Swiss Criminal Procedure Code
(Criminal Procedure Code, CrimPC)

of 5 October 2007 (Status as of 1 August 2023)

The Federal Assembly of the Swiss Confederation,
on the basis of Article 123 paragraph 1 of the Federal Constitution[1],
and having considered the Federal Council Dispatch dated 21 December 2005[2],
decrees:

Title 1 Scope of Application and Principles

Chapter 1 Scope of Application and the Administration of Criminal Justice

Art. 1 Scope of application

1 This Code regulates the prosecution and adjudication by the federal and cantonal criminal justice authorities of offences under federal law.

2 The procedural regulations contained in other federal acts are reserved.

Art. 2 Administration of criminal justice

1 The administration of criminal justice is the responsibility solely of the authorities specified by law.

2 Criminal proceedings may be conducted and concluded only in the forms provided for by law.

Chapter 2 Principles of Criminal Procedure Law

Art. 3 Respect for human dignity and requirement of fairness

1 The criminal justice authorities shall respect the dignity of the persons affected by the proceedings at all stages of the proceedings.

AS **2010** 1881
1 SR **101**
2 BBl **2006** 1085

2 They shall in particular comply with:

a. the principle of good faith;

b. the requirement not to abuse the rights of others;

c. the requirement to treat all persons involved in the proceedings equally and fairly and to grant them the right to be heard;

d. the prohibition, when taking evidence, of using methods that violate human dignity.

Art. 4 Independence

1 The criminal justice authorities are independent in applying the law and bound solely by the law.

2 Statutory powers to issue directives to the prosecution authorities under Article 14 are reserved.

Art. 5 Principle of expeditiousness

1 The criminal justice authorities shall commence criminal proceedings immediately and conclude them without unjustified delay.

2 Where an accused is in detention, the proceedings shall be conducted as a matter of urgency.

Art. 6 Principle of substantive truth

1 The criminal justice authorities shall investigate ex officio all the circumstances relevant to the assessment of the criminal act and the accused.

2 They shall investigate incriminating and exculpating circumstances with equal care.

Art. 7 Obligation to prosecute

1 The criminal justice authorities are obliged to commence and conduct proceedings that fall within their jurisdiction where they are aware of or have grounds for suspecting that an offence has been committed.

2 The cantons may provide:

a. for the exclusion or limitation of criminal liability for statements made in the cantonal parliament by the members of their legislative and judicial authorities and of their governments;

b. that the prosecution of members of their authorities responsible for the execution of sentences and measures and judicial authorities for felonies or misdemeanours committed while in office be made subject to the authorisation of a non-judicial authority.

Art. 8 Waiving prosecution

[1] The public prosecutor and courts shall waive prosecution if the federal law so permits, in particular subject to the requirements of Articles 52, 53 and 54 of the Swiss Criminal Code[3] (SCC).

[2] Unless it is contrary to the private claimant's overriding interests, they shall also waive prosecution if:

a. the offence is of negligible importance in comparison with the other offences with which the accused is charged as regards the expected sentence or measure;

b. any additional penalty imposed in combination with the sentence in the final judgment would be negligible;

c. an equivalent sentence imposed abroad would have to be taken into account when imposing a sentence for the offence prosecuted.

[3] Unless it is contrary to the private claimant's overriding interests, the public prosecutor and courts may waive the prosecution if the offence is already being prosecuted by a foreign authority or the prosecution has been assigned to such an authority.

[4] In such cases, they shall issue an order stating that no proceedings are being taking or that the ongoing proceedings have been abandoned.

Art. 9 Principle of no judgment without a charge

[1] An offence may only be judicially assessed if the public prosecutor has brought a related charge against a specific person in the competent court based on precisely described circumstances.

[2] The foregoing paragraph does not apply to proceedings relating to summary penalty orders and contraventions.

Art. 10 Presumption of innocence and assessment of evidence

[1] Every person is presumed to be innocent until they have been convicted in a judgment that is final and legally binding.

[2] The court shall be free to interpret the evidence in accordance with the views that it forms over the entire proceedings.

[3] Where there is insurmountable doubt as to whether the factual requirements of alleged offence have been fulfilled, the court shall proceed on the assumption that the circumstances more favourable to the accused occurred.

Art. 11 Prohibition of double jeopardy

[1] No person who has been convicted or acquitted in Switzerland by a final legally binding judgment may be prosecuted again for the same offence.

3 SR **311.0**

2 The foregoing paragraph does not apply to proceedings that have been waived or abandoned and to the review of a case.

Title 2 Criminal Justice Authorities

Chapter 1 Powers

Section 1 General Provisions

Art. 12 Prosecution authorities

The prosecution authorities are:

a. the police;

b. the public prosecutor;

c. the authorities responsible for prosecuting contraventions.

Art. 13 Courts

The following bodies have judicial powers in criminal proceedings:

a. the compulsory measures court;

b. the court of first instance;

c. the objections authority;

d. the court of appeal.

Art. 14 Titles and organisation of the criminal justice authorities

1 The Confederation and the cantons shall determine their own criminal justice authorities and the titles that they use.

2 They shall regulate the composition, organisation and powers of the criminal justice authorities and the appointment of their members, unless this Code or other federal acts regulate the same in full.

3 They may establish the offices of a chief public prosecutor or attorney general.

4 They may establish two or more similar criminal justice authorities and specify the local or material jurisdiction of each; exempted therefrom are the objections authority and the court of appeal.

5 They shall regulate the supervision of their criminal justice authorities.

Section 2 Prosecution Authorities

Art. 15 Police

1 The activities of the federal, cantonal and communal police in prosecution matters are governed by this Code.

2 The police investigate offences on their own initiative, in response to reports from members of the public and from authorities, and on the instructions of the public prosecutor; in doing so, they are subject to the supervision and the directives of the public prosecutor.

3 Where criminal proceedings are pending before a court, the court may issue the police with instructions and assignments.

Art. 16 Public prosecutor

1 The public prosecutor is responsible for the uniform exercise of the state's right to punish criminal conduct.

2 It conducts preliminary proceedings, pursues offences within the scope of the investigation, and where applicable brings charges and acts as prosecutor.

Art. 17 Authorities responsible for prosecuting contraventions

1 The Confederation and the cantons may delegate the prosecution and adjudication of contraventions to administrative authorities.

2 Where contraventions are committed in connection with a felony or misdemeanour, they shall be prosecuted by the public prosecutor and judged by the courts at the same time as the more serious offence.

Section 3 Courts

Art. 18 Compulsory measures court

1 The compulsory measures court is responsible for ordering the accused's remand or preventive detention and, where this Code so provides, for ordering or approving additional compulsory measures.

2 Members of the compulsory measures court may not sit as judge in the main hearing in the same case.

Art. 19 Court of first instance

1 The court of first instance assesses, as the first instance, all offences that do not fall within the jurisdiction of other authorities.

2 The Confederation and the cantons may provide that the court of first instance comprise one judge sitting alone to assess:

a. contraventions;

b. felonies and misdemeanours, with exception of those for which the public prosecutor demands a custodial sentence of more than two years, indefinite incarceration in terms of Article 64 SCC[4], treatment in terms of Article 59

4 SR **311.0**

paragraph 3 SCC or, in the case of suspended sanctions to be revoked simultaneously, a deprivation of liberty of more than two years.

Art. 20 Objections authority

1 The objections authority rules on objections against the procedural acts and decisions not subject to formal appeal:

a. of the courts of first instance;

b. of the police, the public prosecutor and the authorities responsible for prosecuting contraventions;

c. of the compulsory measures court in the cases provided for by this Code.

2 The Confederation and the cantons may assign the powers of the objections authority to the court of appeal.

Art. 21 Court of appeal

1 The court of appeal decides on:

a. appeals against judgments of the courts of first instance;

b. applications for the review of a case.

2 Any person who has acted as a member of the objections authority may not sit as a member of the court of appeal in the same case.

3 Any person who has acted as a member of the court of appeal in a specific case may not act as a judge reviewing the same case.

Chapter 2 Material Jurisdiction

Section 1 Extent of Federal and Cantonal Jurisdiction

Art. 22 Cantonal jurisdiction

The cantonal criminal justice authorities shall prosecute and judge offences under federal law, subject to the statutory exceptions.

Art. 23 Federal jurisdiction in general

1 The following offences in the SCC[5] are subject to federal jurisdiction:

a.[6] the offences in Titles One and Four and Articles 140, 156, 189 and 190 insofar as they are committed against persons protected by international law, members of the Federal Council, the Federal Chancellor or judges of the Federal

5 SR **311.0**

6 Amended by Annex No II 7 of the Criminal Justice Authorities Act of 19 March 2010, in force since 1 Jan. 2011 (AS **2010** 3267; BBl **2008** 8125).

Courts, members the Federal Assembly, the Federal Attorney General or the Deputy Attorneys General;

b. the offences in Articles 137–141, 144, 160 and 172ter insofar as they relate to premises, archives or documents of diplomatic missions and consulates;

c. the taking of hostages in terms of Article 185 in order to exert duress on federal or foreign authorities;

d. felonies and misdemeanours under Article 224–226ter;

e.[7] the felonies and misdemeanours in Title Ten relating to coinage, paper money and banknotes, official stamps and other federal marks, weights and measures;

f. the felonies and misdemeanours in Title Eleven insofar as they relate to official federal documents, with the exception of driving licences and receipts for postal money transfers; not included are vignettes for using first and second class national highways;

g.[8] the offences in Title Twelvebis and Twelveter as well as Article 264*k*;

h. the offences in Article 260bis and in Titles Thirteen to Fifteen and in Title Seventeen, provided they are directed against the Confederation, the authorities of the Confederation, the will of the People in federal elections, popular votes, requests for a referendum or initiatives, against federal powers or against the administration of federal justice;

i. the felonies and misdemeanours in Title Sixteen;

j. the offences in Titles Eighteen and Nineteen insofar as they are committed by a member of an authority or an employee of the Confederation or against the Confederation;

k.[9] the contraventions in Articles 329 and 331;

l. political felonies and misdemeanours that are the cause or consequence of unrest that gives rise to armed federal intervention.

[2] The regulations contained in special federal acts on the jurisdiction of the Federal Criminal Court are reserved.

7 Amended by Annex No II 1 of the Fixed Penalties Act of 18 March 2016, in force since 1 Jan. 2018 (AS **2017** 6559; BBl **2015** 959).

8 Amended by No I 3 of the FA of 18 June 2010 on the Amendment of Federal Legislation in Implementation of the Rome Statute of the International Criminal Court, in force since 1 Jan. 2011 (AS **2010** 4963; BBl **2008** 3863).

9 Amended by No I 12 of the FA of 17 Dec. 2021 on the Harmonisation of Sentencing Policy, in force since 1 July 2023 (AS **2023** 259; BBl **2018** 2827).

Art. 24 Federal jurisdiction in the case of organised crime, terrorist offences and white-collar crime[10]

[1] Federal jurisdiction further applies to the offences in Articles 260ter, 260quinquies, 260sexies, 305bis, 305ter and 322ter–322septies SCC[11] as well as the felonies associated with a criminal or terrorist organisation as defined in Article 260ter SCC, if the offences:[12]

a. have to substantial extent been committed abroad;

b. have been committed in two or more cantons with no single canton being the clear focus of the criminal activity.

[2] In the case of felonies under Titles Two and Eleven of the SCC, the Office of the Attorney General of Switzerland may open an investigation if:

a. the requirements of paragraph 1 are fulfilled; and

b. no cantonal criminal justice authority is dealing with the case or if the competent cantonal criminal justice authority requests the Office of the Attorney General of Switzerland to take over the case.

[3] The opening of an investigation in accordance with paragraph 2 establishes federal jurisdiction.

Art. 25 Delegation to the cantons

[1] The Office of the Attorney General of Switzerland may assign a criminal case subject to federal jurisdiction in terms of Article 23 to the cantonal authorities for investigation and adjudication or, by way of exception, for assessment only. Exempted therefrom are criminal cases in terms of Article 23 paragraph 1 letter g.

[2] In minor cases, it may also assign a criminal case subject to federal jurisdiction in terms of Article 24 to the cantonal authorities for investigation and adjudication.

Art. 26 Multiple jurisdiction

[1] If the offence was committed in two or more cantons or abroad or if offenders, co-offenders, or participants are domiciled or habitually resident in different cantons, the Office of the Attorney General of Switzerland shall decide which canton investigates and adjudicates the case.

10 Amended by Annex No II 3 of the FedD of 25 Sept. 2020 on the Approval and Implementation of the Council of Europe Convention on the Prevention of Terrorism and its Additional Protocol and the Strengthening of Criminal Justice Instruments for combating Terrorism and Organised Crime, in force since 1 July 2021 (AS **2021** 360; BBl **2018** 6427).

11 SR **311.0**

12 Amended by Annex No II 3 of the FedD of 25 Sept. 2020 on the Approval and Implementation of the Council of Europe Convention on the Prevention of Terrorism and its Additional Protocol and the Strengthening of Criminal Justice Instruments for combating Terrorism and Organised Crime, in force since 1 July 2021 (AS **2021** 360; BBl **2018** 6427).

2 If a criminal case is subject to both federal and cantonal jurisdiction, the Office of the Attorney General of Switzerland may instruct the proceedings to be combined and dealt with by the federal authorities or the cantonal authorities.

3 Jurisdiction established in accordance with paragraph 2 continues to apply even if that part of the proceedings that established jurisdiction has been abandoned.

4 Where delegation in accordance with this Chapter is an option, the public prosecutors of the Confederation and the cantons shall provide each other with their respective files. Once the decision is made, the files shall be passed to the authority that must investigate and adjudicate the case.

Art. 27 Jurisdiction over the initial enquiries

1 Where a case is subject to federal jurisdiction, the matter is urgent and the federal criminal justice authorities are not yet involved, the police enquiries and the investigation may also be conducted by the cantonal authorities that have local jurisdiction under the rules on place of jurisdiction. The Office of the Attorney General of Switzerland must be notified immediately; the case must be transferred to the OAG or referred for a decision in terms of Articles 25 or 26 as soon as possible.

2 In the case of offences that have been committed wholly or partly in two or more cantons or abroad and for which federal or cantonal jurisdiction has not yet been established, the federal criminal justice authorities may conduct the initial enquiries.

Art. 28 Conflicts

In the event of conflicts between the Office of the Attorney General of Switzerland and cantonal criminal justice authorities, the Federal Criminal Court shall decide.

Section 2 Jurisdiction where two or more Offences coincide

Art. 29 Principle of unity of proceedings

1 Offences shall be prosecuted and adjudicated together where:

a. one person is accused of two or more offences; or

b. the case involves co-offending or participation.

2 Where one or more of multiple offences are subject to federal jurisdiction or multiple offences have been committed in different cantons and by two or more persons, Articles 25 and 33–38 take precedence.

Art. 30 Exceptions

The public prosecutor and the courts may separate or combine criminal proceedings for practical reasons.

Chapter 3 Place of Jurisdiction
Section 1 Principles

Art. 31 Place of jurisdiction of the place of commission

1 The authorities of the locus of criminal act was committed have jurisdiction to prosecute and adjudicate the offence. If it is only the outcome of the offence that occurs in Switzerland, the authorities at the place where it occurs have jurisdiction.

2 Where the offence is committed in two or more places or if the outcome occurs in two or more places, the authorities in the place where the initial prosecution procedures are carried out have jurisdiction.

3 Where an accused has committed two or more felonies, misdemeanours or contraventions in the same locus, the various proceedings shall be combined.

Art. 32 Place of jurisdiction for offences committed abroad or at an unknown location

1 Where an offence was committed abroad or if the place of commission cannot be established, the authorities of the place where the accused is domiciled or habitually resident has jurisdiction to prosecute and adjudicate the offence.

2 If the accused is neither domiciled nor habitually resident in Switzerland, the authorities at his or her place of origin have jurisdiction; in the absence of a place of origin, the authorities of the place where the accused was found have jurisdiction.

3 In the absence of a place of jurisdiction in accordance with paragraphs 1 and 2, authorities of the Canton requesting extradition have jurisdiction.

Section 2 Special Jurisdiction

Art. 33 Place of jurisdiction in the case of two or more participants

1 The participants in an offence shall be prosecuted and adjudicated by the same authorities as the principal offender.

2 If an offence has been committed by two or more co-offenders, the authorities of the place where the initial prosecution procedures were carried out have jurisdiction.

Art. 34 Place of jurisdiction where two or more offences are committed at different loci

1 Where an accused has committed two or more offences at different loci, the authorities of the place where the offence that carries the most severe penalty was committed have jurisdiction to prosecute and adjudicate all offences. Where two or more offences carry the same penalty, the authorities of the place where the initial prosecution procedures were carried out have jurisdiction.

2 Where charges have already been brought in a participant canton in respect of one of the offences at the time of the procedure to establish jurisdiction in accordance with Articles 39–42, the proceedings shall be conducted separately.

3 Where a person is sentenced by different courts to two or more similar penalties, the court that has imposed the most severe penalty shall on application impose a cumulative sentence on the convicted person.

Art. 35 Place of jurisdiction for offences via the media

1 In the case of an offence under Article 28 SCC[13] committed in Switzerland, the authorities of the place where the media undertaking has its registered office have jurisdiction.

2 If the author is known and if he or she is domiciled or habitually resident in Switzerland, the authorities at the domicile or the place of habitual residence have jurisdiction. In such a case, the proceedings shall be conducted where the initial prosecution procedures were carried out. In the case of offences prosecuted only on complaint, the complainant may choose between the two places of jurisdiction.

3 Where no place of jurisdiction is established by paragraphs 1 or 2, the authorities of the place where the media product is broadcast have jurisdiction. If broadcasting takes place in two or more places, the authorities of the place where the initial prosecution procedures were carried out have jurisdiction.

Art. 36 Place of jurisdiction in the case of Debt Enforcement and Bankruptcy offences and criminal proceedings against corporate undertakings

1 In the case of offences in accordance with Articles 163–171 SCC[14], the authorities at the domicile, place of habitual residence or registered office of the debtor have jurisdiction responsible.[15]

2 For criminal proceedings against a corporate undertaking in terms of Article 102 SCC, the authorities at the registered office of the undertaking have jurisdiction. The foregoing also applies if a person acting for the undertaking is also being prosecuted for the same offence.

3 In the absence of a place of jurisdiction in accordance with paragraphs 1 and 2, jurisdiction is established in accordance with Articles 31–35.

Art. 37 Place of jurisdiction for separate forfeiture proceedings

1 Separate forfeiture proceedings (Art. 376–378) must be carried out in the place where the items or assets to be forfeited are located.

13 SR **311.0**
14 SR **311.0**
15 Amended by No I 12 of the FA of 17 Dec. 2021 on the Harmonisation of Sentencing Policy, in force since 1 July 2023 (AS **2023** 259; BBl **2018** 2827).

2 If the items or assets to be forfeited are located in two or more cantons and if they are connected to the same offence or offender, the authorities of the place where the forfeiture proceedings were initiated has jurisdiction.

Art. 38 Establishing an alternative place of jurisdiction

1 The public prosecutors may by mutual agreement establish a place of jurisdiction other than that provided for in Articles 31–37 if this is justified by the focus of the criminal activity, the personal circumstances of the accused or other just cause.

2 In order to safeguard the procedural rights of a party, after charges have been filed, the cantonal objections authority may on application from that party or ex officio transfer the adjudication to another court of first instance in the same canton with material jurisdiction in derogation from the rules on place of jurisdiction in this Chapter.

Section 3 Procedure for Establishing Jurisdiction

Art. 39 Verification of and agreement on jurisdiction

1 The criminal justice authorities shall verify their jurisdiction ex officio and if necessary transfer the case to the competent authority.

2 Where two or more criminal justice authorities have local jurisdiction, the public prosecutors concerned shall notify each other immediately of the essential elements of the case and endeavour to reach agreement as soon as possible.

Art. 40 Conflicts of jurisdiction

1 In the event of a dispute over jurisdiction between criminal justice authorities in the same canton, the Office of the Chief Cantonal Prosecutor or Cantonal Attorney General shall make the final decision or, if there is no such office, the cantonal objections authority.

2 In the event of a dispute over jurisdiction between criminal justice authorities in different cantons, the public prosecutor of the canton that was first to deal with the matter shall submit the issue immediately, and in every case before bringing charges, to the Federal Criminal Court for decision.

3 The authority competent to decide on the place of jurisdiction may specify a place of jurisdiction other than that provided for in Articles 31–37 if this is required due to the focus of the criminal activity or the personal circumstances of the accused or if there is other just cause.

Art. 41 Contesting the place of jurisdiction

1 If a party wishes to contest the jurisdiction of the authority conducting the criminal proceedings, he or she must immediately request the authority to transfer the case to the competent criminal justice authority.

2 The parties may file an objection within 10 days with the authority responsible for the decision on the place of jurisdiction in terms of Article 40 against the decision on the place of jurisdiction (Art. 39 para. 2) made by the public prosecutors concerned. If the public prosecutors have agreed on an alternative place of jurisdiction (Art. 38 para. 1), only the party whose request under paragraph 1 is rejected has the right to file an objection.

Art. 42 Common provisions

1 Until a binding decision is made on the place of jurisdiction, the first authority to deal with the case shall carry out any measures that cannot be delayed. If necessary the authority responsible for the decision on the place of jurisdiction shall designate the authority that must provisionally deal with the matter.

2 Persons who have been arrested shall only be transferred to the authorities of other cantons when a binding decision on jurisdiction has been made.

3 A place of jurisdiction established in accordance with Articles 38–41 may be changed only if good cause has subsequently arisen before charges have been brought.

Chapter 4 Domestic Mutual Assistance

Section 1 General Provisions

Art. 43 Scope of application and definition

1 The provisions this Chapter regulate mutual assistance in criminal matters provided by federal and cantonal authorities to public prosecutors, authorities responsible for prosecuting contraventions and federal and cantonal courts.

2 In relation to the police, these provisions apply to the extent that the police are acting on instructions from public prosecutors, authorities responsible for prosecuting contraventions and courts.

3 Direct mutual assistance between police authorities at federal and cantonal levels and between two or more cantonal police authorities is permitted provided it does not relate to compulsory measures that fall within the exclusive competence of the public prosecutor or the court.

4 Mutual assistance is deemed to be any measure requested by an authority within the scope of their competence in ongoing criminal proceedings.

Art. 44[16] Obligation to provide mutual assistance

The federal and cantonal authorities are obliged to provide mutual assistance in respect of offences being prosecuted and adjudicated under federal law in application of this Code.

16 The correction by the Federal Assembly Drafting Committee dated 10 Nov. 2014, published on 25 Nov. 2014 relates only to the French text (AS **2014** 4071).

Art. 45 Support

1 The cantons shall, to the extent that it is required and possible, provide the criminal justice authorities of the Confederation and other cantons with rooms in which to carry out their official duties and for the accommodation of persons detained pending the main hearing.

2 At the request of the federal criminal justice authorities, the cantons shall take the measures required to guarantee the security of the official duties of these authorities.

Art. 46 Direct communication

1 The authorities shall communicate directly with each other[17].

2 Requests for mutual assistance may be filed in the language of the requesting or the requested authority.

3 If there is any uncertainty as to which authority has jurisdiction, the requesting authority shall file the request for mutual assistance with the highest public prosecutor of the requested Canton or of the Confederation. This service shall pass the request on to the relevant office.

Art. 47 Costs

1 Mutual assistance is provided free of charge.

2 The Confederation shall reimburse the cantons the costs of support as defined in Article 45 that it has caused them to incur.

3 Notice shall be given to the requesting canton or the Confederation of any costs that have arisen in order that they may be charged to the parties liable to pay costs.

4 The requesting canton or the Confederation shall bear any obligations to pay damages arising from mutual assistance measures.

Art. 48 Disputes

1 The objections authority in the relevant canton shall make a final decision on any dispute over mutual assistance between authorities of the same canton.

2 The Federal Criminal Court decides on conflicts between federal and cantonal authorities as well as between authorities of different cantons.

17 Details of the competent local Swiss justice authority for mutual assistance requests may be obtained from the following website: www.elorge.admin.ch

Section 2
Procedural Acts at the Request of the Confederation or of another Canton

Art. 49 Principles

[1] The federal and cantonal public prosecutors and courts may request the criminal justice authorities of other cantons or of the Confederation to carry out procedural acts. The requested authority shall not examine whether the requested procedural acts are admissible or equitable.

[2] The authorities of the requesting Canton or of the Confederation have jurisdiction to hear appeals against mutual assistance measures. Only the implementation of the mutual assistance measures may be contested before the authorities of the requested Canton or of the Confederation.

Art. 50 Request for compulsory measures

[1] The requesting authority shall request that a person be arrested with a written warrant for an enforced appearance (Art. 208).

[2] If possible, the requested authority shall hand over the arrested persons within 24 hours.

[3] Applications for other compulsory measures must include a brief notice of the grounds. In cases of urgency, notice of the grounds may be provided later.

Art. 51 Right to participate

[1] The parties, their legal agents and the requesting authority may participate in the requested procedural acts, insofar as this Code provides therefor.

[2] If participation is possible, the requested authority shall notify the requesting authority, the parties and their legal agents as to where and when the procedural act will be carried out.

Section 3 Procedural Acts in another Canton

Art. 52 Principles

[1] Federal and cantonal public prosecutors, authorities responsible for prosecuting contraventions and courts are entitled to order and carry out any of the procedural acts specified in this Code directly in another canton.

[2] Prior notice shall be given to the public prosecutor of the canton in which the procedural act is to be carried out. In cases of urgency, subsequent notice is possible. No notice is required for obtaining information and for requesting the handover of files.

[3] The costs of the procedural acts and any related obligations to pay damages shall be borne by the Confederation or the canton carrying out the act; it may charge the costs to the parties in accordance with Articles 426 and 427.

Art. 53 Using the services of the police

If the requesting authority requires the support of the police in order to carry out a procedural act, it shall make the relevant request to the public prosecutor of the requested Canton, which shall issue the necessary instructions to the local police.

Chapter 5 International Mutual Assistance

Art. 54 Scope of Application of this Code

The provision of international mutual assistance and the mutual assistance proceedings are governed by this Code only to the extent that other federal acts and international agreements make no provision therefor.

Art. 55 Jurisdiction

1 Where a canton is involved in a case of international mutual assistance, the public prosecutor has jurisdiction.

2 During the main hearing, the courts may themselves submit requests for mutual assistance.

3 The powers of the authorities responsible for the execution of sentences and measures are reserved.

4 Where federal law assigns mutual assistance duties to a judicial authority, the objections authority has jurisdiction.

5 Where a canton dealing with a request for mutual assistance from abroad carries out procedural acts in other cantons, the provisions on domestic mutual assistance apply.

6 The cantons shall regulate any additional procedures.

Chapter 6 Recusal

Art. 56 Grounds for recusal

A person acting for a criminal justice authority shall recuse him- or herself if he or she:

a. has a personal interest in the case;

b. has acted in another capacity in the same case, and in particular as a member of an authority, as the legal agent for a party, as an expert witness, or as a witness;

c. is married to, or living in a registered partnership or cohabiting with a party, his or her legal agent or a person who has acted as a member of the lower court;

d. is related to a party by birth or by marriage directly or collaterally up to and including the third degree;

e. is related to the legal agent of a party or of a person who acted in the same case as a member of the lower court directly or collaterally up to and including the second degree;

f. may not be impartial for other reasons, in particular due to friendship or enmity with a party or his or her legal agent.

Art. 57 Duty to notify

Where a person acting for a criminal justice authority has grounds for recusal, that person shall notify the director of proceedings in good time.

Art. 58 Recusal request by a party

1 If a party requests that a person acting for a criminal justice authority be recuse him- or herself, the party must submit the relevant application to the director of proceedings as soon as he or she becomes aware of the grounds for recusal; the circumstances justifying recusal must be credibly substantiated.

2 The person concerned shall respond to the application.

Art. 59 Decision

1 If grounds for recusal in terms of Article 56 letter a or f are claimed or if a person acting for a criminal justice authority opposes a party application for recusal based on Article 56 letters b–e, the following authorities shall issue a final decision without taking additional evidence:

a. the public prosecutor if matter relates to the police;

b. the objections authority if the matter relates to the public prosecutor, the authorities responsible for prosecuting contraventions or the courts of first instance;

c. the court of appeal if the matter relates to the objections authority or individual members of the court of appeal;

d.[18] the Federal Criminal Court if the matter relates to an entire cantonal court of appeal.

2 The decision shall be issued in writing and with a statement of reasons.

3 Until the decision is issued, the person concerned shall continue to exercise his office.

4 If the application is approved, the procedural costs are borne by the Confederation or the canton. If it is rejected or was clearly submitted too late or vexatious, the costs are borne by the applicant.

18 Amended by No II 3 of the FA of 17 March 2017 (Creation of an Appeals Chamber in the Federal Criminal Court), in force since 1 Jan. 2019 (AS **2017** 5769; BBl **2013** 7109, **2016** 6199).

Art. 60 Consequences of violating the recusal regulations

[1] Where a person subject to recusal has participated in official acts, these acts must be annulled and repeated if so requested by a party within 5 days of becoming aware of the decision on recusal.

[2] Evidence that cannot be taken again may be taken into consideration by the criminal justice authority.

[3] If the ground for recusal comes to light only after conclusion of the proceedings, the provisions on the review of cases apply.

Chapter 7 Director of Proceedings[19]

Art. 61 Jurisdiction

The persons responsible for directing the proceedings are:

a. until proceedings are abandoned or charges are brought: the public prosecutor;

b. in contravention proceedings: the authority responsible for prosecuting contraventions;

c. in court proceedings before two or more judges: the president of the court concerned;

d. in court proceedings before one judge sitting alone: the judge.

Art. 62 General duties

[1] The director of proceedings makes the arrangements required to guarantee the lawful and orderly conduct of the proceedings.

[2] In court proceedings before two or more judges, the director of proceedings holds all the powers that are not reserved to the court.

Art. 63 Measures to ensure order in court

[1] The director of proceedings shall ensure security, quiet and order during the hearings.

[2] The director of proceedings may warn any person who disrupts the hearings or breaches the rules of respectable behaviour. In the event of any repetition, he or she may deny them the right to speak, order them to leave the court and if necessary have them held in police custody until the conclusion of the hearing. He or she may order that the court be cleared.

[3] The director of proceedings may request the assistance of the police at the place where the proceedings are being held.

[4] If a party is excluded from the court, the proceedings shall nevertheless be continued.

19 Revised by the Federal Assembly Drafting Committee (Art. 58 para. 1 ParlA; SR **171.10**).

Art. 64 Disciplinary measures

[1] The director of proceedings may order a person who disrupts the hearings, breaches the rules of respectable behaviour or disregards orders directing proceedings to pay a fixed penalty fine of up to 1000 francs.

[2] Fixed penalty fines imposed by the public prosecutor and the courts of first instance may be challenged before the objections authority within 10 days. Its decision is final.

Art. 65 Right of appeal against orders directing proceedings issued by the court

[1] Orders directing proceedings issued by the court may only be challenged when the final judgment is issued.

[2] If the director of proceedings in a court with two or more judges has issued orders directing proceedings before the main hearing, the court may amend or revoke such orders ex officio or on request.

Chapter 8 General Procedural Regulations

Section 1 Requirement of Oral Proceedings; Language

Art. 66 Requirement of oral proceedings

Proceedings before the criminal justice authorities shall be conducted orally unless this Code provides for written proceedings.

Art. 67 Language of the proceedings

[1] The Confederation and the cantons shall determine the languages to be used by their criminal justice authorities in proceedings.

[2] The cantonal criminal justice authorities shall carry out all procedural acts in the languages that they use in proceedings; the director of proceedings may permit exceptions.

Art. 68 Translation and interpretation

[1] Where a party to the proceedings does not understand the language of the proceedings or is unable to express him- or herself adequately, the director of proceedings shall appoint an interpreter. In minor or urgent cases, the director of proceedings may, if the person concerned consents, dispense with appointing an interpreter provided the director of proceedings and the clerk of court have an adequate command of the foreign language concerned.

[2] Even if he or she has a defence lawyer, the accused shall be notified in a language that he or she understands, either orally or in writing, of at least the essential content of the most important procedural acts. There is no right to have all procedural acts and files translated in full.

3 Files that are not submissions made by parties shall, if required, be translated in writing or orally translated for the record of proceedings.

4 A person of the same sex must be appointed to translate questions to be put to the victim of a sexual offence where the victim so requests and it is possible without causing an unreasonable delay to the proceedings.

5 The provisions on expert witnesses (Art. 73, 105, 182–191) apply *mutatis mutandis* to translators and interpreters.

Section 2 Public Proceedings

Art. 69 Principles

1 Proceedings before the court of first instance and the court of appeal, together with the oral passing of judgments and decrees of these courts shall, with the exception of the judges' deliberations, be conducted in public.

2 If the parties to such cases have waived their right to the public passing of judgment, or if a summary penalty order is issued, interested persons may inspect the judgments and summary penalty orders.

3 The following proceedings are not conducted in public:

a. preliminary proceedings, with the exception of public announcements made by the criminal justice authorities;

b. proceedings before the compulsory measures court;

c. proceedings before the objections authority and, in cases where they are conducted in writing, before the court of appeal;

d. summary penalty order proceedings.

4 Public hearings are open to all members of the public; however, persons under 16 years of age shall only be admitted with the permission of the director of proceedings.

Art. 70 Restrictions on and exclusion of public access

1 The court may completely or partly exclude members of the public from court hearings if:

a. public safety or order or the legitimate interests of a person involved, and in particular the victim, so require;

b. too many members of the public wish access to the court.

2 If members of the public are excluded, the accused, the victim and private claimants may each be accompanied by a maximum of three confidants.

3 Subject to specific requirements, the court may allow court reporters and additional persons with a legitimate interest access to proceedings that are private in accordance with paragraph 1.

4 If members of the public are excluded, the court shall pass judgement at a public hearing or shall if required inform the public of the outcome of the proceedings in another suitable manner.

Art. 71 Video and audio recordings

1 It is not permitted to make video or audio recordings within the court building or to make such recordings of procedural acts carried out outside the court building.

2 Persons infringing the foregoing paragraph may be liable to a fixed penalty fine in accordance with Article 64 paragraph 1. Unauthorised recordings may be confiscated.

Art. 72 Court reporting

The Confederation and the cantons may regulate the accreditation and rights and obligations of court reporters.

Section 3 Confidentiality, Information to the Public, Communications to Authorities

Art. 73 Duty of confidentiality

1 Members of criminal justice authorities, their employees and experts appointed by criminal justice authorities shall treat as confidential information that comes to their knowledge in the exercise of their official duties.

2 The director of proceedings may require private claimants and other persons involved in the proceedings and their legal agents, under caution as to Article 292 SCC[20], to maintain confidentiality with regard to the proceedings and the persons concerned if the object of the proceedings or a private interest so requires. A time limit must be placed on this obligation.

Art. 74 Provision of information to the public

1 The public prosecutor, the courts and, with the consent of the courts, the police may provide the public with information on pending proceedings where this is required:

a. so that the public may assist in enquiries into offences or in locating suspects;

b. to warn or reassure the public;

c. to correct inaccurate reports or rumours;

d. due to the special importance of a case.

2 The police may also inform the public on their own initiative about accidents and offences without naming the persons involved.

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3 When providing information to the public, the presumption of innocence and the personal privacy of the persons concerned must be observed.

4 In cases involving a victim, authorities and private individuals may only identify the victim or provide information that enables his or her identification outside public court proceedings if:

a. the assistance of the public in enquiries into a felony or in tracing suspects is required; or

b. the victim or his or her survivors consent.

Art. 75 Communications with other authorities

1 Where an accused is serving a sentence or subject to a criminal measure, the criminal justice authorities shall inform the authorities responsible for the execution of sentences or measures of any new criminal proceedings and any decisions issued.

2 The criminal justice authorities shall inform the social services and child and adult protection authorities of any criminal proceedings that have been initiated and of any decisions in criminal proceedings if this is required for the protection of an accused or a person suffering harm or his or her next-of-kin.[21]

3 If they establish in the prosecution of offences in which minors are involved that further measures are required, they shall inform the child protection authorities immediately.[22]

3bis The director of proceedings shall notify the Defence Group of pending criminal proceedings against members of the armed forces or potential conscripts if there are serious indications or other evidence that the person concerned could use a firearm to harm themselves or other persons.[23]

4 The Confederation and the cantons may require or authorise the criminal justice authorities to make further communications to authorities.

Section 4 Records

Art. 76 General Provisions

1 The statements of the parties, the oral decisions of the authorities and any other procedural acts that are not carried out in writing shall be recorded.

2 The clerk of court, the director of proceedings and, where applicable, the interpreter or translator shall confirm the accuracy of the record.

21 Amended by Annex No 2 of the FA of 15 Dec. 2017 (Child Protection), in force since 1 Jan. 2019 (AS **2018** 2947; BBl **2015** 3431).

22 Amended by Annex No 2 of the FA of 15 Dec. 2017 (Child Protection), in force since 1 Jan. 2019 (AS **2018** 2947; BBl **2015** 3431).

23 Inserted by No I 2 of the FA of 25 Sept. 2015 on Improving the Exchange of Information between Authorities in relation to Weapons, (AS **2016** 1831; BBl **2014** 303). Amended by Annex No 3 of the FA of 18 March 2016, in force since 1 Jan. 2018 (AS **2016** 4277, **2017** 2297; BBl **2014** 6955).

3 The director of proceedings is responsible for ensuring that procedural acts are completely and correctly recorded.

4 He or she may order that an audio or video recording of all or part of a procedural act be made, in addition to its being recorded in writing. He or she shall give those present advance notice of such a recording.

Art. 77 Records of proceedings

The records of proceedings contain details of all the essential procedural acts and in particular provide information on:

a. the nature, place, date and time of the procedural acts;

b. the names of the participant members of authorities, the parties, their legal agents and any other persons present;

c. the applications of the parties;

d. the caution given regarding the rights and obligations of the persons examined;

e. the statements made by the persons examined;

f. the course of events in the proceedings, the instructions given by the criminal justice authority and compliance with the formal requirements for the individual procedural acts;

g. the files and other evidence submitted by the persons involved in the proceedings or otherwise produced in the criminal proceedings;

h. the decisions and the grounds therefor, unless these are separately included in the files.

Art. 78 Records of hearings

1 The statements of the parties, witnesses, persons providing information and expert witnesses shall be recorded as they are made.

2 The record is made in the language of the proceedings, but important statements must if possible be recorded in the language in which the person examined makes them.

3 Decisive questions and answers shall be recorded verbatim.

4 The director of proceedings may permit the person examined to dictate his or her own statements.

5 On conclusion of the examination hearing, the record shall be read out to the person examined or given to him or her to read. Once aware of its content, the person examined must sign the record and initial each page. If he or she refuses to read or sign the record, the refusal and reasons given for doing so shall be noted in the record.

5bis If the examination in the main hearing is recorded using technical aids, the court may dispense with reading the transcript back to the person examined and or giving that person the transcript to read and sign. The recordings are placed in the case files.[24]

6 In the case of hearings by means of video conference, the person examined shall make an oral declaration that he or she understands the content of the record instead of signing and initialling the same. The declaration shall be noted in the record.

7 If records written by hand are not easily legible or if the statements have been recorded in shorthand, a legible copy shall be prepared immediately. Notes shall be preserved until the conclusion of the proceedings.[25]

Art. 79 Corrections

1 Obvious errors shall be corrected by the director of proceedings and the clerk of court; the director of proceedings shall thereafter notify the parties of the corrections.

2 The director of proceedings shall decide on requests to have the records corrected.

3 Corrections, alterations, deletions and additions shall be certified by the clerk of court and the director of proceedings. Any alterations to the content shall be made in such a manner that the original record remains recognisable.

Section 5 Decisions

Art. 80 Form

1 Decisions that determine substantive criminal or civil issues are issued in the form of a judgment. Other decisions, if made by a judicial authority comprising two or more members, are issued in the form of a decree, or if they are made by a single person, in the form of a ruling. The provisions on summary penalty order procedures are reserved.

2 Decisions are issued in writing and contain a statement of the grounds. They are signed by the director of proceedings and the clerk of court and are served on the parties.

3 Simple decrees and rulings directing proceedings do not require to be issued in any specific form or to contain a statement of grounds; they are noted in the case records and notified to the parties in a suitable manner.

Art. 81 Content of final judgments

1 Judgments and other decisions concluding proceedings contain:

a. an introduction;

24 Inserted by No I 2 of the FA of 28 Sept. 2012 (Transcription Regulations), in force since 1 May 2013 (AS **2013** 851; BBl **2012** 5707 5719).

25 Amended by No I 2 of the FA of 28 Sept. 2012 (Transcription Regulations), in force since 1 May 2013 (AS **2013** 851; BBl **2012** 5707 5719).

b. a statement of the grounds;

c. conclusions;

d. if subject to appeal: instructions on appellate remedies.

2 The introduction contains:

a. details of the criminal justice authority and its members who participated in making the decision;

b. the date of the decision;

c. sufficient details of the parties and of their legal agents;

d. in the case of judgments, the final submissions made by the parties.

3 The statement of the grounds contains:

a. in the case of judgments: an appraisal of the factual and legal issues relating to the conduct incriminating the accused, and an explanation of why any sanctions, incidental legal orders and costs or damages were imposed;

b. in the case of other decisions concluding proceedings: the reasons for concluding the proceedings.

4 The conclusions contain:

a. details of the statutory provisions;

b. in the case of judgments: the verdict and decisions on related sanctions, costs and damages and any civil claims;

c. in the case of other decisions concluding proceedings: the order concluding the proceedings;

d. the subsequent decisions of the court;

e. the decision on the incidental legal orders;

f. the details of the persons and authorities who are to receive a copy of the decision or of the conclusions.

Art. 82 Limitations to the duty to state grounds

1 The court of first instance shall dispense with a written statement of the grounds if it:

a. states the grounds for the judgment orally; and

b. it does not impose a custodial sentence of more than two years, indefinite incarceration under Article 64 SCC[26], treatment in terms of Article 59 paragraph 3 SCC or, in the case of suspended sanctions to be revoked simultaneously, a deprivation of liberty of more than two years.

2 The court shall provide the parties retrospectively with a written judgment stating the grounds if:

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a. a party requests the same within 10 days of service of the conclusions;

b. a party files an appeal.

3 If it is only the private claimant who requests a written judgment stating the grounds or who appeals, the court shall provide a statement of grounds only to the extent that this relates to the criminal conduct to the prejudice of the private claimant and to his or her civil claims.

4 In the appellate proceedings, the court may refer to the grounds stated by the lower court in its appraisal of the factual and the legal issues in the case.

Art. 83 Explanation and correction of decisions

1 If the conclusions to the decision are unclear, contradictory or incomplete, or if they are inconsistent with the grounds, the criminal justice authority that made the decision shall explain or correct the decision on the application of a party or on its own initiative.

2 The application must be submitted in writing, indicating the matters that are contested or the amendment that are requested.

3 The criminal justice authority shall allow the other parties the opportunity to comment on the application.

4 Notice of the explanation for or corrections to the decision shall be given to the parties.

Section 6 Notice and Service of Decisions

Art. 84 Notice of decisions

1 If the proceedings are public, the court shall give notice of the judgment orally on conclusion of its deliberations and state the grounds in brief.

2 The court shall provide the parties with a written copy of the conclusions at the end of the main hearing or serve it on the parties within 5 days.

3 If the court is unable to issue the judgment immediately, it shall do so as soon as possible and give notice of the judgment in rearranged main hearing. If in such an event the parties waive their right to have the judgment issued publicly, the court shall serve the conclusions of the judgment on them immediately after it has been reached.

4 If the court has to state grounds for the judgment, it shall serve the judgment with a full statement of grounds on the accused and the public prosecutor within 60 days, or by way of exception 90 days. The other parties shall be served only with those parts of the judgment in which their applications are mentioned.

5 The criminal justice authority shall give notice of simple decrees or rulings directing proceedings to the parties in writing or orally.

6 Notice of decisions shall be given to other authorities in accordance with federal and cantonal law, notice of appeal decisions shall also be given to the lower court, and

notice of legally binding decisions shall if necessary be given to the authorities responsible for the execution of sentences and measures and to the authorities responsible for the register of convictions.

Art. 85 Form and service of communications

[1] The criminal justice authorities shall issue communications in writing, unless this Code provides otherwise.

[2] Service shall be effected by registered mail or in any other way provided confirmation of receipt is obtained, and in particular by personal service by the police

[3] It is effected if the delivery is accepted by addressee or by an employee thereof or a person living in the same household who is at least 16 years old, unless the law enforcement authority has instructed that delivery be made to the addressee in person.

[4] It is also deemed to be effected:

a. in the case of a delivery by registered mail that is not collected: on the seventh day following the unsuccessful attempt at service, provided the person is expecting the delivery;

b. in the case of personal service, if the addressee refuses to accept service and this is recorded by the messenger: on the day of refusal.

Art. 86[27] Electronic service

[1] With the consent of the person concerned, communications may be served electronically. They must bear an electronic signature in accordance with the Federal Act of 18 March 2016[28] on Electronic Signatures.

[2] The Federal Council shall regulate:

a. the signature to be used;

b. the format for communications and their attachments;

c. the method of transmission;

d. the point in time at which the communication is deemed to have been served.

Art. 87 Address for service

[1] Communications must be served on addressees at their domicile, their habitual place of residence or their registered office.

[2] Parties and legal agents whose domicile, habitual place of residence or registered office is abroad must provide an address for service in Switzerland; provisions of international agreements under which communications may be served directly are reserved.

27 Amended by Annex No II 7 of the FA of 18 March 2016 on Electronic Signatures, in force since 1 Jan. 2017 (AS **2016** 4651; BBl **2014** 1001).
28 SR **943.03**

3 Communications address to parties who have appointed a legal agent are validly served if sent to the agent.

4 Where a party is required to appear personally at a hearing or must personally carry out a procedural act, the related communication shall be served directly on that party. A copy shall be sent to the legal agent.

Art. 88 Public notice

1 Service shall be effected by publication in an official gazette designated by the Confederation or the canton where:

a. the whereabouts of the addressee are unknown and cannot be ascertained despite making reasonable enquiries;

b. service is impossible or would lead to exceptional inconvenience;

c. a party or his or her legal agent with domicile, habitual residence or registered office abroad has failed to provide an address for service in Switzerland.

2 Service is deemed to be effected on the day of publication.

3 In the case of final judgments, only the conclusions of the judgment shall be published.

4 Decisions to take no proceedings and summary penalty orders are deemed to be served without publication being required.

Section 7 Time Limits and Deadlines

Art. 89 General Provisions

1 Statutory time limits may not be extended.

2 There are no court holidays in criminal proceedings.

Art. 90 Commencement and calculation of time limits

1 Time limits that are triggered by a communication or the occurrence of an event begin to run from the following day.

2 If the time limit is due to expire on a Saturday, a Sunday or a public holiday recognised under federal or cantonal law, it shall expire on the next working day. The matter shall be determined by the law of the canton in which the party or his or her legal agent is resident or has its registered office.[29]

Art. 91 Compliance with time limits

1 The time limit is complied with if the procedural act is carried out to the satisfaction of the competent authority on the day of expiry at the latest.

29 Amended by Annex No II 7 of the Criminal Justice Authorities Act of 19 March 2010, in force since 1 Jan. 2011 (AS **2010** 3267; BBl **2008** 8125).

2 Submissions must be delivered on the day of expiry of the time limit at the latest to the criminal justice authority or handed for delivery to SwissPost, a Swiss diplomatic or consular representation or, in the case of persons in custody, the governor of the institution.

3 In case of electronic submission, the relevant time for compliance with a time limit is that at which the receipt is issued that confirms that all the steps have been completed that the party must carry out for transmission.[30]

4 The time limit is also deemed to be complied with if the submission is received by a Swiss authority not competent in the matter on the day of expiry at the latest. This authority shall pass the submission on immediately to the competent criminal justice authority.

5 The time limit for making a payment to a criminal justice authority is complied with if the amount due is handed to SwissPost or is debited from a postal or bank account in Switzerland in favour of the criminal justice authority on the day of expiry at the latest.

Art. 92 Extension of time limits and postponement of hearings

The authorities may extend time limits and postpone hearings ex officio or in response to an application. The application must be made before the expiry of the time limit and be adequately justified.

Art. 93 Default

A party is in default if he or she fails to carry out a procedural act in time or fails to appear for a hearing.

Art. 94 New time limit

1 Where a party has failed to comply with a time limit and has thus incurred a significant and irremediable loss of rights, he or she may request that a new time limit be fixed; in doing so he or she must credibly show that he or she was not at fault for the failure to comply with the time limit.

2 The application must be made in writing with a statement of reasons and submitted within 30 days of the reason for default ceasing to apply to the authority before which the relevant procedural act should have been carried out. The relevant procedural act must be carried out within the same time limit.

3 The application only has suspensive effect if the competent authority grants the same.

4 The criminal justice authority shall decide on the application in written proceedings.

5 Paragraphs 1–4 apply *mutatis mutandis* in the event of failure to attend a hearing. If a new hearing is granted, the director of proceedings shall fix a new date. The provisions on proceedings *in absentia* are reserved.

30 Amended by Annex No II 7 of the FA of 18 March 2016 on Electronic Signatures, in force since 1 Jan. 2017 (AS **2016** 4651; BBl **2014** 1001).

Section 8 Data Processing

Art. 95 Obtaining personal data

[1] Personal data must be obtained from the person concerned or with that person's knowledge unless the proceedings would be otherwise be prejudiced or unreasonable inconvenience or expense would be incurred.

[2] If personal data is obtained without the knowledge of the person concerned, that person must be notified thereof immediately. Where overriding public or private interests so require, notification may be dispensed with or postponed.

Art. 95*a*[31] Processing of personal data

When processing personal data, the competent criminal justice authorities shall ensure that they make a distinction, as far as possible:

a. between the different categories of data subjects;

b. between personal data based on facts and personal data based on personal assessments.

Art. 96 Disclosure and use in pending criminal proceedings

[1] The criminal justice authority may disclose personal data from pending proceedings for use in other pending proceedings if it is anticipated that the data may provide essential information.

[2] The foregoing paragraph does not apply to:

a. Articles 11, 13, 14 and 20 of the Federal Act of 21 March 1997[32] on Measures to Safeguard Internal Security;

b. the regulations of the Federal Act of 13 June 2008[33] on the Federal Police Information Systems;

c. the regulations of the Federal Act of 7 October 1994[34] on the Central Offices of the Federal Criminal Police.[35]

31 Inserted by No II 3 of the FA of 28 Sept. 2018 on the implementation of Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, in force since 1 March 2019 (AS **2019** 625; BBl **2017** 6941).

32 SR **120**

33 SR **361**

34 SR **360**

35 Amended by Annex 2 No I 1 let. a of the FA of 13 June 2008 on the Federal Police Information Systems, in force since 1 Jan. 2011 (AS **2008** 4989; BBl **2006** 5061).

Art. 97 Rights to information in the case of pending proceedings

As long as proceedings are pending, the parties and the other participants in the proceedings have, in accordance with their right to inspect case documents, the right to information on personal data relating to them that has been processed.

Art. 98 Correction of data

[1] Where personal data proves to be incorrect, the relevant criminal justice authorities shall correct it immediately.

[2] They shall immediately notify authorities to which they have transmitted, made available or disclosed the data of the corrections.[36]

Art. 99 Processing and retention of personal data after conclusion of the proceedings

[1] After conclusion of the proceedings, the processing of personal data, procedures and legal protection are governed by the provisions of federal and cantonal data protection law.

[2] The period of retention of personal data after conclusion of proceedings is governed by Article 103.

[3] The provisions of the Federal Act of 7 October 1994[37] on the Central Offices of the Federal Criminal Police, the Federal Act of 13 June 2008[38] on the Federal Police Information Systems and the provisions of this Code on identifying documents and DNA profiles are reserved.[39]

Section 9 Management, Inspection and Retention of Case Files

Art. 100 File management

[1] A case file shall be opened for each criminal case. This file shall contain:

a. the records of proceedings and examination hearings;

b. the documents complied by the criminal justice authority;

c. the documents submitted by the parties.

[2] The director of proceedings shall ensure the systematic filing of documents and sequential indexing; in simple cases, an index is not required.

36 Amended by No II 3 of the FA of 28 Sept. 2018 on the implementation of Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, in force since 1 March 2019 (AS **2019** 625; BBl **2017** 6941).

37 SR **360**

38 SR **361**

39 Amended by Annex 2 No I 1 let. a of the FA of 13 June 2008 on the Federal Police Information Systems, in force since 1 Jan. 2011 (AS **2008** 4989; BBl **2006** 5061).

Art. 101 Inspection of case documents in pending proceedings

[1] The parties may inspect the documents relating to the criminal proceedings at the latest following the first interview with the accused and the gathering of the other most important evidence by the public prosecutor; Article 108 is reserved.

[2] Other authorities may inspect the case documents if they need to do so for the purposes of pending civil, criminal or administrative proceedings and inspection is not contrary to any overriding public or private interests.

[3] Third parties may inspect the case documents if they claim to have an academic or other legitimate interest in doing so and inspection is not contrary to any overriding public or private interests.

Art. 102 Procedure relating to applications to inspect case documents

[1] The director of proceedings decides on whether case documents may be inspected. He or she shall take the measures required to prevent abuses and delays and to protect legitimate interests in confidentiality.

[2] The case documents must be inspected at the offices of the relevant criminal justice authority or those of another criminal justice authority in mutual assistance proceedings. Normally they shall be delivered to other authorities or the legal agents for the parties.

[3] Any person who is entitled to inspect case documents may request copies thereof for a fee.

Art. 103 Retention of case documents

[1] The case documents must be preserved at least until conclusion of the time limits for prosecution and for the execution of the sentence have expired.

[2] The foregoing paragraph does not apply to original documents included in the case file; they must be returned to the persons entitled thereto against written acknowledgement of receipt as soon as the criminal case has been decided by a final judgment.

Title 3 Parties and Other Persons involved in the Proceedings

Chapter 1 General Provisions

Section 1 Definition and Status

Art. 104 Parties

[1] Parties are:

a. the accused;

b. the private claimant;

c. in the main hearing and in appellate proceedings: the public prosecutor.

2 The Confederation and the cantons may grant full or limited party rights to other authorities that are required to safeguard public interests.

Art. 105 Other persons involved in the proceedings

1 Other persons involved in the proceedings are:

a. persons suffering harm;

b. the person who has reported the offence;

c. witnesses;

d. persons providing information;

e. expert witnesses;

f. third parties who have suffered detriment due to procedural acts.

2 If the rights of persons involved in the proceedings named in paragraph 1 are directly affected, they shall, in order to safeguard their interests, be entitled to the procedural rights of a party.

Art. 106 Capacity to act

1 The party may validly carry out procedural acts only if he or she has the capacity to act.

2 A person lacking the capacity to act shall be represented by his or her statutory representative.

3 A person with capacity of judgement who lacks the capacity to act may, in addition to his or her legal agent, exercise procedural rights that are of a highly personal nature.

Art. 107 Right to be heard

1 The parties have the right to be heard; in particular, they have the right:

a. to inspect case documents;

b. to participate in procedural acts

c. to appoint a legal agent;

d. to comment on the case and on the proceedings;

e. to request that further evidence be taken.

2 The criminal justice authorities shall notify parties who are unaware of the law of their rights.

Art. 108 Restriction of the right to be heard

1 The criminal justice authorities may restrict the right to be heard if:

a. there is justified suspicion that a party is abusing his or her rights;

b. this is required for the safety of persons or to safeguard public or private interests in preserving confidentiality.

2 Restrictions in relation to legal agents are only permitted if the legal agent gives personal cause for imposing a restriction.

3 Restrictions must be limited in time or to individual procedural acts.

4 If the reason for imposing the restriction continues to apply, the criminal justice authorities may base their decisions on files that have not been disclosed to a party only if that party has been informed of the essential content thereof.

5 If the reason for the restriction has ceased to apply, the right to be heard must be granted in a suitable form retrospectively.

Section 2 Procedural Acts by the Parties

Art. 109 Submissions

1 The parties may make submissions to the director of proceedings at any time, subject to the specific provisions thereon in this Code.

2 The director of proceedings shall examine the submissions and give the other parties the opportunity to comment.

Art. 110 Form

1 Submissions may be made in writing or orally on record. Written submissions must be dated and signed.

2 In the case of electronic submission, the submission and its enclosures must bear a qualified electronic signature in accordance with the Federal Act of 18 March 2016[40] on Electronic Signatures. The Federal Council shall regulate:

a. the format for submissions and their attachments;

b. the method of transmission;

c. the requirements for requesting the submission of documents in paper form in the event of technical problems.[41]

3 Procedural acts are not otherwise subject to any formal requirements unless this Code provides otherwise.

4 The director of proceedings may reject illegible, incomprehensible, improper or incoherent submissions; they shall fix a deadline for the revision of the submission and give notice that the submission if not revised, will not be considered.

40 SR **943.03**

41 Amended by Annex No II 7 of the FA of 18 March 2016 on Electronic Signatures, in force since 1 Jan. 2017 (AS **2016** 4651; BBl **2014** 1001).

Chapter 2 The Accused

Art. 111 Definition

[1] For the purposes of this Code, the accused is a person suspected, accused of or charged with an offence in a report of a criminal offence, a criminal complaint or in a procedural act carried out by a criminal justice authority.

[2] The rights and the obligations of an accused also apply to persons in respect of whom it is intended to bring new proceedings following abandonment or a judgment in accordance with Article 323 or Articles 410–415.

Art. 112 Criminal proceedings against corporate undertakings

[1] In criminal proceedings against a corporate undertaking, the undertaking shall be represented by a single person who has unlimited authority to represent the undertaking in private law matters.

[2] If the undertaking fails to appoint such a representative within a reasonable time, the director of proceedings shall decide which of the persons authorised to represent the undertaking in private law matters will represent the undertaking in the criminal proceedings.

[3] If a criminal investigation is opened against the person representing the undertaking in the criminal proceedings in respect of the same or related circumstances, the undertaking must appoint another representative. If necessary, the director of proceedings shall appoint another person to represent the undertaking in accordance with paragraph 2, or if no one is available, a suitable third party.

[4] If proceedings are brought against a natural person and an undertaking in respect of the same or related circumstances, the two proceedings may be combined.

Art. 113 Status

[1] The accused may not be compelled to incriminate him or herself. In particular, the accused is entitled to refuse to make a statement or to cooperate in the criminal proceedings. He or she must however submit to the compulsory measures provided for by the law.

[2] The proceedings continue irrespective of whether the accused cooperates.

Art. 114 Fitness to plead

[1] An accused is fit to plead if he or she is physically and mentally capable of understanding the proceedings.

[2] In the event of temporary unfitness to plead, procedural acts that cannot be delayed shall be carried out in the presence of the defence.

[3] If the accused remains unfit to plead, the criminal proceedings shall be suspended or abandoned. The special provisions on proceedings against an accused who is not legally responsible due to a mental disorder are reserved.

Chapter 3 Persons suffering Harm, Victims and Private Claimants
Section 1 Persons suffering Harm

Art. 115

[1] A person suffering harm is a person whose rights have been directly violated by the offence.

[2] A person entitled to file a criminal complaint is deemed in every case to be a person suffering harm.

Section 2 Victims

Art. 116 Definitions

[1] A victim is a person suffering harm whose physical, sexual or mental integrity has been directly and adversely affected by the offence.

[2] Relatives of the victim are his or her spouse, children and parents, and persons closely related to him or her in a similar way.

Art. 117 Status

[1] Victims have special rights, in particular:

a. the right to protection of personal privacy (Art. 70 para. 1 let. a, 74 para. 4, 152 para. 1);
b. the right to be accompanied by a confidant (Art. 70 para. 2, 152 para. 2);
c. the right to protective measures (Art. 152–154);
d. the right to remain silent (Art. 169 para. 4);
e. the right to information (Art. 305 and 330 para. 3);
f. the right to a special composition of the court (Art. 335 para. 4).

[2] In the case of victims under the age of 18, additional special provisions protecting personal privacy apply, in particular relating to:

a. restrictions on confrontation hearings with the accused (Art. 154 para. 4);
b. special protective measures during examination hearings (Art. 154 para. 2–4);
c. abandonment of the proceedings (Art. 319 para. 2).

[3] If relatives of a victim file civil claims, they are entitled to the same rights as the victim.

Section 3 Private Claimants

Art. 118 Definition and requirements

1 A private claimant is a person suffering harm who expressly declares that he or she wishes to participate in the criminal proceedings as a criminal or civil claimant.

2 The filing of a criminal complaint is regarded as being equivalent to such a declaration.

3 The declaration must be made to a criminal justice authority by the end of the preliminary proceedings at the latest.

4 If a person suffering harm has not made a declaration of his or her own volition, so the public prosecutor shall advise the person of this possibility after opening the preliminary proceedings.

Art. 119 Form and content of the declaration

1 A person suffering harm may submit a written declaration in writing or make the declaration orally on record.

2 In the declaration the person suffering harm may do either or both of the following:

a. request the prosecution and punishment of the person responsible for the offence (a criminal complaint);

b. file private law claims based on the offence (a civil claim).

Art. 120 Waiver and withdrawal

1 The person suffering harm may at any time declare either in writing or orally on record that he or she waives his or her rights. The waiver is final.

2 Unless the waiver is expressly limited, it shall be deemed to cover both the criminal and the civil proceedings.

Art. 121 Legal successors

1 If the person suffering harm dies without waiving his or her procedural rights as a private claimant, such rights pass to his or her relatives as defined in Article 110 paragraph 1 SCC[42] in accordance with their ranking under the law of succession.

2 Any person who by law acquires the rights as a claimant of a person suffering harm does so only in respect of the civil claim and has only those procedural rights that relate directly to the assertion of the civil claim.

42 SR **311.0**

Section 4 Civil Claims

Art. 122 General Provisions

1 The person suffering harm may bring civil claims based on the offence as a private claimant in the criminal proceedings.

2 The relatives of the victim have the same right provided they bring their own civil claims against the accused.

3 The civil proceedings become pending when a declaration in accordance with Article 119 paragraph 2 letter b is made.

4 If a private claimant withdraws the civil claim before the end of the main hearing before the court of first instance, they may file the claim again in civil proceedings.

Art. 123 Quantification and statement of the grounds

1 The civil claim must if possible be quantified in the declaration made in accordance with Article 119 and a brief statement of the grounds must be provided, detailing the relevant evidence.

2 The quantification and statement of the grounds must be specified in the party submissions at the latest.

Art. 124 Jurisdiction and procedure

1 The court hearing the criminal case shall judge the civil claim regardless of the amount involved.

2 The accused shall be given the opportunity to respond to the civil claim in the main proceedings before the court of first instance at the latest.

3 If the accused accepts the civil claim, this shall be placed on record and recorded in the decision concluding the proceedings.

Art. 125 Security for the claims against the private claimant

1 A private claimant, with the exception of the victim, must on application by the accused lodge security in respect of the accused's probable costs arising from the civil claim if:

a. he or she is not domiciled or has no registered office in Switzerland;

b. he or she appears to be insolvent, in particular if bankruptcy proceedings have been opened or composition proceedings are ongoing or if certificates of loss have been issued;

c. for other reasons, there is reason to fear that the accused's claim could be seriously jeopardised or frustrated.

2 The director of proceedings for the court shall issue a final judgment on the application. He or she shall determine the amount of security and fix a time limit for its payment.

3 The security may be paid in cash or take the form of a guarantee from a bank permanently established in Switzerland.

4 It may be retrospectively increased, reduced or revoked.

Art. 126 Decision

1 The court decides on pending civil claims in the event that it:

a. convicts the accused;

b. acquits the accused and the court is in a position to make a decision.

2 The civil claim shall be referred for civil proceedings if:

a. the criminal proceedings are abandoned or concluded by means of the summary penalty order procedure;

b. the private claimant has failed to justify or quantify the claim sufficiently;

c. the private claimant has failed to lodge security in respect of the claim;

d. the accused has been acquitted but the court is not in a position to make a decision.

3 If a full assessment of the civil claim would cause unreasonable expense and inconvenience, the court may make a decision in principle on the civil claim and refer it for civil proceedings. If possible, the court shall rule on minor claims itself.

4 In cases involving the victim, the court may firstly decide solely on guilt and the penalty; thereafter the director of proceedings shall, following a further hearing of the parties, rule as a judge sitting alone on the civil claim, irrespective of its amount.

Chapter 4 Legal Agents

Section 1 Principles

Art. 127

1 The accused, the private claimant and the other persons involved in the proceedings may appoint a legal agent to safeguard their interests.

2 The parties may appoint two or more persons as legal agent provided this does not unreasonably delay the proceedings. In such a case, they must designate one agent as the principal agent, who is authorised to carry out acts of representation before the criminal justice authorities and whose domicile is deemed to be the sole address for service.

3 The legal agent may act for two or more persons involved in the proceedings, subject to the restrictions laid down by law and in their professional code of practice.

4 The parties may appoint any person who has the capacity to act, is of unblemished reputation and is trustworthy; the restrictions of the law governing the legal profession are reserved.

5 The defence of the accused is reserved to lawyers who are authorised under the Lawyers Act of 23 June 2000[43] to represent parties in court; the foregoing is subject to derogating cantonal provisions on the defence in proceedings relating to contraventions.

Section 2 Defence Lawyers

Art. 128 Status

A defence lawyer is obliged to act solely in the interests the accused, subject to the restrictions laid down by law and in the professional code of practice.

Art. 129 Right to choose a defence lawyer

1 The accused is entitled, in any criminal proceedings and at any stage of the proceedings either to instruct a legal agent as defined in Article 127 paragraph 5 to conduct his or her defence (right to choose a defence lawyer) or, subject to Article 130, to conduct his or her own defence.

2 The accused exercises his or her right to choose a defence lawyer by executing a written power of attorney or making a declaration on record.

Art. 130 Mandatory appointment of a defence lawyer

A defence lawyer must be appointed to represent the accused if:

a. the period on remand including the period when under arrest has continued for more than 10 days;

b.[44] the offence concerned carries a custodial sentence of more than a year or a custodial measure or may result in expulsion from Switzerland;

c. the accused is unable to safeguard his or her interests in the proceedings adequately due to his or her physical or mental condition or for other reasons, and his or her statutory representative is unable to do so either;

d. the prosecuting lawyer is appearing in person before the court of first instance or the court of appeal;

e. accelerated proceedings (Art. 358–362) are being conducted.

Art. 131 Appointment of the mandatory defence lawyer

1 Where the mandatory appointment of a defence lawyer is required, the director of proceedings shall ensure that a defence lawyer is appointed immediately.

43 SR **935.61**

44 Amended by Annex No 5 of the FA of 20 March 2015 (Implementation of Art. 121 para. 3–6 Federal Constitution on the expulsion of foreign nationals convicted of certain criminal offences), in force since 1 Oct. 2016 (AS **2016** 2329; BBl **2013** 5975).

2 If the requirements for the mandatory appointment of a defence lawyer are fulfilled on commencement of the preliminary proceedings, the defence lawyer must be appointed following the first interview by the public prosecutor, or before opening the investigation at the latest.

3 In cases where the appointment of a mandatory defence lawyer is clearly required but evidence is obtained before a defence lawyer is appointed, the evidence obtained is only admissible if the accused waives the right to have the evidence taken again.

Art. 132 Duty defence lawyer

1 The director of proceedings shall appoint a duty defence lawyer if:

a. in the event of mandatory appointment of a defence lawyer:
   1. the accused, despite being requested to do so by the director of proceedings, fails to appoint a defence lawyer of choice, or
   2. the defence lawyer of choice has been dismissed or has resigned and the accused fails to appoint a new defence lawyer of choice within the time limit set;
b. the accused lacks the necessary financial means and requires a defence lawyer to safeguard of his or her interests.

2 A defence lawyer is required to safeguard the interests of the accused in particular if the matter is not a minor case and the case involves factual or legal issues that the accused is not qualified to deal with alone.

3 A case is no longer regarded as minor if it is probable that a custodial sentence of more than 4 months or a monetary penalty of more than 120 daily penalty units may be imposed on conviction.[45]

Art. 133 Appointment of the duty defence lawyer

1 The duty defence lawyer is appointed by the person acting as director of proceedings at the relevant stage of the proceedings.

2 The director of proceedings shall if possible take account of the wishes of the accused when appointing the duty defence lawyer.

Art. 134 Dismissal and change of duty defence lawyer

1 If there is no longer any reason to have a duty defence lawyer, the director of proceedings shall dismiss the lawyer.

2 If the mutual trust between the accused and his or her duty defence lawyer is seriously compromised or the provision of an effective defence is no longer guaranteed for other reasons, the director of proceedings shall appoint another person as the duty defence lawyer.

45 Amended by Annex No 3 of the FA of 19 June 2015 (Amendments to the Law of Criminal Sanctions), in force since 1 Jan. 2018 (AS **2016** 1249; BBl **2012** 4721).

Art. 135 Duty defence lawyer's fees

[1] The duty defence lawyer shall be paid in accordance with the table of legal fees applicable in the Confederation or in the canton in which the criminal proceedings were conducted.

[2] The public prosecutor or the court passing judgment shall determine the fees at the end of the proceedings.

[3] The duty defence lawyer may file an objection against the decision on fees:

a. with the objections authority, where the decision was made by the public prosecutor or the court of first instance; or

b. with the Federal Criminal Court, where the decision was made by the objections authority or the cantonal court of appeal.

[4] If the accused is ordered to pay procedural costs, as soon as his or her financial circumstances permit, he or she must:

a. repay the fees to the Confederation or the canton;

b. pay the defence lawyer the difference between the official fees and the full fees.

[5] The rights of the Confederation or of the canton are subject to a time limit of 10 years from the time when the decision becomes legally binding.

Section 3 Legal Aid for the Private Claimant

Art. 136 Requirements

[1] The director of proceedings shall grant the private claimant full or partial legal aid for the enforcement of their civil claims if:

a. the private claimant does not have the required financial resources; and

b. the civil proceedings does not appear to be without any prospect of success.

[2] Legal aid includes:

a. relief from the requirement to make an advance payment or to provide security in respect of costs;

b. relief from the requirement to pay procedural costs;

c. the appointment of a legal representative if this is necessary to safeguard the rights of the private claimant.

Art. 137 Appointment, dismissal and change

The appointment, dismissal and change of the legal representative are governed by Articles 133 and 134 *mutatis mutandis*.

Art. 138 Fees and allocation of costs

[1] The legal representative's fees are governed by Article 135 *mutatis mutandis*; the final judgment on who must pay the costs of the legal representative and of any procedural acts in respect of which relief has been granted from making an advance payment to cover costs remains reserved.

[2] If the private claimant is awarded procedural and legal costs to be paid by the accused, the portion of these costs covered by legal aid must be refunded to the Confederation or to the canton.

Title 4 Evidence

Chapter 1 General Provisions

Section 1 Taking Evidence and Admissibility of Evidence

Art. 139 Principles

[1] In order to establish the truth, the criminal justice authorities shall use all the legally admissible evidence that is relevant in accordance with the latest scientific findings and experience.

[2] No evidence shall be led on matters that are irrelevant, obvious, known to the criminal justice authority or already adequately proven in law.

Art. 140 Prohibited methods of taking evidence

[1] The use of coercion, violence, threats, promises, deception and methods that may compromise the ability of the person concerned to think or decide freely are prohibited when taking evidence.

[2] Such methods remain unlawful even if the person concerned consents to their use.

Art. 141 Admissibility of unlawfully obtained evidence

[1] Evidence obtained in violation of Article 140 is not admissible under any circumstances. The foregoing also applies where this Code declares evidence to be inadmissible.

[2] Evidence that criminal justice authorities have obtained by criminal methods or by violating regulations on admissibility is inadmissible unless it is essential that it be admitted in order to secure a conviction for a serious offence.

[3] Evidence that has been obtained in violation of administrative regulations is admissible.

[4] Where evidence that is inadmissible under paragraph 2 has made it possible to obtain additional evidence, such evidence is not admissible if it would have been impossible to obtain had the previous evidence not been obtained.

5 Records relating to inadmissible evidence shall be removed from the case documents, held in safekeeping until a final judgment has concluded the proceedings, and then destroyed.

Section 2 Examination Hearings

Art. 142 Criminal justice authority conducting the examination hearing

1 Examination hearings are conducted by the public prosecutor, the authorities responsible for prosecuting contraventions and the courts. The Confederation and the cantons shall decide on the extent to which the employees of these authorities are permitted to conduct examination hearings.

2 The police may question accused persons and persons providing information. The Confederation and the cantons may determine which police officers may question witnesses on behalf of the public prosecutor.

Art. 143 Conduct of the examination hearing

1 At the start of the examination hearing, the person being questioned shall, in a language they can understand:

a. be asked for his or her personal details;

b. be advised of the subject matter of the criminal proceedings and of the capacity in which he or she is being interviewed;

c. be informed in full of his or her rights and obligations.

2 A note must be made in the record that the provisions of paragraph 1 have been complied with.

3 The criminal justice authority may make further enquiries in relation to the identity of the person being questioned.

4 It shall invite the person being questioned to comment on the subject matter of the examination hearing.

5 It shall endeavour by means of clearly formulated questions and contentions to obtain comprehensive statements and to clarify any contradictions.

6 The person being questioned shall make his or her statement on the basis of his or her recollections. He or she may make use of written documents with the consent of the director of proceedings; these documents shall be added to the case documents on conclusion of the examination hearing.

7 Persons with speech or hearing difficulties shall be questioned in writing or with the assistance of a suitably qualified person.

Art. 144 Examination hearing by video conference

[1] The public prosecutor and the courts may conduct an examination hearing by video conference if a personal appearance by the person being questioned is not possible or is only possible with unreasonable trouble and expense.

[2] An audio and video recording shall be made of the examination hearing.

Art. 145 Written reports

The criminal justice authority may invite a person being questioned to provide a written report instead of or in addition to holding an examination hearing.

Art. 146 Examination of two or more persons and confrontation hearings

[1] The persons being questioned shall be questioned separately.

[2] The criminal justice authorities may arrange for persons, including those who have the right to refuse to give evidence, to confront each other. The special rights of the victim are reserved.

[3] They may require persons who have been questioned who will probably be required to confront other persons after the conclusion of the examination hearing to remain at the place of the proceedings until the confrontation hearing is held.

[4] The director of proceedings may temporarily exclude a person from the hearing if:

a. there is a conflict of interest; or

b. the person must still be questioned in the proceedings as a witness, a person providing information or as an expert witness.

Section 3 Rights to Participate in the Taking of Evidence

Art. 147 General provisions

[1] Parties have the right to be present when the public prosecutor and the courts are taking evidence and to put questions to persons who have been questioned. The presence of the defence lawyer at examination hearings conducted by the police is governed by Article 159.

[2] Persons exercising a right to participate do not have the right to request that the taking of evidence be postponed.

[3] A party or his or her legal agent may request that evidence be taken again if the legal agent or the party without a legal agent is prevented from participating for good cause. Evidence need not be taken again if it would involve unreasonable trouble and expense and the right of the party to be heard, and in particular the right to ask questions, can be taken into account in another way.

[4] Evidence obtained in violation of this Article is inadmissible against a party who was not present when it was taken.

Art. 148 In mutual assistance proceedings

[1] If evidence is taken abroad in execution of a request for mutual assistance, the right of the parties to participate is satisfied if they:

a. are permitted to submit questions to be asked by the requested foreign authority;

b. are permitted to inspect the record once the request for mutual assistance has been executed; and

c. are permitted to submit written supplementary questions.

[2] Article 147 paragraph 4 applies.

Section 4 Protective Measures

Art. 149 General provisions

[1] If there are grounds to assume that a witness, a person providing information, an accused person, an expert witness or a translator or interpreter, or a person related to him or her in terms of Article 168 paragraphs 1–3 could be exposed to a serious danger to life and limb or any other serious prejudice by participating in the proceedings, the director of proceedings shall take the appropriate protective measures in response to an application or ex officio.

[2] The director of proceedings may also suitably restrict the procedural rights of the parties, in particular by:

a. ensuring anonymity;

b. conducting examination hearings while excluding parties or the public;

c. establishing personal details while excluding parties or the public;

d. modifying the appearance or voice of the person requiring protection or screening the person from the court;

e. limiting rights to inspect case documents.

[3] The director of proceedings may permit the person requiring protection to be accompanied by a legal agent or a confidant.

[4] If a person under the age of 18 is interviewed as a witness or person providing information, the director of proceedings may order further protective measures in accordance with Article 154 paragraphs 2 and 4.

[5] The director of proceedings shall ensure in the case of all protective measures that the right of the parties to be heard is respected and in particular that the accused's rights to a proper defence are respected.

[6] If the person requiring protection has been assured that his or her anonymity will be preserved, the director of proceedings shall take appropriate measures to prevent any confusion or mistaken identity.

Art. 150 Assurance of anonymity

[1] The director of proceedings may give an assurance to the person requiring protection that his or her anonymity will be preserved.

[2] The public prosecutor shall submit its assurance to the compulsory measures court within 30 days for approval; in doing so, it must specify all the details required to assess the legality of the measure. The decision of the compulsory measures court is final.

[3] If the compulsory measures court declines to approve the measure, any evidence already obtained subject to the assurance of anonymity shall be inadmissible.

[4] An assurance of anonymity that has been approved or granted is binding on all criminal justice authorities involved in the case.

[5] The person requiring protection may waive the requirement of anonymity at any time.

[6] The public prosecutor and the director of proceedings in the court shall revoke the assurance if there is clearly no longer a need for protection.

Art. 151 Measures to protect undercover investigators

[1] Undercover investigators who have been given an assurance that their anonymity will be preserved have the following rights:

a. to have their true identity withheld throughout the entire proceedings and after their conclusion from everyone other than the judges of the courts hearing the case;

b. to have no details as to their true identity recorded in the case documents.

[2] The director of proceedings shall take the required protective measures.

Art. 152 General measures to protect victims

[1] The criminal justice authorities shall safeguard the personal privacy of the victim at every stage of the proceedings.

[2] The victim may be accompanied at all procedural hearings by a confidant in addition to his or her legal agent.

[3] The criminal justice authorities shall ensure that the victim does not encounter the accused if the victim so requests. In such a case, they shall take account of the accused's right to be heard in some other way. In particular, they may question the victim while applying protective measures in accordance with Article 149 paragraph 2 letters b and d.

[4] A confrontation hearing may be ordered if:

a. the accused's right to be heard cannot be guaranteed in any other way; or

b. the hearing is essential for the purpose of the prosecution.

Art. 153 Special measures to protect of victims sexual offences

[1] Victims of sexual offences may ask to be questioned by a person of the same sex.

[2] A confrontation hearing with the accused may be ordered against the wishes of the victim only if the accused's right to be heard cannot be guaranteed in any other way.

Art. 154 Special measures to protect child victims

[1] A victim is a child within the meaning of this Article if he or she is under 18 years of age at the time of the examination hearing or confrontation hearing.

[2] The first examination hearing with the child must take place as quickly as possible.

[3] The authority may exclude the confidant from the proceedings if this person could exert a decisive influence on the child.

[4] If it is evident that the examination hearing or the confrontation hearing could be a serious psychological burden for the child, the following rules apply:

a. A confrontation hearing with the accused may be ordered only if the child expressly requests the confrontation hearing or the accused's right to be heard cannot be guaranteed in any other way.

b. The child may not normally be interviewed more than twice during the entire proceedings.

c. A second interview shall take place only if parties were unable to exercise their rights at the first interview or the examination hearing is essential in the interests of the enquiries or of the child. If possible, the child should be questioned by the same person who conducted the first interview.

d. Examination hearings shall be conducted in the presence of a specialist by an investigating officer specifically trained for this purpose. Unless a confrontation hearing is held, audio and video recordings shall be made of the examination hearing.

e. The parties shall exercise their rights through the person asking the questions.

f. The person asking the questions and the specialist shall record their special observations in a report.

Art. 155 Measures to protect persons with mental disorders

[1] Examination hearings with persons with mental disorders shall be limited to essential matters; additional examination hearings shall be avoided.

[2] The director of proceedings may arrange for specialist criminal or social services authorities to conduct the examination hearing or request that family members, other confidants or expert witnesses attend the examination hearing.

Art. 156 Measures to protect persons outside the proceedings

The Confederation and the cantons may take measures to protect persons outside the proceedings.

Chapter 2 Examination Hearings with the Accused

Art. 157 Principle

[1] The criminal justice authorities may question the accused at any stage of the criminal proceedings in relation to the offences of which he or she is accused.

[2] In doing so, they shall give the accused the opportunity to make a comprehensive statement in relation to these offences.

Art. 158 Caution administered at the first interview

[1] At the start of the first interview, the police or public prosecutor shall advise the accused in a language that he or she understands:

a. that preliminary proceedings have been commenced against him or her, and of the offences that are the subject of the proceedings;

b. that he or she is entitled to remain silent and may refuse to cooperate in the proceedings;

c. that he or she is entitled to appoint a defence lawyer or if appropriate to request the assistance of a duty defence lawyer;

d. that he or she may request the assistance of an interpreter.

[2] Evidence obtained at an examination hearing conducted without the foregoing caution is inadmissible.

Art. 159 Police examination hearings during enquiries

[1] In the case of police examination hearings, the accused has the right for his or her defence lawyer to be present and allowed to ask questions.

[2] In the case of police examination hearings of a person who has been arrested, the person also is entitled to communicate freely with his or her defence lawyer.

[3] The examination hearing may not be postponed to allow time for the foregoing rights to be exercised.

Art. 160 Examination hearing with an accused who has admitted the offence

If the accused has admitted committing the offence, the public prosecutor and court shall assess the credibility of the admission and request the accused to provide more precise details of the circumstances of the offence.

Art. 161 Investigation of personal circumstances at the preliminary proceedings stage

The public prosecutor shall question the accused with regard to his or her personal circumstances only if it is expected that the accused will be charged or issued with a summary penalty order or if it is essential for other reasons.

Chapter 3 Witnesses
Section 1 General Provisions

Art. 162 Definition

A witness is a person not involved in committing an offence who can make a statement that may assist in the investigation of an offence and who is not a person providing information.

Art. 163 Capacity and duty to testify

1 A person has the capacity to testify if he or she is over the age of 15 and has the required mental capacity with regard to the subject matter of the examination hearing.

2 Every person with the capacity to testify is obliged to make a statement and to tell the truth, subject to the provisions on rights to refuse to testify.

Art. 164 Enquiries relating to witnesses

1 Enquiries may be made into the previous conduct and the personal circumstances of a witness only if this is relevant to an assessment of his or her credibility.

2 If there are doubts as to the mental capacity of a witness or if there are indications of a mental disorder, the director of proceedings may order an outpatient examination of the witness if this is justified by the importance of the criminal proceedings and of the witnesses testimony.

Art. 165 Witness's duty of confidentiality

1 The authority conducting the examination hearing may require a witness subject to advising him or her of the penalties under Article 292 SCC[46] to treat the planned or completed interview and its subject matter as confidential.

2 This obligation shall be made subject to a time limit.

3 The order may be combined with the witness's summons.

Art. 166 Interview with the person suffering harm

1 The person suffering harm shall be interviewed as a witness.

2 The right to interview the person suffering harm as a person providing information in accordance with Article 178 is reserved.

Art. 167 Compensation

A witness is entitled to appropriate compensation for loss of income and expenses.

46 SR **311.0**

Section 2 Rights to Refuse to Testify

Art. 168 Right to refuse to testify due to a personal relationship

[1] The following persons may refuse to testify:

a. the accused's spouse or the person who cohabits with the accused;

b. anyone who has a child with the accused;

c. anyone who is related to the accused in direct line or by marriage;

d. the accused's siblings and stepsiblings and the spouse of a sibling or stepsibling;

e. the siblings and stepsiblings of the accused's spouse, and the spouse of such a sibling or stepsibling;

f. the accused's foster parents, foster children and foster siblings;

g.[47] a person appointed to act as guardian or deputy for the accused.

[2] The right to refuse to testify under paragraph 1 letters a and f remains valid if the marriage is dissolved or if in the case of a foster family[48], the foster relationship no longer applies.

[3] A registered partnership is deemed equivalent to marriage.

[4] The right to refuse to testify ceases to apply if:

a.[49] the criminal proceedings concern an offence under Articles 111–113, 122, 124, 140, 184, 185, 187, 189, 190 or 191 SCC[50]; and

b. the criminal act was directed at a person to whom the witness in accordance with paragraphs 1–3 is related.

Art. 169 Right to refuse to testify for personal protection or to protect closely related persons

[1] A person may the refuse to testify if he or she would incriminate him or herself by testifying such that he or she:

a. could be found guilty of an offence;

b. could be held liable under the civil law and the interest in protection outweighs the interest in prosecution.

[2] The right to refuse to testify also applies if the person by testifying would incriminate a closely related person as defined in Article 168 paragraphs 1–3; Article 168 paragraph 4 remains reserved.

47 Amended by Annex No 2 of the FA of 15 Dec. 2017 (Child Protection), in force since 1 Jan. 2019 (AS **2018** 2947; BBl **2015** 3431).

48 Art. 4–11 of the Ordinance of 19 Oct. 1977 on the Placement of Children in Foster Care and for Adoption (SR **211.222.338**).

49 Amended by No III of the FA of 30 Sept. 2011, in force since 1 July 2012 (AS **2012** 2575; BBl **2010** 5651 5677).

50 SR **311.0**

3 A person may refuse to testify if by testifying he or she or a closely related person as defined in Article 168 paragraphs 1–3 would be exposed to a considerable risk to life and limb or other serious detriment that cannot be prevented by taking protective measures.

4 A victim of a sexual offence may in every case refuse to answer questions that relate to his or her private domain.

Art. 170 Right to refuse to testify due to official secrecy

1 Public officials as defined in Article 110 paragraph 3 SCC[51] and their auxiliaries as well as members of authorities and their auxiliaries may refuse to testify on secret matters communicated to them in their official capacity or which have come to their knowledge in the exercise of their office or their auxiliary activity.[52]

2 They must testify if they have been given written authorisation to do so by their superior.

3 The superior shall grant authorisation to testify if the interest in establishing the truth outweighs the interest in preserving secrecy.

Art. 171 Right to refuse to testify due to professional confidentiality

1 Members of the clergy, lawyers, defence lawyers, notaries, patent attorneys, doctors, dentists, pharmacists, psychologists and assistants to such persons may refuse to testify in relation to confidential matters that have been confided to them or come to their knowledge in the course of their professional work.[53]

2 They must testify if they:

a. are subject to a duty to report; or

b. are relieved of their duty of confidentiality in terms of Article 321 number 2 SCC[54] by the person to whom the confidential information pertains or through the written consent of the competent authority.

3 The criminal justice authority shall also respect professional confidentiality in cases where the person entrusted with confidential information is relieved of the duty of confidentiality but he or she establishes that the interest of the person to whom the confidential information pertains outweighs the interest in establishing the truth.

4 The provisions of the Lawyers Act of 23 June 2000[55] are reserved.

51 SR **311.0**
52 Amended by Annex 1 No 8 of the Information Security Act of 18 Dec. 2020, in force since 1 Jan. 2023 (AS **2022** 232, 750; BBl **2017** 2953).
53 Amended by Annex No 2 of the Healthcare Occupations Act of 30 Sept. 2016, in force since 1 Feb. 2020 (AS **2020** 57; BBl **2015** 8715).
54 SR **311.0**
55 SR **935.61**

Art. 172 Protection of journalists' sources

[1] Persons involved professionally in the publication of information in the editorial section of a medium that appears periodically, together with their auxiliary personnel may refuse to testify as to the identity of the author or as to the content and sources of their information.

[2] They must testify if:

a. the testimony is required to save a person from immediate danger to life and limb;

b. without the testimony one of the following offences will not be solved or a person suspected of committing such an offence may not be apprehended:

1. homicide offences in terms of Articles 111–113 SCC[56],

2. felonies carrying a custodial sentence of at least 3 years,

3.[57] offences in terms of Articles 187, 189, 190, 191, 197 paragraph 4, 260ter, 260^{quinquies}, 260^{sexies}, 305bis, 305ter and 322ter–322^{septies} SCC,

4.[58] offences in terms of Article 19 number 2 of the Narcotics Act of 3 October 1951[59].

Art. 173 Right to refuse to testify due to other duties of confidentiality

[1] Any person who is required to preserve professional confidentiality in accordance with any of the following provisions must testify only if the interest in establishing the truth outweighs the interest in preserving confidentiality:

a. Article 321bis SCC[60];

b. Article 139 paragraph 3 of the Civil Code[61];

c. Article 2 of the Federal Act of 9 October 1981[62] on Pregnancy Advisory Centres;

d.[63] Article 11 of the Victim Support Act of 23 March 2007[64];

e.[65] Article 15 paragraph 2 of the Narcotics Act of 3 October 1951[66];

56 SR **311.0**
57 Amended by Annex No II 3 of the FedD of 25 Sept. 2020 on the Approval and Implementation of the Council of Europe Convention on the Prevention of Terrorism and its Additional Protocol and the Strengthening of Criminal Justice Instruments for combating Terrorism and Organised Crime, in force since 1 July 2021 (AS **2021** 360; BBl **2018** 6427).
58 Correction by the Federal Assembly Drafting Committee dated 19 Sept. 2014, published on 4 Oct. 2014 (AS **2011** 4487).
59 SR **812.121**
60 SR **311.0**
61 SR **210**. This Art. has now been repealed.
62 SR **857.5**
63 Amended by Annex No II 7 of the Criminal Justice Authorities Act of 19 March 2010, in force since 1 Jan. 2011 (AS **2010** 3267; BBl **2008** 8125).
64 SR **312.5**
65 Correction by the Federal Assembly Drafting Committee dated 19 Sept. 2014, published on 4 Oct. 2014 (AS **2011** 4487).
66 SR **812.121**

f.[67] Article 16 letter f of the Healthcare Occupations Act of 30 September 2016[68].

2 Persons entrusted with other confidential information protected by law are required to testify. The director of proceedings may relieve them of the duty to testify if they are able to establish that the interest in preserving confidentiality outweighs the interest in establishing the truth.

Art. 174 Decision on permitting a person to refuse to testify

1 The decision on whether to allow a person to refuse to testify is made by:

a. the authority conducting the examination hearing in the preliminary proceedings;

b. the court after charges have been brought.

2 The witness may request a review by the objections authority immediately after receiving notification of the decision.

3 Until the objections authority makes its decision, the witness is entitled to refuse to testify.

Art. 175 Exercise of the right to refuse to testify

1 The witness may invoke his or her right to refuse to testify at any time or revoke his or her waiver of that right.

2 Statements made by a witness after being cautioned with regard to the right to refuse to testify may be admitted as evidence if the witness subsequently exercises the right to refuse to testify or revokes a waiver of the right to refuse to testify.

Art. 176 Unlawful refusal to testify

1 Any person who refuses to testify without having the right to do so may be liable to a fixed penalty fine and may be required to pay the costs and damages incurred as a result of such refusal.

2 If a person who is obliged to testify insists on refusing to do so, he or she will again be requested to testify and cautioned as to the penalties under Article 292 SCC[69]. In the event of continued refusal, criminal proceedings shall be commenced.

Section 3 Examination Hearings with Witnesses

Art. 177

1 The authority conducting the examination hearing shall caution the witness at the beginning of each hearing with regard to the obligations to testify and to tell the truth

67 Inserted by Annex No 2 of the Healthcare Occupations Act of 30 Sept. 2016, in force since 1 Feb. 2020 (AS **2020** 57; BBl **2015** 8715).
68 SR **811.21**
69 SR **311.0**

and advise the witness of the penalties for perjury in terms of Article 307 SCC[70]. If no caution is given, the examination hearing is invalid.

2 The authority conducting the examination hearing shall question each witness at the beginning of the first hearing as to his or her relationship with the parties and as to other circumstances that may be relevant to the witness's credibility.

3 It shall caution the witness as to the rights to refuse to testify as soon as it becomes apparent through questioning or the files that such rights apply. If no caution is given and the witness subsequently exercises the right to refuse to testify, the examination hearing is inadmissible.

Chapter 4 Persons providing Information

Art. 178 Definition

The following persons may be interviewed as persons providing information:

a. a person who has given notice that he or she is a private claimant;

b. a person who is under the age of 15 at the time of the examination hearing;

c. a person who due to limited mental capacity is not able to understand the subject matter of the examination hearing;

d. a person who is not an accused but who cannot be excluded as the perpetrator of or as a participant in the offence under investigation or another related offence;

e. a person who is a co-accused who must be interviewed with regard to an offence of which he or she is not personally accused;

f. a person who is the accused in other proceedings relating to an offence connected with the offence under investigation;

g. a person who has been or could be designated as the representative of a corporate entity in criminal proceedings against that entity, as well as his or her employees.

Art. 179 Persons providing information at police examination hearings

1 The police shall question any person who is not a suspect in the capacity of a person providing information.

2 The foregoing is subject to the right to question a person as a witness in accordance with Article 142 paragraph 2.

70 SR **311.0**

Art. 180 Status

[1] Persons providing information in terms of Article 178 letters b–g have the right to remain silent; they are subject to the provisions on examination hearings with the accused, *mutatis mutandis*.

[2] A private claimant (Art. 178 let. a) is obliged to testify before the public prosecutor, before the courts and before the police if they interview the claimant on behalf of the public prosecutor. In addition, the provisions on witnesses apply *mutatis mutandis*, with exception of Article 176.

Art. 181 Examination hearing

[1] The criminal justice authorities shall caution persons providing information at the beginning of the examination hearing with regard to their obligation to testify or their right to remain silent or right to refuse to testify.

[2] They shall caution persons providing information who are obliged to testify or who declare that they are prepared to testify with regard to the possible penalties for false accusation, of misleading judicial authorities and of assisting offenders.

Chapter 5 Authorised Experts

Art. 182 Requirements for requesting the services of an expert witness

The public prosecutor and courts shall request the services of one or more expert witnesses if they do not have the specialist knowledge and skills required to determine or assess the facts of the case.

Art. 183 Requirements for the expert witness

[1] Any natural person with the required specialist knowledge and skills in the relevant field may be appointed as an expert witness.

[2] The Confederation and the cantons may provide for the retention of permanent or official expert witnesses for specific fields.

[3] Authorised experts are subject to the grounds for recusal in terms of Article 56.

Art. 184 Appointment and instructions

[1] The director of proceedings shall appoint the expert witness.

[2] The director of proceedings shall provide written instructions; these shall contain:

a. the personal details of the expert witness;

b. if applicable, notice that the expert witness may instruct others to assist in preparing the report subject to his or her supervision;

c. the precisely formulated questions;

d. the deadline for completing the report;

e. reference to the duty of confidentiality that applies to the expert witness and any assistants;

f. a reference to the penalties for perjury by an expert witness in terms of Article 307 SCC[71].

3 The director of proceedings shall give the parties prior opportunity to comment on the expert witness and on the questions and to submit their own applications. The director of proceedings may dispense with this requirement in relation to laboratory tests, in particular where they relate to determining the blood-alcohol concentration or the level of purity of substances, proof of the presence of narcotics in the blood or the preparation of a DNA profile.

4 Together with the instructions, they shall provide the expert witness with the documents and items required to prepare the report.

5 They may revoke their instructions at any time and appoint new expert witnesses if this is in the interests of the criminal case.

6 They may request an estimate of the costs before issuing the instructions.

7 If a private claimant requests an expert report, the director of proceedings may make instructing an expert witness dependent on the private claimant making an advance payment to cover costs.

Art. 185 Preparation of the report

1 The expert witness is personally responsible for the expert report.

2 The director of proceedings may request the expert witness to attend procedural hearings and authorise the expert to put questions to the person being questioned.

3 If the expert witness is of the view that documents must be added to the case files, he or she shall make the relevant application to the director of proceedings.

4 The expert witness may conduct simple enquiries that are closely connected to his or her assignment and for this purpose may request persons to cooperate. These persons must comply with the instructions. If they refuse, they may be brought before the expert witness by the police.

5 In relation to enquiries by the expert witness, the accused and, to the extent of their right to refuse to testify, persons who have the right to remain silent or to refuse to testify may refuse to cooperate. The expert witness shall caution the persons concerned with regard to such rights at the start of his or her enquiries.

Art. 186 In-patient assessment

1 The public prosecutor or courts may have an accused admitted to hospital if this is required in order to prepare a medical report.

71 SR **311.0**

2 The public prosecutor shall apply to the compulsory measures court for the accused to be admitted to hospital unless the accused is already on remand. The compulsory measures court shall issue a final judgment on the matter in written proceedings.

3 If an in-patient assessment proves necessary during the court proceedings, the court concerned shall issue a final decision on the matter in written proceedings.

4 The time spent in hospital shall be taken into account in the sentence.

5 In addition, the in-patient assessment is governed by *mutatis mutandis* by the regulations on remand and preventive detention.

Art. 187 Form of the expert report

1 The expert witness shall prepare an expert report in writing. If additional persons are involved in the preparation of the report, their names and the contribution that they made to the preparation of the report must be specified.

2 The director of proceedings may order the expert report to be given orally or that a written report be explained or added to orally; in such an event, the regulations on witness examination hearings apply.

Art. 188 Right of the parties to comment

The director of proceedings shall notify the parties of the content of the written expert report and allow them time in which to comment thereon.

Art. 189 Additions and improvements to the report

The director of proceedings shall ex officio or at the request of a party arrange for the expert report to be added to or improved by the same expert witness or shall appoint additional expert witnesses if:

a. the expert report is incomplete or unclear;

b. two or more expert witnesses diverge considerably in their conclusions; or

c. there are doubts as to the accuracy of the expert report.

Art. 190 Fees

The expert witness is entitled to an appropriate fee.

Art. 191 Neglect of duty

If an expert witness fails to fulfil his obligations or does not do so in time, the director of proceedings may:

a. impose a fixed penalty fine;

b. revoke their instructions without paying the expert a fee for any work carried out.

Chapter 6 Material Evidence

Art. 192 Items of evidence

1 The criminal justice authorities shall add all items of evidence in their original form to the case file.

2 Copies shall be made of official documents and other records if this is sufficient for the purposes of the proceedings. If necessary, the copies must be certified.

3 The parties may inspect items of evidence in accordance with the regulations on the inspection of files.

Art. 193 Inspection

1 The public prosecutor, the courts and, in minor cases, the police shall make an on-site inspection of all items, locations and processes that are important in assessing the circumstances but which are not immediately available as items of evidence.

2 Every person concerned must tolerate the inspection and allow the participants the required access.

3 If it is necessary to enter houses, dwellings or other premises that are not generally accessible, the authorities shall comply with the regulations applicable to the search of premises.

4 A record shall be made of inspections by means of video or audio recordings, plans, drawings or descriptions, or by some other method.

5 The director of proceedings may order that:

a. other procedural acts be relocated to the place where the inspection is being carried out;

b. the inspection is combined with a reconstruction of the criminal act or with a confrontation hearing; in such an event, the accused, the witnesses and the persons providing information are obliged to take part, subject to their right to remain silent.

Art. 194 Consultation of case files

1 The public prosecutor and the courts shall consult files relating to other proceedings if this is required to prove the circumstances of the case or to assess the guilt of the accused.

2 Administrative and judicial authorities shall make their files available for inspection unless there is an overriding public or private interest in preserving confidentiality.

3 Conflicts between authorities of the same canton shall be decided by the objections authority of the canton concerned, and conflicts between authorities of different cantons or between cantonal and federal authorities shall be decided by the Federal Criminal Court.

Art. 195 Obtaining reports and information

[1] The criminal justice authorities shall obtain official reports and medical certificates relating to matters that may be of significance in the criminal proceedings.

[2] In order to establish the personal circumstances of the accused, the public prosecutor and courts information shall obtain information on the accused's criminal record and reputation and other relevant reports from public offices and members of the public.

Title 5 Compulsory Measures

Chapter 1 General Provisions

Art. 196 Definition

Compulsory measures are procedural acts carried out by the criminal justice authorities that restrict the fundamental rights of the persons concerned and which serve:

a. to secure evidence;

b. to ensure that persons attend the proceedings;

c. to guarantee the execution of the final judgment.

Art. 197 Principles

[1] Compulsory measures may be taken only if:

a. they are permitted by law;

b. there is reasonable suspicion that an offence has been committed;

c. the aims cannot be achieved by less stringent measures

d. the seriousness of the offence justifies the compulsory measure.

[2] Particular caution must be taken when carrying out compulsory measures that restrict the fundamental rights of persons not accused of an offence.

Art. 198 Competence

[1] Compulsory measures may be ordered by:

a. the public prosecutor;

b. the courts, or in cases of urgency, their director of proceedings;

c. the police in cases specifically provided for by law.

[2] The Confederation and the cantons may restrict the powers of the police to order or carry out compulsory measures to police officers of a specific rank or function.

Art. 199 Notice of the order

Where a compulsory measure must be ordered in writing and need not be kept secret, the persons directly concerned shall be given a copy of the warrant and of any record relating to its execution against confirmation of receipt.

Art. 200 Use of force

Force may be used as a last resort when carrying out compulsory measures; any force used must be reasonable.

Chapter 2
Summonses, Enforced Appearances and Tracing of Wanted Persons or Property

Section 1 Summonses

Art. 201 Form and content

[1] A summons shall be issued in writing by the public prosecutor, the authorities responsible for prosecuting contraventions and the courts.

[2] It contains:

a. the name of the criminal justice authority issuing the summons and the persons who will carry out the procedural act;

b. the name of the person summoned and the capacity in which it is intended that person should participate in the procedural act;

c. the reason for the summons if the aim of the investigation permits such information to be disclosed;

d. the place, date and time of appearance;

e. notice of the requirement to appear personally;

f. a caution as to the legal consequences of the failure to appear without excuse;

g. the date on which the summons was issued;

h. the signature of the person issuing the summons.

Art. 202 Time limit

[1] Summonses shall be served:

a. in the preliminary proceedings: at least 3 days before the procedural act is due to take place;

b. in proceedings in court: at least 10 days before the procedural act is due to take place.

[2] Public summonses shall be published at least one month before the procedural act is due to take place.

3 When deciding on the date of the procedural act, appropriate account shall be taken of the availability of the persons being summoned.

Art. 203 Exceptions

1 A summons may be issued in a form other than that prescribed and subject to shorter time limits:

a. in cases of urgency; or

b. with the consent the person being summoned.

2 Any person who is present at the place of the procedural act or in detention may be questioned immediately and without the issue of a summons.

Art. 204 Safe conduct

1 If persons who are abroad must be summoned, the public prosecutor or the persons conducting the court proceedings may guarantee their safe conduct.

2 Persons who have been guaranteed safe conduct may not be arrested or made subject to other measures restricting their liberty in Switzerland due to acts or convictions from the period prior to their departure.

3 Safe conduct may be subject to conditions. In this case, the persons concerned must be informed that the right to safe conduct expires if they fail to comply with the conditions thereof.

Art. 205 Duty to appear, circumstances preventing appearance and failure to appear

1 Any person summoned by a criminal justice authority must comply with the summons.

2 Any person who is prevented from complying with a summons must inform the authority issuing the summons immediately; he or she must give reasons for his or her inability to appear and if possible provide documentary evidence thereof.

3 A summons may be revoked if there is good cause. The revocation of the summons takes effect when the person summoned has been informed thereof.

4 Any person who, without an acceptable reason, fails to comply with a summons from a public prosecutor, authority responsible for prosecuting contraventions or a court or who appears late shall be liable to a fixed penalty fine and may also be brought before the authority concerned by the police.

5 The foregoing paragraph does not apply to the provisions on proceedings in absentia.

Art. 206 Police summonses

1 In the course of police enquiries, the police may summon persons for the purposes of questioning, establishing their identity or for other identification procedures without the requirement to comply with special formalities or time limits.

2 Any person who fails to comply with a police summons may be brought before the authority concerned on the basis of a warrant issued by the public prosecutor provided the person summoned has been issued with a written warning that this measure may be taken.

Section 2 Appearance enforced by the Police

Art. 207 Requirements and competence

1 A person may be brought before an authority by the police if:

a. he or she has failed to comply with a summons;

b. there are specific indications that he or she will not comply with a summons;

c. in proceedings relating to a felony or misdemeanour, his or her immediate appearance is essential in the interests of the procedure;

d. there is a strong suspicion that he or she has committed a felony or misdemeanour and there is reason to believe that there are grounds for the person's detention.

2 An enforced appearance shall be ordered by the director of proceedings.

Art. 208 Form of the order

1 An enforced appearance is ordered in the form of a written warrant. In cases of urgency, it may be ordered orally; it must however be confirmed subsequently in writing.

2 The warrant shall contain the same details as a summons and also the express authorisation for the police to use force and to enter buildings, dwellings and other spaces not generally accessible if this is necessary in order to implement the warrant.

Art. 209 Procedure

1 The police shall make every effort to protect the persons concerned when executing a warrant for an enforced appearance.

2 They shall show the person concerned the warrant for the enforced appearance and bring him or her before the relevant authority immediately or at the time specified for the appearance.

3 The authority shall inform the person concerned immediately and in a language they can understand of the reason for the enforced appearance, carry out the procedural act and release the person immediately thereafter unless the authority is applying for his or her remand or preventive detention.

Section 3 Tracing of Wanted Persons or Property

Art. 210 Principles

[1] The public prosecutor, authorities responsible for prosecuting contraventions and courts may order the tracing of persons whose whereabouts are unknown and who are required to appear in the proceedings. In cases of urgency, the police may themselves order that a wanted person be traced.

[2] A warrant may be issued for an accused person to be arrested and brought before the authorities if there is a strong suspicion that he or she has committed a felony or misdemeanour and there is reason to believe that there are grounds for the person's detention.

[3] Unless the public prosecutor, the authority responsible for prosecuting contraventions or the court orders otherwise, the police are responsible for tracing wanted persons.

[4] Paragraphs 1 and 3 apply *mutatis mutandis* to the tracing of property.

Art. 211 Assistance from the public

[1] The public may be requested to assist in tracing wanted persons or property.

[2] The Confederation and the cantons may issue provisions in accordance with which members of the public may be rewarded for assisting in the successful tracing of wanted persons or property.

Chapter 3 Deprivation of Liberty, Remand and Preventive Detention

Section 1 General Provisions

Art. 212 Principles

[1] An accused person shall remain at liberty. He or she may be subjected to compulsory measures involving deprivation of liberty only in accordance with the provisions of this Code.

[2] Compulsory measures involving deprivation of liberty must be revoked as soon as:

a. their requirements are no longer fulfilled;

b. the term of the measure specified by this Code or by a court has expired; or

c. alternative measures achieve the same purpose.

[3] Remand and preventive detention may not be of longer duration than the anticipated custodial sentence.

Art. 213 Access to premises

[1] If it is necessary to enter houses, dwellings or other rooms that are not generally accessible in order to stop or arrest a person, the provisions on searching premises must be complied with.

[2] If there is a risk in any delay, the police may enter premises without a search warrant.

Art. 214 Notification

[1] If a person is arrested, or placed on remand or in preventive detention, the relevant criminal justice authority shall immediately notify:

a. his or her next-of-kin;

b. if so requested, his or her employer or the relevant embassy or consulate.

[2] No notification shall be given if this is precluded by the purpose of the investigation or the person concerned expressly so requests.

[3] Where an arrested person is subject to a compulsory measure involving the deprivation of his or her liberty and a dependant suffers difficulties as a result, the criminal justice authority shall notify the relevant social services authorities.

[4] The victim shall be informed of the accused being placed in or released from remand or preventive detention, the ordering of an alternative measure under Article 237 paragraph 2 letter c or g, or if the accused absconds, unless he or she has expressly requested not to be informed.[72] Such information may not be provided if it would expose the accused to a serious danger.

Section 2 Police Powers to Stop and of Pursuit

Art. 215 Police power to stop

[1] For the purpose of investigating an offence, the police may stop a person and if necessary bring that person to the police station in order to:

a. establish the person's identity;

b. question the person briefly;

c. establish whether he or she has committed an offence;

d. establish whether the person or property in his or her possession is being traced.

[2] They may require the person they have stopped to:

a. provide their personal details;

b. produce identity documents;

72 Amended by Annex No 1 of the FA of 13 Dec. 2013 on Activity Prohibition Orders and Contact Prohibition and Exclusion Orders, in force since 1 Jan. 2015 (AS **2014** 2055; BBl **2012** 8819).

c. produce property in his or her possession;

d. open containers or vehicles.

3 They may request members of the public to assist them to stop persons.

4 If there are specific indications that an offence is being committed or persons suspected of an offence are located at a specific place, the police may cordon off the location and stop the person located there.

Art. 216 Pursuit

1 The police are entitled in cases of urgency to pursue and stop a suspect on the territory of another commune, another canton and, if international agreements so permit, another country.

2 If the person stopped is then arrested, he or she shall be handed over immediately to the competent authority at the place where he or she was stopped.

Section 3 Arrest

Art. 217 By the police

1 The police are obliged to arrest a person and bring that person to the police station if:

a. they have caught the person in the act of committing a felony or misdemeanour or they have encountered him or her immediately after committing such an offence;

b. the person is subject to an arrest warrant.

2 They may arrest a person and bring him or her to the police station if, based on enquiries or other reliable information, the person is suspected of committing a felony or misdemeanour.

3 They may arrest a person and bring him or her to the police station if they have caught the person in the act of committing a contravention or they have encountered him or her immediately after committing such an offence in the event that:

a. the person refuses to provide his or her personal details;

b. the person does not live in Switzerland and fails to provide security for payment of the anticipated fine immediately;

c. the arrest is necessary in order to prevent the person from committing further contraventions.

Art. 218 By private individuals

1 Where there is insufficient time to obtain police assistance, members of the public have the right to arrest a person if:

a. they have caught the person in the act of committing a felony or misdemeanour or they have encountered him or her immediately after committing such an offence; or

b. the public have been requested to assist in tracing of the person concerned.

2 When making an arrest, private individuals may only use force in accordance with Article 200.

3 Arrested persons must be handed over to the police as quickly as possible.

Art. 219 Police procedure

1 The police shall establish the identity of the arrested person immediately after the arrest, inform him or her of the reason for the arrest in a language the person can understand and caution the person as to his or her rights within the meaning of Article 158. Thereafter, they shall inform the public prosecutor immediately of the arrest.

2 They shall then question the arrested person in accordance with Article 159 on the suspected offences and carry out appropriate investigations immediately in order to substantiate or rebut the allegations and any other grounds for detention.

3 If investigations reveal that there are no grounds for detention or such reasons no longer apply, they shall release the arrested person immediately. If the investigations confirm the suspicions and any grounds for detention, they shall hand the person over to the public prosecutor immediately.

4 Release or handover shall in any case take place at the latest within 24 hours; if the person was stopped before the arrest, then the period while stopped shall be taken into account when calculating the time limit.

5 If the police have provisionally arrested a person in accordance with Article 217 paragraph 3, the person may only be held for more than 3 hours if a corresponding order is given by a police officer authorised to do so by the Confederation or the canton.

Section 4 Remand and Preventive Detention: General Provisions

Art. 220 Definitions

1 Remand begins when it is ordered by the compulsory measures court and ends with the receipt by the court of first instance of the indictment, the accelerated commencement of a custodial sanction or with the accused's release during the investigation.

2 Preventive detention is the period of detention between the time of receipt by the court of first instance of the indictment and the issue of a final judgment, the commencement of a custodial sanction, the enforcement of an expulsion order, or the accused's release.[73]

73 Amended by Annex No 5 of the FA of 20 March 2015 (Implementation of Art. 121 para. 3–6 Federal Constitution on the expulsion of foreign nationals convicted of certain criminal offences), in force since 1 Oct. 2016 (AS **2016** 2329; BBl **2013** 5975).

Art. 221 Requirements

1 Remand and preventive detention are only permitted if there is a strong suspicion that the accused has committed a felony or misdemeanour and there is a serious concern that the accused:

a. will evade criminal proceedings or the anticipated sanction by absconding;

b. will influence people or tamper with evidence in order to compromise efforts to establish the truth; or

c. will pose a considerable risk to the safety of others by committing serious felonies or misdemeanours as he or she has already committed similar offences.

2 Detention is also permitted if there is serious concern that a person will carry out a threat to commit a serious felony.

Art. 222[74] Appellate remedies

A detainee may contest decisions ordering, extending or ending his or her remand or preventive detention before the objections authority, subject to Article 233.

Art. 223 Communications with the defence in detention proceedings

1 The defence agent may be present in detention proceedings when the accused is interviewed or when other evidence is being gathered.

2 The accused may at any time communicate privately with his or her defence agent in writing or orally in proceedings before the public prosecutor or the courts relating to detention.

Section 5 Remand

Art. 224 Remand proceedings before the public prosecutor

1 The public prosecutor shall question the accused immediately and give the accused the opportunity to make a statement regarding the suspected offence and the grounds for remand. It shall immediately record all evidence that may substantiate or rebut the suspicions and the grounds for detention provided such evidence is readily available.

2 If the suspicions and the grounds for remand are confirmed, the public prosecutor shall immediately apply to the compulsory measures court, but at the latest within 48 hours of the arrest, for the accused to be remanded or for an alternative measure. It shall file its application in writing, with a brief statement of reasons and the most relevant files.

74 Amended by Annex No II 7 of the Criminal Justice Authorities Act of 19 March 2010, in force since 1 Jan. 2011 (AS **2010** 3267; BBl **2008** 8125).

3 If the public prosecutor decides against applying for remand, it shall order the accused's immediate release. If it applies for an alternative measure, it shall take the required preventive measures.

Art. 225 Detention proceedings before the compulsory measures court

1 On receipt of the application from the public prosecutor, the compulsory measures court shall immediately arrange a private hearing with the public prosecutor, the accused and his or her defence agent; it may require the public prosecutor to participate.

2 If so requested, it shall permit the accused and the defence to inspect the files in its possession before the hearing.

3 Any person who is permitted not to attend the hearing may submit applications in writing or make reference to earlier submissions.

4 The compulsory measures court shall gather all the immediately available evidence that may substantiate or rebut the suspicions or the grounds for detention.

5 If the accused expressly waives the right to a hearing, the compulsory measures court shall decide in written proceedings on the basis of the application made by the public prosecutor and the submissions made by the accused.

Art. 226 Decision of the compulsory measures court

1 The compulsory measures court decides immediately, but at the latest within 48 hours of receipt of the application.

2 It shall give immediate notice of its decision to the public prosecutor, the accused and his or her defence lawyer orally, or, if they are absent, in writing. It shall then provide them with a brief written statement of the grounds.

3 If it orders the accused to be remanded, it shall inform the accused that he or she may file an application for release from remand at any time.

4 In its decision it may:

a. stipulate a maximum term for remand;

b. instruct the public prosecutor to carry out specific investigative activities;

c. order alternative measures to remand.

5 If it decides not to order the accused to be remanded, the accused shall be released immediately.

Art. 227 Application to extend the period of remand

1 If the period on remand ordered by the compulsory measures court expires, the public prosecutor may file an application to extend the period of remand. If the compulsory measures court has not limited the period of remand, the application must be filed before the accused has spent 3 months on remand.

2 The public prosecutor shall file a written application stating the grounds with the compulsory measures court 4 days at the latest before the expiry of the period of remand, together with the most relevant files.

3 The compulsory measures court shall give the accused and his or her defence lawyer the opportunity to inspect the files in its possession and to respond to the application in writing within 3 days.

4 It may order the provisional continuation of remand pending its decision.

5 The compulsory measures court shall decide at the latest within 5 days of receipt of the response or the expiry of the time limit mentioned in paragraph 3 above. It may instruct the public prosecutor to carry out specific investigative activities, or order an alternative measure.

6 The proceedings are normally conducted in writing, but the compulsory measures court may order a hearing, which shall be held in private.

7 An extension of the period on remand may be granted for a maximum of 3 months, or in exceptional cases for a maximum of 6 months.

Art. 228 Application for release from remand

1 The accused may apply to the public prosecutor at any time in writing or orally on record for release from remand, subject to paragraph 5 below. The application must be accompanied by a brief statement of grounds.

2 If the public prosecutor grants the application, it shall release the accused from remand immediately. If it does not wish to grant the application, it shall pass the same together with the files no later than 3 days after receipt to the compulsory measures court accompanied by a statement of its opinion.

3 The compulsory measures court shall send the opinion to the accused and his or her defence lawyer and allow them 3 days to respond.

4 The compulsory measures court shall decide at the latest within 5 days of receiving the response or of the expiry of the time limit mentioned in paragraph 3 above. If the accused expressly waives the right to a hearing, the decision may be issued in written proceedings. Article 226 paragraphs 2–5 also applies *mutatis mutandis*.

5 The compulsory measures court may in its decision specify a time limit of a maximum of one month within which the accused is not permitted to file a further application for release.

Section 6 Preventive Detention

Art. 229 Decision to order preventive detention

1 In cases where the accused has already been on remand, an application for preventive detention is filed in writing by the public prosecutor and the decision on whether to order preventive detention is taken by the compulsory measures court.

2 Where grounds for detention arise only after charges have been brought, the director of proceedings in the court of first instance shall conduct detention proceedings in analogous application of Article 224 and shall request the compulsory measures court to order preventive detention.

3 The proceedings before the compulsory measures court are governed by:

a. Articles 225 and 226 *mutatis mutandis* where the accused has not been on remand;

b. Article 227 *mutatis mutandis* where the accused has already been on remand.

Art. 230 Release from preventive detention during the proceedings before the court of first instance

1 The accused and the public prosecutor may file an application for release from detention during the proceedings before the court of first instance.

2 The application must be submitted to the director of proceedings in the court of first instance.

3 If the director of proceedings grants the application, he or she shall release the accused from detention immediately. If the director of proceedings does not wish to grant the application, it shall be passed on to the compulsory measures court for a decision to be made.

4 The director of proceedings in the court of first instance may also order the accused to be released from detention provided the public prosecutor consents. If the public prosecutor does not consent, the compulsory measures court decides.

5 The provisions of Article 228 also apply *mutatis mutandis*.

Art. 231 Preventive detention following the judgment of the court of first instance

1 The court of first instance shall decide in its judgment whether a person convicted should be placed or should remain in preventive detention:

a. in order to ensure that a sentence or measure is duly executed;

b. with a view to appellate proceedings.

2 If an accused in detention is acquitted and the court of first instance orders his or her release, the public prosecutor may apply to the court of first instance for the director of appellate proceedings to order the continuation of preventive detention. In such a case, the person concerned shall remain in detention until the director of appellate proceedings makes a decision. The director of appellate proceedings shall decide on the application made by the public prosecutor within 5 days of the application being filed.

3 If the objections withdrawn, the court of first instance shall decide on how the period spent in detention following the judgment will be taken into account.

Art. 232 Preventive detention during proceedings before the court of appeal

[1] If grounds for detention arise only during proceedings before the court of appeal, the director of appellate proceedings shall order the person to be placed in detention to be brought before the court immediately in order to be heard.

[2] A decision shall be made within 48 hours of the hearing; their decision is final.

Art. 233 Application for release from detention during proceedings before the court of appeal

The director of appellate proceedings shall decide on an application for release from detention within 5 days; the decision is final.

Section 7 Execution of Remand and Preventive Detention

Art. 234 Detention centre

[1] Remand and preventive detention is normally carried out in detention centres reserved for this purpose and which are otherwise used only for the execution of short custodial sentences.

[2] If it is advisable for medical reasons, the relevant cantonal authority may arrange for the detainee to be admitted to a hospital or psychiatric hospital.

Art. 235 Conditions of detention

[1] The detainee's personal freedom may not be more strictly limited than is required for the purpose of detention or for order and security in the detention centre.

[2] Contact between the detainee and other persons requires authorisation from the director of proceedings. Visits shall if necessary be supervised.

[3] The director of proceedings shall inspect incoming and outgoing post, with the exception of correspondence with the supervisory and criminal justice authorities. During preventive detention, the director of proceedings may delegate this task to the public prosecutor.

[4] The detainee may communicate freely with his or her defence agent without the content of communications being inspected. If there is justified suspicion that this right is being abused, the director of proceedings may with approval of the compulsory measures court restrict free communication for a limited period, provided prior notice is given to the detainee and the defence agent of the restrictions.

[5] The cantons shall regulate the rights and obligations of persons in custody, their rights to legal redress, disciplinary measures and the supervision of detention centres.

Art. 236 Accelerated execution of sentences and measures

[1] The director of proceedings may authorise the accused to begin a custodial sentence or custodial measure in advance of the anticipated date, provided the status of the proceedings permit this.

[2] If the charges have already been filed, the director of proceedings shall consult the public prosecutor.

[3] The Confederation and the cantons may provide that the execution of a measure in advance of the anticipated date requires the consent of the authorities responsible for its execution.

[4] On admission to a penal institution, the accused begins his or her sentence or measure; from this point the accused is governed by the relevant regime unless this conflicts with the purpose of the accused's remand or preventive detention.

Section 8 Alternative Measures

Art. 237 General Provisions

[1] The relevant court shall order one or more lenient measures instead of remand or preventive detention if such measures achieve the same result as detention.

[2] Alternative measures include in particular:

a. the payment of money bail;

b. the surrendering of a passport or identity papers;

c. the requirement to stay or not to stay in a specific place or in a specific house;

d. the requirement to report to a public office at regularly intervals;

e. the requirement to do a regular job;

f. the requirement to undergo medical treatment or a medical examination;

g. the prohibition of making contact with specific persons.

[3] In order to monitor such alternative measures, the court may order the use of technical devices and that they be securely fastened to the person being monitored.

[4] The ordering of alternative measures and appeals against such measures are governed *mutatis mutandis* by the regulations on remand and preventive detention.

[5] The court may revoke the alternative measures at any time, or order other alternative measures or the accused's remand or preventive detention if new circumstances so require or if the accused fails to fulfil the requirements stipulated.

Art. 238 Payment of money bail

[1] Where there is a risk that the accused may abscond, the relevant court may order payment of a sum of money in order to ensure that the accused appears for all procedural acts or to begin a custodial sanction.

2 The amount of the bail payment is assessed on the basis of the seriousness of the offences of which the accused is suspected and of the accused's personal circumstances.

3 The payment of money bail may be made in cash or by means of a guarantee issued by a bank or insurance company permanently established in Switzerland.

Art. 239 Return of the bail payment

1 The bail payment shall be returned if:

a. the grounds for detention no longer apply;

b. the criminal proceedings are concluded by a final judgment of abandonment or acquittal;

c. the accused has begun a custodial sanction.

2 Before the bail payment made by the accused is returned, any monetary penalties, fines, costs and damages that have been imposed on the accused may be deducted from it.

3 The authority before which the case is pending or was last pending shall decide on the return of the bail payment.

Art. 240 Forfeiture of the bail payment

1 If the accused absconds during the proceedings or the execution of a custodial sanction, the bail payment shall be forfeited to the Confederation or to the canton whose court ordered the same.

2 If a third party made the bail payment, the forfeiture may be waived if the third party provides the authorities with information in good time to enable the accused to be apprehended.

3 The authority before which the case is pending or was last pending shall decide on the forfeiture of the bail payment.

4 A forfeited bail payment shall be used in analogous application of Article 73 SCC[75] to cover the claims of persons suffering harm and, if a surplus remains, to cover the monetary penalties, fines and the procedural costs. Any surplus still remaining shall pass to the Confederation or the canton.

Chapter 4 Searches and Examinations

Section 1 General Provisions

Art. 241 Authorisation

1 Searches shall be authorised by written warrant. In cases of urgency, they may be authorised orally, but this must be confirmed subsequently in writing.

75 SR **311.0**

2 The warrant shall indicate:

a. the persons, premises, property or records to be searched;

b. the purpose of the measure;

c. the authorities or persons authorised to conduct the measure.

3 If there is a risk in any delay, the police may authorise the manual search of body orifices and body cavities and carry out searches without a warrant; they shall inform competent criminal justice authority about the search immediately.

4 The police may search a person who has been stopped or arrested person, in particular in order to guarantee the safety of other persons.

Art. 242 Conduct of searches

1 The authorities or persons carrying out the search shall take suitable safety precautions in order to achieve the aim of the measure.

2 They may prohibit persons from leaving during a search.

Art. 243 Accidental finds

1 Forensic evidence or items found that are not connected with the offence under investigation but which appears to relate to a different offence shall be secured.

2 The property shall be handed over with a report thereon to the director of proceedings, who shall decide on the further course of action.

Section 2 Searches of Premises

Art. 244 Principle

1 Houses, dwellings and other rooms not generally accessible may only be searched with the consent the proprietor.

2 The proprietor's consent is not required if it is suspected that on the premises:

a. there are wanted persons;

b. there is forensic evidence or property or assets that must be seized;

c. offences are being committed.

Art. 245 Conduct of searches

1 The persons authorised to carry out the search shall produce the search warrant at the start of the search.

2 Proprietors of premises being searched who are present must remain on the premises during the search. If they are absent, if possible an adult family member or another suitable person must remain present.

Section 3 Search of Records and Recordings

Art. 246 Principle

Documents, audio, video and other recordings, data carriers and equipment for processing and storing information may be searched if it is suspected that they contain information that is liable to seizure.

Art. 247 Conduct

[1] The proprietor may comment before a search on the content of records and recordings.

[2] Experts may be called in to examine the content of records and recordings, and in particular to identify records and recordings with protected content.

[3] The proprietor may provide the criminal justice authority with copies of records and recordings and printouts of stored information if this is sufficient for the purpose of the proceedings.

Art. 248 Sealing of evidence

[1] Records and property that according to the proprietor may not be searched or seized due to the right to remain silent or to refuse to testify or for other reasons must be sealed and may neither be inspected nor used by the criminal justice authorities.

[2] Unless the criminal justice authority files a request for the removal of the seals within 20 days, the sealed records and property shall be returned to the proprietor.

[3] If it files a request for the removal of the seals, the following courts shall issue a final judgment thereon within a month:

a. in preliminary proceedings: the compulsory measures court;

b. in other cases: the court before which the case is pending.

[4] The court may call in an expert to examine the content of records and property.

Section 4 Searches of Persons and Property

Art. 249 Principle

Persons and property may only be searched without consent if it is suspected that forensic evidence or items or assets that must be seized may be found.

Art. 250 Conduct

[1] Searching persons includes the examination of clothing, items carried by the person concerned, containers and vehicles, the surface of the body and visible body orifices and body cavities.

2 Searches of a person's genital area shall be carried out by a person of the same gender or by a doctor, unless the measure cannot be delayed.

Section 5 Examination of Persons

Art. 251 Principle

1 An examination of a person includes an examination of their physical or mental condition.

2 The accused may be questioned in order to:

a. establish the facts of the case;

b. establish whether the he or she had the mental capacity to be held criminally liable, is fit to plead and to withstand detention.

3 Interventions in the physical integrity of the accused may be ordered provided they do not cause particular pain or any risk to health.

4 Examinations and interventions in the physical integrity of persons other than the accused are only permitted without consent if they are essential in order to properly investigate an offence under Articles 111–113, 122, 124, 140, 184, 185, 187, 189, 190 or 191 SCC[76].[77]

Art. 252 Conduct of physical examinations

Examinations of persons and interventions in their physical integrity shall be carried out by a doctor or another medical specialist.

Section 6 Examination of Dead Bodies

Art. 253 Unnatural deaths

1 If there are indications that a death did not occur naturally, and in particular indications of an offence, or if the body is unidentified, the public prosecutor shall order an inspection of the body to be carried out by a specialist doctor in order to establish the cause of death or to identify the body.

2 If, after the inspection of the body, there is no evidence that an offence has been committed and if identity is established, the public prosecutor shall release the body for the funeral.

3 The public prosecutor shall otherwise order the body to be secured and further tests, and if necessary an autopsy to be carried out by an institute for forensic medicine. It

76 SR **311.0**
77 Amended by No III of the FA of 30 Sept. 2011, in force since 1 July 2012 (AS **2012** 2575; BBl **2010** 5651 5677).

may order the body or parts thereof to be retained for as long as required for the purpose of the investigation.

4 The cantons shall decide persons in the medical profession are required to report unnatural deaths to the criminal justice authorities.

Art. 254 Exhumation

If it appears necessary in for the proper investigation of an offence, the exhumation of a body or the opening of an urn containing its ashes may be ordered.

Chapter 5 DNA Analyses

Section 1 DNA Profiles[78]

Art. 255 General requirements

1 In order to investigate a felony or a misdemeanour, a sample may be taken to create a DNA profile of:

a. the accused;

b. other persons, in particular victims or persons entitled to be present at the place of commission, insofar as this is necessary to distinguish their biological material from that of the accused;

c. deceased persons;

d. biological material relevant to the offence.

2 The police may order:

a. a sample to be taken from persons by non-invasive methods;

b. the creation of a DNA profile from biological material relevant to the offence.

3 If it is only possible to create the Y-DNA profile from biological material relevant to the offence, the public prosecutor may when investigating a felony order its comparison with data in the information system in accordance with Article 10 of the DNA Profiling Act of 20 June 2003[79].[80]

Art. 256[81] Mass testing

1 In an investigation into a felony, the compulsory measures court may at the request of the public prosecutor order that samples be taken to create DNA profiles from persons who display specific characteristics established as being relevant to the commis-

78 Inserted by Annex 1 No 2 of the FA of 17 Dec. 2021, in force since 1 Aug. 2023 (AS **2023** 309; BBl **2021** 44).
79 SR **363**
80 Inserted by Annex 1 No 2 of the FA of 17 Dec. 2021, in force since 1 Aug. 2023 (AS **2023** 309; BBl **2021** 44).
81 Amended by Annex 1 No 2 of the FA of 17 Dec. 2021, in force since 1 Aug. 2023 (AS **2023** 309; BBl **2021** 44).

sion of the offence. The group of persons to be investigated may be more strictly defined by means of phenotyping in accordance with Article 258*b*.

2 If the profile comparison in accordance with paragraph 1 does not produce a match, the compulsory measures court may, at the request of the public prosecutor, order that a familial relationship with the person to whom forensic evidence pertains be used as a basis for further investigations.

Art. 257 Convicted persons

The court may in its judgment order that a sample be taken to create a DNA profile from persons who:

a. have received a custodial sentence of more than a year on being convicted of a wilfully committed felony;

b. have been convicted of a wilfully committed felony or misdemeanour against life and limb or against sexual integrity;

c. have been ordered to undergo a therapeutic measure or the indefinite incarceration.

Art. 258 Taking samples

Where invasive methods are used to take samples, the sample shall be taken by a doctor or another medical specialist.

Art. 258*a*[82] Familial searches

In order to investigate a felony under Articles 111–113, 118 paragraph 2, 122, 124, 140, 156 numbers 2–4, 182, 184, 185, 187, 189 paragraphs 1 and 3, 190 paragraphs 1 and 3, 191, 260[ter] or 264–264*l* SCC[83], a familial DNA search may be ordered in accordance with Article 2*a* of the DNA Profiling Act of 20 June 2003[84], provided the investigative measures up to that point have been unsuccessful or the investigation would otherwise have no prospect of success or would be made disproportionately more difficult.

82 Inserted by Annex 1 No 2 of the FA of 17 Dec. 2021, in force since 1 Aug. 2023 (AS **2023** 309; BBl **2021** 44).
83 SR **311.0**
84 SR **363**

Section 2 Phenotyping[85]

Art. 258*b*[86] Phenotyping

Phenotyping in accordance with Article 2*b* of the DNA Profiling Act of 20 June 2003[87] may be ordered when investigating felonies under the following Articles: Articles 111–113, 118 paragraph 2, 122, 124, 140, 156 numbers 2–4, 182, 184, 185, 187, 189 paragraphs 1 and 3, 190 paragraphs 1 and 3, 191, 260[ter] or 264–264*l* SCC[88].

Art. 259 Application of the DNA Profiling Act

The DNA Profiling Act of 20 June 2003[89] also applies.

Chapter 6
Recording Identification Data, Handwriting and Voice Samples

Art. 260 Recording identification data

[1] When recording identification data, the physical characteristics of a person shall be noted and prints taken of parts of the body.

[2] The police, the public prosecutor and the courts, or in cases of urgency the director of proceedings may order the recording of identifying data.

[3] The recording of identifying data shall be ordered in a written warrant, with a brief statement of the reasons. In cases of urgency, it may be ordered orally, but must subsequently be confirmed and explained in writing.

[4] If the person concerned refuses to accept the police order, the public prosecutor shall decide.

Art. 261[90] Retention and use of identifying documents

[1] Documents that identify the accused may be retained outside the case file and, in the event of a reasonable suspicion that a new offence has been committed, may also be used:

a. until the expiry the time limits for the deletion of DNA profiles in accordance with Articles 16–18 of the DNA Profiles Act of 20 June 2003[91]; or

85 Inserted by Annex 1 No 2 of the FA of 17 Dec. 2021, in force since 1 Aug. 2023 (AS **2023** 309; BBl **2021** 44).
86 Inserted by Annex 1 No 2 of the FA of 17 Dec. 2021, in force since 1 Aug. 2023 (AS **2023** 309; BBl **2021** 44).
87 SR **363**
88 SR **311.0**
89 SR **363**
90 Amended by Annex 1 No 5 of the Criminal Records Register Act of 17 June 2016, in force since 23 Jan. 2023 (AS **2022** 600; BBl **2014** 5713).
91 SR **363**

b.[92] in the event of a conviction for a contravention: for five years from the date of the judgment, provided the judgment is final.

2 Documents identifying persons other than the accused must be destroyed as soon as the proceedings against the accused have been concluded or abandoned or it has been decided not to bring proceedings.

3 If it becomes clear before the expiry of the time limits under paragraph 1 that there is no longer any interest in retaining or using the identifying documents, they shall be destroyed.

Art. 262 Handwriting and voice samples

1 Accused persons, witnesses and persons providing information may be required to provide handwriting or voice samples for comparison with other such samples.

2 Any person who refuses to provide such a sample may be issued with a fixed penalty fine. The foregoing does not apply to the accused and, where such rights apply, persons who have the right to remain silent or to refuse to testify.

Chapter 7 Seizure

Art. 263 Principle

1 Items and assets belonging to an accused or to a third party may be seized if it is expected that the items or assets:

a. will be used as evidence;

b. will be used as security for procedural costs, monetary penalties, fines or damages;

c. will have to be returned to the persons suffering harm;

d. will have to be forfeited.

2 Seizure shall be ordered on the basis of a written warrant containing a brief statement of the grounds. In urgent cases, seizure may be ordered orally, but the order must thereafter be confirmed in writing.

3 Where there is a risk in any delay, the police or members of the public may provisionally seize items or assets on behalf of the public prosecutor or the courts.

Art. 264 Restrictions

1 The following items may not be seized irrespective of their location and of when they were created:

a. documents used in communications between the accused and his or her defence lawyer;

92 Amended by Annex 1 No 2 of the FA of 17 Dec. 2021, in force since 1 Aug. 2023 (AS **2023** 309; BBl **2021** 44).

b. personal records and correspondence belonging to the accused if the interest in protecting his or her privacy outweighs the interest in prosecution;

c.[93] items and documents used in communications between the accused and persons who may refuse to testify in accordance with Articles 170–173 and who are not accused of an offence relating to the same case;

d.[94] items and documents used in communications between another person and his or her lawyer provided the lawyer is entitled to represent clients before Swiss courts in accordance with the Lawyers Act of 23 June 2000[95] and is not accused an offence relating to the same case.

2 The restrictions in accordance with paragraph 1 do not apply to items and assets that must be seized with a view to their return to the person suffering harm or their forfeiture.

3 If an entitled person claims that a seizure of items or assets is not permitted on the grounds of a right to refuse to make a statement or testify or for other reasons, the criminal justice authorities shall proceed in accordance with the regulations on the sealing of evidence.

Art. 265 Duty to hand over items or assets

1 The holder is obliged to hand over items or assets that should be seized.

2 The following persons are not required to hand over items or assets:

a. the accused;

b. persons who have the right to remain silent or to refuse to testify, to the extent that that right applies;

c. corporate undertakings, if by handing over items they could incriminate themselves such that they:

1. could be held liable under criminal law or

2. could be held liable under civil law and if their interest in protection outweighs the interest in prosecution.

3 The criminal justice authority may demand that the person obliged to hand over items or assets does so, may fix a deadline, and notify him or her that in the event of non-compliance the penalties mentioned in Article 292 SCC[96] or a fixed penalty fine may be imposed.

4 Compulsory measures are only permitted if the person concerned refuses to hand over the items or assets or if it may be assumed that a demand to hand over the items or assets may prejudice the success of the measure.

93 Amended by No I 6 of the FA of 28 Sept. 2012 on the Amendment of Procedural Provisions on Professional Confidentiality for Lawyers, in force since 1 May 2013 (AS **2013** 847; BBl **2011** 8181).

94 Inserted by No I 6 of the FA of 28 Sept. 2012 on the Amendment of Procedural Provisions on Professional Confidentiality for Lawyers, in force since 1 May 2013 (AS **2013** 847; BBl **2011** 8181).

95 SR **935.61**

96 SR **311.0**

Art. 266 Procedure

[1] The criminal justice authority ordering seizure shall confirm that it has received the property and assets seized or handed over in the seizure order or in a separate receipt.

[2] It shall draw up a list and safeguard the property and assets appropriately.

[3] If immovable property is seized, an inhibition shall be ordered; this shall be recorded in the Land Register.

[4] The seizure of a debt shall be notified to the debtor, who shall be advised that repayment to the creditor will not settle the debt.

[5] Property that is subject to rapid depreciation or requires expensive maintenance, as well as securities or other assets with a stock exchange or market price may be sold immediately in accordance with the Federal Act of 11 April 1889[97] on Debt Enforcement and Bankruptcy (DEBA). The proceeds shall be seized.

[6] The Federal Council shall regulate the investment of seized assets.

Art. 267 Decision on seized property and assets

[1] If the grounds for seizure no longer apply, the public prosecutor or court shall revoke the seizure order and hand over the property or assets to the person entitled to them.

[2] Where it is undisputed that a person has as a direct result of the offence been deprived of an item of property or an asset belonging to him or her, the criminal justice authority shall return the property or asset to the person entitled to it before the conclusion of the proceedings.

[3] Unless the order to seize an item of property or an asset has already been revoked, a decision on its return to the entitled person, its use to cover costs or its forfeiture in shall be made in the final judgment.

[4] If two or more persons lay claim to an item of property or an asset in respect of which the seizure order is to be revoked, the court may decide on the issue.

[5] The criminal justice authority may award property or assets to a person and set the other claimants a time limit within which to raise a civil action.

[6] If at the time when the seizure order is revoked the identity of the person entitled to the property or assets is unknown, the public prosecutor or the court shall give public notice that the property or assets are available to be claimed. If no one makes a claim within five years of notice being given, the seized property and assets shall pass to the canton or to the Confederation.

Art. 268 Seizure to cover costs

[1] Assets belonging to the accused may be seized to the extent that is anticipated to be required to cover:

a. procedural costs and damages;

b. monetary penalties and fines.

97 SR **281.1**

2 The criminal justice authority shall take account of the financial circumstances of the accused and his or her family when deciding on seizure.

3 Exempted from seizure are assets that may not be seized in accordance with Articles 92–94 DEBA[98].

Chapter 8 Covert Surveillance Measures

Section 1 Surveillance of Post and Telecommunications

Art. 269 Requirements

1 The public prosecutor may arrange for post and telecommunications to be monitored if:

a. there is a strong suspicion that an offence listed in paragraph 2 has been committed;

b. the seriousness of the offence justifies surveillance; and

c. investigative activities carried out so far have been unsuccessful or the enquiries would otherwise have no prospect of success or be made unreasonably complicated.

2 Surveillance may be ordered in the investigation of the offences under the following Articles:

a.[99] SCC: Articles 111–113, 115, 118 paragraph 2, 122, 124, 127, 129, 135, 138–140, 143, 144 paragraph 3, 144bis number 1 paragraph 2 and number 2 paragraph 2, 146–148, 156, 157 number 2, 158 number 1 paragraph 3 and number 2, 160, 163 number 1, 180, 181, 182–185, 187, 188 number 1, 189–191, 192 paragraph 1, 195–197, 220, 221 paragraphs 1 and 2, 223 number 1, 224 paragraph 1, 226, 227 number 1 paragraph 1, 228 number 1 paragraph 1, 230bis, 231 number 1, 232 number 1, 233 number 1, 234 paragraph 1, 237 number 1, 240 paragraph 1, 242, 244, 251 number 1, 258, 259 paragraph 1, 260bis–260^{sexies}, 261bis, 264–267, 271, 272 number 2, 273, 274 number 1 paragraph 2, 285, 301, 303 number 1, 305, 305bis number 2, 310, 312, 314, 317 number 1, 319, 322ter, 322^{quater} and 322^{septies};

b.[100] Foreign Nationals and Integration Act[101] of 16 December 2005[102]: Articles 116 paragraph 3 and 118 paragraph 3;

98 SR **281.1**

99 Amended by No I 12 of the FA of 17 Dec. 2021 on the Harmonisation of Sentencing Policy, in force since 1 July 2023 (AS **2023** 259; BBl **2018** 2827).

100 Amended by Annex No II 7 of the Criminal Justice Authorities Act of 19 March 2010, in force since 1 Jan. 2011 (AS **2010** 3267; BBl **2008** 8125).

101 Title amended on 1 Jan. 2019 in application of Art. 12 para. 2 of the Publications Act of 18 June 2004 (SR **170.512**). This change has been made throughout the text.

102 SR **142.20**

c. Federal Act of 22 June 2001[103] on the Hague Convention on Adoption and on Measures to Protect Children in International Adoption Cases: Article 24;

d.[104] War Material Act of 13 December 1996[105]: Articles 33 paragraph 2 and 34–35*b*;

e. Nuclear Energy Act of 21 March 2003[106]: Articles 88 paragraphs 1 and 2, 89 paragraphs 1 and 2 and 90 paragraph 1;

f.[107] Narcotics Act of 3 October 1951[108]: Articles 19 number 1 second sentence and number 2, and 20 number 1 second sentence;

g. Environmental Protection Act of 7 October 1983[109]: Article 60 paragraph 1 letters g–i as well as m and o;

h. Goods Control Act of 13 December 1996[110]: Article 14 paragraph 2;

i.[111] Sport Promotion Act of 17 June 2011[112]: Article 22 paragraphs 2 and 25*a* paragraph 3;

j.[113] Financial Market Infrastructure Act of 19 June 2015[114]: Articles 154 and 155;

k.[115] Weapons Act of 20 June 1997[116]: Article 33 paragraph 3;

l.[117] Medicinal Products Act of 15 December 2000[118]: Article 86 paragraphs 2 and 3;

m.[119] Gambling Act of 29 September 2017[120]: Article 130 paragraph 2 for the offences under Article 130 paragraph 1 letter a;

103 SR **211.221.31**
104 Amended by No II of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS **2013** 295; BBl **2011** 5905).
105 SR **514.51**
106 SR **732.1**
107 Correction by the Federal Assembly Drafting Committee dated 19 Sept. 2014, published on 4 Oct. 2014 (AS **2011** 4487).
108 SR **812.121**
109 SR **814.01**
110 SR **946.202**
111 Inserted by Art. 34 No 2 of the Sport Promotion Act of 17 June 2011 (AS **2012** 3953; BBl **2009** 8189). Amended by Annex No II 2 of the Gambling Act of 29 Sept. 2017, in force since 1 Jan. 2019 (AS **2018** 5103; BBl **2015** 8387).
112 SR **415.0**
113 Inserted by No II 4 of the FA of 28 Sept. 2012 (AS **2013** 1103; BBl **2011** 6873). Amended by Annex No 4 of the Financial Market Infrastructure Act of 19 June 2015, in force since 1 Jan. 2016 (AS **2015** 5339; BBl **2014** 7483).
114 SR **958.1**
115 Inserted by Annex No II 1 of the FA of 18 March 2016 on the Surveillance of Postal and Telecommunications Traffic, in force since 1 March 2018 (AS **2018** 117; BBl **2013** 2683).
116 SR **514.54**
117 Inserted by Annex No 1 of the FD of 29 Sept. 2017 (Medicrime Convention), in force since 1 Jan. 2019 (AS **2018** 4771; BBl **2017** 3135).
118 SR **812.21**
119 Inserted by Annex No II 2 of the Gambling Act of 29 Sept. 2017, in force since 1 Jan. 2019 (AS **2018** 5103; BBl **2015** 8387).
120 SR **935.51**

n.[121] Intelligence Service Act of 25 September 2015[122]: Article 74 paragraph 4.

3 If the adjudication an offence subject to military jurisdiction is assigned to the jurisdiction of the civil courts, the surveillance of post and telecommunications may also be ordered in the investigation of the offences under Article 70 paragraph 2 of the Military Criminal Procedure Code of 23 March 1979[123].

Art. 269bis [124] Use of special technical devices for the surveillance of telecommunications

1 The public prosecutor may order the use of special technical devices for the surveillance of telecommunications in order to listen to or record conversations, identify a person or property or determine their location if:

a. the requirements of Article 269 are met;

b. previous telecommunications surveillance measures under Article 269 have been unsuccessful or surveillance with these measures would be futile or disproportionately difficult;

c. the authorisation required under telecommunications law has been obtained to use these devices at the time of use.

2 The public prosecutor shall keep statistics on the use of these forms of surveillance. The Federal Council shall regulate the details.

Art. 269ter [125] Use of special software for the surveillance of telecommunications

1 The public prosecutor may order the introduction of special software into a data processing system in order to intercept and recover the content of communications and telecommunications metadata in unencrypted form provided:

a. the conditions of Article 269 paragraphs 1 and 3 are met;

b. the proceedings relate to an offence listed in Article 286 paragraph 2;

c. previous telecommunications surveillance measures under Article 269 have been unsuccessful or surveillance with these measures would be futile or disproportionately difficult.

2 In the surveillance order, the public prosecutor shall specify:

121 Inserted by Annex No II 3 of the FedD of 25 Sept. 2020 on the Approval and Implementation of the Council of Europe Convention on the Prevention of Terrorism and its Additional Protocol and the Strengthening of Criminal Justice Instruments for combating Terrorism and Organised Crime, in force since 1 July 2021 (AS **2021** 360; BBl **2018** 6427).
122 SR **121**
123 SR **322.1**
124 Inserted by Annex No II 1 of the FA of 18 March 2016 on the Surveillance of Postal and Telecommunications Traffic, in force since 1 March 2018 (AS **2018** 117; BBl **2013** 2683).
125 Inserted by Annex No II 1 of the FA of 18 March 2016 on the Surveillance of Postal and Telecommunications Traffic, in force since 1 March 2018 (AS **2018** 117; BBl **2013** 2683).

a. the desired data types; and

b. the non-public spaces that may have to be entered in order to introduce special software into the relevant data processing system.

3 Data not covered by paragraph that is collected when using such software must be destroyed immediately. No use may be made of information obtained from such data.

4 The public prosecutor shall keep statistics on these forms of surveillance. The Federal Council shall regulate the details.

Art. 269quater 126 Requirements applicable to special software for the surveillance of telecommunications

1 The only special software that may be used is that which records the surveillance unalterably and without interruption. The record forms part of the case files.

2 The recovery of data from the data processing system under surveillance to the relevant criminal justice authority must take place securely.

3 The criminal justice authority shall ensure that the source code can be checked in order to verify that the software has only legally permitted functions.

Art. 270 Subject matter of surveillance

The post and telecommunications of the following persons may be monitored:[127]

a. the accused;

b. third parties if there is reason to believe based on specific information that:

1.[128] the accused uses the postal address or the telecommunications service of the third party, or

2. the third party receives certain communications on behalf of the accused or passes on communications from the accused to another person.

Art. 271[129] Preservation of professional confidentiality

1 When monitoring a person belonging to one of the professions mentioned in Articles 170–173, the court must ensure that information that is relevant to the enquiries or the reason why this person is being monitored is separated from information that is relevant, in order to guarantee that no professional secrets come to the knowledge of

126 Inserted by Annex No II 1 of the FA of 18 March 2016 on the Surveillance of Postal and Telecommunications Traffic, in force since 1 March 2018 (AS **2018** 117; BBl **2013** 2683).

127 Amended by Annex No II 1 of the FA of 18 March 2016 on the Surveillance of Postal and Telecommunications Traffic, in force since 1 March 2018 (AS **2018** 117; BBl **2013** 2683).

128 Amended by Annex No II 1 of the FA of 18 March 2016 on the Surveillance of Postal and Telecommunications Traffic, in force since 1 March 2018 (AS **2018** 117; BBl **2013** 2683).

129 Amended by Annex No II 1 of the FA of 18 March 2016 on the Surveillance of Postal and Telecommunications Traffic, in force since 1 March 2018 (AS **2018** 117; BBl **2013** 2683).

the criminal justice authority. The separated data must be destroyed immediately; it may not be evaluated.

2 Information under paragraph 1 need not be separated beforehand if:

a. there is a strong suspicion that the person subject to professional confidentiality is guilty of an offence; and

b. there are specific reasons justifying the direct interception of communications.

3 In the surveillance of other persons, as soon as it is established that they have links with a person mentioned in Articles 170–173, information on communication with the person must be separated in accordance with paragraph 1. Information in respect of which a person mentioned in Articles 170–173 may refuse to testify must be removed from the case documents and destroyed immediately; it may not be evaluated.

Art. 272 Duty to obtain authorisation and general authorisation

1 The surveillance of post and telecommunications requires the authorisation of the compulsory measures court.

2 If enquiries reveal that the person under surveillance is changing his or her telecommunications service regularly, the compulsory measures court may by way of exception authorise the surveillance of all identified services used by the person under surveillance for telecommunications so that authorisation is not required in each individual case (general authorisation).[130] The public prosecutor shall submit a report to the compulsory measures court for approval every month and on conclusion of the surveillance.

3 If during the surveillance of a service in terms of a general authorisation, measures are required to protect professional confidentiality and such measures are not mentioned in the general authorisation, an application for authorisation for the individual surveillance operation concerned must be submitted to the compulsory measures court.[131]

Art. 273[132] Subscriber information, location identification and technical transmission features

1 If there is a strong suspicion that a felony or misdemeanour has been committed, and if the requirements of Article 269 paragraph 1 letters b and c of this Code are met, the public prosecutor may request metadata relating to telecommunications in accordance with Article 8 letter b of the Federal Act of 18 March 2016[133] on the Surveillance of

130 Amended by Annex No II 1 of the FA of 18 March 2016 on the Surveillance of Postal and Telecommunications Traffic, in force since 1 March 2018 (AS **2018** 117; BBl **2013** 2683).

131 Amended by Annex No II 1 of the FA of 18 March 2016 on the Surveillance of Postal and Telecommunications Traffic, in force since 1 March 2018 (AS **2018** 117; BBl **2013** 2683).

132 Amended by Annex No II 1 of the FA of 18 March 2016 on the Surveillance of Postal and Telecommunications Traffic, in force since 1 March 2018 (AS **2018** 117; BBl **2013** 2683).

133 SR **780.1**

Postal and Telecommunications Traffic (SPTA) and metadata relating to post in accordance with Article 19 paragraph 1 letter b SPTA relating to the person under surveillance.[134]

2 The order requires the approval of the compulsory measures court.

3 The information mentioned in paragraph 1 may be requested irrespective of the duration of surveillance and for the 6 months prior to the date of the request.

Art. 274 Authorisation procedure

1 The public prosecutor shall submit the following documents to the compulsory measures court within 24 hours of surveillance or the release of information being ordered:

a. the order;

b. a statement of the reasons and the case documents relevant for authorisation.

2 The compulsory measures court shall decide and provide a brief statement of the reasons within 5 days of the surveillance or the release of information being ordered. It may grant authorisation subject to a time limit or other conditions, or request further information or investigations.

3 The compulsory measures court shall give notice of the decision immediately to the public prosecutor and to the Post and Telecommunications Surveillance Bureau in terms of Article 3 SPTA[135].[136]

4 The authorisation shall expressly state:

a. which measures must be taken to protect professional confidentiality;

b. whether non-public spaces may be entered in order to introduce special software into the relevant data processing system.[137]

5 The compulsory measures court shall grant authorisation for a maximum of 3 months. The authorisation may be extended on one or more occasions for a maximum of 3 months at a time. If an extension is required, the public prosecutor shall file an application for the extension, stating the reasons therefor, before expiry of the current authorisation.

Art. 275 Conclusion of surveillance

1 The public prosecutor shall stop surveillance immediately if:

a. the requirements are no longer fulfilled; or

134 Amended by No I 12 of the FA of 17 Dec. 2021 on the Harmonisation of Sentencing Policy, in force since 1 July 2023 (AS **2023** 259; BBl **2018** 2827).
135 SR **780.1**
136 Amended by Annex No II 1 of the FA of 18 March 2016 on the Surveillance of Postal and Telecommunications Traffic, in force since 1 March 2018 (AS **2018** 117; BBl **2013** 2683).
137 Amended by Annex No II 1 of the FA of 18 March 2016 on the Surveillance of Postal and Telecommunications Traffic, in force since 1 March 2018 (AS **2018** 117; BBl **2013** 2683).

b. the authorisation or its extension is refused.

2 In cases under paragraph 1 letter a, the public prosecutor shall notify the compulsory measures court that surveillance has been concluded.

Art. 276 Results not required

1 Records of authorised surveillance operations that are not required for criminal proceedings shall be stored separately from the case documents and destroyed immediately on conclusion of the proceedings.

2 Postal items may be retained for as long as this is necessary for the criminal proceedings; they must be released to the addressee as soon as the status of the proceedings permits.

Art. 277 Use of the results of unauthorised surveillance operations

1 Documents and data carriers obtained in unauthorised surveillance activities must be destroyed immediately. Postal items must be delivered to the addressee immediately.

2 The results of unauthorised surveillance operations may not be used.

Art. 278 Accidental finds

1 If in the course of surveillance operations offences other than those specified in the surveillance order come to light, these findings may be used against the accused provided surveillance would have been permitted in the investigation of the offences concerned.

1bis If offences come to light during surveillance operations in terms of Articles 35 and 36 SPTA[138], the findings may be used subject to the requirements specified in paragraphs 2 and 3.[139]

2 Findings relating to offences committed by a person who is not named as a suspect in the surveillance order may be used if the requirements for the surveillance of this person are fulfilled.

3 In cases under paragraphs 1, 1bis and 2, the public prosecutor shall order surveillance immediately and begin the authorisation procedure.[140]

4 Records that may not be used as accidental finds must be stored separately from the case documents and destroyed on conclusion of the proceedings.

5 Any findings made in a surveillance operation may be used to trace wanted persons.

138 SR **780.1**

139 Inserted by Annex No II 7 of the Criminal Justice Authorities Act of 19 March 2010 (AS **2010** 3267; BBl **2008** 8125). Amended by Annex No II 1 of the FA of 18 March 2016 on the Surveillance of Postal and Telecommunications Traffic, in force since 1 March 2018 (AS **2018** 117; BBl **2013** 2683).

140 Amended by Annex No II 7 of the Criminal Justice Authorities Act of 19 March 2010, in force since 1 Jan. 2011 (AS **2010** 3267; BBl **2008** 8125).

Art. 279 Notice

[1] The public prosecutor shall notify the suspect under surveillance and third parties under surveillance in terms of Article 270 letter b of the reason for and form and duration of the surveillance operation on conclusion of the preliminary proceedings at the latest.

[2] With the consent of the compulsory measures court, notice may be deferred or dispensed with if:

a. the findings are not used as evidence in court proceedings; and

b. deferring or dispensing with notice is necessary to protect overriding public or private interests.

[3] Persons whose post or telecommunications have been under surveillance or who have used a postal address or telecommunications service that has been under surveillance may file an objection under Articles 393–397.[141] The period for filing the objection begins on receipt of the notice.

Section 2 Surveillance using Technical Surveillance Devices

Art. 280 Permitted use

The public prosecutor may use technical surveillance devices in order to:

a. listen to or record words spoken in private;

b. observe or record events in private or not generally accessible places;

c. establish the whereabouts of persons or property.

Art. 281 Requirements and conduct

[1] Devices may only be used in relation to a suspect.

[2] Premises or vehicles of third parties may only be monitored if there is reason to believe on the basis of specific information that a suspect is present on those premises or using that vehicle.

[3] Use of devices may not be ordered in order to:

a. record as evidence in court proceedings events involving an accused who is in custody;

b. monitor premises or vehicles of a third party who belongs to one of the professions mentioned in Articles 170–173.

[4] The use of technical surveillance devices is otherwise governed by Articles 269–279.

141 Amended by Annex No II 1 of the FA of 18 March 2016 on the Surveillance of Postal and Telecommunications Traffic, in force since 1 March 2018 (AS **2018** 117; BBl **2013** 2683).

Section 3 Observation

Art. 282 Requirements

[1] The public prosecutor and, in the enquiries, the police may covertly observe persons and property in generally accessible locations and make image or sound recordings while doing so if:

a. there is reason to believe on the basis of specific information that felonies or misdemeanours have been committed; and

b. the enquiries would otherwise have no prospect of success or be made unreasonably complicated.

[2] Where observation activities ordered by the police have been conducted for one month, their continuation requires authorisation by the public prosecutor.

Art. 283 Notice

[1] The public prosecutor shall notify the persons directly concerned by observation activities of the reason for and form and duration of the observation activities on conclusion of the preliminary proceedings at the latest.

[2] Notice may be deferred or dispensed with if:

a. the findings are not used as evidence in court proceedings; and

b. deferring or dispensing with notice is necessary to protect overriding public or private interests.

Section 4 Surveillance of Banking Transactions

Art. 284 Principle

In order to investigate felonies or misdemeanours, the compulsory measures court may, at the request of the public prosecutor, order the surveillance of transactions between a suspect and a bank or bank-type institution.

Art. 285 Conduct

[1] If the compulsory measures court authorises the application, it shall issue the bank or bank-type institution with written instruction on:

a. the information and documents to be provided

b. the secrecy measures to be taken.

[2] The bank or bank-type institution is not required to provide information or documents if in doing so it would incriminate itself to the extent that:

a. it could be convicted of a criminal offence; or

b. it could be held liable under civil law and if the interest to be protected outweighs the interest in prosecution.

3 The account holder shall be notified of the measure after it has been carried out in accordance with of Article 279 paragraphs 1 and 2.

4 Persons whose banking transactions have been monitored may file an objection in accordance with Articles 393–397. The period for filing the objection begins on receipt of the notice.

Section 5[142] Undercover Investigations

Art. 285*a*[143] Definition

In an undercover investigation, police officers or persons temporarily appointed to carry out police duties make contact with persons under false pretences by using a false identity (cover) supported by documents with the aim of gaining the trust of those persons and infiltrating a criminal environment in order to investigate particularly serious offences.

Art. 286 Requirements

1 The public prosecutor may order an undercover investigation if:

a. it is suspected that an offence listed in paragraph 2 has been committed;

b. the seriousness of the offence justifies the covert investigation; and

c. previous investigative activities have been unsuccessful or the enquiries would otherwise have no prospect of success or be made unreasonably complicated.

2 An undercover investigation is permitted in respect of offences under the following Articles:

a.[144] SCC: Articles 111–113, 122, 124, 129, 135, 138–140, 143 paragraph 1, 144 paragraph 3, 144bis number 1 paragraph 2 and number 2 paragraph 2, 146 paragraphs 1 and 2, 147 paragraphs 1 and 2, 148, 156, 160, 182–185, 187, 188 number 1, 189 paragraphs 1 and 3, 190 paragraphs 1 and 3, 191, 192 paragraph 1, 195, 196, 197 paragraphs 3–5, 221 paragraphs 1 and 2, 223 number 1, 224 paragraph 1, 227 number 1 paragraph 1, 228 number 1 paragraph 1, 230bis, 231 number 1, 232 number 1, 233 number 1, 234 paragraph 1, 237 number 1, 240 paragraph 1, 242, 244 paragraph 2, 251 number 1, 260bis–260^{sexies}, 264–267, 271, 272 number 2, 273, 274 number 1 paragraph 2, 301, 305bis number 2, 310, 322ter, 322^{quater} and 322^{septies};

142 Originally before Art. 286.
143 Inserted by No I of the FA of 14 Dec. 2012 on Undercover Investigations and Enquiries, in force since 1 May 2013 (AS **2013** 1051; BBl **2012** 5591 5609).
144 Amended by No I 12 of the FA of 17 Dec. 2021 on the Harmonisation of Sentencing Policy, in force since 1 July 2023 (AS **2023** 259; BBl **2018** 2827).

b.[145] Foreign Nationals and Integration Act of 16. December 2005[146]: Articles 116 paragraph 3 and 118 paragraph 3;

c. Federal Act of 22. June 2001[147] on the Hague Convention on Adoption and on Measures to Protect Children in International Adoption Cases: Article 24;

d.[148] War Material Act of 13 December 1996[149]: Articles 33 paragraph 2 and 34–35*b*;

e. Nuclear Energy Act of 21 March 2003[150]: Articles 88 paragraphs 1 and 2, 89 paragraphs 1 and 2 and 90 paragraph 1;

f.[151] Narcotics Act of 3 October 1951[152]: Articles 19 number 1 second sentence and number 2, and 20 number 1 second sentence;

g. Goods Control Act of 13 December 1996[153]: Article 14 paragraph 2;

h.[154] Sport Promotion Act of 17 June 2011[155]: Articles 22 paragraph 2 and 25*a* paragraph 3;

i.[156] Weapons Act of 20 June 1997[157]: Article 33 paragraph 3;

j.[158] Medicinal Products Act of 15 December 2000[159]: Article 86 paragraphs 2 and 3;

k.[160] Gambling Act of 29 September 2017[161]: Article 130 paragraph 2 for the offences under Article 130 paragraph 1 letter a;

145 Amended by Annex No II 7 of the Criminal Justice Authorities Act of 19 March 2010, in force since 1 Jan. 2011 (AS **2010** 3267; BBl **2008** 8125).
146 SR **142.20**
147 SR **211.221.31**
148 Amended by No II of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS **2013** 295; BBl **2011** 5905).
149 SR **514.51**
150 SR **732.1**
151 Correction by the Federal Assembly Drafting Committee dated 19 Sept. 2014, published on 4 Oct. 2014 (AS **2011** 4487).
152 SR **812.121**
153 SR **946.202**
154 Inserted by Art. 34 No 2 of the Sport Promotion Act of 17 June 2012 (AS **2012** 3953; BBl **2009** 8189). Amended by Annex No II 2 of the Gambling Act of 29 Sept. 2017, in force since 1 Jan. 2019 (AS **2018** 5103; BBl **2015** 8387).
155 SR **415.0**
156 Inserted by Annex No II 1 of the FA of 18 March 2016 on the Surveillance of Postal and Telecommunications Traffic, in force since 1 March 2018 (AS **2018** 117; BBl **2013** 2683).
157 SR **514.54**
158 Inserted by Annex No 1 of the FD of 29 Sept. 2017 (Medicrime Convention), in force since 1 Jan. 2019 (AS **2018** 4771; BBl **2017** 3135).
159 SR **812.21**
160 Inserted by Annex No II 2 of the Gambling Act of 29 Sept. 2017, in force since 1 Jan. 2019 (AS **2018** 5103; BBl **2015** 8387).
161 SR **935.51**

l.[162] Intelligence Service Act of 25 September 2015[163]: Article 74 paragraph 4.

3 If the adjudication an offence subject to military jurisdiction is assigned to the jurisdiction of the civil courts, an undercover investigation may also be ordered in respect of offences under Article 70 paragraph 2 of the Military Criminal Procedure Code of 23 March 1979[164].

Art. 287 Requirements for the persons deployed

1 The following persons may be deployed as undercover investigators:

a. members of a Swiss or foreign police force;

b. persons employed temporarily on police duties even if they have not received police training.

2 Only members of a police force may be deployed as command staff.

3 If members of a foreign police force are deployed, they are normally led by their regular commander.

Art. 288 Cover and guarantee of anonymity

1 The police shall provide undercover investigators with a cover.[165]

2 The public prosecutor may guarantee to undercover investigators that their true identity will not be revealed even if they appear in court proceedings as a person providing information or as a witness.[166]

2 It may guarantee to undercover investigators that their true identity will not be disclosed even if they appear in court proceedings as persons providing information or witnesses.

3 If undercover investigators commit an offence while deployed, the compulsory measures court shall decide on the identity under which criminal proceedings are brought.

Art. 289 Authorisation procedure

1 The deployment of an undercover investigator requires the authorisation of the compulsory measures court.

2 The public prosecutor shall submit the following documents to the compulsory measures court within 24 hours of ordering the undercover investigation:

162 Inserted by Annex No II 3 of the FedD of 25 Sept. 2020 on the Approval and Implementation of the Council of Europe Convention on the Prevention of Terrorism and its Additional Protocol and the Strengthening of Criminal Justice Instruments for combating Terrorism and Organised Crime, in force since 1 July 2021 (AS **2021** 360; BBl **2018** 6427).
163 SR **121**
164 SR **322.1**
165 Amended by No I of the FA of 14 Dec. 2012 on Undercover Investigations and Enquiries, in force since 1 May 2013 (AS **2013** 1051; BBl **2012** 5591 5609).
166 Amended by No I of the FA of 14 Dec. 2012 on Undercover Investigations and Enquiries, in force since 1 May 2013 (AS **2013** 1051; BBl **2012** 5591 5609).

a. the order;

b. a statement of the reasons and the case documents relevant for authorisation.

3 The compulsory measures court shall decide and provide a brief statement of the reasons within 5 days of the undercover investigation being ordered. It may grant authorisation subject to a time limit or other conditions, or request further information or investigations.

4 The authorisation shall expressly state whether it is permitted:

a. to produce or alter official documents in order to create or maintain a cover;

b. to guarantee anonymity;

c. to deploy persons with no police training.

5 The compulsory measures court shall grant authorisation for a maximum of 12 months. Authorisation may be extended on one or more occasions for a maximum of 6 months at a time. If an extension is required, the public prosecutor shall file an application for the extension, stating the reasons therefor, before expiry of the current authorisation.

6 If authorisation is not granted or no authorisation has been obtained, the public prosecutor shall terminate deployment immediately. All records must be destroyed immediately. Findings made by means of the undercover investigation may not be used.

Art. 290 Briefing before deployment

The public prosecutor shall brief the commanding officer and the undercover investigator before deployment.

Art. 291 Commanding officer

1 During deployment, the undercover investigator is subject to the direct instructions of the commanding officer. During deployment, any contact between the public prosecutor and the undercover investigator shall take place exclusively via the commanding officer.

2 The commanding officer has the following duties in particular:

a. he or she shall brief the undercover investigator in detail and continuously on the assignment and powers and on how to deal with the cover story.

b. he or she shall instruct and advise the undercover investigator and continually assess the risk situation.

c. he or she shall keep a written record of oral reports made by the undercover investigator and a full dossier on the operation.

d. he or she shall inform the public prosecutor regularly and in full on the operation.

Art. 292 Duties of undercover investigators

[1] Undercover investigators shall carry out their operation in accordance their duties and in line with their instructions.

[2] They shall report to their commanding officer regularly and in full on their activities and their findings.

Art. 293 Scope of influence permitted

[1] Undercover investigators may not generally encourage others to commit offences or incite persons already willing to commit offences to commit more serious offences. They must limit their activities to substantiating an existing decision to commit an offence.

[2] Their activities may only be of minor significance in the decision to commit a specific offence.

[3] If required in order to bring about the main transaction, they may make trial purchases or provide evidence of their ability to pay.

[4] If the undercover investigator exceeds the remit of the authorised operation, the court must take due account of this in assessing the sentence imposed on the person subject to the investigator's influence, or may dispense with imposing any sentence.

Art. 294 Deployment in investigations under the Narcotics Act

Undercover investigators may not be convicted of an offence under Articles 19 and 20–22 of the Narcotics Act of 3 October 1951[167] if they are acting in the course of an authorised undercover investigation.

Art. 295 Money for simulated transactions

[1] At the request of the public prosecutor, the Confederation may provide sums of money via the National Bank in the required amounts, forms and denominations for the purpose of simulated transactions and to provide evidence of an ability to pay.

[2] The request must be submitted to the Federal Office of Police together with a summary of the facts of the case.

[3] The public prosecutor shall take the precautions required to protect the money provided. In the event of loss, the Confederation or the canton to which public prosecutor belongs is liable.

Art. 296 Accidental finds

[1] Where evidence of an offence other than that named in the investigation order comes to light in the course of an undercover investigation, the evidence may be used provided the ordering of a covert investigation would have been permitted in order to investigate the offence newly disclosed.

167 SR **812.121**

2 The public prosecutor shall order an undercover investigation immediately and begin the authorisation procedure.

Art. 297 Conclusion of the operation

1 The public prosecutor shall terminate the operation immediately if:

a. the requirements are no longer met;

b. authorisation or an extension thereof is refused; or

c. the undercover investigator or the commanding officer fails to follow instructions or fails to carry out his or her duties in some other way, in particular by wilfully providing false information to the public prosecutor.

2 In cases under paragraph 1 letters a and c, the public prosecutor shall notify the compulsory measures court of the termination of the operation.

3 When terminating an operation, it must be ensured that neither the undercover investigator nor any third parties involved in the investigation are exposed to any avoidable risks.

Art. 298 Notice

1 The public prosecutor shall give notice to the accused at the latest on conclusion of the preliminary proceedings that he or she has been the subject of an undercover investigation.

2 Notice may be deferred or dispensed with, subject to the consent of the compulsory measures court, if:

a. the findings are not used as evidence; and

b. deferring or dispensing with notice is necessary to protect overriding public or private interests.

3 Persons who have been the subject of an undercover investigation may file an objection in accordance with Articles 393–397. The period for filing the objection begins on receipt of notice of the investigation.

Section 5*a*[168] Undercover Enquiries

Art. 298*a* Definition

1 In undercover enquiries, police officers deployed for short periods in such a way that their true identity and function remains concealed attempt to investigate felonies and misdemeanours and to do so enter into or pretend that they wish to enter into fictitious transactions.

168 Inserted by No I of the FA of 14 Dec. 2012 on Undercover Investigations and Enquiries, in force since 1 May 2013 (AS **2013** 1051; BBl **2012** 5591 5609).

2 Undercover agents are not provided with a cover within the meaning of Article 285*a*. Their true identity and function is disclosed in the case files and at hearings.

Art. 298*b* Requirements

1 The public prosecutor and, during police enquiries, the police may order undercover enquiries if:

a. it is suspected that a felony or misdemeanour has been committed; and

b. previous enquiries or investigations have been unsuccessful or the enquiries would otherwise have little prospect of success or would be made disproportionately more complex.

2 If undercover enquiries ordered by the police have been carried out for one month, the public prosecutor must approve their continuation.

Art. 298*c* Requirements for the persons deployed and conduct

1 Article 287 applies *mutatis mutandis* to the persons deployed. The deployment of persons in accordance with Article 287 paragraph 1 letter b is not permitted.

2 Articles 291–294 apply by analogy to the status, duties and obligations of the undercover agents and their commanding officers.

Art. 298*d* Termination and notification

1 The police unit or public prosecutor responsible shall terminate the undercover enquiries immediately if:

a. the requirements therefor are no longer met;

b. public prosecutor fails to approve the continuation of enquiries ordered by the police; or

c. the undercover agent or commanding officer does not follow instruction or fails to fulfil his or her obligations in another way, in particular by providing the public prosecutor with false information or attempting to influence the target person in an unlawful manner.

2 The police shall notify the public prosecutor of the termination of undercover enquiries.

3 When terminating undercover enquiries, care should be taken to ensure that the undercover agent is not exposed to any avoidable risk.

4 Notification of undercover enquiries is governed by Article 298 paragraphs 1 and 3 *mutatis mutandis*.

Title 6 Preliminary Proceedings
Chapter 1 General Provisions

Art. 299 Definition and purpose

1 The preliminary proceedings comprise the police enquiries and the investigation by the public prosecutor.

2 In the preliminary proceedings, based on the suspicion that an offence has been committed, enquiries shall be carried out and evidence gathered in order to establish whether:

a. a summary penalty order should be issued to the accused;

b. charges should be brought against the accused;

c. the proceedings should be abandoned.

Art. 300 Commencement

1 Preliminary proceedings commence when:

a. enquiries are begun by the police;

b. an investigation is opened by the public prosecutor.

2 The commencement of preliminary proceedings may not be contested unless the accused claims it constitutes a violation of the rule against double jeopardy.

Art. 301 Right to report an offence

1 Any person is entitled to report an offence to a criminal justice authority in writing or orally.

2 The criminal justice authority shall if requested notify the person making the report of whether criminal proceedings are being commenced and how they are proceeding.

3 A person making a report who has neither suffered loss nor injury nor is a private claimant has no further procedural rights.

Art. 302 Duty to report

1 The criminal justice authorities are obliged to report to the competent authority all offences that have come to light or that have been reported to them in the course of their official activities, unless they themselves are responsible for prosecuting the offence.

2 The Confederation and the cantons shall regulate the duty to report of members of other authorities.

3 The duty to report ceases to apply for persons who have the right to remain silent or to refuse to testify in accordance with Articles 113 paragraph 1, 168, 169 and 180 paragraph 1.

Art. 303 Offences prosecuted on complaint or with official authorisation

1 In the case of offences that are prosecuted only on complaint or with official authorisation, preliminary proceedings shall be commenced only if a criminal complaint has been made or authorisation granted.

2 The competent authority may act to secure evidence beforehand where this cannot be delayed.

Art. 304 Form of the criminal complaint

1 A criminal complaint must be submitted in writing or made orally and noted down in an official record. It must be made to the police, the public prosecutor or the authority responsible for prosecuting contraventions.

2 Where a person waives the right to file a complaint or withdraws a complaint, the same form is required.

Art. 305[169] Information and referral for the victim[170]

1 The police and the public prosecutor shall inform the victim in full at their first examination hearing of his or her rights and obligations in the criminal proceedings.

2 They shall at the same time inform the victim of:[171]

a. the addresses and services provided by victim counselling services;

b. the possibility of claiming various victim support benefits;

c. the time limit for the filing claims for damages and satisfaction;

d.[172] the right under Article 92*a* SCC to request information on the decisions and and circumstances of the execution of penalties and measure in relation to the offender.

3 If the victim agrees, they shall pass his or her name and address on to a counselling service.

4 Paragraphs 1–3 also apply *mutatis mutandis* to the relatives of the victim.

5 Confirmation that the provisions this Article have been complied with must be recorded in the case file.

169 Amended by Annex No II 7 of the Criminal Justice Authorities Act of 19 March 2010, in force since 1 Jan. 2011 (AS **2010** 3267; BBl **2008** 8125).
170 Amended by No I 3 of the FA of 26 Sept. 2014 on Victims' Right to Information, in force since 1 Jan. 2016 (AS **2015** 1623; BBl **2014** 889 913).
171 Amended by No I 3 of the FA of 26 Sept. 2014 on Victims' Right to Information, in force since 1 Jan. 2016 (AS **2015** 1623; BBl **2014** 889 913).
172 Inserted by No I 3 of the FA of 26 Sept. 2014 on Victims' Right to Information, in force since 1 Jan. 2016 (AS **2015** 1623; BBl **2014** 889 913).

Chapter 2 Police Enquiries

Art. 306 Duties of the police

1 The police shall in the course of their enquiries establish the facts relevant to an offence on the basis of reports, instructions from the public prosecutor or their findings.

2 They must in particular:

a. secure and evaluate forensic and other evidence;

b. identify and interview persons suffering harm and suspects;

c. if necessary, stop and arrest or attempt to trace suspects.

3 Their activities are governed by the regulations on investigations, evidence and compulsory measures, subject to the special provisions of this Code.

Art. 307 Cooperation with the public prosecutor

1 The police shall inform the public prosecutor immediately of serious offences and other serious incidents. The federal and cantonal public prosecutors may issue more detailed provisions on this duty to provide information.

2 The public prosecutor may issue instructions and assignments to the police at any time or take over the conduct of the proceedings. In the cases under paragraph 1, it shall if possible conduct the first essential examination hearings itself.

3 The police shall record all their findings and the measures they have taken in written reports and pass these on conclusion of their enquiries together with the reports of offences, transcripts of examination hearings, other files and property and assets that have been seized directly to the public prosecutor.

4 They may dispense with making a report if:

a. there is clearly no need for the public prosecutor to take further proceedings; and

b. no compulsory measures or other formal enquiries have been carried out.

Chapter 3 Investigation by the Public Prosecutor
Section 1 Duties of the Public Prosecutor

Art. 308 Definition and purpose of the investigation

1 In the investigation, the public prosecutor shall clarify the factual and legal aspects of the case in order that it may conclude the preliminary proceedings.

2 If it is anticipated that charges will be brought or a summary penalty order issued, it shall clarify the personal circumstances of the accused.

3 If charges are to be brought, the investigation must provide the court with the basic information required to assess the guilt of the accused and to impose a sentence.

Art. 309 Opening the investigation

[1] The public prosecutor shall open an investigation if:

a. there is a reasonable suspicion that an offence has been committed based on the information and reports from the police, the complaint or its own findings;

b. it intends to order compulsory measures;

c. it has received information from the police in terms of Article 307 paragraph 1.

[2] It may return police reports and criminal complaints that do not contain clear indications that an offence has been committed to the police so that they may carry out additional enquiries.

[3] It shall open the investigation by issuing a ruling in which it shall name the accused and the offence that he or she is suspected of committing. The ruling need not contain a statement of reasons or be made public. It is non-contestable.

[4] The public prosecutor may not open an investigation if it immediately issues a no-proceedings order or a summary penalty order.

Art. 310 No-proceedings order

[1] The public prosecutor shall rule that no proceedings be taken as soon as it is established on the basis of the complaint or the police report that:

a. the elements of the offence concerned or the procedural requirements have clearly not been fulfilled;

b. there are procedural impediments;

c. there should be no prosecution for the reasons stated in Article 8.

[2] The procedure is otherwise governed by the provisions on abandoning proceedings.

Section 2 Conduct of the Investigation

Art. 311 Gathering of evidence and extending the investigation

[1] The public prosecutors shall gather the evidence themselves. The Confederation and the cantons shall decide on the extent to which they may delegate specific investigative activities to their staff.

[2] The public prosecutor may extend the investigation to include additional persons or offences. Article 309 paragraph 3 applies.

Art. 312 Assignments given by the public prosecutor to the police

[1] The public prosecutor may instruct the police to carry out additional enquiries after the investigation has been opened. It shall issue written instructions, or in cases of urgency oral instructions, that limit the enquiries to clearly defined issues.

2 In the case of examination hearings carried out by the police on behalf of the public prosecutor, the persons involved in the proceedings have the procedural rights that they would be accorded in the case of examination hearings by the public prosecutor.

Art. 313 Taking evidence for civil claims

1 The public prosecutor shall gather the evidence required to assess the civil claim provided the proceedings are not unduly extended or delayed thereby.

2 It may the make the gathering of evidence that primarily serves to further the civil claim conditional on an advance payment by the private claimant to cover costs.

Art. 314 Suspension

1 The public prosecutor may suspend an investigation, in particular if:

a. the identity of the offender or his or her whereabouts is unknown is or there are other temporary procedural impediments;

b. the outcome of the criminal proceedings depends on other proceedings and it seems appropriate to await their conclusion;

c. private settlement proceedings are ongoing and it seems appropriate to await their outcome;

d. a decision on the substance of the case depends on how the consequences of the offence develop.

2 In the case of paragraph 1 letter c, the period of suspension shall be limited to 3 months; it may be extended on one occasion by a further 3 months.

3 Before suspending proceedings, the public prosecutor shall gather any evidence that is at risk of being lost. If the identity of the offender or his or her whereabouts is unknown, it shall order that he or she be traced.

4 The public prosecutor shall give notice of the suspension to the accused, the private claimant and the victims.

5 The procedure is otherwise governed by the provisions on the abandonment of proceedings.

Art. 315 Resumption of proceedings

1 The public prosecutor shall resume a suspended investigation ex officio if the grounds for suspension no longer apply.

2 A decision to resume proceedings may not be contested.

Section 3 Private Settlements

Art. 316

[1] Where the proceedings relate to an offence that is prosecuted only on complaint, the public prosecutor may summon the complainant and the accused to a hearing with the aim of achieving a settlement. If the complainant fails to attend, the complaint is deemed to have been withdrawn.

[2] If consideration is being given to an exemption from punishment due to reparation being made in accordance with Article 53 SCC[173], the public prosecutor shall invite the person suffering harm and the accused to a hearing with the aim of agreeing on reparation.

[3] If an agreement is reached, this shall be placed on record and signed by those involved. The public prosecutor shall then abandon the proceedings.

[4] If the accused fails to attend a hearing in accordance with paragraphs 1 or 2 or if no agreement is reached, the public prosecutor shall immediately proceed with the investigation. In cases where it is justified, it may require the complainant to provide security for costs and damages within ten days.

Section 4 Conclusion of the Investigation

Art. 317 Final examination hearing

In extensive and complex preliminary proceedings, the public prosecutor shall question the accused again in a final examination hearing before concluding the investigation and request the accused to comment on the findings.

Art. 318 Conclusion

[1] If the public prosecutor regards the investigation as completed, it shall issue a summary penalty order or give written notice to those parties whose address is known of the imminent conclusion of the investigation and inform them whether it is intended to bring charges or abandon the proceedings. At the same time, it shall allow the parties a period within which to submit requests for further evidence to be taken.

[2] It may reject requests for further evidence to be taken only if the evidence involves matters that are irrelevant, obvious, known to the criminal justice authority or already satisfactorily proven in legal terms. The decision shall be issued in writing and with a brief statement of the grounds. Requests for further evidence to be taken that are refused may be made again in the main proceedings.

[3] Notice in accordance with paragraph 1 and decisions in accordance with paragraph 2 are non-contestable.

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Chapter 4 Abandoning Proceedings and Bringing Charges
Section 1 Abandoning Proceedings

Art. 319 Grounds

[1] The public prosecutor shall order the complete or partial abandonment of the proceedings if:

a. no suspicions are substantiated that justify bringing charges;

b. the conduct does not fulfil the elements of an offence;

c. grounds justifying the conduct mean that it does not constitute an offence;

d. it is impossible to fulfil the procedural requirements or procedural impediments have arisen;

e. a statutory regulation applies that permit the public prosecutor to dispense with bringing charges or imposing a penalty.

[2] It may also abandon the proceedings by way of exception if:

a. this is essential in the interests of a victim who was under the age of 18 at the time of the offence and this interest clearly overrides the interest of the state in a prosecution; and

b. the victim or in the event that the victim lacks legal capacity, his or her legal agent consents to the abandonment.

Art. 320 Ruling abandoning proceedings

[1] The form and general content of the ruling abandoning proceedings are governed by Articles 80 and 81.

[2] The public prosecutor shall revoke existing compulsory measures in the ruling abandoning proceedings. It may order the forfeiture of property and assets.

[3] Civil claims are not addressed in the ruling abandoning proceedings. A private claimant may take civil action after the ruling becomes legally binding.

[4] A legally binding ruling abandoning proceedings is equivalent to a final verdict of acquittal.

Art. 321 Notice

[1] The public prosecutor shall give notice of the ruling abandoning proceedings to:

a. the parties;

b. the victim;

c. the other persons involved in the proceedings affected by the ruling;

d. any other authorities designated by the cantons provided they have a right of appeal.

2 The foregoing is subject to the express waiver of any person involved in the proceedings.

3 Articles 84–88 are otherwise applicable *mutatis mutandis*.

Art. 322 Approval and rights of appeal

1 The Confederation and the cantons may stipulate that the ruling abandoning proceedings be approved by the Office of the Chief Cantonal Prosecutor.

2 The parties may contest the ruling abandoning proceedings with the objections authority within 10 days.

Art. 323 Reopening of proceedings

1 The public prosecutor shall order the reopening of proceedings that have been abandoned by a legally-binding ruling if it obtains new evidence or information that:

a. indicates that the accused is guilty of a criminal offence; and

b. does not result from the previous files.

2 It shall give notice of the reopening of proceedings to the persons and authorities that previously received notice of the abandonment.

Section 2 Bringing Charges

Art. 324 Principles

1 The public prosecutor shall bring charges in the competent court if, based on the results of the investigation, it regards the grounds for suspicion as sufficient and it is not competent to issue a summary penalty order.

2 The bringing of charges is non-contestable.

Art. 325 Content of the indictment

1 The indictment shall indicate:

a. the place and the date;

b. the public prosecutor bringing the charges;

c. the court competent to hear the charges;

d. the accused and his or her defence lawyer;

e. the person suffering harm;

f. as briefly but precisely as possible: the acts that the accused is alleged to have committed with details of the locus, date, time, nature and consequences of their commission;

g. the offences that are in the opinion of the public prosecutor constituted by these acts with details of the applicable statutory provisions.

2 The public prosecutor may bring alternative charges or secondary charges for the event that the main charges are dismissed.

Art. 326 Further information and applications

1 The public prosecutor shall provide the court with the following details and make the following applications unless they are already included in the indictment:

a. the private claimant and any civil claims;
b. the compulsory measures ordered;
c. the seized property and assets;
d. the costs incurred in the investigation;
e. if deemed necessary, its application for preventive detention;
f. its applications for sanctions or notice that these applications will be made at the main hearing;
g. its applications for subsequent judicial decisions;
h. its request to receive a summons to the main hearing.

2 If the public prosecutor is not personally represented in court, it may attach a final report to the indictment that explains the circumstances of the case, which also contains comments on the assessment of evidence.

Art. 327 Service of the indictment

1 The public prosecutor shall immediately serve the indictment together with any final report:

a. on the accused, provided his or her whereabouts is known;
b. on the private claimant;
c. on the victim;
d. on the competent court, together with the files and the seized property and assets.

2 If the public prosecutor applies for an order of preventive detention, when filing the relevant application, it shall also serve a copy of the indictment on the compulsory measures court.

Title 7 Main Proceedings of First Instance

Chapter 1 Pending Status, Preparation for the Main Hearing, General Provisions on the Main Hearing

Art. 328 Pending status

1 On receipt of the indictment, the proceedings become pending before the court.

2 When the proceedings become pending, authority over the proceedings passes to the court.

Art. 329 Examination of the indictment; suspension and abandonment of the proceedings

1 The director of proceedings shall examine whether:

a. the indictment and the files have been presented in the proper manner;

b. the procedural requirements are fulfilled;

c. there are any procedural impediments.

2 If it is determined in this examination or later in the proceedings that a judgment cannot be issued at this time, the court shall suspend the proceedings. If required, it shall return the indictment to the public prosecutor for amendment or correction.

3 The court shall decide whether a suspended case remains pending before it.

4 If it is permanently impossible to issue a judgment, the court shall abandon the proceedings after granting the parties and other third parties adversely affected by abandonment the right to be heard. Article 320 applies *mutatis mutandis*.

5 If the proceedings are only abandoned in relation to specific charges on the indictment abandoned, the abandonment order may be issued with the judgment.

Art. 330 Preparation for the main hearing

1 If the charges are to be considered, the director of proceedings shall immediately issue the orders required for the main hearing to be conducted.

2 In the case of courts with two or more judges on the bench, the director of proceedings shall circulate the files.

3 The director of proceedings shall inform the victim of his or her rights, unless the prosecution authorities have already done so; Article 305 applies *mutatis mutandis*.

Art. 331 Scheduling the main hearing

1 The director of proceedings shall decide on the evidence that may be taken at the main hearing. He or she shall notify the parties of the composition of the court and what evidence is to be presented.

2 The director of proceedings shall at the same time set a deadline within which the parties must submit and justify requests for further evidence to be taken; when doing so, he or she shall notify the parties of the potential effect on costs and damages of delayed requests for further evidence to be taken.

3 If the director of proceedings rejects a request for further evidence to be taken, he or she shall notify the parties of this and give a brief statement of the grounds. Rejection is non-contestable, but rejected requests for further evidence to be taken may be submitted again at the main hearing.

4 The director of proceedings shall fix a date, time and place for the main hearing and summon the parties, together with the witnesses, persons providing information and expert witnesses who are to be questioned.

5 He or she shall make a final decision on applications for postponement that are submitted before the start of the main hearing.

Art. 332 Preliminary hearings

1 The director of proceedings may summon the parties to a preliminary hearing in order to settle organisational issues.

2 The director of proceedings may summon the parties to discuss a private settlement in accordance with Article 316.

3 If it is expected that it will not be possible to take certain evidence in the main hearing, the director of proceedings may take that evidence prior to the main hearing, entrust the task to a delegate of the court or in cases of urgency to the public prosecutor, or arrange for the evidence to be taken through mutual assistance procedures. The parties shall be given the opportunity to participate if evidence is taken in this way.

Art. 333 Amending and adding charges

1 The court shall allow the public prosecutor the opportunity to amend the charges if in its view the circumstances outlined in the indictment could constitute a different offence but the indictment does not meet the statutory requirements.

2 If further offences by the accused come to light during the main hearing, the court may permit the public prosecutor to add charges to the indictment.

3 Additions are not permitted if the proceedings would be made unduly complex or this would affect the jurisdiction of the court or if a case involves co-offending or participation. In these cases, the public prosecutor shall commence preliminary proceedings.

4 The court may only base its judgment on a charge that has been amended or added to if the party rights of the accused and the private claimant have been observed. If necessary, it shall adjourn the main hearing.

Art. 334 Transfer

1 If the court concludes that in proceedings pending before it a sentence or measure must be considered that exceeds its competence, it shall transfer the case at the latest following the party submissions to the competent court. This court shall conduct its own procedure for taking evidence.

2 The decision to transfer the case to another court is non-contestable.

Chapter 2 Conduct of the Main Hearing
Section 1 Court and Persons involved in the Proceedings

Art. 335 Composition of the court

[1] The court shall sit for the entire duration of the main hearing in the composition required by law and in the presence of a clerk of court.

[2] If a judge becomes unable to attend during the main hearing, the entire main hearing shall be held again unless the parties waive this requirement.

[3] The director of proceedings may order that from the outset a substitute member of the court participates in the hearing in order to replace a member of the court if necessary.

[4] If the court is hearing a case involving sexual offences, if so requested by the victim at least one of its members must be of the same gender as the victim. Where the court comprises one judge sitting alone, this rule need not be applied if the case involves victims of both genders.

Art. 336 Accused, duty defence lawyer and mandatory defence lawyer

[1] The accused must attend the main hearing in person if:

a. the case involves a felony or misdemeanour; or

b. the director of proceedings orders a personal appearance.

[2] Duty defence lawyers and the mandatory defence lawyers must attend the main hearing in person.

[3] The director of proceedings may dispense with the requirement for the accused to attend in person at the accused's request if the accused shows good cause and his or her presence is not required.

[4] If the accused fails to attend without being excused, the regulations on proceedings in absentia apply.

[5] If a duty defence lawyer or mandatory defence lawyer fails to attend, the hearing shall be postponed.

Art. 337 Public prosecutor

[1] The public prosecutor may submit written applications to the court or be represented by a prosecutor in court.

[2] It is neither bound by the legal assessment nor by the applications set out in the indictment.

[3] If it requests a custodial sentence of more than one year or a custodial measure, it must be represented in court by a prosecutor.

[4] The director of proceedings may require the public prosecutor to be represented by a prosecutor in other cases if he or she regards it as necessary.

5 If the public prosecutor is not represented by a prosecutor at the main hearing, despite being required to be represented, the hearing shall be postponed.

Art. 338 Private claimant and third parties

1 The director of proceedings may dispense with the requirements for a private claimant to attend at the claimant's request if his or her presence is not required.

2 A third party affected by an application for forfeiture is not required to appear in person.

3 If a private claimant or a third party affected by an application for forfeiture does not appear in person, he or she may be represented or submit written applications.

Section 2 Commencement of the Main Hearing

Art. 339 Opening; Preliminary and supplementary issues

1 The director of proceedings shall open the main hearing, announce the composition of the court and establish whether the persons summoned are present.

2 The court and the parties may then raise preliminary issues in particular relating to:

a. the competence of the charge;
b. procedural requirements;
c. procedural impediments;
d. the files and the evidence taken;
e. the admission of the public to the hearing;
f. the division of the hearing.

3 The court decides immediately on the preliminary issues after granting the parties present the right to be heard.

4 If the parties raise supplementary issues during the main hearing, the court shall deal with these in the same way as preliminary issues.

5 The court may adjourn the main hearing at any time in order to deal with preliminary or supplementary issues, and to add to or have the public prosecutor add to the files or the evidence.

Art. 340 Continuation of the hearing

1 The fact that any preliminary issues have been dealt with has the following consequences:

a. the main hearing must be conducted to its completion without unnecessary interruptions;
b. the charge may no longer be withdrawn and, subject to Article 333, may no longer be amended;

c. parties required to attend may only leave the venue for the hearing with the consent of the court; if a party leaves the venue for the hearing, the hearing shall nevertheless continue.

2 After any preliminary issues have been dealt with, the director of proceedings shall announce the applications made by the public prosecutor, unless the parties dispense with this requirement.

Section 3 Procedure for Taking Evidence

Art. 341 Examination hearings

1 The director of proceedings or a member of the court that they have appointed shall conduct the examination hearings.

2 The other members of the court and the parties may request the director of proceedings to ask supplementary questions or request their authorisation to ask them themselves.

3 At the start of the beginning of the procedure for taking evidence, the director of proceedings shall question the accused in detail on his or her personal circumstances, on the charge and on the results of the preliminary proceedings.

Art. 342 Division of the main hearing

1 The court may at the request of the accused or the public prosecutor or ex officio divide the main hearing into two parts; in doing so, it may stipulate that:

a. in the first part of the proceedings only the offence and the issue of the accused's guilt will be considered, and that in the second the consequences of conviction or acquittal shall be considered; or

b. in the first part of the proceedings only the offence will be considered and in the second the issue of the accused's guilt together with the consequences of conviction or acquittal will be considered.

2 The decision on the division of the main hearing is non-contestable.

3 In the event of the division of the proceedings, the personal circumstances of the accused may only be considered in the main hearing in the event of that the accused is found guilty, unless that the accused's personal circumstances are of significance in assessing the objective facts of the case or the state of mind of the accused.

4 The verdict shall be given following the deliberations, but it may only be contested in conjunction with the entire judgment.

Art. 343 Taking of evidence

1 The court shall take new evidence and add to evidence already taken that is incomplete.

2 It shall take evidence again that was not taken in the proper manner in the preliminary proceedings.

3 It shall take evidence again that was taken in the proper manner in the preliminary proceedings if direct knowledge of the evidence appears necessary in order to reach a decision.

Art. 344 Differences in legal assessment

If the court intends to make an assessment of the legal aspects of the case that differs from that of public prosecutor in the indictment, it shall give notice of this to the parties present and give them the opportunity to comment.

Art. 345 Conclusion of the procedure for taking evidence

Before concluding the procedure for taking evidence, the court shall give the parties the opportunity to submit additional requests for further evidence to be taken.

Section 4 Party Submissions and Conclusion of the Party Hearing

Art. 346 Party submissions

1 On conclusion of the procedure for taking evidence, the parties shall present and justify their applications. The parties shall make their submissions in the following order:

a. the public prosecutor;

b. the private claimant;

c. third parties affected by an application for forfeiture (Art. 69–73 SCC[174]);

d. the accused or his or her defence lawyer.

2 The parties have the right to make a second party submission.

Art. 347 Conclusion of the party hearing

1 The accused is entitled to have the last word on conclusion of the party submissions.

2 The director of proceedings shall then declare the party hearing closed.

Section 5 Judgment

Art. 348 Deliberations on the judgment

1 The court shall retire on conclusion of the party hearing in order to deliberate on the judgment in private.

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2 The clerk of court shall participate in an advisory capacity.

Art. 349 Additional evidence

If the court is not yet in a position to issue a judgment in the case, it may decide to take additional evidence and the reopen the party hearing.

Art. 350 Latitude in assessing the charge; Basis for the judgment

1 The court is bound by the facts of the case set out in the indictment but not by the legal assessment of the case therein.

2 It shall take account of the evidence taken in the preliminary proceedings and main proceedings.

Art. 351 Decision on and notice of the judgment

1 If the court is able to decide on the substance of the charge, it shall reach a verdict, and a decision on the sanctions and other consequences.

2 It shall reach its decision on all points of the judgment by a simple majority. Each member is obliged to vote.

3 It shall give notice of its judgment in accordance with the provisions of Article 84.

Title 8 Special Procedures

Chapter 1 Summary Penalty Order Procedure, Contravention Procedure

Section 1 Summary Penalty Order Procedure

Art. 352 Requirements

1 If the accused has accepted responsibility for the offence in the preliminary proceedings or if his or her responsibility has otherwise been satisfactorily established, the public prosecutor shall issue a summary penalty order if, having taken account of any suspended sentence or parole order that must be revoked, it regards any of the following sentences as appropriate:

a. a fine;

b. a monetary penalty of no more than 180 daily penalty units;

c.[175] …

d. a custodial sentence of no more than 6 months.

175 Repealed by Annex No 3 of the FA of 19 June 2015 (Amendments to the Law of Criminal Sanctions), with effect from 1 Jan. 2018 (AS **2016** 1249; BBl **2012** 4721).

2 Any of these sentences may be combined with a measure in accordance with Articles 66 and 67*e*–73 SCC[176].[177]

3 Sentences in accordance with paragraph 1 letters b–d may be combined with each other provided the total sentence imposed corresponds to a custodial sentence of no more than 6 months. A fine may always be combined with any another sentence.

Art. 353 Content and notice of the summary penalty order

1 The summary penalty order contains:

a. the name of the authority issuing the order;

b. the name of the accused;

c. a description of the act committed by the accused;

d. the offence constituted by the act;

e. the sanction;

f. notice of the revocation of a suspended sanction or of parole with a brief statement of the reasons;

f[bis].[178] the date on which any DNA profile created must be deleted;

g. the costs and damages due;

h. details of any seized property or assets that are to be released or forfeited;

i. reference to the possibility of rejecting the order and the consequences of failing to reject the order;

j. place and date of issue;

k. the signature of the person issuing the order.

2 If the accused has accepted the civil claims of the private claimant, this shall also be recorded in the summary penalty order. Claims that are not accepted shall be referred for civil proceedings.

3 Immediate written notice of the summary penalty order shall be given to persons and authorities who are entitled to reject the order.

Art. 354 Rejection

1 A written rejection of the summary penalty order may be filed with the public prosecutor within 10 days by:

a. the accused;

b. other affected persons;

176 SR **311.0**
177 Amended by Annex No 5 of the FA of 20 March 2015 (Implementation of Art. 121 para. 3–6 Federal Constitution on the expulsion of foreign nationals convicted of certain criminal offences), in force since 1 Oct. 2016 (AS **2016** 2329; BBl **2013** 5975).
178 Inserted by Annex 1 No 2 of the FA of 17 Dec. 2021, in force since 1 Aug. 2023 (AS **2023** 309; BBl **2021** 44).

c. if so provided, the Office of the Attorney General of Switzerland or of the canton in federal or cantonal proceedings respectively.

2 A rejection other than that made by the accused must be accompanied by a statement of grounds.

3 Unless a valid rejection is filed, the summary penalty order becomes a final judgment.

Art. 355 Procedure for rejection

1 If a rejection is filed, the public prosecutor shall gather the additional evidence required to assess the rejection.

2 If the person filing the rejection fails to attend an examination hearing without an excuse despite being served with a summons, the rejection is deemed to have been withdrawn.

3 After taking the evidence, the public prosecutor shall decide to either:

a. stand by the summary penalty order;

b. abandon the proceedings;

c. issue a new summary penalty order;

d. bring charges in the court of first instance.

Art. 356 Procedure before the court of first instance

1 If the public prosecutor decides to stand by the summary penalty order, it shall send the files immediately to the court of first instance for the conduct of the main hearing. The summary penalty order constitutes the indictment.

2 The court of first instance shall decide on the validity of the summary penalty order and its rejection.

3 The rejection may be withdrawn at any time prior to the conclusion of the party submissions.

4 If the person filing the rejection fails to attend the main hearing without excuse or being represented, the rejection is deemed to have been withdrawn.

5 If the summary penalty order is invalid, the court shall revoke it and refer the case back to the public prosecutor for new preliminary proceedings to be conducted.

6 If the rejection relates only to costs and damages or other incidental legal orders, so the court shall decide in written proceedings, unless the person filing the rejection expressly requests a hearing.

7 If summary penalty orders have been issued to two or more persons in relation to the same act, Article 392 applies *mutatis mutandis*.

Section 2 Contravention Proceedings

Art. 357

1 The administrative authorities appointed to prosecute and adjudicate contraventions have the powers of the public prosecutor.

2 The procedure is governed *mutatis mutandis* by the regulations on the summary penalty order procedure.

3 If elements of the contravention have not been fulfilled, so the authority responsible for prosecuting contraventions shall abandon the proceedings by issuing a ruling with a brief statement of the reasons.

4 If in the view of the authority responsible for prosecuting contraventions the facts of the case constitute a felony or misdemeanour, it shall refer the case to the public prosecutor.

Chapter 2 Accelerated Proceedings

Art. 358 Principles

1 At any time prior to bringing charges, the accused may request the public prosecutor to conduct accelerated proceedings provided the accused admits the matters essential to the legal appraisal of the case and recognises, if only in principle, the civil claims.

2 Accelerated proceedings are not an option in cases where the public prosecutor requests a custodial sentence of more than five years.

Art. 359 Opening proceedings

1 The decision of the public prosecutor on whether to conduct accelerated proceedings is final. The ruling need not contain a statement of reasons.

2 The public prosecutor shall notify the parties that accelerated proceedings are to be conducted and shall set the private claimant a time limit of 10 days to file civil claims and request the reimbursement of costs incurred in the proceedings.

Art. 360 Indictment

1 The indictment shall contain:

a. the details required in accordance with Articles 325 and 326;

b. the sentence;

c. any measures;

d. instructions related to the imposition of a suspended sentence;

e. the revocation of suspended sentences or parole;

f. the ruling on the civil claims made by the private claimant;

g. the ruling on costs and damages;

h. notice to the parties that by consenting to the indictment, they waive their rights to ordinary proceedings and their rights of appeal.

2 The public prosecutor shall serve the indictment on the parties. The parties must declare within ten days whether they consent to the indictment or not. Consent is irrevocable.

3 If the private claimant fails to give written notice rejecting the indictment within the time limit, he or she is deemed to have consented to it.

4 If the parties consent, the public prosecutor shall pass the indictment with the files to the court of first instance.

5 If any party rejects the indictment, the public prosecutor shall conduct ordinary preliminary proceedings.

Art. 361 Main hearing

1 The court of first instance shall conduct a main hearing.

2 At the main hearing, the court shall question the accused and establish whether:

a. he or she admits the matters on which the charges are based; and

b. this admission corresponds to the circumstances set out in the files.

3 If necessary, the court shall also question other parties present.

4 No procedure for taking evidence shall be conducted.

Art. 362 Judgment or rejection of application

1 The court shall be free to decide whether:

a. the conduct of accelerated proceedings is lawful and reasonable;

b. the charge corresponds to the result the main hearing and the files; and

c. the requested sanctions are equitable.

2 If the requirements for a judgment in the accelerated proceedings are fulfilled, the court shall issue a judgment that sets out the offences, sanctions and civil claims contained in the indictment, together with a brief statement of reasons for the fulfilment of the requirements for the accelerated proceedings.

3 If the requirements for a judgment in the accelerated proceedings are not fulfilled, the court shall return the files to the public prosecutor so that ordinary preliminary proceedings may be conducted. The court shall give notice of its decision not to issue a judgment both orally and by issuing written conclusions. This decision is non-contestable.

4 Following a decision not to issue a judgment in accelerated proceedings, statements made by the parties for the purpose of the accelerated proceedings may not be used in any subsequent ordinary proceedings.

5 The sole grounds for appeal against a judgment in accelerated proceedings are that a party did not consent to the indictment or that the judgment does not correspond to the indictment.

Chapter 3 Procedure for Separate Subsequent Court Decisions

Art. 363 Jurisdiction

1 The court that issued the first instance judgment shall also take any separate subsequent decisions delegated to a judicial authority unless the Confederation or cantons provide otherwise.

2 If the public prosecutor issued the decision in summary penalty order proceedings or the authority responsible for prosecuting contraventions issued the decision in contravention proceedings, these authorities shall also take the subsequent decisions.

3 The Confederation and the cantons shall specify the authorities responsible for making subsequent decisions that are not made by the court.

Art. 364 Procedure

1 The competent authority shall begin proceedings to issue a subsequent judicial decision ex officio unless federal law provides otherwise. It shall submit the relevant files and its application to the court.

2 In all other cases, the person convicted or any other entitled persons may request proceedings be initiated by filing a written and justified application.

3 The court shall examine whether the requirements for the subsequent judicial decision are fulfilled, and shall if necessary add to the files or arrange for further enquiries to be carried out by the police.

4 It shall give the persons and authorities concerned the opportunity to comment on the intended decision and to submit applications.

Art. 364*a*[179] Preventive detention with a view to a separate subsequent court decision

1 The authority responsible for initiating the proceedings to issue a separate decision ex officio may order the arrest of the convicted person if it is seriously to be expected that:

a. the person will be ordered to serve a custodial sanction; and

b. the person:

1. will attempt to evade serving the sanction, or

2. will commit a further felony or serious misdemeanour.

179 Inserted by No I of the FA of 25 Sept. 2020 (Preventive Detention in the Procedure for Separate Subsequent Decisions), in force since 1 March 2021 (AS **2021** 75; BBl **2019** 6697).

2 The procedure is governed by analogy by Articles 222–228.

3 The competent authority shall submit the relevant files and its application to the court responsible for the separate subsequent decision as quickly as possible.

Art. 364*b*[180] Preventive detention during the court proceedings

1 The director of proceedings may order the arrest of the convicted person subject to the requirements of Article 364*a* paragraph 1.

2 It shall conduct detention proceedings by analogous application of Article 224 and request the compulsory measures court or the director of appellate proceedings to order preventive detention. The procedure is governed by analogy by Articles 225 and 226.

3 If preventive detention has already been ordered, the procedure is governed by analogy by Article 227.

4 Articles 222 and 230–233 also apply by analogy.

Art. 365 Decision

1 The court shall decide based on the files. It may also order a hearing.

2 It shall issue its decision in writing with a brief statement of reasons. If a hearing has been held, it shall make an immediate oral announcement of its decision.

Chapter 4 Procedure in the Absence of the Accused

Section 1 Requirements and Conduct

Art. 366 Requirements

1 If an accused who has been duly summoned fails to appear before the court of first instance, the court shall fix a new hearing and summon the person again or arrange for him or her to be brought before the court. It shall take evidence where this cannot be delayed.

2 If the accused fails to appear for the re-arranged main hearing or if it is not possible to bring him or her before the court, the main hearing may be held in the absence of the accused. The court may also suspend the proceedings.

3 If the accused is suffering from a voluntarily induced unfitness to plead or if he or she refuses to be brought from detention to the main hearing, the court may conduct proceedings immediately in absentia.

4 Proceedings in absentia may only be held if:

180 Inserted by No I of the FA of 25 Sept. 2020 (Preventive Detention in the Procedure for Separate Subsequent Decisions), in force since 1 March 2021 (AS **2021** 75; BBl **2019** 6697).

a. the accused has previously had adequate opportunity in the proceedings to comment on the offences of which he or she is accused

b. sufficient evidence is available to reach a judgment without the presence of the accused.

Art. 367 Conduct and decision

1 The parties and the defence shall be permitted to make party submissions.

2 The court shall reach its judgment based on the evidence taken in the preliminary proceedings and the main proceedings.

3 On conclusion of the party submissions the court may issue a judgment or suspend the proceedings until the accused appears in court in person.

4 Proceedings in absentia are otherwise governed by the provisions on the main proceedings in the first instance.

Section 2 Re-assessment

Art. 368 Application for a re-assessment

1 If it is possible to serve the judgment in absentia personally, the person convicted shall be notified that he or she has 10 days to make a written or oral application to the court that issued the judgment for it to re-assess the case.

2 In the application, the person convicted must briefly explain why he or she was unable to appear at the main hearing.

3 The court shall reject the application if the person convicted was duly summoned, but failed to appear at the main hearing without excuse.

Art. 369 Procedure

1 If it is probable that the requirements for a re-assessment will be fulfilled, the director of proceedings shall fix a new main hearing. At this hearing, the court shall decide on the application for re-assessment and shall if applicable reach a new judgment.

2 The appeal courts shall suspend any appellate proceedings raised by other parties.

3 The director of proceedings shall decide before the main hearing on granting suspensive effect and on preventive detention.

4 If the convicted person again fails to appear for the main hearing, the judgment in absentia shall remain valid.

5 The application for re-assessment may be withdrawn at any time prior to the conclusion of the party hearing subject to the payment of costs and damages.

Art. 370 New judgment

[1] The court shall issue a new judgment, which is subject to the customary rights of appeal.

[2] When the new judgment becomes legally binding, the judgment in absentia, and appeal against the same and decisions already taken in the appellate proceedings become void.

Art. 371 Relationship to an appeal

[1] Within the applicable time limit, a person convicted may file an appeal against the judgment in absentia in addition to or instead of the application for re-assessment. The person convicted must be notified of this possibility in accordance with Article 368 paragraph 1.

[2] An appeal shall only be considered if the application for re-assessment has been rejected.

Chapter 5 Separate Measures Procedures

Section 1 Good Behaviour Bond Order

Art. 372 Requirements and jurisdiction

[1] If it is not competent to order a good behaviour bond in terms of Article 66 SCC[181] in the course of the criminal proceedings against the accused, separate proceedings shall be held.

[2] If the accused is in detention due to a risk that he or she will commit a threatened felony or misdemeanour or that he or she will commit that felony or misdemeanour again, a good behaviour bond order is not competent.

[3] The application to begin separate proceedings must be submitted to the public prosecutor in the place where the threat was made or the intention was expressed to commit the offence again.

Art. 373 Procedure

[1] The public prosecutor shall question the persons involved and then pass the files to the compulsory measures court. The court shall order the measures mentioned in Article 66 SCC[182]. The person concerned may file an objection against an order of detention with the objections authority.

[2] The person threatened has the same rights as a private claimant. He or she may where this is justified be required to lodge security for the costs of the proceedings and for damages.

[3] The person alleged to have made the threat has the rights of an accused.

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182 SR **311.0**

4 Where money bail in accordance with Article 66 paragraph 3 SCC is forfeited to the state, a ruling thereon shall be issued in application of Article 240.

5 If a person threatens immediate danger, the public prosecutor may place this person provisionally in detention or take other protective measures. The public prosecutor shall bring the person immediately before the competent compulsory measures court; this court shall decide on whether to order detention.

Section 2
Procedure where the Accused is not legally responsible due to a Mental Disorder

Art. 374 Requirements and procedure

1 If an accused is not legally responsible due to a mental disorder and if the application of Article 19 paragraph 4 or 263 SCC[183] is not an option, the public prosecutor shall make a written application to the court of first instance for a measure in accordance with Articles 59–61, 63, 64, 67 or 67*b* or 67*e* SCC, without abandoning the proceedings beforehand due to the accused not being legally responsible due to a mental disorder.[184]

2 The court of first instance may in consideration of the accused's state of health or to protect the accused's privacy:

a. conduct the proceedings in the absence of the accused;

b. exclude the public from the proceedings.

3 It shall give any private claimant the opportunity to comment on the application made by the public prosecutor and on his or her civil claim.

4 The provisions on the main proceedings at first instance otherwise apply.

Art. 375 Decision

1 The court shall order the measures requested or other measures if it is satisfied that the accused committed the act but is not legally responsible due to a mental disorder and that measure is required. It shall decide on any civil claims at the same time.

2 The order in respect of the measure and the decision on the civil claims are issued in a judgment.

3 If the court is satisfied that the accused has the mental capacity to be legally responsible or that he or she committed the offences while lacking such mental capacity, it shall reject the application made by the public prosecutor. When this decision becomes legally binding, the preliminary proceedings against the accused shall be continued.

183 SR **311.0**
184 Amended by Annex No 1 of the FA of 13 Dec. 2013 on Activity Prohibition Orders and Contact Prohibition and Exclusion Orders, in force since 1 Jan. 2015 (AS **2014** 2055; BBl **2012** 8819).

Section 3 Separate Forfeiture Proceedings

Art. 376 Requirements

Separate forfeiture proceedings are conducted if a decision must be made on the forfeiture of property or assets outside of criminal proceedings.

Art. 377 Procedure

[1] Property or assets that will probably be forfeited in separate proceedings shall be seized.

[2] If the requirements for forfeiture are fulfilled the public prosecutor shall order their forfeiture in a forfeiture order; it shall give the person concerned the opportunity to respond.

[3] If the requirements are not fulfilled, it shall order the abandonment of the proceedings and return the property or assets to the entitled person.

[4] The rejection procedure is governed by the provisions on summary penalty orders. Any decision made by the court shall be issued in the form of a decree or ruling.

Art. 378 Use for the benefit of the person suffering harm

The public prosecutor or the court shall also decide on the applications made by the person suffering harm for the forfeited property or assets to be used for his or her benefit. Article 267 paragraphs 3–6 applies *mutatis mutandis*.

Title 9 Appellate Remedies

Chapter 1 General Provisions

Art. 379 Applicable regulations

Appellate proceedings are governed *mutatis mutandis* by the general provisions of this Code, unless this Title provides otherwise.

Art. 380 Final or non-contestable decisions

Where this Code provides that a decision is final or non-contestable, there is no appellate remedy in respect of that decision under this Code.

Art. 381 Rights of the public prosecutor

[1] The public prosecutor may seek an appellate remedy for the benefit or to the detriment of an accused or a person convicted.

[2] If the Confederation or cantons provide for a chief prosecutor or an attorney general, they shall specify which public prosecutor is entitled to seek an appellate remedy.

3 They shall specify which authorities may seek an appellate remedy in contravention proceedings.

4 The Office of the Attorney General of Switzerland may seek an appellate remedy in respect of cantonal decisions if:

a. federal law provides that it or another federal authority must be notified of the decision;

b. it has referred the criminal case to the cantonal authorities for investigation and adjudication.

Art. 382 Rights of other parties

1 Any party with a legitimate interest in the quashing or amendment of a decision may seek an appellate remedy.

2 A private claimant may not contest a decision on a sanction that has been imposed.

3 In the event of the death of the accused, the person convicted or a private claimant the next-of-kin in terms of Article 110 paragraph 1 SCC[185] and in accordance with their ranking under the law of succession may seek an appellate remedy or continue the appellate proceedings provided their legitimate interests are affected.

Art. 383 Payment of security

1 The director of appellate proceedings may require the private claimant to lodge security within of a time limit to cover any costs and damages. Article 136 remains reserved.

2 If the security is not paid in time, the appellate authority shall not consider the appellate remedy.

Art. 384 Commencement of the period for requesting the appellate remedy

The period for requesting an appellate remedy begins:

a. in the case of a judgment: with the handover or service of the conclusions;

b. in the case of other decisions: with the service of the decision;

c. in the case of a procedural act not subject to written notice: when the recipient is informed of it.

Art. 385 Statement of the grounds and form

1 If this Code requires that the appellate remedy be accompanied by a statement of the grounds, the person or the authority seeking the appellate remedy must indicate precisely:

a. which points of the decision are contested;

b. what grounds there are for reaching a different decision;

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c. what evidence they wish to adduce in support of the appellate remedy.

2 If the submission fails to satisfy these requirements, the appellate authority shall return the same and fix a short additional period within which it may be amended. If the submission still fails to satisfy the requirements after this additional period, the appellate authority shall not consider the appellate remedy.

3 The incorrect designation of an appellate remedy does not adversely affect its validity.

Art. 386 Waiver and withdrawal

1 Any person with a right to seek an appellate remedy may waive this right by making a written or oral declaration to the authority issuing the decision on receiving notice of the contestable decision.

2 Any person who has requested an appellate remedy may withdraw the same:

a. in oral proceedings: before the conclusion of the party hearings;

b. in written proceedings: before the conclusion of the exchange of submissions and any amendments to the evidence or files.

3 Waiver and withdrawal are final unless the party has been induced to make his or her declaration by deception, an offence or incorrect official information.

Art. 387 Suspensive effect

Appellate remedies have no suspensive effect, subject to any provisions of this Code that provide otherwise or orders issued by the director of appellate proceedings.

Art. 388 Measures directing proceedings and preliminary measures

The director of appellate proceedings shall take the required measures directing proceedings and preliminary measures that cannot be delayed. He or she may in particular:

a. instruct the public prosecutor to take evidence where this cannot be delayed;

b. order detention;

c. appoint a duty defence lawyer.

Art. 389 Additional evidence

1 The appellate proceedings are based on the evidence that was taken in the preliminary proceedings and in the main proceedings before the court of first instance.

2 Evidence taken by the court of first instance shall only be taken again if:

a. rules on evidence have been infringed;

b. the evidence taken was incomplete;

c. the files on the evidence taken appear to be unreliable.

3 The appellate authority shall take the required additional evidence ex officio or at the request of a party.

Art. 390 Written procedure

1 Any person who wishes to request an appellate remedy for which this Code stipulates a written procedure must file the relevant petition.

2 If the appellate remedy is not obviously inadmissible or unjustified, the director of proceedings shall send the petition to the other parties and the lower court to obtain their response. If the petition cannot be sent to a party or if a party fails to respond, the proceedings shall nevertheless be continued.

3 The appellate authority shall if necessary order a second exchange of written submissions.

4 It shall make its decision by way of circulation or by deliberating in camera based on the files and any additional evidence taken.

5 It may order a hearing ex officio at the request of a party.

Art. 391 Decision

1 In making its decision, the appellate authority is not bound by:

a. the grounds put forward by the parties;

b. the applications made by the parties unless it is considering civil claims.

2 It may not amend decisions to the prejudice of an accused or person convicted if the appeal was filed solely for that person's benefit. However, it may impose a more severe penalty where facts have come to light that the court of first instance could not have known.

3 It may not amend decisions on civil matters to the prejudice of a private claimant if this is the only person to request an appellate remedy.

Art. 392 Extending the application of successful appellate remedies

1 Where only certain individual suspects or person convicted in the same proceedings have requested an appellate remedy and if this appellate remedy is granted, the contested decision shall also be quashed or amended in favour of the persons who did not request an appellate remedy if:

a. the appellate authority assessed the facts of the case differently; and

b. their considerations area also relevant to the other parties.

2 Before making their decision, the appellate authority shall if necessary hear the accused or person convicted who have not requested an appellate remedy, the public prosecutor and the private claimant.

Chapter 2 Objections

Art. 393 Admissibility and grounds

[1] An objection is admissible against:

a. the rulings and the procedural acts of the police, public prosecutor and authorities responsible for prosecuting contraventions;

b. the rulings, decrees and procedural acts of courts of first instance, with the exception of decisions directing proceedings;

c. the decisions of the compulsory measures court in the cases provided for by this Code.

[2] An objection may contest:

a. an infringement of the law, including exceeding and abusing discretionary powers, the denial of justice and unjustified delay;

b. an incomplete or incorrect assessment of the circumstances of the case;

c. a decision that is inequitable.

Art. 394 Inadmissibility of the objection

An objection is not permitted:

a. if an appeal is admissible;

b. against the rejection of requests for further evidence to be taken by the public prosecutor or the authority responsible for prosecuting contraventions, if the application may be filed again before the court of first instance without legal disadvantage.

Art. 395 Collegial court as objections authority

If the objections authority is a collegial court, the director of proceedings shall decide on the objection alone if it has the following subject matter:

a. contraventions only;

b. the financial consequences of a decision where the amount in dispute is no more than 5000 francs.

Art. 396 Form and time limit

[1] An objection against decisions issued in writing or orally must be filed within 10 days in writing and with a statement of grounds with the objections authority.

[2] There is no time limit for filing an objection alleging a denial of justice or unjustified delay.

Art. 397 Procedure and decision

[1] An objection shall be dealt with by written proceedings.

2 If the authority upholds the objection, it shall make a new decision or quash the contested decision and refer the case back to the lower court for a new decision.

3 If it upholds an objection to a ruling abandoning proceedings, it may issue instructions to the public prosecutor or the authority responsible for prosecuting contraventions on the continuation of the proceedings.

4 If it holds that there has been a denial of justice or unjustified delay, it may issue instructions to the authority concerned and set time limits for its compliance.

Chapter 3 Appeals
Section 1 General Provisions

Art. 398 Admissibility and grounds

1 An appeal is permitted against judgments of courts of first instance that conclude the proceedings in their entirety or in part.

2 The court of appeal may review the judgment comprehensively on all contested points.

3 An appeal may contest:

a. an infringement of the law, including exceeding and abusing discretionary powers, the denial of justice and unjustified delay;

b. an incomplete or incorrect assessment of the circumstances of the case;

c. a decision that is inequitable.

4 Where the main hearing before the court of first instance considered contraventions only, the appeal may only claim that the judgment contains errors in law or the assessment of the circumstances was clearly incorrect or based on an infringement of the law. New averments and evidence may not be raised.

5 If the appeal is limited to civil matters, the first instance judgment shall only be reviewed to the extent permitted by the civil procedure law applicable at the place of jurisdiction.

Art. 399 Notice of intention to appeal and appeal petition

1 Notice of intention to appeal must be given in writing or orally to the court of first instance within 10 days of the issuing of the judgment.

2 When it has drawn up the written judgment stating the grounds, the court of first instance shall transmit the notice together with the files to the court of appeal.

3 The party that has given notice of intention to appeal shall file a written appeal petition with the court of appeal within 20 days of receiving the written judgment stating the grounds. In the petition, he or she must indicate:

a. whether he or she is contesting the judgment in its entirety or only in part;

b. which changes to the judgment issued by the court of first instance judgment it is requesting; and

c. what requests for further evidence to be taken it is making.

4 If a person is only contesting part of the judgment, he or she must indicate in the appeal petition which of the following parts the appeal is limited to:

a. the verdict, and which verdict if there is more than one offence;

b. the sentence imposed;

c. the measures ordered;

d. the civil claim or individual civil claims;

e. the incidental effects of the judgment;

f. the award of costs, damages or satisfaction;

g. the subsequent judicial decisions.

Art. 400 Preliminary examination

1 If it is not clear from the appeal petition whether the first instance judgment is being contested in its entirety or only in part, the director of appeal proceedings shall request the party to clarify the petition and set a time limit for that purpose.

2 The director of proceedings shall send a copy of the appeal petition to the other parties immediately.

3 Within 20 days of receipt of the appeal petition, the other parties may:

a. make a written application for the dismissal of the appeal without considering its substance; the application contain with a statement of the grounds;

b. declare their intention to file a cross-appeal.

Art. 401 Cross-appeal

1 Cross-appeals are governed *mutatis mutandis* by Article 399 paragraphs 3 and 4.

2 They are not limited to the scope of the main appeal, unless it relates solely to the civil aspect of the judgment.

3 If the main appeal is withdrawn or dismissed without its substance being considered, the cross-appeal also lapses.

Art. 402 Effect of the appeal

An appeal has suspensive effect with regard to the matters contested.

Section 2 Procedure

Art. 403 Decision to consider the substance of the appeal

1 The court of appeal shall decide in written proceedings whether it should consider the substance of the appeal where the director of proceedings or a party claims:

a. the notice of intention to appeal or appeal petition was filed too late or is inadmissible;

b. the appeal is inadmissible under Article 398;

c. procedural requirements have not been fulfilled or there are procedural impediments.

2 It shall give the parties opportunity to comment.

3 If it decides not to consider the substance of the appeal, it shall give notice of its decision and the grounds therefor to the parties.

4 The director of proceedings shall otherwise and without any further formalities make the required arrangements for conducting the appellate proceedings.

Art. 404 Extent of consideration

1 The court of appeal shall consider only the contested points in the first instance judgment.

2 It may also consider points not contested for the benefit of the accused in order to prevent an unlawful or unfair decision from being made.

Art. 405 Oral procedure

1 The oral appeal hearing is governed by the provisions on the main hearing in the first instance.

2 If the accused or the private claimant filed the appeal or cross-appeal, the director of proceedings shall summon him or her to the appeal hearing. In simple cases, he or she may, if requested, be granted dispensation not to attend and be permitted to submit and justify their applications in writing.

3 The director of proceedings shall summon the public prosecutor to the hearing:

a. in the cases mentioned in Article 337 paragraphs 3 and 4;

b. if the public prosecutor has filed the appeal or the cross-appeal.

4 If the public prosecutor is not summoned, it may submit written applications and a written statement of the grounds or appear personally in court.

Art. 406 Written procedure

1 The court of appeal may deal with the appeal in written proceedings if:

a. its decision relates solely to legal issues;

b. only the civil aspect is being contested;

c. the subject matter of the judgment of the court of first instance is a contravention and the appeal does not request a conviction for a felony or misdemeanour;

d. only an award of costs, damages or satisfaction is being contested;

e. only measures under Article 66–73 SCC[186] are being contested.

2 With the consent the parties, the director of proceedings may also order written proceedings if:

a. the presence the accused is not required;

b. the appeal relates to the decision of a judge sitting alone.

3 The director of proceedings shall fix a time limit within which the party filing the appeal must submit a written statement of the grounds.

4 The subsequent proceedings are governed by Article 390 paragraphs 2–4.

Art. 407 Default by the parties

1 The appeal or cross-appeal is deemed to have been withdrawn if the party that has filed it:

a. fails without excuse to attend or to arrange to be represented at the oral appeal hearing;

b. fails to file any written submissions; or

c. cannot be summoned.

2 If the public prosecutor or the private claimant has filed an appeal against the verdict or the sentence and the accused fails without excuse to attend the hearing, so proceedings in absentia shall be held.

3 If the private claimant has limited his or her appeal to the civil aspect and the accused fails without excuse to attend the hearing, the court of appeal shall decide as on the basis of the findings made in the main hearing before the court of first instance and the other files.

Section 3 Appeal Decision

Art. 408 New judgment

If the court of appeal decides to consider the substance of the appeal, it shall issue a new judgment which replaces the first instance judgment.

Art. 409 Quashing the judgment and remitting the case

1 If the proceedings in the first instance were so seriously flawed that they cannot be rectified by the appeal proceedings, the court of appeal shall quash the contested judg-

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ment and remit the case to the court of first instance so that it may conduct a new main hearing and issue a new judgment.

2 The court of appeal shall decide which procedural acts must be repeated or carried out.

3 The court of first instance is bound by the interpretation of law made by the court of appeal in the decree remitting the case and by the instruction issued in accordance with paragraph 2.

Chapter 4 Review

Art. 410 Admissibility of and grounds for a review

1 Any person who is adversely affected by a legally binding final judgment, a summary penalty order, a subsequent judicial decision or a decision in separate proceedings on measures may request a review of the case if:

a. new circumstances that arose before the decision or new evidence have come to light that are likely to lead to an acquittal, a considerably reduced or more severe penalty for the convicted person or the conviction of an acquitted person;

b. the decision is irreconcilably contradictory to a subsequent criminal judgment relating to the same set of circumstances;

c. it has been proven in other criminal proceedings that the result of proceedings was influenced by a criminal offence; a conviction is not required; if it is not possible to conduct criminal proceedings, proof may be adduced in another way.

2 The review of a case due to a violation of the Convention of 4 November 1950[187] for the Protection of Human Rights and Fundamental Freedoms (ECHR) may be requested if:

a.[188] the European Court of Human Rights has held in a final judgment (Art. 44 ECHR) that the ECHR or its Protocols have been violated or the case has been concluded by means of a friendly settlement (Art. 39 ECHR);

b. the consequences the violation cannot be compensated for by the payment of damages; and

c. the review of a case is necessary in order to redress the violation.

3 The review of a case for the benefit of the person convicted may also be requested after the case becomes time-barred.

4 Is the review of a case is limited to civil claims, it shall be admissible only if the civil procedure law applicable at the place of jurisdiction would allow a review of a case.

187 SR **0.101**
188 Amended by Annex No 3 of the FA of 1 Oct. 2021, in force since 1 July 2022 (AS **2022** 289; BBl **2021** 300, 889).

Art. 411 Form and time limit

[1] Applications for the review of a case must be submitted to the court of appeal in writing and include a statement of the grounds. The application must indicate and substantiate the grounds for the review.

[2] Applications in terms of Article 410 paragraph 1 letter b and 2 must be filed within 90 days of receiving notice of the decision concerned. In other cases, applications for the review of a case are not subject to a time limit.

Art. 412 Preliminary examination and decision to consider the substance of the case

[1] The court of appeal shall conduct a preliminary examination of the application for a review in written proceedings.

[2] If the application is clearly in admissible or unjustified or if an application on the same grounds has already been made and rejected, the court shall not consider the substance of the case.

[3] The court shall otherwise request the other parties and the lower court to comment in writing.

[4] It shall decide on the required additions to the evidence and files as well as on preliminary measures, unless this is the responsibility of the director of proceedings in accordance with Article 388.

Art. 413 Decision

[1] If the court of appeal rejects the grounds for a review put forward, it shall dismiss the application for a review and cancel any preliminary measures.

[2] If the court of appeal accepts the grounds for a review put forward, it shall quash the contested decision in its entirety or in part and:

a. remit the case to the authority that it designates for reconsideration and a new judgment; or

b. make a new decision itself, provided the state of the files so permits.

[3] In the event that it remits the case, it shall decide on the extent to which the grounds for a review accepted nullify the legality and enforceability of the contested decision and at what stage the proceedings should be resumed.

[4] It may order the accused to be placed temporarily or to remain in preventive detention, if the relevant requirements are fulfilled.

Art. 414 New proceedings

[1] If the court of appeal has remitted the case to the public prosecutor, the public prosecutor shall decide whether to raise a new prosecution, to issue a summary penalty order or to abandon the proceedings.

[2] If it has remitted the case to a court, the court shall take any additional evidence required and, following a main hearing, shall issue a new judgment.

Art. 415 Consequences of the new decision

[1] If the new decision imposes a higher sentence on the accused, the portion of the original sentence already served shall be taken into account.

[2] If the accused is acquitted or a more lenient sentence is imposed or if the proceedings are abandoned, any fines or monetary penalties that have been overpaid shall be refunded. Claims made by the accused for damages or satisfaction are governed by Article 436 paragraph 4.

[3] If a conviction is overturned and an acquittal imposed, the accused or, following his or her death, his or her next-of-kin may demand that the new decision be published.

Title 10 Procedural Costs, Damages and Satisfaction

Chapter 1 General Provisions

Art. 416 Scope of application

The provisions of this Title apply to all procedures under this Code.

Art. 417 Liability to pay costs for procedural default

In the event of failure to comply with procedural requirements or any other form of procedural default, the criminal justice authority may require the party responsible for the default to pay procedural costs and damages regardless of the outcome of the proceedings.

Art. 418 Participation of more than one person and liability of third parties

[1] If more than one person is liable to pay costs, the costs shall be imposed proportionately.

[2] Where two or more persons are jointly responsible for costs being incurred, the criminal justice authority may order that persons concerned are jointly and severally liable to pay the costs.

[3] It may require third parties in accordance with the civil law principles of liability to bear the costs jointly and severally with the accused.

Art. 419 Liability to pay costs of persons not legally responsible due to a mental disorder

If the proceedings are abandoned or result in an acquittal because the accused is not legally responsible due to a mental disorder, the costs may be imposed on the accused if this appears reasonable in all the circumstances.

Art. 420 Legal action

The Confederation or the canton may take legal action against persons who wilfully or through gross negligence lead it to incur costs by:

a. causing proceedings to be instituted;
b. make the proceedings considerably more complicated;
c. bringing about a decision that is overturned in review proceedings.

Art. 421 Decision on costs

1 The criminal justice authority shall decide who is to bear any costs in the final judgment.

2 It may make an advance decision in:

a. interim decisions;
b. decisions on the partial abandonment of the proceedings;
c. decisions on appeals against interim and abandonment decisions.

Chapter 2 Procedural Costs

Art. 422 Definition

1 The procedural costs comprise the charges that cover fees and outlays in a specific criminal case.

2 Outlays are in particular:

a. the cost of the duty defence lawyer and legal aid representative;
b. the cost of translations;
c. the cost of expert reports;
d. the cost incurred by involving other authorities;
e. postage, telephone and similar expenses.

Art. 423 Principles

1 The procedural costs shall be borne by the Confederation or the canton that conducts the proceedings, unless otherwise provided in this Code.

2 and 3 …[189]

Art. 424 Calculation and fees

1 The Confederation and the cantons shall issue regulations on the calculation of procedural costs and shall stipulate the fees.

2 They may stipulate flat-rate fees for simple cases that also cover the outlays.

189 Repealed by Annex No II 7 of the Criminal Justice Authorities Act of 19 March 2010, with effect from 1 Jan. 2011 (AS **2010** 3267; BBl **2008** 8125).

Art. 425 Deferment and remission

The criminal justice authority may defer its claim to procedural costs or, taking account of the financial circumstances of the person liable to pay, reduce or remit the sum due.

Art. 426 Liability to pay costs of the accused and parties to separate measures proceedings

[1] The accused shall bear the procedural costs if he or she is convicted. Exempted therefrom are the costs of the duty defence lawyer; Article 135 paragraph 4 is reserved.

[2] If the proceedings are abandoned or the accused acquitted, all or part of the procedural costs may be imposed on the accused if he or she has unlawfully or culpably caused the proceedings to be initiated or has obstructed their conduct.

[3] The accused shall not bear the procedural costs that:

a. the Confederation or the canton has incurred through unnecessary or flawed procedural acts;

b. are incurred for translations that were necessary because the accused speaks a foreign language.

[4] The accused shall bear the costs of the private claimant's legal aid representative only if he or she has the financial means to do so.

[5] The provisions of this Article apply *mutatis mutandis* to parties to separate measures procedures if they are unsuccessful.

Art. 427 Liability to pay costs of the private claimant and the complainant

[1] The private claimant may be ordered to pay procedural costs incurred as a result of his or her applications on civil matters if:

a. the proceedings are abandoned or the accused is acquitted;

b. the private claimant withdraws the civil claim before the conclusion of the main hearing before the court of first instance;

c. the civil proceedings are dismissed or remitted to the civil courts.

[2] In the case of offences prosecuted only on complaint, procedural costs may be imposed on the complainant where he or she has wilfully or through gross negligence brought about the proceedings or has obstructed their conduct, or on the private claimant where:

a. the proceedings are abandoned or the accused is acquitted; and

b. the accused is not liable to pay costs in terms of Article 426 paragraph 2.

[3] If the complainant withdraws the criminal complaint as part of a settlement arranged by the public prosecutor, the Confederation or the canton shall normally bear the procedural costs.

4 An agreement between the complainant and the accused on who is to bear the costs in the event that the criminal complaint is withdrawn requires the approval of the authority that orders the case to be abandoned. The agreement may not prejudice the Confederation or the canton.

Art. 428 Allocation of costs in appellate proceedings

1 The costs of the appellate proceedings are borne by the parties according to whether they are successful or not. An appellant is also regarded as unsuccessful if the appeal is dismissed without its substance being considered or if the appeal is withdrawn.

2 Where an appellant secures a more favourable decision, he or she may be ordered to pay costs if:

a. the appeal is successful due to circumstances that became apparent for the first time in the appellate proceedings; or

b. only minor changes are made to the contested decision.

3 If the appellate authority itself issues a new decision, it shall also review the ruling on costs issued by the lower court.

4 If it quashes a decision and remits the case to the lower for a new decision, the Confederation or the canton shall bear the costs of the appellate proceedings, if the appellate authority so decides, those of the lower court.

5 If an application for a review is approved, the criminal justice authority that must subsequently deal with the case shall decide at its discretion on the costs of the first proceedings.

Chapter 3 Damages and Satisfaction

Section 1 Accused

Art. 429 Claims

1 If the accused is wholly or partly acquitted or if the proceedings against the accused are abandoned, he or she is entitled to:

a. damages for his or her expenditure incurred in the appropriate exercise of their procedural rights;

b. damages for the financial losses that he or she incurs due to the required participation in the criminal proceedings;

c. satisfaction for particularly serious violations of his or her personal circumstances, in particular due to deprivation of liberty.

2 The criminal justice authority shall examine the claim ex officio. It may require the accused to quantify and substantiate the claim.

Art. 430 Reduction or refusal of damages or satisfaction

1 The criminal justice authority may reduce the damages or satisfaction or refuse to pay if:

a. the accused has unlawfully and culpably brought about the proceedings or has obstructed their conduct;

b. the private claimant is required to pay damages to the accused; or

c. the accused's expenditure is negligible.

2 In the appellate proceedings, damages and satisfaction may be further reduced if the requirements of Article 428 paragraph 2 are fulfilled.

Art. 431 Unlawfully applied compulsory measures

1 If compulsory measures have been applied to the accused unlawfully, the criminal justice authority shall award the accused appropriate damages and satisfaction.

2 There is a right to damages and satisfaction in relation to remand and preventive detention if the permitted period of detention is exceeded is and the excessive deprivation of liberty cannot be not accounted for in sanctions imposed in respect of other offences.

3 The right under paragraph 2 ceases to apply if the accused:

a. is sentenced to a monetary penalty, community service or a fine and the equivalent alternative custodial sentence would not be substantially shorter than the time spent on remand or in preventive detention;

b. receives a suspended custodial sentence the length of which exceeds the time spent on remand or in preventive detention.

Art. 432 Rights in relation to the private claimant and the complainant

1 The accused, if acquitted, is entitled to appropriate damages from the private claimant in respect of expenditure incurred in relation to the civil claim.

2 If the accused is acquitted of an offence prosecuted only on complaint, the complainant may be required to compensate the accused for expenditure incurred in the proper exercise of his or her procedural rights, provided the complainant has brought about the proceedings wilfully or through gross negligence or has obstructed their conduct.

Section 2 Private Claimant and Third Parties

Art. 433 Private claimant

1 The private claimant is entitled to appropriate damages from the accused for costs incurred in the proceedings if:

a. the claim is successful; or

b. the accused is liable to pay costs in terms of Article 426 paragraph 2.

2 The private claimant must submit his or her damages claim to the criminal justice authority, and quantity and substantiate the same. If he or she fails to fulfil this obligation, the criminal justice authority shall not consider the claim

Art. 434 Third parties

1 Third parties have the right to appropriate damages for losses that are not otherwise covered and to satisfaction if they have incurred losses as a result of procedural acts or in providing support to the criminal justice authorities. Article 433 paragraph 2 applies *mutatis mutandis*.

2 A decision shall be made on the claims in the final judgment. In clear cases, the public prosecutor may issue a decision in the preliminary proceedings.

Section 3 Special Provisions

Art. 435 Time limits

Claims for damages and satisfaction against the Confederation or the canton must be filed within 10 years of the date on which the decision becomes legally binding.

Art. 436 Damages and satisfaction in appellate proceedings

1 Claims for damages and satisfaction in appellate proceedings are governed by Articles 429–434.

2 Where the accused is neither fully nor partly acquitted and the proceedings are not abandoned but the accused is successful on other points, he or she is entitled to appropriate damages for his or her expenditure.

3 If the appellate authority quashes a decision in accordance with Article 409, the parties are entitled to appropriate damages for their expenditure in the appellate proceedings and that part of the proceedings before the court of first instance that related to the quashed decision.

4 An accused who is acquitted or receives a reduced sentence following a review of the case is entitled to appropriate damages for his or her expenditure in the review proceedings. He or she is also entitled to satisfaction and damages for time spent in custody, provided this deprivation of liberty cannot be not accounted for in sanctions imposed in respect of other offences.

Title 11
Legal Effect and Execution of Decisions in Criminal Proceedings
Chapter 1 Legal Effect

Art. 437 Entry into force

[1] Judgments and other decisions concluding proceedings against which an appellate remedy may be requested under this Code become legally binding when:

a. the period for requested appellate remedy has expired and no request has been made;

b. the entitled person declares that he or she is waiving his or her right to an appellate remedy or withdrawing an appellate remedy already requested;

c. the appellate authority decides not to consider the substance of the appellate remedy or to reject it.

[2] The decision becomes legally binding with retrospective effect from the day on which the decision was issued.

[3] Decisions that are not subject to the right to an appellate remedy under this Code become legally binding on being issued.

Art. 438 Notification of legal effect

[1] The criminal justice authority that has issued a decision shall note the date on which it becomes legally binding in the files or in the judgment.

[2] If the parties have been notified that an appellate remedy has been requested, they shall also be notified of the date on which the judgment becomes legally binding.

[3] If there is a dispute over whether or when a decision has become legally binding, the authority that has issued the decision shall rule on the matter.

[4] An objection may be filed against the ruling on the legally binding effect of the decision.

Chapter 2 Enforcement of Decisions in Criminal Proceedings

Art. 439 Execution of sentences and measures

[1] The Confederation and the cantons shall determine the authorities responsible for the execution of sentences and measures as well as the relevant procedure; special regulations in this Code and in the SCC[190] are reserved.

[2] The executive authority shall issue an execution order.

[3] Legally-binding custodial sentences and custodial measures must be executed immediately:

190 SR **311.0**

a. if there is a risk of absconding;

b. if there is a serious risk to the public; or

c. if there is no guarantee that the purpose of the measure will otherwise be fulfilled.

4 In order to implement the execution order, the executive authority may arrest the person convicted, issue a warrant for his or her arrest or request his or her extradition.

Art. 440 Preventive detention

1 In cases of urgency, the executive authority may place the person convicted in preventive detention to ensure of that the sentence or the measure is executed.

2 It shall submit the case within 5 days of the person's detention:

a. to the court that imposed the sentence or measure that is to be executed;

b. in the case of summary penalty orders, to the compulsory measures court at the place where the public prosecutor issued the summary penalty order.

3 The court shall make a final decision on whether the person convicted remains in detention until the commencement of the sentence or measure.

Art. 441 Time limit for enforcement

1 Sentences that are time-barred may not be enforced.

2 The executive authority shall verify ex officio whether the sentence is time barred.

3 The person convicted may contest the planned execution of a time-barred sentence or measure before the objections authority of the canton of execution. This authority shall also decide on whether the appeal has suspensive effect.

4 If the person convicted is made to serve a time-barred custodial sanction, he or she shall be entitled to damages and satisfaction in analogous application of Article 431.

Art. 442 Enforcement of decisions on procedural costs and other financial payments

1 Procedural costs, monetary penalties, fines and other financial payments to be made in connection with criminal proceedings shall be collected in accordance with the provisions of the DEBA[191].

2 Claims in respect of procedural costs must be filed within 10 years of the date on which the decision on costs becomes legally binding. Default interest amounts to 5 per cent.

3 The Confederation and the cantons shall determine the authorities that collect financial payments.

191 SR **281.1**

4 The criminal justice authorities may set off their claims in respect of procedural costs against the claims to damages of the party liable to pay arising from the same criminal proceedings and against seized assets.

Art. 443 Enforcement of criminal judgments on civil matters

Insofar as the judgment relates to civil claims, it shall be enforced in accordance with the civil procedure law applicable at the place of execution and the DEBA[192].

Art. 444 Official notices

The Confederation and the cantons shall determine the authorities that must issue official notices.

Title 12 Final Provisions

Chapter 1 Implementing Provisions

Art. 445

The Federal Council and, insofar as they are responsible, the cantons shall issue the provisions required to implement this Code.

Chapter 2 Amendment of Legislation

Art. 446 Repeal and amendment of current legislation

1 The repeal and the amendment of current legislation are regulated in Annex 1.

2 The Federal Assembly may amend by ordinance provisions of federal acts that are contradictory to this Code but which have not been formally amended herein.

Art. 447 Coordination provisions

The coordination of provisions of other enactments with this Code is regulated in Annex 2.

Chapter 3 Transitional Provisions

Section 1 General Procedural Provisions

Art. 448 Applicable law

1 Proceedings that are pending when this Code comes into force shall be continued in accordance with the new law unless the following provisions provide otherwise.

192 SR **281.1**

2 Procedural acts that were ordered or carried out before this Code came into force shall remain valid.

Art. 449 Jurisdiction

1 Proceedings that are pending when this Code comes into force shall be continued by the competent authorities under the new law unless the following provisions provide otherwise.

2 Conflicts on jurisdiction between authorities of the same canton shall be decided by the objections authority of the canton concerned and conflicts between the authorities of different cantons or between cantonal and federal authorities shall be decided by the Federal Criminal Court.

Section 2
Main Proceedings of First Instance and Special Proceedings

Art. 450 Main proceedings of first instance

If the main hearing has already begun when this Code comes into force, it shall be continued in accordance with the previous law in the previously competent court of first instance.

Art. 451 Separate subsequent court decisions

After this Code comes into force, separate subsequent court decisions shall be made by the criminal justice authority that would have been responsible for the first instance judgment under this Code.

Art. 452 Proceedings in absentia

1 Applications for re-assessment following a judgment in absentia that are pending when this Code comes into force shall be considered in accordance with the previous law.

2 Applications for re-assessment following a judgment in absentia under the previous law that are made after this Code comes into force shall be considered in accordance with the law that is more favourable to the applicant.

3 The new law applies to the re-assessment. The court that would have been responsible for the judgment in absentia in accordance with this Code has jurisdiction.

Section 3 Appellate Proceedings

Art. 453 Decisions made before this Code comes into force

[1] If a decision was made before this Code comes into force, an appellate remedy against it shall be judged in accordance with the previous law by the authorities competent under the previous law.

[2] If proceedings are remitted by the appellate authority or the Federal Supreme Court for re-assessment, the new law applies. The re-assessment shall be carried out by the authority that would have been responsible for the quashed decision in accordance with this Code.

Art. 454 Decision made after this Code comes into force

[1] Appellate remedies against first instance decisions that are made after this Code comes into force are governed by the new law.

[2] Appellate remedies against first instance decisions of higher courts that are made in accordance with the previous law after this Code comes into force are governed by the previous law.

Section 4 Rejections of Summary Penalty Orders; Private Prosecutions

Art. 455 Rejections of summary penalty orders

Rejections of summary penalty orders are governed by Article 453 *mutatis mutandis*.

Art. 456 Private prosecutions

Private prosecutions under the previous cantonal law that are pending before a court of first instance when this Code comes into force shall be continued to the conclusion of first instance proceedings in accordance with the previous law by the court that was competent under the previous law.

Section 5[193] Transitional Provision to the Amendment of 28 September 2012

Art. 456*a*

In proceedings that are pending when the Amendment of 28 September 2012 to this Code comes into force, the new law applies to examination hearings from the date on which the Amendment comes into force.

193 Inserted by No I 2 of the FA of 28 Sept. 2012 (Transcription Regulations), in force since 1 May 2013 (AS **2013** 851; BBl **2012** 5707 5719).

Chapter 4 Referendum and Commencement

Art. 457

[1] This Code is subject to an optional referendum.

[2] The Federal Council shall determine the commencement date.

Commencement date: 1 January 2011[194]

[194] FCD of 31 March 2010.

Annex 1
(Art. 446 para. 1)

Repeal and Amendment of Current Legislation

I

The following Federal Acts are repealed:

1. Federal Act of 15 June 1934[195] on the Administration of Federal Criminal Justice;
2. Federal Act of 20 June 2003[196] on Covert Investigations.

II

The federal acts below are amended as follows:

…[197]

195 [BS **3** 303; AS **1971** 777 No III 4; **1974** 1857 Annex No 2; **1978** 688 Art. 88 No 4; **1979** 1170; **1992** 288 Annex No 15, 2465 Annex No 2; **1993** 1993; **1997** 2465 Annex No 7; **2000** 505 No I 3, 2719 No II 3, 2725 No II; **2001** 118 No I 3, 3071 No II 1, 3096 Annex No 2, 3308; **2003** 2133 Annex No 9; **2004** 1633 No I 4; **2005** 5685 Annex No 19; **2006** 1205 Annex No 10; **2007** 6087; **2008** 1607 Annex No 1, 4989 Annex 1 No 6, 5463 Annex No 3; **2009** 6605 Annex No II 3]

196 [AS **2004** 1409; **2006** 2197 Annex No 29; **2007** 5437 Annex No II 6; **2006** 5437 Art. 2 No 2. AS **2010** 1881 Annex 1 No I 2]

197 The amendments may be consulted under AS **2010** 1881.

Annex 2
(Art. 447)

Coordination Provisions

1. Coordination of Article 305 paragraph 2 letter b of the Criminal Procedure Code with the new Victim Support Act[198]

Irrespective of whether the new Victim Support Act of 23 March 2007[199] (new VSA) comes into force before or after the Criminal Procedure Code of 5 October 2007 (CPC), on commencement of whichever comes into force later or if both come into force at the same time, Article 305 paragraph 2 letter b CPC shall be amended as follows:

…

2. Coordination of Number 9 of Annex 1 with the new Victim Support Act

Irrespective of whether the new VSA comes into force before or after the CPC, on commencement of whichever comes into force later or if both come into force at the same time Number 9 of Annex 1 of the CPC shall cease to have effect and the new VSA shall be amended in accordance with number 10 of Annex 1 of the CPC.

3. Coordination of the Military Criminal Procedure Code of 23 March 1979[200] (Annex 1 number 12) with the new VSA

Irrespective of whether the new VSA comes into force before or after the CPC, on commencement of whichever comes into force later or if both come into force at the same time Articles 84a, 104 paragraph 3 and 118 paragraph 2 shall be amended by number 12 of the Annex 1 the CPC as follows:

…

4. Coordination of Article 269 paragraph 2 letter a with the Federal Decree of 18 December 2015 on the Adoption and Implementation of the International Convention for the Protection of All Persons from Enforced Disappearance

Irrespective of whether the present amendment to the Criminal Procedure Code or the Amendment of 18 December 2015[201] comes into force first, on commencement of whichever comes into force later or if both come into force at the same time, the following provision shall be worded as follows:

…

198 The new VSA came into force on 1 Jan. 2009.
199 SR **312.5**
200 SR **322.1**
201 AS **2016** 4687

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