themselves with the documents relating to the case in so far as this can be done without detriment or risk to the purpose of the investigation or to a third person. An official defence counsel may not be denied access to any documents that are or have been submitted at a court sitting except a court sitting that is held to make an order pursuant to the second paragraph. These provisions nevertheless do not apply to documents that should be kept secret in the interests of national security or relations with a foreign State.

If the suspect or his defence counsel is denied access to the said documents, the issue may be required to be decided by an order of the court.

When there are two or more suspects in a case, the right of each suspect and his defence counsel to acquaint themselves with the documents relating to the case shall not apply to documents relating solely to the affairs of the other suspects.

The King may prescribe regulations concerning how the documents shall be made available pursuant to this section.

§ 243. The person charged shall by lawful notice be summoned to attend court sittings during the investigation unless this may cause inadvisable delay or a summons cannot be served. If the person charged is under arrest or in custody and is brought before the court, or attends voluntarily, the court sitting may be held without giving prior notice.

As far as possible the prosecuting authority and defence counsel should be given due notice of the sitting.

A court sitting need not be postponed because someone who has been notified is unable to attend.

§ 244. The prosecuting authority, the person charged and defence counsel are entitled to be present at the court sitting and to make statements and applications.

The person charged shall as a general rule withdraw when other persons charged make a statement.

§ 245. The court may decide that the person charged shall leave the courtroom while a witness is being examined if there is special reason to fear that an unreserved statement will not otherwise be made. Other persons may for the same reason be ordered to leave the courtroom during the examination of a witness or a person charged. In the case of an examination of the aggrieved person, the court may also make such a decision if for special reasons due consideration for the aggrieved person so indicates.

When the person charged or any other person who has the rights of a party to the case has left the courtroom pursuant to the provisions of the first paragraph and later returns to it, he shall be informed of the proceedings that have taken place in his absence.

Under special circumstances the court may by order entirely exclude the person charged and his private defence counsel if and for so long as there is reason to fear that the purpose of the investigation would otherwise be endangered, or if it is in the interests of national security or relations with a foreign State so indicate. Before any such order is made, the person concerned shall be allowed to express his views. If the person charged is excluded, he shall have a defence counsel during the court sittings.

§ 246. When the court has carried out the judicial proceedings applied for, it shall send the court record and the other documents relating to the case to the prosecuting authority.

§ 247. When special reasons so indicate, the court may at the request of the prosecuting authority take over the conduct of the investigation. In this case the court shall make the necessary inquiries. It may give orders to the police and apply to other courts for judicial proceedings to be undertaken.

§ 248. If in a case concerning a criminal act punishable by imprisonment for a term not exceeding 10 years the person charged has made an unreserved confession in court which is corroborated by the other evidence, the case may on the application of the prosecuting authority and with the consent of the person charged be adjudicated by a court of summary jurisdiction without an indictment and main hearing unless the court finds this inadvisable. An increase of the maximum penalty because of repeated offences, concurrence of offences, or the application of section 232 of the Penal Code shall not be taken into account. Even though the person charged has not made an unreserved confession, a case relating to a contravention of section 22, first paragraph, cf. section 31, of the Road Traffic Act may nevertheless be adjudicated by a court of summary jurisdiction when instead the person charged pleads guilty as charged in court. A case concerning preventive supervision or preventive detention may not be adjudicated by a court of summary jurisdiction.

If the person charged has a defence counsel, the latter shall be given an opportunity to express his views before the case is brought to judgement.

Chapter 19. Indictment

§ 249. The question of preferring an indictment shall be decided as soon as the case is sufficiently prepared for this purpose.

§ 250. If the prosecuting authority finds that there are grounds for preferring an indictment but that the person charged cannot be tried because his whereabouts are not known or because he is staying abroad, the case shall temporarily be suspended.

The fact that the case is suspended shall not prevent evidence being recorded pursuant to sections 270 and 271 when there is a risk that evidence may otherwise be lost or its value impaired.

§ 251. If the person charged is seriously mentally ill or mentally retarded to a considerable degree and a summons to attend the main hearing is dispensed with pursuant to the provisions of section 84, second paragraph, only proceedings for preventive supervision or confiscation may be pursued.

If there is reason to assume that the impediment is of a transient nature, the question of preferring an indictment may be temporarily suspended. Otherwise the prosecution shall be discontinued. If the case is temporarily suspended, the provision of section 250, second paragraph, shall apply correspondingly.

§ 252. The indictment shall be signed and dated and contain:

1) the designation of the court,

2) the name and residence of the person indicted,

3) a reference to the penal provision that is deemed applicable with a reproduction of its contents in so far as they are of significance in the case,

4) a short but as accurate as possible description of the matter to which the indictment relates, with details of the time and place.

If the prosecution is not unconditionally public, it shall appear from the indictment that the conditions for a public prosecution have been fulfilled.

If claims other than a penalty are involved, information to this effect shall be given.

§ 253. If before the main hearing the prosecuting authority wishes to extend the indictment to include other criminal matters, this shall be done by an addition to the indictment or by preferring a new indictment instead of the previous one.

Other amendments to the indictment may be made in the same manner.

§ 254. During the main hearing the prosecutor may waive some counts of the indictment or the indictment as a whole. If the question of an indictment is a matter for the King or the Director General of Public Prosecutions, such waiver nevertheless requires the consent of the Director General of Public Prosecutions.

With the consent of the court the prosecuting authority may extend the indictment to include other criminal matters, in so far as the person indicted consents thereto or makes an unreserved confession that is corroborated by the other evidence.

Other amendments to the indictment may be made by the prosecuting authority or any person representing the said authority.

The person indicted shall be granted a suitable adjournment when the court finds this to be desirable for the defence.

Any person representing the prosecuting authority shall endorse the indictment with the amendments that are made.

Chapter 20. Optional fine or confiscation

§ 255. If the prosecuting authority finds that a case should be concluded with a fine or confiscation, or both, the said authority may issue a writ giving an option to this effect in lieu of an indictment.

§ 256. The said writ shall be signed and dated and contain:

1) the name and residence of the person charged,

2) a reference to the penal provision applicable, with a reproduction of its contents in so far as they are of significance in the case,

3) a short but as accurate as possible description of the matter to which the writ relates, with details of the time and place,

4) a stipulation of the fine and, as the case may be, confiscation required and the term of imprisonment to be served if the fine is not paid,

5) an admonition to the person charged to declare within a fixed time-limit whether he accepts the option of a fine or confiscation, or both. The time-limit shall be so determined that he is given a period for reflection which should usually be from three to 10 days.

The said writ may also provide that the person charged shall pay to the person so entitled a financial claim that comes under section 3, and costs to the State. The provisions of section 432, first, third, and fourth paragraphs, shall apply correspondingly.

§ 257. If the person charged accepts the option, he shall endorse the writ. The person charged shall receive a copy of the writ.

§ 258. An accepted option may be annulled in favour of the person charged by a superior prosecuting authority. Such annulment shall not affect any financial claim on behalf of a person so entitled which is included in the writ.

Otherwise acceptance of the option has the effect of a judgement.

§ 259. Acceptance of the option may be appealed against by the parties.

The following are the only grounds for appeal:

1) that a procedural error has been committed,

2) that penal legislation has been wrongly applied to the matter described in the writ to the detriment of the person charged, or that criminal liability has become time-barred,

3) that the acceptance is not binding as a declaration of intent.

§ 260. For the person charged the time-limit for an appeal begins to run from acceptance. For the prosecuting authority the time-limit begins to run from the time when the acceptance is received in the office of the official who is entitled to appeal.

If the appeal is allowed, the acceptance shall be annulled. Otherwise the appeal shall be rejected.

Otherwise, the provisions of chapter 23 shall apply correspondingly as far as they are appropriate.

§ 261. As regards the reopening of a case that has been decided by acceptance of the option of a fine or confiscation, or both, the provisions of chapter 27 shall apply correspondingly as far as they are appropriate. The application shall be submitted to the Court of Appeal. A new hearing of the case shall be carried out by the District Court or the City Court.

Chapter 21. Preparation for the main hearing

§ 262. When the prosecuting authority has decided to prefer an indictment, the said authority shall send the court a copy of the indictment with a summary of the evidence it will produce. If the prosecuting authority is of the opinion that the case should be tried with expert lay judges, it shall at the time so state. The president of the court may, if he finds it necessary, ask to borrow the documents relating to the case.

The court shall immediately appoint a defence counsel if the person indicted is entitled to an official defence counsel and one has not already been appointed.

In special cases in which the court finds it appropriate in view of the nature of the case, it may order the prosecuting authority to submit a written account of the case within a specified time limit. The court shall send a copy of this account to the person indicted and to defence counsel, and set a time-limit for any comments.

§ 263. The prosecuting authority shall have the indictment served on the person indicted as soon as possible with notice of who has been appointed as his defence counsel.

§ 264. At the same time as the indictment is sent for service on the person indicted, the prosecuting authority shall send a copy of the indictment and the summary of evidence to defence counsel together with the documents relating to the case.

Copies may be sent instead of original documents. Original documents and other evidence that are not so sent shall be made available to defence counsel in an appropriate manner.

The person indicted and his defence counsel are entitled to make themselves familiar with documents that should be kept secret in the interests of national security or relations with a foreign State only to the extent and in the manner that the court finds necessary for the purposes of the defence of the person indicted. When special reasons so indicate, the prosecuting authority may also prohibit that such documents be loaned to the person indicted or that they be duplicated.

If more persons than one are indicted in a case, the defence counsel of one of them is not entitled to have documents sent to him which relate solely to the affairs of another indicted person.

§ 264 a. The prosecuting authority shall inform the aggrieved person that an indictment has been preferred in the case and that he is entitled to familiarise himself with the indictment.

The aggrieved person shall on application be allowed to become acquainted with the documents relating to the case if this can be done without detriment or risk to the trial of the case or to a third person. Section 242, first paragraph, last sentence, and last paragraph shall apply correspondingly.

In cases in which counsel for the aggrieved person has been appointed pursuant to section 107 a, a copy of the indictment, of the summary of evidence and as far as possible of the documents relating to the case shall be sent to counsel for the aggrieved person. The prosecuting authority shall also state when the case should be tried. Documents that are not sent to the said counsel shall be made available to him in an appropriate manner. Counsel shall be permitted to address the court concerning the date of the main hearing in the case.

§ 265. Defence counsel shall without unnecessary delay contact the person indicted and discuss how the defence is to be conducted. Within a time-limit set by the prosecuting authority, which may be extended by the said authority or by the court, defence counsel shall return the documents relating to the case to the prosecuting authority with a statement of what evidence he will produce. He may also request that attempts be made to procure evidence in another way than that stated by the prosecuting authority, and that the said authority shall

secure any new evidence he specifies. If defence counsel is of the opinion that the case should be tried with expert lay judges, he shall at the same time so state.

Defence counsel shall send the court a copy of his statement.

§ 266. If the prosecuting authority rejects any request referred to in section 265, it shall immediately inform defence counsel accordingly. Defence counsel may demand that the issue be submitted to the court. The court's decision is not subject to appeal.

If defence counsel is of the opinion that the case must be summarily dismissed or that the person indicted must be acquitted by reason of matters extraneous to the question of evidence, defence counsel shall as soon as possible inform the court and the prosecuting authority accordingly.

§ 267. If the person indicted has no defence counsel, he shall on service of the indictment be given a summary of the evidence that the prosecuting authority will produce, and shall be informed that he may make himself familiar with the documents relating to the case. He shall be urged to give notice within three days if he is of the opinion that other evidence should be produced than that which the prosecuting authority has set out. The provision of section 242, third paragraph, shall apply correspondingly.

When the time-limit for the person indicted has expired, the prosecuting authority shall send the said documents to the court with a summary of potential new evidence. The court shall inquire whether any further evidence is needed and shall return the documents to the prosecuting authority with notice of what the court has decided as regards the production of evidence.

§ 268. If a writ giving the option of a fine has been issued,[18] it may take the place of an indictment.

§ 269. When instead of summoning a witness for oral examination at the main hearing, a party wishes to apply for a statement made by the witness to be read aloud or for a reproduction of any evidence given by the witness before the main hearing, he shall notify the court accordingly. If no evidence has previously been given to a court by the witness, an attempt should be made to obtain his evidence by judicial recording in so far as this is possible and does not entail disproportionate inconvenience or expense.

If a party decides to use evidence other than that set out, or to waive some of it, or to have evidence taken or used in a manner other than that stated, he shall as soon as possible inform the opposite party and the court.

§ 270. Judicial recording of evidence before the main hearing may be done when the evidence cannot be produced at the main hearing without disproportionate inconvenience or expense, or there is a risk that the evidence may otherwise be lost or its value impaired.

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[18] See chapter 20, sections 255, 256. (Translator's note)

When the prosecuting authority applies for a judicial recording of evidence, the said authority shall itself decide whether the conditions prescribed in the first paragraph are fulfilled. On application from the person indicted or his defence counsel the decision lies with the court to which the application is made.

If the person indicted or his defence counsel applies for a judicial recording of evidence, the court shall as a general rule require that a sufficient sum be paid in to cover the costs thereof. If the prosecuting authority or the court of judgement finds that there have been reasonable grounds for the judicial recording of evidence, the costs shall be met by the State.

§ 271. When an application for a judicial recording of evidence is made pursuant to section 270, the opposite party shall at the same time be so informed.

The provisions of sections 243, 244, and 245, first and second paragraphs, shall apply correspondingly to a judicial recording of evidence. A transcript shall be sent to the parties as soon as possible.

§ 272. The court may decide that a court sitting shall be held during the preparatory proceedings to deal with the issue of summarily dismissing the case, or acquitting the person indicted because the matter described in the indictment is not criminal, or because criminal liability has lapsed. There is no appeal against any such decision.

The provisions of the first paragraph shall also be applicable with regard to the question whether to exclude the production of evidence during the main hearing or concerning the duty to testify.

The court may decide to postpone the decision until the main hearing.

A decision to proceed with the case and decisions pursuant to the second paragraph are not binding at the main hearing. If the issue has been decided by a higher court after an interlocutory appeal, the decision cannot be reversed during the main hearing except on the basis of new evidence.

§ 273. In a defamation case the court shall during the preparatory proceedings of its own motion decide whether evidence as to the truth of an allegation shall be admitted or not, cf. section 249, subsection 4, of the Penal Code.

If no decision is made to exclude evidence as to the truth of an allegation, the court shall endeavour to clarify what it is desired to prove by each item of the evidence that it is intended to produce. If the court is of the opinion that certain parts of the intended proof will be without significance, or that its significance will not be in reasonable proportion to the damage that may be caused to the aggrieved person or other persons, the decision to exclude these parts of the proof should as far as possible be made during the preparatory proceedings.

Before a decision is made, the parties shall be allowed to express their views orally or in writing.

A decision that evidence shall be excluded cannot be overruled at the main hearing.

If the case involves a claim that a defamatory allegation be declared null and void without any proposal for the imposition of a penalty for the allegation, the court shall of its own motion decide whether the case shall be summarily dismissed pursuant to section 253, subsection 3, of the Penal Code. The issue of summary dismissal pursuant to section 253, subsection 2, of the Penal Code may also be decided during the preparatory proceedings.

§ 274. In the Court of Appeal, three judges shall participate in deciding questions referred to in sections 272 and 273. In the District Court or the City Court the decision shall be made by the president of the court.

The court may also otherwise decide that court sittings shall be held during the preparatory proceedings.

§ 275. The court shall as soon as possible fix the time and place for the main hearing and inform the prosecuting authority and defence counsel accordingly, as well as the aggrieved person's counsel in such cases as are referred to in section 107 a. If special circumstances do not prevent it, the main hearing in the District Court or the City Court shall be scheduled to take place not later than two weeks after the case was referred to the court, cf. section 262, first sentence. If this time-limit is not observed, the reason shall be stated in the court record for the main hearing.

The prosecuting authority shall ensure that a summons be served on the person indicted, the witnesses, and the experts concerned, and that any person indicted or witnesses who are not at liberty shall be brought to the court premises.

If the person indicted or his defence counsel wishes to summon witnesses to attend the main hearing, the provisions of section 270, third paragraph, shall apply correspondingly. Compensation for expenses may also be granted when witnesses attend voluntarily, and when experts who have not been appointed attend court.

Chapter 22. Main hearing in the District Court or the City Court

§ 276. At the main hearing the court shall sit with a professional judge and two lay judges.

In cases concerning felonies punishable pursuant to statute with imprisonment for a term exceeding six years, which are especially complex or where other special reasons apply, the administrator of the court may decide that the court shall sit with two professional judges and three lay judges. Increase of the maximum penalty because of repeated offences, concurrence of felonies, or the application of section 232 of the Penal Code shall not be taken into account. The decision may not be challenged by way of an interlocutory appeal or used as a ground for an appeal proper. If any of the members of the court is unable to attend after the main hearing has begun, section 15, first paragraph, of the Courts of Justice Act shall apply correspondingly.

If the court is to sit with two professional judges and there is only one permanent professional judge attached to the court, the court shall summon a judge pursuant to the provisions of section 19, second paragraph, of the Courts of Justice Act. The administrator of the court shall decide who shall be the president of the court.

A deputy judge cannot sit in cases concerning felonies punishable pursuant to statute with imprisonment for a term exceeding six years. The second sentence of the second paragraph shall apply correspondingly.

In complex cases the president of the court may decide that one or two deputies for the lay judges shall follow the proceedings and join the court if any such judge is unable to attend.

§ 277. Lay judges shall be appointed from the special panel when such a panel has been established in cases concerning:

1) any violation of building, public health, or fire prevention legislation when the case concerns buildings,

2) any violation of chapters 30 and 42 of the Penal Code, of sections 1, 2 and 5 of Act of 20 July 1893 No. 2 relating to shipwreck and wreckage, and any other violation of official duties as a seaman.

In other cases in which it is necessary, the president of the court may decide to appoint expert lay judges pursuant to the provisions of section 87 or 88 of the Courts of Justice Act.

If several acts are consolidated in one case, and expert lay judges are to be appointed for some of them pursuant to the first or the second paragraph, the whole case shall be tried with expert lay judges.

When the court sits with three lay judges pursuant to section 276, second paragraph, and expert lay judges are appointed, all the lay judges shall be experts.

§ 278. Proceedings at the main hearing are oral. Reading aloud cannot take the place of a free oral account.

The president of the court shall ensure that the hearing shall as far as possible proceed without interruption. He may stop any further hearing of questions that he considers to have been sufficiently discussed or that are not of essential significance for the decision.

If the case is adjourned to a new court sitting, what took place at the previous hearing shall be recapitulated in so far as any of the judges finds this to be necessary.

§ 279. If the prosecutor does not appear, the case shall be adjourned unless another person can assume his duties. The same applies if defence counsel does not appear in cases in which the person charged is entitled to a defence counsel.

The court may nevertheless proceed with or continue the hearing even though defence counsel has not appeared if it finds that the result must be an acquittal or summary dismissal of the case.

§ 280. The person indicted shall be present during the hearing until judgement is delivered. The court may nevertheless permit him to absent himself when he has given evidence. If he leaves the court premises without permission, the hearing may continue if his presence is not deemed necessary for the clarification of the case.

§ 281. In a case concerning a criminal act in which the prosecuting authority does not wish to propose the imposition of a sentence of imprisonment for a term exceeding one year, the main hearing may proceed even though the person indicted is not present, if his presence is not deemed necessary for the clarification of the case, and the person indicted either

1) has consented to the case being dealt with in his absence, or

2) is absent without it being made clear or shown to be probable that he has a lawful excuse, or

3) has absconded after the indictment was served on him.

If a summons to attend the main hearing has not been served on the person indicted because he has absconded, the main hearing may nevertheless proceed in the case specified in item 3 of the first paragraph.

A case concerning preventive supervision may not proceed in the absence of the person indicted.

In all cases the hearing may proceed when the court finds that it must lead to an acquittal or the summary dismissal of the case.

§ 282. Any person who is convicted when the main hearing proceeds pursuant to section 281, first paragraph, item 2, may apply for a retrial if he shows it to be probable that he had a lawful excuse and that he cannot be blamed for failing to notify the court in time. The same applies to any person who is convicted when the main hearing proceeds pursuant to section 281, first paragraph, item 3, if he shows it to be probable that he had not absconded.

The application must be submitted before the expiry of the time-limit for lodging an appeal. If the judgement is appealed against, the appeal shall be suspended until the application for a retrial is decided. Otherwise the provisions of sections 308, 309, 318, first paragraph, 319, second paragraph, and sections 396 to 400 shall apply correspondingly.

The application shall be decided by a court order without any oral proceedings.

If the convicted person is absent from the retrial without it being made clear or shown to be probable that he has a lawful excuse, the case shall be dismissed and the sentence already pronounced shall remain in force.

§ 283. When the main hearing must be adjourned, the court may nevertheless record evidence on the conditions prescribed in section 270. The recording of evidence shall be carried out by the president of the court.

§ 284. The court may decide that a person indicted shall leave the courtroom while another person indicted or a witness is being examined if there is special reason to fear that an unreserved statement will not otherwise be made. Other persons may also be ordered to leave the courtroom for the same reason. At the examination of the aggrieved person the court may also make such a decision if for special reasons it is in the interests of the said person to do so.

If a person indicted is ejected pursuant to section 133 of the Courts of Justice Act, the hearing may nevertheless continue when the court does not consider his presence to be necessary for the clarification of the case.

The provision of section 245, second paragraph, shall apply correspondingly.

§ 285. If the question of summarily dismissing the case arises, the hearing may be limited to this issue until the question is decided.

The court shall allow the remedying of errors that prevent the case from proceeding and grant any adjournment that is necessary.

Objections that are to be disregarded unless they are invoked by a party are forfeited if they are not raised as soon as there is an opportunity to do so.

§ 286. If a question of an acquittal is raised because the matter described in the indictment is not criminal, or because criminal liability has lapsed, the hearing may temporarily be limited to this issue. On the basis of such a hearing the court may pronounce an acquittal if it finds that the question is ripe for decision. Otherwise the hearing shall continue.

§ 287. In a case relating to two or more criminal acts or two or more indicted persons, the court may decide that there shall be a separate hearing for each individual act or person indicted.

When part of the case is fully heard, the court may pronounce judgement on this part if it finds it unobjectionable to do so.

§ 288. When there is any doubt concerning the mental state of the person indicted or other reasons make it desirable to do so, the court may decide that there shall be a separate hearing concerning the issue of guilt or some parts of it.

When such a separate hearing is held, the court may:

1) conclude the case by a judgement if it results in an acquittal, or

2) make an order that the person indicted is guilty or that he has committed the unlawful act to which the indictment relates. If the indictment also includes matters of which the court finds that the person indicted must be acquitted, the court may so decide in the order. No grounds for the order need be given, and it is not subject to appeal.

Such an order shall always be made if the conditions for it are otherwise fulfilled and any further hearing must be adjourned so that the person indicted may be subjected to mental observation in cases in which the decision concerning this has been postponed pursuant to the provisions of section 165, second paragraph. When such an order has been made, any further hearing may be adjourned in order to have an examination made of the mental state of the person indicted or to obtain other information needed for the decision of the question of punishment and other sanctions. Adjournment shall always be made to a later court sitting that shall be scheduled at the same time.

When judgement is pronounced in the case, the order may be departed from to the benefit of the person indicted, but not to his detriment. If a separate vote has been taken on the question whether the person indicted has committed the unlawful act, and a subsequent vote is taken on the question of guilt, the judges who have voted for an acquittal shall not take part but shall be deemed to have voted in favour of the person indicted.

If no decision is made pursuant to the second paragraph, the hearing shall continue with a view to deciding the case as a whole.

§ 289. The hearing of the actual matter to which the indictment relates begins with the reading aloud of the indictment. The president of the court shall then ask the person indicted whether he pleads guilty and shall urge him to follow the proceedings carefully.

The prosecutor then addresses the court to explain the substance of the indictment and to mention briefly the evidence that will be produced.

On application defence counsel may be allowed to make short comments in connection with what the prosecutor has said.

§ 290. Any reproduction in the court record or a police report of any statement that the person indicted has previously made in the case may only be read aloud if his statements are contradictory or relate to points on which he refuses to speak or declares that he does not remember, or if he does not attend the hearing. The same applies to any written statement that he has previously made in relation to the case.

§ 291. Evidence shall first be produced by the prosecutor and then by defence counsel unless they agree on another sequence.

The party producing the evidence may, if necessary, briefly explain the significance of the matters that are sought to be proved.

§ 292. If the person indicted makes a full confession, the court shall decide to what extent further proof of guilt should be given.

Otherwise the production of available evidence may only be denied if the court finds that such evidence relates to matters that are of no significance for the case, or that have already been adequately proved.

The court may inspect the scene of the crime when it finds reason to do so.

§ 293. The court may refuse to adjourn the proceedings for the production of evidence when it finds that such evidence would be of no significance or would lead to delay or inconvenience that is not in reasonable proportion to the significance of the evidence and the case.

If evidence is produced of which the opposite party has not had sufficient notice, he shall be entitled to an adjournment unless the evidence is of no significance.

§ 294. The court shall in its official capacity ensure that the case is fully clarified. For this purpose it may decide to obtain new evidence and to adjourn the hearing.

§ 295. In a defamation case evidence may not be produced concerning anything that has not in the preparatory proceedings been specified as a matter for proof. The court shall also deny the production of evidence that it finds to be of no significance, or whose significance is not in reasonable proportion to the damage that may be caused to the aggrieved person or other persons. Likewise the court may refuse to allow the production of a witness or other evidence that has, without reasonable cause, been concealed during the preparatory proceedings.

§ 296. Witnesses who can give evidence that is deemed to be of significance in the case should be examined orally during the main hearing if special circumstances do not prevent this.

At such examination any reproduction in the court record or a police report of any statement that the witness has previously made in the case may only be read aloud if the witness's statements are contradictory or relate to points on which he refuses to speak or declares that he does not remember. The same applies to any written statement that the witness has previously made in relation to the case.

§ 297. When a witness is not present at the main hearing, any reproduction in the court record or a police report of any statement that the witness has previously made in the case may only be read aloud if an oral examination is not possible or would entail disproportionate inconvenience or expense. A statement may always be read aloud when the person indicted fails to appear without lawful excuse in a case in which a writ giving the option of a fine has been issued[19] or which only concerns confiscation.

A written statement that the witness has made in relation to the case may only be read aloud with the consent of both parties or if a judicial examination cannot be carried out.

§ 298. In a case relating to a sexual felony or misdemeanour, the reading aloud, video-recording or tape-recording of a statement made by a witness under 14 years of age before a court or pursuant to the provisions of section 239 shall take the place of a personal examination unless the court for special reasons finds that the witness should give evidence at the main hearing. The same procedure may be followed if the witness is mentally retarded or similarly handicapped.

The same procedure may also be followed in cases relating to other criminal matters when it is in the interests of the witness to do so.

§ 299. A written report from an appointed expert who is not present during the main hearing may be used as evidence when an oral examination cannot be carried out or is found to be unnecessary. The same applies to a social inquiry report.

Such a report may be read aloud in so far as it is appropriate to do so even when the expert or the social inquiry officer is present.

§ 300. A tape-recording of a statement that has previously been made in the case may also be admitted as evidence in other cases than those referred to in section 298 if the conditions for reading aloud pursuant to sections 290, 296, 297 or 299 are fulfilled or the court otherwise finds grounds for this. The same applies to a transcript of such a recording.

§ 301. When defence counsel produces evidence of the good character of the person indicted, the prosecuting authority may produce counter-evidence. Written statements concerning the good or bad name and reputation of the person indicted are inadmissible.

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[19] See chapter 20, sections 255, 256. (Translator's note)

Otherwise evidence of the bad character of the person indicted may only be produced to the extent the court permits. The production of evidence of previous convictions or waiver of prosecutions may only be denied when such evidence is of no significance in the case.

§ 302. Written evidence shall be read aloud by the person producing the evidence unless the court decides otherwise.

§ 303. After the examination of each individual witness and after the reading aloud of each piece of written evidence the person indicted should be given an opportunity to speak.

§ 304. When the production of evidence is completed, first the prosecutor and then defence counsel may address the court. Each of them is entitled to speak twice. When defence counsel has finished, the person indicted shall be asked whether he has any further comment to make.

When separate hearings are held pursuant to the provisions of section 288, the first paragraph shall apply correspondingly to each separate hearing.

If the person indicted does not understand Norwegian, or if he is deaf, at least the proposals made by the prosecutor and defence counsel must be brought to the knowledge of the person indicted.

§ 305. In deciding what is deemed to be proved only the evidence produced at the main hearing shall be taken into consideration.

Part VI. Judicial remedies

Chapter 23. Appeal

§ 306. Appeals against judgements of the District Court or the City Court or the Court of Appeal may be brought by the parties to the appellate court indicated in sections 6 to 8.

Error in the assessment of evidence in relation to the issue of guilt cannot be a ground of appeal to the Supreme Court.

As regards a judgement of the Court of Appeal in a case that is tried with a jury, no appeal to the detriment of the person charged may be brought against the application of law with regard to the issue of guilt unless the ground of appeal is that the recorded explanation by the president of the court of the legal principles applicable was wrong.

§ 307. Any person who has been acquitted may not appeal unless the court has found it proved that he committed the unlawful act referred to in the indictment.

Any person acquitted by a judgement of the Court of Appeal in a case that is tried with a jury may not appeal unless the issue of guilt has been decided against him.

§ 308. If the person charged is dead, his spouse, relatives in direct line of ascent or descent, siblings and heirs may appeal in his stead.

§ 309. The prosecuting authority may appeal in favour of the person charged. This applies even if the judgement is legally enforceable and even if the person charged is dead.

§ 310. The time-limit for an appeal is two weeks from the date on which judgement is delivered.

If the person charged is not present when judgement is delivered, the time-limit for him runs from the service of the judgement.

If the official in the prosecuting authority who is entitled to appeal is not present when judgement is delivered, the time-limit for the said authority runs from the date when the judgement is received in its office.

§ 311. If one party appeals, the other party may lodge a cross-appeal within one week. For the person charged the time-limit runs from service of notice of the prosecuting authority's appeal. For the said authority the time-limit runs from the date when notice of appeal by the person charged reaches the official who is entitled to appeal.

If the main appeal is withdrawn, summarily dismissed, or disallowed, the cross-appeal lapses unless it fulfils the conditions for an independent appeal.

§ 312. An appeal by the person charged shall be submitted in writing or orally to the court that has pronounced the judgement or to the prosecuting authority. If the person charged is in custody, the appeal may also be submitted to the prison authority concerned.

An oral notice of appeal which is not submitted when judgement is delivered shall be reduced to writing on the spot, dated, and signed by the appellant and the recipient.

If the court or the prison authority receives the notice of appeal, it shall be forwarded to the prosecuting authority without delay.

An appeal by the prosecuting authority must be delivered for service on the person charged before the time-limit for an appeal expires.

§ 313. If the person charged has an official defence counsel, the latter shall on request advise on the question of an appeal.

Defence counsel shall also assist the person charged with the notice of appeal. Corresponding assistance may be required of any authority specified in section 312.

§ 314. The notice of appeal shall specify:

1) the judgement that is being appealed against, whether the appeal relates to the whole judgement or only some counts, and whether it includes any decision relating to confiscation or a declaration that a statement is null and void,

2) whether the appeal relates to procedure, the assessment of evidence in relation to the issue of guilt, the application of law with regard to the issue of guilt, or the decision concerning a penalty or sanction specified in section 2, first paragraph, item 1,

3) when the appeal relates to procedure, what error is alleged.

The notice should also state:

1) in an appeal against the application of law, the error on which the appeal is based,

2) any new evidence that is to be invoked,

3) the alteration proposed.

§ 315. Procedural decisions cannot be used as a ground of appeal when they are by their nature or pursuant to special statutory provision unchallengeable.

In defamation cases it cannot be a ground of appeal that a decision made during the preparatory proceedings concerning the production of evidence was wrong.

In trying procedural issues the appellate court is not bound by decisions made pursuant to an interlocutory appeal. However, the Court of Appeal is bound by the interpretation of the law on which a decision by the Interlocutory Appeals Committee of the Supreme Court is based.

§ 316. The prosecuting authority shall without delay send the notice of appeal and the other documents relating to the case to the appellate court.

§ 317. The appellate court shall judge whether the appeal has been lodged in time and otherwise fulfils the statutory requirements.

§ 318. An appeal that is submitted after the time-limit for an appeal has expired shall be summarily dismissed unless the court finds that the appellant should not be held liable for exceeding the time-limit. In any case an appeal must be submitted within two weeks after the conclusion of the matter that has caused the delay.

The court may refrain from deciding the question of summary dismissal if it finds that the appeal must be disallowed pursuant to section 321, second or third paragraph, or that consent shall be denied pursuant to section 321, first paragraph, or section 323.

§ 319. An appeal shall also be summarily dismissed if it does not fulfil the requirements of section 314, first paragraph, or it is subject to some other error that prevents it from being heard. The provisions of section 318, second paragraph, shall apply correspondingly.

An attempt should be made to remedy unintentional errors. If necessary, the appellant may be granted a short period in which to amend his notice of appeal.

§ 320. In the case of appeals to the Supreme Court, decisions pursuant to sections 317 to 319 shall be made by the Interlocutory Appeals Committee of the Supreme Court.

§ 321. An appeal to the Court of Appeal concerning matters in regard to which the prosecuting authority has not proposed and there has not been imposed any sanction other than a fine or confiscation may not proceed without the consent of the court. Such consent shall only be given when there are special reasons for doing so. Consent is not, however, necessary if the person charged is a business enterprise, cf. chapter 3a of the Penal Code.

An appeal to the Court of Appeal may otherwise be disallowed if the court finds it obvious that the appeal will not succeed. An appeal by the prosecuting authority that is not in favour of the person charged may also be disallowed if the court finds that the appeal concerns questions of minor importance, or that there is otherwise no reason for the appeal to be heard.

An appeal concerning a felony punishable pursuant to statute with imprisonment for a term exceeding six years may only be disallowed in the cases referred to in the second sentence of the second paragraph. An increase of the maximum penalty because of repeated offences, concurrence of felonies, or the application of section 232 of the Penal Code shall not be taken into account.

A decision to refuse consent or to disallow an appeal must be unanimous. A refusal may be reversed in favour of the person charged if there are special reasons for doing so.

Decisions pursuant to this section shall be made by a court decision and may be limited to part of the case.

An interlocutory appeal concerning any refusal pursuant to this section or any rejection of an application for the reversal of such a refusal may be brought on the basis of procedural error. Otherwise decisions pursuant to this section may not be challenged by an interlocutory appeal or serve as a ground of appeal.

§ 322. An appeal against a judgement of the District Court or the City Court may be decided without an appeal hearing when the Court of Appeal unanimously finds it clear:

1) that the judgement should be set aside,

2) that the person charged must be acquitted because the matter prosecuted is not criminal or criminal liability has lapsed, or

3) that the judgement should, in accordance with the appeal, be altered in favour of the person charged and the evidence in relation to the question of guilt is not in issue.

The Court of Appeal may also set aside the judgement when the court unanimously finds it clear that the judgement would be altered to the detriment of the person charged, because the statutory provisions relating to the determination of a penalty or other sanction have been wrongly applied or because information of essential significance for such determination was lacking.

If an appeal is brought concerning the assessment of evidence in relation to the issue of guilt and the prosecution is dropped, the court shall pronounce a judgement of acquittal without an appeal hearing.

§ 323. An appeal to the Supreme Court may not proceed without the consent of the Interlocutory Appeals Committee of the Supreme Court. Such consent shall only be given when the appeal is concerned with issues whose significance extends beyond the current case, or it is for other reasons especially important to have the case tried in the Supreme Court.

The matter shall be decided by a court decision. Consent may be limited to part of the case. A decision to refuse consent shall be unanimous. It may be reversed in favour of the person charged if there are special reasons for doing so.

§ 324. Decisions pursuant to sections 318 to 323 shall be made without party proceedings. The court may, however, allow the parties to express their views in writing.

If one of the parties has in a statement relating to the appeal pleaded new facts that are not obviously without significance, the court shall inform the opposite party of the statement.

§ 325. If an appeal is not decided pursuant to the aforesaid provisions, it shall be referred to an appeal hearing. The decision to refer may not be challenged by an interlocutory appeal or serve as a ground of appeal.

§ 326. If an appeal concerning the same matters is brought by the same or different parties over both the assessment of evidence in relation to the issue of guilt and other aspects of the judgement, the court shall first try the issue of referring the appeal relating to the evidence. The court may, however, refrain from deciding the issue of referring an appeal relating to the evidence to an appeal hearing if pursuant to the provisions of section 322 there are grounds for setting aside the judgement or acquitting without an appeal hearing.

If the appeal relating to the evidence is referred to an appeal hearing, but withdrawn or summarily dismissed, the case shall nevertheless proceed to an appeal hearing if other grounds for an appeal still subsist.

§ 327. An appeal hearing shall be prepared and carried out according to the rules applicable to the hearing at first instance in so far as such rules are appropriate and it is not otherwise provided below. The provisions of section 275, first paragraph, second and third sentences, shall not apply.

§ 328. When an appeal is referred, a defence counsel shall be appointed immediately.

The person charged shall at the same time be informed of the appointment. In the case of an appeal to the Supreme Court he shall also be informed that the case will be heard in the Supreme Court as soon as possible, and that he will not be summoned to attend the hearing, but will be notified thereof.

§ 329. If the issue of the evidence in relation to the question of guilt is to be tried, the court shall send the documents relating to the case to the prosecuting authority with an order to forward the documents to defence counsel within a fixed time-limit. The court shall set a time-limit for the parties to submit a summary of evidence.

If there is no appeal relating to the evidence, the court shall send the documents to the person who, pursuant to the provisions of section 339, shall be entitled to speak first at the hearing, with an order to forward such documents to the opposite party within a fixed time-limit. The court shall if necessary set a time-limit for submitting a summary of evidence.

Act of 14 August 1918 No. 2 relating to extracts in civil disputes and criminal cases shall apply to the preparation of extracts.

§ 330. If the appeal does not concern the assessment of evidence in relation to the issue of guilt, the court will decide what evidence needs to be produced. In the Court of Appeal, the question of the amount of evidence to be produced may be dealt with before the appeal hearing pursuant to the provisions of section 272, cf. section 274.

§ 331. If an appeal hearing in the Court of Appeal is to include the assessment of evidence in relation to the issue of guilt, a completely new trial of the case shall be held in so far as it has been referred.

The indictment may be extended if the person charged consents thereto or makes an unreserved confession which is corroborated by the other evidence. The indictment may be altered within the limits of the same criminal matters. A new or altered indictment shall be served on the person charged.

If only a part of the assessment of evidence in the judgement is contested, the production of evidence may be limited to that part.

Any part of the evidence given by witnesses or experts before the District Court or the City Court which is recorded in the court record may, in addition to the cases specified in sections 296 and 297, be read aloud if none of the parties requests a fresh examination.

§ 332. At an appeal hearing that includes the assessment of evidence in relation to the issue of guilt or the assessment of sentence for a felony punishable pursuant to statute with imprisonment for a term exceeding six years the Court of Appeal shall sit with four lay judges. Section 321, third paragraph, second sentence, shall apply correspondingly. In complex cases the president of the court may decide that one or more deputy members for the lay judges shall follow the proceedings and join the court if any of the lay judges is unable to attend. In cases in which it is necessary, the president of the court may decide that two of the lay judges shall be experts. They shall be appointed pursuant to the provisions of section 87 or 88 of the Courts of Justice Act.

This section does not apply to cases that are to be tried with a jury pursuant to chapter 24.

§ 333. If an appeal to the Court of Appeal does not concern the assessment of evidence in relation to the issue of guilt or the assessment of sentence for a felony punishable pursuant to statute with imprisonment for a term exceeding six years, the court may with the consent of the parties decide that the case shall be dealt with in writing. Section 321, third paragraph, second sentence, shall apply correspondingly.

The written proceedings shall be conducted by the judge appointed by the senior judge president.

Each party shall be allowed to submit two pleadings.

The court may reverse the decision to deal with the case in writing.

A decision to have written proceedings may not be challenged by interlocutory appeal or serve as a ground of appeal.

§ 334. If the Court of Appeal shall only try issues of procedure or application of law, the person charged shall not be summoned to attend the appeal hearing unless the court finds that there are special reasons for doing so. If the court is only to try the issue of the imposition of a penalty or other sanction, a summons may be omitted if the presence of the person charged is considered superfluous.

The person charged shall not be summoned to attend an appeal hearing in the Supreme Court.

In all cases the person charged shall as far as possible be notified of the appeal hearing.

§ 335. If on an appeal from the person charged the Court of Appeal shall try the issue of the evidence in relation to the issue of guilt, it shall be stated in the writ of summons that his appeal against the assessment of evidence will be summarily dismissed if he does not appear. Otherwise the person charged shall be summoned in accordance with the provisions of section 87.

§ 336. If the person charged is summoned in accordance with section 335, first sentence, and does not appear without it being shown to be clear or probable that he has a lawful excuse, his appeal against the assessment of evidence shall be summarily dismissed. The same applies if it has not been possible to serve such a summons on him because he has absconded. The summary dismissal is no bar to a trial of the appeal which the court may undertake regardless of any ground of appeal.

If on an appeal by the prosecuting authority the Court of Appeal shall try the issue of the evidence in relation to the issue of guilt, the case may proceed in the absence of the person charged if the conditions pursuant to section 281 are fulfilled and the judgement appealed against has not imposed a sentence of imprisonment for a term exceeding one year.

If the court shall not try the issue of the evidence in relation to the issue of guilt, the case may always proceed in the absence of the person charged unless he is summoned or shall be summoned to attend the appeal hearing and it is shown to be clear or probable that he has a lawful excuse.

§ 337. An order of summary dismissal pursuant to section 336, first paragraph, first sentence, may be reversed if the person charged shows it to be probable that he had a lawful excuse for his absence and that he cannot be blamed for failing to give notice in time. An order pursuant to section 336, first paragraph, second sentence, may be reversed if the person charged shows it to be probable that he had not absconded.

An application for reversal must be submitted before the expiry of the time-limit for an interlocutory appeal. The provisions of section 318, first paragraph, shall apply correspondingly.

§ 338. When a party in a case before the Supreme Court finds it necessary to have evidence taken judicially or to have a judicial inquiry carried out, the said party may apply for a judicial recording of evidence.

An application for evidence to be judicially recorded shall be submitted to the Interlocutory Appeals Committee of the Supreme Court, which will decide whether the application shall be granted.

The provisions of section 271 shall apply correspondingly.

§ 339. At an appeal hearing that is not concerned with the assessment of evidence in relation to the issue of guilt, the appellant shall be entitled to speak first. If both parties have appealed, the president of the court will decide who shall speak first.

If the person charged is present during an appeal hearing in the Court of Appeal, he is in all cases entitled to speak before the hearing is concluded. In the Supreme Court the court may allow the person charged to speak.

§ 340. In the Supreme Court evidence shall be adduced by reading aloud from the documents relating to the case. Experts may, however, be directly examined before the Supreme Court. An inquiry may be conducted by the Supreme Court if it does not require an inspection of the scene of the crime.

§ 341. The appellant may withdraw the appeal at any time prior to the commencement of the appeal hearing and, with the consent of the opposite party, at any time prior to its conclusion.

§ 342. If the appellate court shall not try the issue of the assessment of evidence in relation to the issue of guilt, it is bound by the grounds of appeal that are stated in the appeal, cf. section 314, first paragraph.

Regardless of the ground of appeal, the court may nevertheless:

1) try the issue whether the criminal legislation has been correctly applied,

2) in favour of the person charged review the decision concerning a penalty or sanction specified in section 2, first paragraph, item 1,

3) set aside the judgement on the ground of a procedural error which is deemed to have affected the substance thereof to the detriment of the person charged,

4) according to the circumstances set aside the judgement on the ground of any error specified in section 343, second paragraph.

In favour of the person charged the court may extend the effect of an error to parts of the case not covered by the appeal if the said error is significant for such parts too. The same applies if the error is significant for other persons charged who have been convicted in the same case, but who are not covered by the appeal.

§ 343. A procedural error will only be taken into consideration if it is deemed to have affected the substance of the judgement.

The following errors shall unconditionally be deemed to have had such an effect:

1) that the requisite application for a prosecution is lacking,

2) that the case was not brought by the proper authority,

3) that the court was not lawfully constituted; nevertheless the fact that a case has been erroneously adjudicated with lay judges, that there were not an equal number of lay judges of each sex, that a case has been adjudicated with lay judges from the general panels instead of the special panel, or with lay judges who were appointed instead of being drawn by lot, shall not unconditionally be deemed to have affected the substance of the judgement,

4) that judgement was pronounced by a court that had no jurisdiction in the case,

5) that a legally enforceable decision has already been made in the case,

6) that the case was proceeded with in the absence of the person charged contrary to law,

7) that the person charged had no defence counsel even though this was legally necessary,

8) that the grounds for judgement have defects that hinder the hearing of the appeal.

The errors specified in items 1, 2, 6 and 7, however, shall unconditionally be deemed to have affected the judgement only if it constitutes a conviction.

§ 344. If the application of the law is upheld, the court shall not alter the sentence imposed, unless it finds that the sentence is obviously disproportionate to the criminal act committed.

§ 345. If the hearing is concerned with the assessment of evidence in relation to the issue of guilt, the appeal shall be decided by a judgement pursuant to the provisions of section 40.

If the court in other cases finds no reason to alter or set aside the judgement appealed against, the appeal shall be dismissed by order. In the opposite case the court shall pronounce a new judgement if the necessary preconditions are fulfilled; otherwise the judgement appealed against shall be set aside by order.

§ 346. An order made by the Court of Appeal pursuant to section 345 is subject to appeal. The provisions concerning appeals against judgements shall apply correspondingly.

§ 347. When a judgement is set aside, the main hearing shall also be set aside unless the court finds that the setting aside should only apply to the judgement.

If the ground for setting the judgement aside applies only to part of it, the court will decide whether the setting aside shall be limited to this part or include the whole judgement.

§ 348. If the person charged has been convicted of two or more offences by the judgement appealed against, and the issue of the assessment of evidence in relation to the issue of guilt shall be tried only for some of them, the court shall in the event of a convicting judgement determine a joint penalty for all the offences. If the person charged is acquitted, the court shall determine a new penalty for the offences to which the conviction continues to apply.

If the person charged is convicted of two or more offences by the judgement appealed against and no appeal is brought against the assessment of evidence in relation to the issue of guilt, the court shall in the event of a setting aside of the judgement or an acquittal in regard

to some of the offences determine a new penalty for the offences to which the conviction continues to apply. If there is no appeal against sentence, the penalty imposed may not exceed the total penalty imposed by the judgement appealed against.

§ 349. When the appeal is decided, the documents relating to the case shall, together with the decision, be sent to the prosecuting authority, which shall ensure that they are served on the person charged and any other parties as far as is necessary and that the court that made the decision appealed against is duly informed.

§ 350. If the case is retried after the judgement is set aside, new lay judges shall be appointed. The court shall follow the interpretation of the law on which the decision in the appeal case is based.

If the judgement set aside applies to two or more matters, and the ground for setting it aside applies only to some of them, the court shall for the other matters apply the decision of the issue of guilt which was made in the first judgement.

§ 351. An appeal by the prosecuting authority in favour of the person charged cannot result in any alteration that is detrimental to him. An appeal by the prosecuting authority solely against a contravention of procedural rules made exclusively for the protection of the person charged shall in all cases be deemed to be an appeal in his favour.

Chapter 24. Appeal hearing with a jury

§ 352. The Court of Appeal shall during an appeal hearing sit with a jury when an appeal is brought against the assessment of evidence in relation to the issue of guilt and the appeal is concerned with a felony punishable pursuant to statute with imprisonment for a term exceeding six years.

This does not, however, apply:

1) to cases concerning a contravention of chapter 8 or 9 of the Penal Code,

2) when the person charged was under 18 years of age when the felony was committed and the prosecuting authority does not intend to propose and the judgement appealed against has not imposed a sentence of imprisonment for a term exceeding two years,

3) in cases that are retried pursuant to sections 376a and 376 c.

An increase of the maximum penalty because of repeated offences, concurrence of felonies, or the application of section 232 of the Penal Code shall not be taken into account.

§ 353. If an appeal is brought against the assessment of evidence in relation to the issue of guilt for two or more offences that have been consolidated in one case and the appeal in regard to some of them shall be tried with a jury, it shall be tried with a jury in respect of all the offences.

Consolidated cases shall, however, be separated so that the following cases shall not be tried with a jury unless it follows from section 352:

1) cases concerning defamation,

2) cases that are better suited to being heard by a composite court[20] with expert lay judges. The court's decision pursuant to item 2 may not be challenged by interlocutory appeal or serve as a ground of appeal.

If an appeal is concerned with two or more offences and there is in regard to some of them an appeal relating to evidence which shall be tried with a jury, whereas in regard to others there is an appeal against other aspects of the judgement, they shall be tried at the same appeal hearing. The appeal in regard to the latter offences shall be heard by the court without the participation of the jury. If four jury members are selected to join the court pursuant to section 376 e, first paragraph, they shall, nevertheless, take part in deciding the question of a sanction and the other questions referred to in the said section for the whole case.

An appeal that concerns a contravention of chapter 8 or 9 of the Penal Code or of the Act of 18 August 1914 relating to defence secrets shall in its entirety be heard by a composite court.[21]

§ 354. In cases that are to be tried with a jury, the provisions of chapter 23 shall apply in so far as they are appropriate and it is not otherwise provided.

§ 355. The jury shall have 10 members.

In complex cases the president of the court may decide that 11 or 12 jury members shall follow the proceedings. When the jury shall give its verdict and the number of jurors has not through absence been reduced to 10, one or two of them shall be chosen by lot to stand down. Lots shall be drawn in such a way that as far as possible an equal number of men and women shall remain. The foreman of the jury shall be excluded from the drawing of lots.

Before the hearing begins, the president of the court shall ascertain whether any of the jurors or their deputies are disqualified, cf. section 115 of the Courts of Justice Act.

§ 356. The parties are entitled to exclude as many jurors and deputies as are present in excess of 10, or in excess of 11 or 12 in the cases referred to in section 355, second paragraph.

The person indicted and then the prosecuting authority may in turn exclude one juror after another until the desired number remains.

If the right to exclude is not exercised, or not fully exercised, it shall be decided by lot who shall stand down.

Exclusion and the drawing of lots shall be done in such a way that finally as far as possible an equal number of men and women shall remain.

§ 357. If there are two or more persons indicted in the same case, they shall exercise the right of exclusion jointly. If they cannot agree, they are each entitled to exclude an equal number. If this cannot be done either, it shall be decided by lot who is to exercise the right of exclusion, or, as the case may be, who shall exclude the greater number.

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[20] See footnote 6, section 40. (Translator's note)
[21] Ibid.

In the absence of the person indicted his right of exclusion shall be exercised by his defence counsel.

§ 358. With the consent of the parties the jury that has served in the preceding case may serve in the next case if the hearing of the latter case is commenced on the same day.

§ 359. The president of the court shall inform the members of the jury of the course of the court proceedings and of the jury's tasks and responsibility. He shall especially impress on the members of the jury that until the verdict of the jury has finally been pronounced, they must not have any discussion or contact with any person other than the court as regards the case, and that they must not without the permission of the president of the court leave the conference room after they have retired to answer the questions put to them.

§ 360. The president of the court shall then ask the members of the jury: "Do you affirm that you will pay close attention to the whole proceedings in the court and answer the questions that will be submitted to you as truthfully and justly as you can according to the law and the evidence in the case?" The members of the jury standing and each in turn shall answer: "I do so affirm."

All persons present shall rise when the affirmation is made.

When several cases are dealt with consecutively, a member of the jury who has made an affirmation in one of the earlier cases need not repeat it.

§ 361. Under the leadership of the president of the court the jury shall choose a foreman by secret ballot. If the vote is tied, the choice shall be decided by lot. The jury shall be given a list of the members of the jury arranged in the order decided by lot pursuant to section 85 of the Courts of Justice Act.

§ 362. A judgement of acquittal pursuant to section 286 may be pronounced by the court without the participation of the jury, unless the acquittal is based on the expiry of a period of limitation, and it is disputed when the criminal act was committed.

If separate hearings have been decided on pursuant to section 287, first paragraph, questions to the jury may also be put separately for an individual act or an individual person indicted.

Until the jury has given its verdict, only the conclusion of the judgement appealed against shall normally be read aloud.

§ 363. After the production of evidence relating to the issue of guilt is completed, the prosecutor shall submit a draft of the questions to be put to the jury. Defence counsel shall be given an opportunity to comment on the said draft. When required, a short adjournment shall be granted in order to study the draft.

The president of the court shall formulate the questions and submit them to the parties. If any of them raises any objection to the questions, the court shall decide the matter.

§ 364. The object of the questions is the matter to which the indictment relates.

A question must relate to only one person indicted, as far as possible to only to one criminal matter, and to only one penal provision.

When the court finds it appropriate or a party so requires, a question shall be put as to whether there are circumstances that may bring the matter under another penal provision than the one to which the indictment relates.

If an affirmative answer to a question will exclude other questions, the question that will lead to the least favourable result for the person indicted shall be put first.

§ 365. All questions shall be so framed that the jury can answer yes or no to any of them.

In the case of each question it shall be stated how many votes are required for an answer in disfavour of the person indicted. If a question is to be answered only in the event that a preceding question is answered in a specific manner, this shall also be stated in the written list of questions.

§ 366. A primary question shall, unless it relates to a matter that is not concerned with criminal guilt, begin with the words: "Is the person indicted guilty?" The question shall include the legal indicia of the criminal act and a short, but as accurate as possible, description of the matter to which the indictment relates, with details of time and place.

§ 367. If the jury is to decide whether there are such special circumstances as would pursuant to statute bring the matter under a more severe or milder penal provision, an additional question concerning this issue may be put. This question shall only be answered if an affirmative answer is given to the question to which the additional question is connected.

§ 368. When the questions have been defined, the president of the court shall read them aloud. Each member of the jury shall receive a transcript of the questions.

The president of the court shall sum up the evidence in the case and explain the questions and the legal principles applicable.

The parties may request further explanation on specific points. They may also submit proposals concerning amendments to the questions.

The parties may require that specially indicated parts of the explanation of the legal principles shall be entered in the court record. Any such application must be submitted before the jury has retired to consider its verdict, cf. section 369.

§ 369. The jury shall then retire to a secluded room to consider its verdict. The jury shall take with it the written list of questions signed by the president of the court.

When retiring to consider its verdict the jury may take with it pictures, drawings, maps, and other objects that have been produced during the main hearing. The jury may also take with it written exhibits and other written evidence that has been produced when the court

finds this appropriate. As a general rule, the jury should not be permitted to take with it statements previously made by the person indicted, witnesses or experts.

§ 370. The foreman of the jury shall be in charge of the jury's consideration of its verdict.

If the jury finds that it needs further clarification of the questions, of the legal principles applicable, or of the procedure to be followed, or if it finds that the questions should be amended or new questions put, it shall return to the courtroom so that the president of the court may do what is required. The jury may summon the president of the court in order to receive guidance concerning the questions referred to in the first sentence.

If it is to be decided whether the questions are to be amended or new questions put, the parties shall be given the opportunity to express their views.

§ 371. When it has finished considering its verdict, the jury shall under the leadership of its foreman vote on the individual questions in the order in which they are put. The members of the jury shall vote in the sequence decided by lot pursuant to section 85 of the Courts of Justice Act. The foreman shall vote last.

§ 372. At least seven votes are required for an answer that is in disfavour of the person indicted. The answer shall include a statement that it has been given by more than six votes.

The number of votes must not in any case be further specified.

A member of the jury who has voted for an acquittal on the primary question shall not participate in the voting as to whether such special circumstances as are specified in section 367 subsist, but is deemed to have acceded to the vote that is most favourable to the person indicted.

The foreman shall sign the answers together with the two members of the jury first drawn by lot.

§ 373. After the voting the members of the jury shall return to their places in the courtroom. The foreman shall rise and say: "The jury has on its honour and in good conscience given the following answers to the questions that have been put." He shall then read aloud the answers that have been given to each of the questions.

The foreman shall deliver the written list of questions and the signed answers to the court.

§ 374. If the court finds that the verdict of the jury has not been arrived at in a lawful manner, or that it is obscure, incomplete, or contradictory, or if there is any doubt as to whether the answer expresses the jury's real opinion, and the defect cannot be remedied immediately or the doubt removed by an explanation from the foreman, the court may, as long as judgement has not been pronounced, order the jury to retire in order to reconsider and vote again on the question to which the defect relates.

If the error is only a formal one, the jury cannot change the substance of its decision. Otherwise it is not bound by its previous decision.

§ 375. As long as judgement has not been pronounced, the court may decide to amend the questions or to put new questions after the parties have been given the opportunity to express their views.

§ 376. If the jury's verdict is that the person indicted is not guilty, the court shall pronounce a judgement of acquittal if it does not make a decision pursuant to section 376 a.

§ 376 a. If the jury's verdict is that the person indicted is not guilty, but the court finds that he is undoubtedly guilty, the court may unanimously decide that the case shall be retried before other judges. At the new trial the Court of Appeal shall be constituted as a composite court.[22]

If the case covers two or more offences or two or more persons indicted, any such decision may apply to individual offences or individual persons indicted. If the court finds that the counts in the indictment that it has decided should be retried, should at the new trial be tried together with other counts that have been decided by the verdict of the jury, the court may make a corresponding decision in regard to such counts.

A decision pursuant to this section shall be made by the court of its own motion without the parties being given an opportunity to express their views. An interlocutory appeal may be made against the decision on the ground of procedural error or misapplication of law.

§ 376 b. If the jury's verdict is that the person indicted is guilty, the determination of a penalty or other sanction shall be based on this verdict unless the court finds that the conditions for pronouncing judgement in accordance with the second or third paragraph are fulfilled, or the court makes a decision pursuant to section 376 c.

If the court finds that the matter described in the question is not criminal or that criminal liability has lapsed, it shall pronounce a judgement of acquittal.

If the court in like manner finds that the person indicted must be convicted of a lesser offence than that indicated by the verdict of the jury, the court shall pronounce judgement accordingly. If there are circumstances pertinent to the substance of the offence on which the jury has not expressed a view, the court shall put the necessary questions to the jury.

§ 376 c. If the jury's verdict is that the person indicted is guilty, but the court finds that insufficient evidence of his guilt has been produced, the court may decide that the case shall be retried before other judges. The provisions of section 376 a, first paragraph, final sentence, and second and third paragraphs, shall apply correspondingly.

§ 376 d. When a decision for a retrial has been made pursuant to section 376 c, the person indicted cannot be convicted under more severe penal provisions than he would have been convicted under on the basis of the jury's verdict in the first trial unless the conditions for reopening the case are fulfilled.

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[22] Ibid.

§ 376 e. If the jury has declared the person indicted guilty, and the court does not pronounce a judgement of acquittal pursuant to sections 376 b to 376 d or refer the case to a new main hearing, three members of the jury chosen by lot shall together with the foreman join the court in deciding the question of imposing a penalty or other sanction as specified in section 2, first paragraph, and the question of liability for costs in these cases. The drawing of lots shall be done in such a way that, including the foreman, there shall be an equal number of men and women among the jurors who join the court.

A member of the jury who has voted for acquittal on the issue of guilt shall take part in the voting concerning the imposition of a penalty or other sanction. In no case shall it be stated in the grounds for judgement how a member of the jury has voted on the issue of guilt.

§ 376 f. Thereupon first the prosecutor and then defence counsel shall address the court on the question of sanctions and submit such evidence as may be necessary in this regard. When defence counsel has finished, the person indicted shall be asked whether he has anything to add. The addresses and the submission of evidence must not be intended to challenge what has been decided by the verdict of the jury.

Chapter 25.

(Repealed by Act of 11 June 1993 No. 80.)

Chapter 26. Interlocutory appeal

§ 377. An interlocutory appeal may be brought against a court order or decision by any person who is affected thereby unless it may be the subject of an appeal proper or may serve as a ground of such an appeal by the said person, or it is by reason of its nature or a specific statutory provision unchallengeable.

The provisions of sections 308 and 309 shall apply correspondingly.

§ 378. An interlocutory appeal may not be brought against court orders or decisions made during the main hearing except in the following cases:

1) when they summarily dismiss, quash, or adjourn the case,

2) when they relate to remand in custody, search, personal examination, seizure, a charge on property, a procedural penalty, compensation, or costs of the case,

3) when they are directed against a third party,

4) when they reject an application for the appointment of an official defence counsel.

§ 379. The time-limit for an interlocutory appeal is two weeks unless it is otherwise provided. The provisions of section 310, third paragraph, and section 318, first paragraph, shall apply correspondingly.

An interlocutory appeal by any person who is ordered to make a statement or affirmation, to undergo an examination, to deliver evidence or to serve as an expert must be lodged immediately if the person concerned is present in court, and otherwise within three days.

§ 380. Notice of an interlocutory appeal shall be given in writing or orally to the court whose decision is being appealed against. The provisions of section 312, second paragraph, and section 319, second paragraph, shall apply correspondingly.

§ 381. If the court finds the interlocutory appeal justified, it shall alter its decision in so far as it has power to do so. Otherwise it shall without delay forward the notice of appeal together with the pertinent documents to the interlocutory appeals court.

If the court finds that there is no right of interlocutory appeal, or that the notice of appeal is out of time, it shall so inform the appellant, but the case shall nevertheless be remitted unless the interlocutory appeal is withdrawn.

No later than the day of remittal the court shall notify the opposite party of the said appeal in so far as any person has acted as an opposite party or may be so regarded. Such notification shall, however, not be given when the prosecuting authority brings an interlocutory appeal against the rejection of an application for the use of coercive measures, in so far as there is any risk that such notification will thwart the purpose of the measure in question.

§ 382. An interlocutory appeal has no suspensive effect unless it is so provided by statute, or the court whose decision is being appealed against or the interlocutory appeals court so decides.

An interlocutory appeal by a third party against an order to make a statement or affirmation, to deliver evidence, or to serve as an expert will have a suspensive effect on any such order as regards the said party.

§ 383. The appellant and other persons affected by the interlocutory appeal may submit a written statement concerning the case. The court that made the decision that is being appealed against may do likewise.

If new facts are pleaded that are not obviously of no significance, the court shall inform the opposite party of the said statement. If it finds grounds for so doing, it may also submit the statement to the court that made the decision appealed against.

§ 384. The interlocutory appeals court may obtain further information and decide that evidence be judicially recorded. This shall be done in accordance with the provisions for the judicial recording of evidence outside the main hearing.

§ 385. An interlocutory appeal shall be decided by a court order without oral proceedings.

If the interlocutory appeals court finds the interlocutory appeal justified, it shall make a new decision when it has grounds for so doing; otherwise the decision appealed against shall be set aside. If the interlocutory appeal does not succeed, it shall be rejected.

If a procedural error is pleaded, the provisions of section 343 shall apply correspondingly. If there is a procedural error that has not been pleaded, the interlocutory appeals court may according to the circumstances set aside the decision appealed against in so far as it deems that such error may have affected the substance of the decision, or the error is one of those specified in section 343, second paragraph.

Instead of setting the decision aside pursuant to the provisions of the third paragraph, the interlocutory appeals court may itself make a decision in the case when the necessary grounds subsist and the court finds it unobjectionable to do so.

§ 386. When an interlocutory appeal has been decided, the documents relating to the case shall, together with the court order, be sent to the prosecuting authority, which shall arrange for notification of the person charged or other persons whom the court order concerns and of the court that made the decision appealed against.

§ 387. When there are special reasons for so doing, the court may decide to conduct oral proceedings concerning an interlocutory appeal, including an examination of the parties and witnesses or the hearing of other direct evidence. Neither an interlocutory appeal nor an appeal proper may be brought against the court's decision. During such oral proceedings the court record shall be kept according to the provisions of section 21.

If oral proceedings are conducted, the person charged shall always have a defence counsel when the interlocutory appeal concerns him. The court may appoint a legal representative for a third party who is a party to the interlocutory appeal proceedings. The provisions of chapter 9 shall apply to such legal representative in so far as they are appropriate.

The provisions of the first and second paragraphs shall not apply to the Interlocutory Appeals Committee of the Supreme Court. The said Committee may in interlocutory appeal proceedings submit questions of law to the Supreme Court or decide that the case as a whole shall be decided by the Supreme Court pursuant to the provisions of section 6, second paragraph, of Act of 25 June 1926 No. 2.

§ 388. No further interlocutory appeal may be brought against the Court of Appeal's decision of an interlocutory appeal except in the following cases:

1) when the Court summarily dismisses a case from the lower court because the case does not come within the jurisdiction of the courts or because it has already been decided by a legally enforceable judgement,

2) when the interlocutory appeal relates to procedure in the Court of Appeal,

3) when the interlocutory appeal relates to the interpretation of a statutory provision,

4) when the interlocutory appeal relates to a decision concerning a duty to testify pursuant to section 125,

Chapter 27. Reopening a case

§ 389. A case that has been decided by a legally enforceable judgement may on the petition of one of the parties be reopened for a new trial when the conditions prescribed in sections 390 to 393 are fulfilled. If the judgement has been pronounced by the Court of Appeal and it includes the assessment of evidence in relation to the issue of guilt, the case may be reopened even though the judgement is not legally enforceable.

The provisions of sections 307 to 309 shall apply correspondingly.

A decision concerning confiscation or a declaration that a statement is null and void may be reopened separately when the conditions prescribed in section 405 or 407 of the Civil Procedure Act are fulfilled. The provisions of this chapter shall apply to the hearing of the case.

§ 390. Reopening of a case may be required when a judge or member of the jury who has taken part in the hearing of the case was by law ineligible for the position of judge or disqualified and there is reason to assume that this may have affected the decision.

Reopening of a case may nevertheless not be required by a party who has or could have raised this objection during the proceedings.

§ 391. In favour of the person charged reopening of the case may be required:

1) when a judge, member of the jury, keeper of the records, police officer or official in the prosecuting authority, prosecutor, defence counsel, expert or court interpreter has been guilty of a criminal offence in relation to the case, or a witness has given false evidence in the case, or a document that has been used in the case is false or forged, and it cannot be excluded that this has affected the judgement to the detriment of the person charged,

2) when the decision is deemed to be directly or indirectly based on an interpretation of international law or a treaty which differs from the interpretation that an international court has in a parallel case laid down as binding on Norway, and it must be assumed that such an interpretation should lead to a different decision,

3) when a new circumstance is brought to light or new evidence is procured which seems likely to lead to an acquittal or summary dismissal of the case or to the application of a more lenient penal provision or a considerably more lenient sanction. In a case in which a sentence of imprisonment, preventive supervision, or loss of civil rights is not imposed, new information or evidence that the person concerned should have presented at an earlier stage may not be pleaded.

§ 392. Even though the conditions prescribed in section 390 or 391 are not fulfilled, the court may order the case to be reopened in favour of the person charged when the Supreme Court has departed from a legal interpretation that it has previously adopted and on which the judgement is based.

The same applies when special circumstances make it doubtful whether the judgement is correct, and weighty considerations indicate that the question of the guilt of the person charged should be tried anew.

§ 393. The prosecuting authority may require the case to be reopened to the detriment of the person charged when:

1) a matter specified in section 391, item 1, subsists or the person charged has been guilty of a criminal offence in relation to the case and there is reason to assume that this has led to an acquittal or to the application of a considerably too lenient penal provision or a considerably too lenient penalty,

2) by reason of his own confession or other new information or evidence it must be assumed that he is guilty of the criminal offence or of a considerably more serious criminal offence than the one he has been convicted of.

If the criminal offence that is alleged to have been committed is not pursuant to statute punishable with imprisonment for a term exceeding three years, the case may only be reopened on the ground that the person charged has been guilty of a criminal offence in relation to the case.

§ 394. The petition shall be submitted to the court that has pronounced the judgement challenged. This applies even if judgement has been pronounced in a higher court on appeal, in so far as the appellate court has not tried that aspect of the judgement which is being challenged.

If judgement has been pronounced by the Supreme Court, the petition shall be submitted to the Interlocutory Appeals Committee of the Supreme Court.

§ 395. No judge who has been a party to pronouncing the judgement challenged may take part in deciding a petition for a case to be reopened or in a new trial of the case.

On the hearing of a petition for reopening a case that has been tried by a composite court,[23] lay judges shall be summoned only when the professional judges of the court find it necessary to do so. If lay judges are not summoned, three professional judges shall take part in the hearing.

§ 396. The petition must state the grounds for reopening the case and the evidence that will be adduced.

If the petition does not contain any ground that may pursuant to statute lead to a reopening of the case, or if the facts or evidence pleaded are obviously of no significance, the court shall immediately make an order rejecting the petition. The decision may be made by the president of the court.

§ 397. If the petition is not rejected pursuant to section 396, it shall be submitted to the opposite party for comment.

The court may obtain further information and decide that evidence be judicially recorded. This shall be done in accordance with the provisions for the judicial recording of evidence outside the main hearing. The provisions of section 97, first sentence, relating to defence counsel shall apply correspondingly. The decision may be made by the president of the court.

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[23] Ibid.

The parties shall be given the opportunity to express their views concerning the information obtained.

§ 398. The court shall by order decide whether to allow a reopening of the case. The provisions of section 54 shall not be applicable.

When special reasons so indicate, the court may decide to conduct oral proceedings concerning the petition, including an examination of the parties and witnesses, or the hearing of other direct evidence. No interlocutory appeal or appeal proper may be brought against the court's decision.

If oral proceedings are conducted, the person charged shall have a defence counsel if such counsel will be necessary during a new main hearing of the case.

§ 399. If the convicted person is dead, the court shall either reject the petition for a reopening of the case or pronounce a judgement of acquittal without a main hearing.

In other cases too the court may, with the consent of the prosecuting authority, pronounce a judgement of acquittal without a main hearing.

§ 400. If it is decided to reopen the case, a completely new trial of the case shall be conducted by the court that pronounced the judgement challenged.

The provision of section 351, first sentence, shall apply correspondingly.

§ 401. In relation to a court order that summarily dismisses a case, or that summarily dismisses or rejects an appeal, the provisions relating to the reopening of judgements shall be applicable in so far as they are appropriate. The same applies to a decision that disallows an appeal.

PART VII. Private prosecutions and civil legal claims

Chapter 28. Private prosecutions

§ 402. Pursuant to the provisions of this chapter an aggrieved party may institute a private prosecution in the case of:

1) a criminal act that is not prosecuted by the public authorities,

2) a criminal act that is not prosecuted by the public authorities unless this is considered necessary in the public interest,

3) other criminal acts in so far as the prosecuting authority has refused to comply with an application for public prosecution or has, contrary to the provisions of section 69 or 70, abandoned a prosecution that has been commenced.

A case of defamation shall be treated as a case coming under item 2 even if it only relates to a declaration that a statement is null and void.

§ 403. Proceedings pursuant to section 402, first paragraph, item 1 or 2, must be brought within the time-limits specified in section 80 of the Penal Code.

If an application for a public prosecution in a case referred to in section 402, first paragraph, item 2, is submitted within the aforesaid time-limit and the prosecuting authority decides not to bring a prosecution, proceedings can be instituted in time by issuing a writ of summons not later than one month after the aggrieved party has been notified of the prosecuting authority's decision. For a person who has not been so notified, the time-limit is three months from the date of the prosecuting authority's decision.

If the decision not to prosecute the case has been made by an official in the prosecuting authority who is not himself authorised to prefer an indictment, the aggrieved party may within a corresponding time-limit require the case to be submitted to the person who is authorised to prosecute. This does not, however, apply to cases in which the Director General of Public Prosecutions has decided that the prosecution shall be discontinued pursuant to section 64, first paragraph, second sentence.

§ 404. If it is decided to conduct a public prosecution in a case referred to in section 402, first paragraph, item 2, the aggrieved party may join the prosecution. In this case the aggrieved party has the same party rights as a private prosecutor. This does not, however, in any way affect the position of the aggrieved party as a witness in the case.

§ 405. When an application for a public prosecution in a case referred to in section 402, first paragraph, item 3, is rejected, a writ of summons must be filed within the time-limits specified in section 403, second paragraph. The provisions of section 403, third paragraph, shall apply correspondingly.

§ 406. If the prosecuting authority has decided to abandon a prosecution instituted for a criminal act referred to in section 402, first paragraph, item 2 or 3, the aggrieved party may take over the prosecution and take the place of the prosecuting authority as the case stands. Notice to this effect or a writ of summons pursuant to section 412 must be sent to the court within the time-limits specified in section 403, second paragraph. If the prosecuting authority has instituted proceedings pursuant to the provisions concerning court procedure in military criminal cases in sections 463 ff., the case shall continue pursuant to the provisions of this chapter.

If the prosecuting authority abandons the case after the main hearing has begun, the aggrieved party may not take over the prosecution unless it is a case of defamation.

§ 407. If the prosecuting authority abandons a defamation case after the main hearing has begun, the said authority shall immediately inform the aggrieved party accordingly.

If the aggrieved party is present at the court sitting and wishes to take over the prosecution, he must immediately give notice to that effect. The court may grant him such adjournment as is considered necessary for proceeding with the case.

If the aggrieved party is not present, the case shall be adjourned. If he wishes to take over the prosecution, he must give the court notice to that effect not later than two weeks after

he has been notified that the prosecuting authority has abandoned the case. The court will in this case set a date for the continuation of the main hearing as soon as possible.

If the aggrieved party does not give notice that he will take over the prosecution, a judgement of acquittal shall be pronounced when the conditions prescribed in section 73, first paragraph, are fulfilled. The same applies if he takes over the prosecution but subsequently withdraws.

When judgement has been pronounced in a public case of defamation and the prosecuting authority does not appeal, the aggrieved party may do so. In this case the time-limit for him shall run from the date when the time-limit for the prosecuting authority expires. If an appeal by the prosecuting authority is abandoned, the provisions of section 403 shall apply correspondingly. Otherwise the provisions relating to an appeal by a private prosecutor shall apply.

§ 408. If there are two or more aggrieved parties, each one of them may exercise the right to prosecute independently of the others. If any of them has instituted a prosecution, the others only have the right to join in the case as it stands.

§ 409. In a private prosecution the provisions relating to the prosecuting authority in chapters 19, 21 to 24 and 26 to 27 shall be applicable to the private prosecutor. Otherwise the provisions relating to public prosecutions shall be followed as far as it is possible and not otherwise provided. In the course of the proceedings the court should give the parties such guidance as is necessary in order to avert or correct procedural errors or defects. The court shall ensure that the case is pursued without undue delay.

In a case of defamation a defence counsel is unnecessary.

If the aggrieved party lacks legal capacity, is seriously mentally ill or significantly mentally retarded, or if he is dead, the provisions of section 78 of the Penal Code shall apply.

§ 410. In cases before the Court of Appeal the private prosecutor must engage counsel to conduct the case. The rights of the private prosecutor during the preparatory proceedings and the main hearing may only be exercised through counsel.

Otherwise the private prosecutor may act personally or by a legal representative pursuant to the provisions of chapter 4 of the Civil Procedure Act.

§ 411. The court may order the private prosecutor to appear in person.

He may be ordered to confirm his statement by affirmation.

He has the same obligations as a witness to testify and to produce documents and other evidence.

§ 412. A private prosecution shall be instituted by a writ of summons, unless an indictment has already been served. The writ of summons shall be signed by the private prosecutor or his legal representative and shall contain the matters specified for an indictment in section 252, first and third paragraphs.

If the court finds that it must of its own motion refuse to allow the case to proceed, it shall notify the private prosecutor accordingly. If the defect is not remedied within a time-limit fixed by the court, the case shall be summarily dismissed.

If the case is not summarily dismissed, the court shall have the writ of summons served on the defendant with a request to submit a written reply within a time-limit fixed by the court. This time-limit may be extended. When a reply has been delivered or the time-limit for doing so has expired, the court shall summon the parties to a court sitting during the preparatory proceedings. Instead of requesting a written reply, the court may immediately set a date for such a court sitting.

§ 413. On the application of the defendant the court may decide that as a condition for allowing the case to proceed the private prosecutor shall provide security for such costs as he may be ordered to pay the defendant.

§ 414. When the aggrieved party takes over a prosecution after an indictment has been served, the provisions of section 412, second paragraph, shall apply correspondingly. If the case is not summarily dismissed pursuant to those provisions, the private prosecutor's notice that he is taking over the prosecution shall be served on the defendant. At the same time the defendant shall be requested to deliver a written reply, or summoned to a court sitting pursuant to the provisions of section 412, third paragraph.

§ 415. In a case pursuant to section 402, first paragraph, item 2, which is brought by or against a public official, and in a case pursuant to section 402, first paragraph, item 3, the private prosecutor shall provide the prosecuting authority with a copy of the writ of summons at the same time as it is filed or a notice that he is taking over the prosecution is sent to the court. The court shall notify the prosecuting authority of court sittings during the preparatory proceedings and of the main hearing.

The prosecuting authority has in such cases the right to appear, to produce evidence, and to submit proposals. The said authority may itself take over the prosecution even if it has previously refused to institute a prosecution or has discontinued a prosecution that has been commenced.

If the prosecuting authority takes over the case, the private prosecutor may join the prosecution pursuant to the provisions of section 404.

§ 416. If after a court sitting is held during the preparatory proceedings in a case referred to in section 402, first paragraph, item 3, the court finds that there are not sufficient grounds for a private prosecution, it shall summarily dismiss the case.

In so deciding the court shall attach special importance to the prospects of proving that the defendant is guilty, the interests of the private prosecutor and the public authorities in the prosecution, and the damage that may be inflicted on the defendant by legal proceedings even if he is acquitted.

Before the court makes its decision, it may obtain further information. It may itself examine the parties or witnesses or have them examined by another court or by the police.

§ 417. The court shall summon the parties, witnesses and experts.

Judicial recording of evidence outside the main hearing may be conducted when the court finds that the conditions prescribed in section 270, first paragraph, are fulfilled. If one of the parties applies for other procedural steps to be taken, the court will decide whether there are sufficient grounds for granting the application.

The court may also of its own motion decide that evidence shall be produced.

Such decisions as are referred to in this section shall be made by the court that is dealing with the case. The said court will make due application to the court that is to conduct the recording of evidence or carry out any other judicial proceeding.

§ 418. As a condition for summoning witnesses, appointing experts, or ordering the judicial recording of evidence or any other legal process on the application of one of the parties, the court may require a sufficient amount to cover the costs to be deposited. If it finds that the application has been justified, the costs shall be met by the State. The court may also decide that the costs of witnesses who attend voluntarily and of experts who are not appointed shall be met by the State.

§ 419. Section 99 of the Civil Procedure Act shall apply in the event of mediation and conciliation in court.

If the private prosecutor withdraws from the prosecution, the case shall be quashed. He cannot then take up the prosecution again.

If the private prosecutor fails to attend a court sitting referred to in section 412, third paragraph, or section 414 or the main hearing, without it being made clear or shown to be probable that he has a lawful excuse, and no legal representative appears for him either, he shall be deemed to have withdrawn from the case. The same applies if he exceeds a time-limit fixed by the court pursuant to section 409, first paragraph, fourth sentence, or fails to comply with any order or obligation pursuant to section 411.

§ 420. If the case is quashed pursuant to the provisions of section 419, third paragraph, the court may reverse its order if the private prosecutor shows it to be probable that he is not to blame for the circumstances that justified quashing the case. An application for any such reversal must be submitted before the expiry of the time-limit for an interlocutory appeal. The provisions of section 318, first paragraph, shall apply correspondingly.

§ 421. If the private prosecutor wishes to appeal to the Court of Appeal, he must engage counsel to conduct the case. In the case of an appeal to the Supreme Court he must engage counsel who is entitled to conduct cases before the Supreme Court.

The time-limit for an appeal runs from the service of the judgement. The notice of appeal must be served on the defendant before the expiry of the time-limit.

The provisions of section 415 shall apply correspondingly.

§ 422. If counsel does not appear for the private prosecutor at the hearing of the case in the Supreme Court or the Court of Appeal or at any court sitting referred to in section 412, last paragraph, or section 414, and it is not made clear or shown to be probable that there is a lawful excuse for his absence, the case shall be summarily dismissed. The same applies when the private prosecutor exceeds a time-limit fixed by the court pursuant to section 409, first paragraph, fourth sentence. The case shall also be summarily dismissed when the private prosecutor fails to comply with an order or obligation pursuant to section 411.

§ 423. When the defendant appeals in a case not relating to defamation, the prosecuting authority shall take over the prosecution and ensure that the notice of appeal is served on the private prosecutor. The latter may join the prosecution pursuant to the provisions of section 404.

§ 424. When the defendant appeals in a case of defamation, the provisions of section 421 and section 422, first and second sentences, shall apply correspondingly to him.

In such cases the provisions of section 419, third paragraph, shall apply correspondingly to the private prosecutor. If the case is quashed pursuant to these provisions, the judgement appealed against shall be set aside in so far as it has been appealed against by the defendant.

§ 425. When an appeal is summarily dismissed pursuant to section 422 or section 424, first paragraph, or the case is quashed pursuant to section 424, second paragraph, the provisions of section 420 shall apply correspondingly.

Chapter 29. Civil legal claims

§ 426. When the aggrieved person first appears in court, he shall be asked whether he has any claims that he wishes to pursue pursuant to section 3 if this has not previously been made clear. If so, he shall be informed of his opportunity to have any such claim decided in connection with the criminal proceedings.

§ 427. In a public case the prosecuting authority may on application pursue such civil legal claims as are specified in section 3. The person entitled to any such claim must then provide further information concerning the grounds for and the amount of the claim and what evidence he can produce.

Inclusion of a claim against the person charged by any person who has suffered direct damage from the criminal act may only be refused if the said claim is obviously unjustified or if it would cause disproportionate inconvenience for the hearing of the criminal case if the claim were pursued in connection with it. The person who has suffered direct damage shall immediately be informed of any such decision.

The same applies to claims against the parents of the person charged pursuant to section 1-2, subsection 2, of Act of 13 June 1969 No. 26 relating to damages.

When civil legal claims are pursued against a person other than the person charged, the person concerned assumes the position of a party to the case in so far as this issue is concerned. He shall in sufficient time before being summoned to the main hearing or any other court sitting for the adjudication of the case be notified in writing of the claim that will be submitted, the grounds for the claim, and the evidence that will be produced. If this is not done, the civil legal claim may only be pursued to the extent that the defendant so consents or the court finds that he has nevertheless had a sufficiently good opportunity to prepare his defence.

§ 428. Any person who has any such civil legal claim as is specified in section 3 may himself pursue it in connection with a public case if a main hearing is held. The court may at any stage of the case refuse to allow the claim to be pursued during the main hearing if this would cause considerable inconvenience. This does not, however, apply in a criminal case of defamation or in a case referred to in section 2, first paragraph, item 3.

When the aggrieved person himself pursues his claim, the provisions of section 404 shall apply correspondingly.

The provisions of section 427, fourth paragraph, shall also apply correspondingly when the claim is pursued against the person charged, but it will then be sufficient if the notification specified therein is given to the person charged or his defence counsel not later than simultaneously with the summons to attend the main hearing.

§ 429. In private prosecutions the private prosecutor may pursue civil legal claims in the same way as a proposal for a penalty.

§ 430. On the application of the County Governor the prosecuting authority may submit a claim for a judgement declaring that a marriage is void if this is a precondition for the indictment. In the same way a claim may be submitted that a marriage shall be dissolved on the grounds of kinship or a previous marriage.

The provisions of section 427, fourth paragraph, shall apply correspondingly.

§ 431. The court may decide that the hearing of a civil legal claim shall be postponed until the criminal case has been adjudicated.

§ 432. If the court finds that the information given in the case is insufficient to enable the amount of the claim to be determined, the court may pronounce judgement for such part of the claim as it finds to be substantiated.

When a case is decided by a judgement in a court of summary jurisdiction, civil legal claims may only be adjudicated to the extent that the court finds them not subject to any doubt.

As regards the time-limit for compliance the provisions of sections 146 and 148 of the Civil Procedure Act shall apply.

Any person who believes that he has any claim additional to that for which judgement has been given pursuant to the first or the second paragraph may institute proceedings for the remaining claim pursuant to the provisions of the Civil Procedure Act.

§ 433. Except with the consent of the defendant or the court, an application for the adjudication of any civil legal claim may not be withdrawn after the main hearing has begun unless the claim is at the same time abandoned.

§ 434. If in an appeal or a reopening of the case in criminal proceedings the issue of the evidence in relation to the question of guilt is to be tried, the parties may also require a new hearing of the civil legal claims. An application to this effect, with details of the evidence to be produced, must be submitted in time for the other party to be able to prepare for the hearing.

Otherwise, civil legal claims shall be tried in so far as the decision of such claims directly depends on the decision made in the criminal case. In the case of an appeal against sentence, the appellate court shall try claims relating to abrogation of the right of inheritance pursuant to section 73 of the Inheritance Act if the claim has been adjudicated by the court below.

§ 435. A separate appeal against the decision of civil legal claims shall be brought according to the provisions of the Civil Procedure Act. The same applies to a reopening of the case.

Part VIII. Costs and compensation in connection with a prosecution

Chapter 30. Costs of the case

§ 436. If the person charged is convicted or a statement is declared null and void in a public case, the person charged should normally be ordered to compensate the State for the necessary costs of the case. In particular, a person charged who can be blamed for having behaved in such a manner during the prosecution that the costs are higher than necessary should be ordered to cover the extra costs. Costs may also be imposed when, after a date has been set for the main hearing, a case is dismissed because the person charged accepts a previously given option of a fine.[24]

When the decision made on an appeal, interlocutory appeal, or petition for reopening a case lodged by the person charged is adverse to him, the provisions of the first paragraph shall apply correspondingly. The same applies when a judicial remedy is used by a person referred to in section 308.

§ 437. In determining costs pursuant to section 436, expenses incurred for members of the court, court officials or court premises shall be disregarded.

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[24]See chapter 20, sections 255, 256. (Translator’s note)

If more persons than one have been charged in a case, the costs shall be distributed between them at the court's discretion. Expenses relating only to matters involving one particular person are of no concern to the others.

Costs shall only be imposed if it is deemed possible to obtain payment thereof, and they shall be proportionate to the financial capacity of the person charged.

§ 438. If a public prosecution ends in an acquittal, or if it is discontinued contrary to the provisions of section 69 or 70, the court shall award the person charged compensation from the State for necessary expenses incurred for his defence unless he himself wilfully incurred suspicion. Compensation for payment to his defence counsel shall not exceed the amount defence counsel would have been awarded if he had been appointed official defence counsel.

The necessary travelling expenses of the person charged shall also be reimbursed.

§ 439. When the aggrieved person in a public prosecution himself pursues civil legal claims, the provisions for compensation for costs in chapter 13 of the Civil Procedure Act shall apply correspondingly to costs relating to such claims.

If the aggrieved person has joined the public prosecution, the provisions of sections 436 and 437 shall apply correspondingly to his costs.

§ 440. In a private case pursuant to this Act the provisions relating to compensation for costs in chapter 13 of the Civil Procedure Act shall apply correspondingly.

If the defendant is convicted or a statement is declared null and void in a private case, he may be ordered to pay costs to the State pursuant to the provisions for a public case. The private prosecutor may be ordered to pay costs to the State pursuant to the provisions of section 437 when the case ends in an acquittal or judgement is not pronounced, if the court finds that the defendant has not given reasonable cause for the prosecution.

§ 441. A decision relating to compensation for costs shall be made in the judgement or in the order concluding the case. If such a decision is not made, or if the prosecution is discontinued without a judgement or order, an application for costs may be submitted for decision by order of the court that has dealt with the case, or if no court has done so, by a court of summary jurisdiction. Any such application shall be submitted not later than one month after it has become permissible to do so. Before any decision is made, the opposite party shall be given the opportunity to express his views.

§ 442. If the judgement is appealed against, the appellate court shall try the issue of compensation for costs when the issue of the evidence in relation to the question of guilt is tried, and otherwise when the decision is directly dependent on the outcome of the appeal. Otherwise an interlocutory appeal may be lodged on the ground that the question of costs has been decided contrary to law.

§ 443. Defence counsel for the person charged is deemed to be authorised to receive such compensation as is awarded pursuant to section 438. He may require direct payment to himself of such part of the compensation as is necessary to cover outstanding expenses and fees. Such part of the compensation as is payable for this purpose cannot be subjected to execution by other creditors of the person charged, or form part of his estate in bankruptcy or be set off against any debt due from the person charged to the State.

Chapter 31. Compensation in connection with a prosecution

§ 444. If a person charged is acquitted or the prosecution against him is discontinued, he may claim compensation from the State for any damage that he has suffered through the prosecution if it is shown to be probable that he did not commit the act that formed the basis for the charge. If a sentence of imprisonment or other custodial sanction has already been executed, any damage resulting from this shall be compensated for without regard to what has been shown to be probable.

Compensation shall not be awarded when the person charged by a confession or in any other way by his own wilful conduct has induced the prosecution or the conviction.

If he has otherwise contributed to the damage in a culpable manner, the compensation may be reduced or not payable at all.

§ 445. Even if the conditions prescribed in section 444 are not fulfilled, the court may award the person charged compensation for special or disproportionate damage resulting from a criminal prosecution whenever this appears to be reasonable under the circumstances.

§ 446. If the conditions relating to compensation prescribed in section 444 or 445 are fulfilled, the court may, when special reasons so indicate, award the person charged a suitable amount as redress for the indignity or other damage of a non-pecuniary nature that he has suffered as a result of the prosecution.

§ 447. Any claim for compensation or redress must be submitted not later than three months after the person charged has been informed of the decision that finally concludes the case. The provisions of section 318, first paragraph, shall apply correspondingly.

If the case has been concluded without any judicial trial of the evidence relating to the issue of guilt, the claim shall be submitted to a court of summary jurisdiction.

Otherwise the claim shall be submitted to the court that shall conduct or has last conducted any such trial. If the claim is submitted to the District Court or the City Court, but has not been decided when an appeal against the assessment of evidence in relation to the issue of guilt proceeds to an appeal hearing, the Court of Appeal shall also decide the question of compensation. On the hearing of the claim the court shall as far as possible sit with the same judges who decided the criminal case. In the Court of Appeal lay judges or the selected jurors who join the court pursuant to section 376 e shall not take part unless the decision is made at the same court sitting as that at which judgement is pronounced in the case.

§ 448. For damage or other inconvenience caused to persons other than the person charged through inquiry, search, seizure, telephone control pursuant to chapter 16 a, or any other measure taken during the case, a court of summary jurisdiction or the court that has ordered the said measure may award compensation when this appears to be reasonable under the circumstances.

Such claim must be submitted not later than three months after the person concerned has become aware of the damage and its extent.

§ 449. The prosecuting authority shall be given the opportunity to express its views on the claim. The court may obtain further information and decide that evidence be judicially recorded.

The decision shall be made by court order.

The court may decide to conduct oral proceedings concerning the claim including the examination of the parties and witnesses and the hearing of other direct evidence. No interlocutory appeal or appeal proper may be brought against the court's decision.

If oral proceedings are conducted concerning a claim pursuant to sections 444 to 446, the person charged shall have a defence counsel unless the court finds this to be unnecessary.

§ 450. If the judgement is appealed against, the appellate court shall try the decision concerning compensation to the person charged when it tries the issue of the evidence in relation to the question of guilt, and otherwise when the decision depends directly on the outcome of the appeal. If the decision is not triable pursuant to these provisions, it may be the subject of an interlocutory appeal.

§ 451. A decision relating to compensation to the person charged may be reopened separately when the conditions prescribed in section 405 or 407 of the Civil Procedure Act are fulfilled. The provisions of section 408 of the said Act shall apply correspondingly. The provisions of chapter 27 shall apply to the hearing.

Part IX. Execution

Chapter 32. Execution

§ 452. A judgement shall be executed as soon as it is legally enforceable unless it is otherwise specially provided. The same applies to a court order that imposes a penalty or costs or other compensation to the State.

If a legally enforceable judgement is challenged by an appeal or a petition for reopening a case, the court before which the judgement or petition is brought may by order decide that execution shall be wholly or partly deferred.

§ 453. Execution of a judgement may be commenced before the said judgement is legally enforceable if the convicted person so requests and the prosecuting authority finds it to be appropriate and unobjectionable under the circumstances.

The use of judicial remedies against a decision relating to confiscation or a declaration that a statement is null and void is no impediment to the execution of the rest of the judgement.

§ 454. A claim set out in a writ giving the option of a fine[25] falls due immediately the option is accepted. The writ may be executed as from the same date. If the acceptance is appealed against before the expiry of the time-limit for an appeal, execution cannot, however, take place before the case is decided.

§ 455. The public prosecutor will decide on execution of judgement in cases of felonies. The decision shall, however, be made by the police in cases in which the police have instituted a prosecution pursuant to section 67, second paragraph, second sentence. In cases concluded by acceptance of the option of a fine[26] and in cases of misdemeanours the decision will be made by the police.

The execution shall be effected by the police.

Fines and other pecuniary claims for the benefit of the public treasury shall be recoverable through the State Agency for the Recovery of Fines, Damages and Costs, cf. section 456. The same applies to compensation and other pecuniary claims ordered to be paid to an aggrieved person or other injured person in a public prosecution if the person entitled thereto so desires.

§ 456. Fines and other pecuniary claims ordered to be paid in a public prosecution shall be recovered by the State Agency for the Recovery of Fines, Damages and Costs. The said State Agency shall also recover such claims as it is ordered to recover pursuant to statute or any regulation of the Ministry.

The State Agency and the police may permit the claims to be paid by instalments. This also applies to compensation and other pecuniary claims ordered to be paid to an aggrieved person or other injured person in a public prosecution when the person entitled thereto so consents.

For claims referred to in the first sentence of the first paragraph the State Agency may decide on deductions in wages and similar payments pursuant to the provisions of section 2-7 of the Security of Creditors Act. The State Agency may also make such decisions for other claims that it recovers when so authorised by special statutory provision. When the State Agency enforces a claim, the provisions of the Enforcement Act concerning the implementation of the execution proceedings shall apply, including the provisions relation to administrative appeal, cessation and termination of execution.

If the claims are not met, the State Agency may apply to the enforcement authorities for execution to be levied. Fines that are not paid or are not recoverable by deductions from wages or by other enforcement measures shall be executed by serving the sentence of

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[25] See chapter 20, sections 255, 256. (Translator's note)
[26] Ibid.

imprisonment imposed in default of payment. Decisions concerning serving a sentence shall be made by the police.

Pursuant to further rules laid down by the Ministry of Justice persons sentenced to pay a fine may be ordered to pay interest and fees on unpaid fines as well as any other expenses incurred by enforced recovery. A judgement or writ concerning a fine is also a ground for enforcement of an additional claim pursuant to the first sentence.

§ 457. The King will prescribe further regulations relating to the recovery of fines and other pecuniary claims.

§ 458. If the court of judgement or the prosecuting authority has recommended that a penalty should be remitted or made subject to a conditional pardon, such penalty may not be executed before the question of pardon has been dealt with by the King.

If the convicted person otherwise petitions for a pardon, the Ministry may defer the execution until the petition is decided by the Ministry or the King.

If the Ministry has found that it will not for the present recommend a petition for pardon, it may - when weighty reasons so indicate and the petitioner consents - postpone the final processing of the petition for a probationary period. The length of this probationary period may not be fixed at more than one year. When special reasons so indicate, the period may be extended. Execution shall not be carried out before the petition is finally dealt with.

§ 459. Execution of a custodial sentence shall be deferred if the convicted person has become seriously mentally ill or his state of health otherwise makes execution inadvisable.

Otherwise execution of a custodial sentence may be deferred when weighty reasons so indicate.

Deferment pursuant to the second paragraph may be made conditional on the provision of security. Other conditions may also be imposed.

§ 460. In executing a custodial sentence the entire period during which the convicted person has been remanded in custody after judgement has been pronounced shall be taken into account. This shall apply correspondingly in the case of execution of a fine, so that a deduction shall be made pursuant to the provisions laid down in accordance with section 457.

§ 461. If a convicted person who is at liberty shall serve a custodial sentence, the police shall send him an order to appear at a fixed time and place so that execution of the sentence may be commenced.

If he is suspected of intending to abscond or if he fails to appear when ordered, he may be apprehended.

§ 462. If any disagreement arises between the prosecuting authority and the convicted person concerning interpretation of the judgement, calculation of the length of the sentence, or any similar question relating to the execution thereof, the convicted person may require the

question to be decided by order of the local court or the court that judged the case. The same applies when there is a dispute as to whether the person against whom the judgement is sought to be executed is the convicted person.

Part X. Legal procedure in military criminal cases

Chapter 33. General provisions

§ 463. All cases concerning the prosecution of contraventions of the Military Penal Code shall be dealt with pursuant to the provisions of this part when the contravention is committed by a military person. In so far as it is not otherwise prescribed by the provisions of this part, the other provisions of this Act shall apply correspondingly.

In this Act military person means any person who is employed by or belongs to the armed forces.

In wartime these provisions shall also be applicable to the prosecution of cases against

a. any person who in any capacity whatsoever serves with the armed forces, or who accompanies a unit of the armed forces,

b. prisoners of war who are under military guard.

Under threat of war the King may decide that the provisions relating to military legal proceedings in wartime shall be applicable to the whole or parts of the realm. In the same way the King may make provisions for a transition to peacetime legal proceedings.

The King may decide that the provisions relating to military legal proceedings in wartime shall wholly or partly be applicable in the event of Norwegian participation in international peace-keeping operations. The King may at the same time decide that wartime provisions in the Military Penal Code and in the Disciplinary Authority Act shall wholly or partly be applicable to acts committed by a person who is taking part in operations referred to in the previous sentence.

§ 464. In wartime, cases concerning the prosecution of civil felonies and misdemeanours shall also be dealt with pursuant to the provisions of this part when they are brought against persons referred to in section 463, second and third paragraphs, and the criminal act has been committed in a military area, theatre of operations, or outside the realm.

§ 465. When the conditions for consolidating the prosecution of two or more criminal acts in one case pursuant to section 13 are fulfilled, but the acts are only partly covered by the provisions of this part, the persons entitled to prosecute may agree that the case shall in its entirety be dealt with pursuant to the general provisions of this Act or pursuant to the provisions of this part.

Chapter 34. Constitution of the court

§ 466. In peacetime and in wartime, military criminal cases shall be tried by the ordinary courts.

In wartime, such cases shall be tried by the District Court or the City Court as the King decides. The King may in this connection decide that the prosecuting authority, with the consent of the court otherwise having jurisdiction in the case, may bring the case before another court. When there are special reasons for doing so, any District Court or City Court may function as a court of examination and summary jurisdiction. In wartime, the District Court and the City Court shall for the main hearing sit with two military lay judges and the Court of Appeal with four military lay judges.

§ 467. Only military persons over 25 years of age who have completed their preliminary service or similar basic training and who have lived for at least three years in the realm may serve as military lay judges.

§ 468. Lists of military lay judges shall be prepared for each court by such military authorities as the King decides. There shall be separate lists for each branch of the defence force. Half the lay judges shall belong to the category of corporals and private soldiers and half to the category of officers.[27] Each list shall contain at least 30 names.

Sections 66 a and 76, first paragraph, of the Courts of Justice Act shall apply correspondingly.

The King will prescribe further rules concerning how the lists shall be drawn up and kept up to date at any time.

§ 469. When trying a case against a corporal or private soldier half of the lay judges shall belong to this category. The same applies to cases against persons who have no military rank. When trying cases against officers half the lay judges shall belong to the category of corporals and private soldiers and the remainder to that of officers.[28] At least one of the latter shall as far as possible have the same or higher rank than the person indicted. The lay judges shall be taken from the same branch of the defence force as the person indicted.

In cases against two or more indicted persons of different ranks or from different branches of the defence force, the provisions of the first paragraph shall be applied in so far as they are appropriate. As far as possible at least one lay judge shall come from the same branch of the defence force as each of the persons indicted.

§ 470. The president of the court or a judge shall in sufficient time before the main hearing in the case select the military lay judges from the persons referred to in section 468 by the drawing of lots. In the District Court and in the City Court two lay judges and one deputy member shall be selected. In the Court of Appeal four lay judges and two deputy members shall be selected. Lay judges who have recently served or who have already been selected to serve, and lay judges who will find it difficult to attend shall be passed over. Persons who are not at the time under military command shall also be passed over.

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[27] *Befal*: officers and non-commissioned officers above the rank of corporal or equivalent rank. (Translator's note)

[28] Ibid.

If a reasonable number of persons do not remain on the lists, the lay judges may be appointed from persons who fulfil the requirements for military lay judges. The same applies in other emergencies.

The same lay judges may be selected to serve in two or more cases tried consecutively by the same court when the rules relating to the court's constitution in the individual case so permit.

Chapter 35. The prosecuting authority

§ 471. For the prosecution of cases concerning contraventions of the Military Penal Code the officials of the prosecuting authority are:

1) the Director General of Public Prosecutions and the Assistant Director General of Public Prosecutions,

2) the public prosecutors, the deputy public prosecutors, and the assistant public prosecutors,

3) the Director General of Military Prosecutions, the senior military prosecutors, the military prosecutors, the deputy military prosecutors, and the assistant military prosecutors,

4) senior and other police officials who are authorised to prosecute and the district sheriffs.[29]

§ 472. The Director General of Military Prosecutions is a senior state official who shall be appointed by the King. The Director General of Military Prosecutions shall have the same qualifications as are specified for the Director General of Public Prosecutions (cf. section 56).

The senior military prosecutors and the military prosecutors shall be appointed by the Ministry, which shall also determine their number, their jurisdiction, and the units or staffs in which they shall serve. The senior military prosecutors and the military prosecutors must have the same qualifications as are specified for the public prosecutors (cf. section 57).

Assistant military prosecutors may be appointed who shall deal with cases assigned to them by the Director General of Military Prosecutions or the senior military prosecutor or military prosecutor concerned. The system may differ in peacetime and wartime.

§ 473. The officials referred to in section 471, items 3 and 4, are subordinate to the Director General of Public Prosecutions and the public prosecutors in the capacity of prosecuting authority. In wartime, however, the Director General of Military Prosecutions and the senior military prosecutors come directly under the Director General of Public Prosecutions.

The Director General of Public Prosecutions and the public prosecutors, and in wartime also the Director General of Military Prosecutions and the senior military prosecutors, may give direct orders to the officials.

§ 474. In peacetime the decision whether to prosecute in cases of military felonies shall be made by the public prosecutor unless the decision is reserved to the King in Council or the

[29] See footnote 7, section 55, item 4. (Translator's note)

Director General of Public Prosecutions. The police will decide whether to prosecute in cases of military misdemeanours and in cases of felonies if the police are otherwise competent to do so as authorised by section 67, second paragraph. The Director General of Military Prosecutions, the senior military prosecutor, and the military prosecutor have the same competence to issue writs giving the option of a fine[30] as senior and other police officials with prosecuting authority.

In wartime, the decision whether to prosecute in cases of military felonies and misdemeanours shall be made by the Director General of Military Prosecutions or the senior military prosecutor unless the decision is reserved to the King in Council or the Director General of Public Prosecutions. In exceptional cases the decision may be made by the public prosecutor. The military prosecutor has the same competence to issue writs giving the option of a fine[31] as senior and other police officials with prosecuting authority.

§ 475. The military commander specified by the King shall in wartime in all cases be informed of the decision of the question of prosecution.

If the military commander disagrees with the decision, he may require the case to be brought before a higher prosecution authority.

The prosecuting authority should, before the question of prosecution is decided, seek an opinion from the military commander if this can be done without considerable delay that significantly affects the case.

§ 476. The Director General of Public Prosecutions may himself conduct cases before the Supreme Court or delegate them to the Director General of Military Prosecutions, a senior military prosecutor or a military prosecutor.

Cases in the Court of Appeal shall be conducted by the Director General of Military Prosecutions, the senior military prosecutors, or, if they so decide, a military prosecutor.

Cases in the District Court and the City Court shall be conducted by the senior military prosecutors or the military prosecutors.

In cases before the District Court and the City Court in which a writ giving the option of a fine[32] has been issued, the prosecuting authority may be represented by a military officer. The same applies to court sittings in the court of examination and summary jurisdiction.

Otherwise, section 76 shall apply correspondingly.

§ 477. The King in Council may prescribe further rules concerning the organisation of the military prosecuting authority.

Chapter 36. Other provisions

[30] See chapter 20, sections 255, 256. (Translator’s note)
[31] Ibid.
[32] Ibid.

§ 478. As regards criminal investigation and the use of coercive measures the military police and military officers shall have the same powers as police officers.

§ 479. Besides the penalties mentioned in section 255 military detention may also be applied as an optional penalty.

A writ giving an option of military detention shall specify the number of days in detention imposed.

When the option of a fine is given, instead of imprisonment a specific number of days in military detention shall be fixed which shall take effect if the fine is not paid.

§ 480. In cases of felonies contrary to section 34, cf. section 95, or section 35, cf. section 96, of the Military Penal Code and in which the person indicted is not present, the main hearing may in wartime proceed pursuant to the provisions of section 281 without regard to the sentence that will be proposed, or pursuant to section 336, second paragraph, without regard to the penalty imposed.

§ 481. Any increase of the penalty limit in wartime is of no significance in relation to the provisions of this Act which accord legal effect to the penalty framework.

Part XI. Commencement of the Act, etc.

Chapter 37. Commencement of the Act and repeal of other Acts

§ 482. This Act shall come into force from the date to be specified by a special Act[33].

§ 483. When this Act comes into force, the following Acts shall be repealed:

1) From 1 January 1986 pursuant to Act of 14 June 1985 No. 71
2) Acts of 1 July 1887 No. 5, 21 February 1947 No. 2

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33 1 January 1986, pursuant to Act of 14 June 1985 No. 71.