

# **THE KYRGYZ REPUBLIC**

## **CRIMINAL PROCEDURE CODE**

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28 June 2001 #62, 4 August #81, 20 March 2002 #41, 20 March 2002 #41,  
16 October 2002 #141, 13 March 2003 #61, 11 June 2003 #98, 5 August 2003 #192,  
14 November 2003 #221, Decision of the Constitutional Court of KR dated 29 January 2004,  
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8 August 2004 #111, 22 June 2005 #112,  
Decision of the Constitutional Court of KR dated 13 January 2006,  
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approved by the Legislative Assembly  
of Jogorku Kenesh (Parliament) of the Kyrgyz Republic on 24 May 1999

## **GENERAL PART**

### **SECTION I. GENERAL PROVISIONS**

#### **CHAPTER 1. MAJOR PROVISIONS**

##### **Article 1. Legislation Governing Criminal Procedure**

- (1) Criminal Procedure shall be governed by the Constitution of the Kyrgyz Republic, the Law of Kyrgyz Republic about Supreme Court and courts of primary and appellate jurisdiction, and this Code.
- (2) Common principles and provisions of jus gentium and international treaties ratified by the Kyrgyz Republic shall be a constituent part of the criminal procedure law and shall directly generate human rights and freedoms in the field of the criminal procedure.
- (3) Laws regulating the order of criminal procedure shall be applied in case they are included into this Code.
- (4) No laws and other documents in the field of criminal procedure shall be issued in the Kyrgyz Republic, revoking or derogating human and civil rights, violating independence of courts and adversarial form of trial, giving the evidences predetermined power, contradicting common principles and provisions of jus gentium, provisions of international treaties of an independent state.
- (5) If during the criminal case procedure there occurs a need for processing of an issue, which should be decided as provided by the civil or administrative law, it shall be decided under the civil or administrative procedure.

(As amended by the Law of KR dated 8 August 2004 #111)

## **Article 2. Application of Prevailing Legal Regulations in Criminal Procedure.**

- (1) The Constitution of the Kyrgyz Republic has the supreme legal effect and direct application throughout the territory of the Kyrgyz Republic. In case of any contradiction between provisions of this Code and provisions of the Constitution of the Kyrgyz Republic, provisions of the Constitution shall be applied.
- (2) In case of any contradiction between provisions of this Code and provisions of the Constitutional law of the Kyrgyz Republic, provisions of the Constitutional law shall be applied. In case of any contradiction between provisions of this Code and other laws, provisions of this Code shall be applied.
- (3) International treaties ratified by the Kyrgyz Republic shall have priority over this Code and shall be applied directly, except for the cases when the international treaty provides issuing law for its application.

## **Article 3. Limits for Application of the Criminal Procedure law**

- (1) Criminal proceedings shall be conducted as provided by the law, effective at the moment of investigation and the court proceedings.
- (2) Criminal proceedings in the territory of the Kyrgyz Republic in any case shall be conducted as provided by this Code despite the actual location of the commission of the crime.
- (3) If not otherwise provided by international treaties on mutual legal cooperation between the Kyrgyz Republic and other states, criminal proceedings in respect to foreign citizens and persons without citizenship involved in the commission of a crime shall be conducted in the territory of the Kyrgyz Republic as provided by this Code.
- (4) If so provided by the international treaty with the state of concern, Criminal Procedure rules of this state may be applied while performing some proceedings on the instructions of courts or investigating authorities of such state.
- (5) In respect to persons enjoying the right of diplomatic immunity herein provided proceedings may be applied only at the request or with the consent of such persons. Such consent shall be requested through the Ministry of Foreign Affairs of the Kyrgyz Republic.
- (6) Criminal procedure law charging new responsibilities on, directly or indirectly revoking or derogating the right of the proceeding's participants, limiting their application by special conditions, shall have no retroactive effect.
- (7) Admissibility of evidence is determined as provided by the law effective at the moment of the evidence occurrence.

## **Article 4. Purpose of Criminal Procedure law**

- (1) The major purpose of criminal procedure shall be to provide quick and complete clearance of crime, convicting and charging with criminal liability those who committed the crime, fair court examination and right application of the criminal statute.
- (2) The order of proceedings for criminal cases provided by the law shall guarantee the protection from groundless accusation and conviction, illegal limitation of human and civil rights and freedoms, shall guarantee immediate and complete discharge in case of illegal

accusation and conviction, and shall contribute to strengthening law and order, prevention of crimes, encouraging respect towards law.

## **Article 5. Major Definitions Used in the Code**

Major terms:

“Court”— a tribunal trying criminal case in all degrees of jurisdiction and exercising judicial control over the legitimacy of investigational proceedings and decisions of a prosecutor, investigator, agency of preliminary investigation in cases stipulated by this Code.

“Court of primary jurisdiction”—any court authorized to determine circumstances of a case during hearing and rendering a verdict on the case.

“Court of appellate jurisdiction”— any regional, Bishkek city court, Military court of the Kyrgyz Republic, consisting of three judges, hearing appeals and petitions against court verdicts that did not take effect.

“Court of cassation jurisdiction” – regional courts, Bishkek city court, Military court of Kyrgyz Republic, consisting of three judges, hearing appeals and petitions against court verdicts that came into legal force.

“Court of review jurisdiction”— the supreme court of the Kyrgyz Republic hearing appeals and petitions against court verdicts, rulings and resolutions that took effect.

“Judge”—a judge of any court, the chairperson, deputy chair of a court.

“Presiding judge”—a judge presiding in collective or personal hearing a case.

“Parties”— agencies and persons performing functions of prosecution and defense in the process of the adversarial trial on a criminal case.

“Participants of procedure” – investigator, prosecutor (public prosecutor) and victim (private prosecutor), advocate, suspect, accused, civil claimant, civil defendant, and their representatives, and other persons drawn to proceedings.

“Prosecutor”—Prosecutor-General of the Kyrgyz Republic, prosecutor of the city of Bishkek, prosecutors of regions, district (city) prosecutors; military and other prosecutors authorized with the same rights as district (city) prosecutors; prosecutors’ deputies and aids, prosecutors of departments and administrations of public prosecutor offices.

“Investigator”— officer of procuracy agencies, police officer, national safety officer, tax police officer, customs officer of criminal-procedural system of Ministry of Justice of Kyrgyz Republic, authorized to conduct investigation on a criminal case.

“Investigation” – procedural form of pretrial actions of authorized agencies within the stipulated herein authorities to discover, establish and secure circumstances of a case and charge those who committed the crime with criminal liability.

“Defense”— procedural actions undertaken by defense party to secure rights and interests of suspects, confute or mitigate accusation, and discharge persons illegally exposed to criminal prosecution.

“Identifying witness” – adult person, with no interest in the case outcomes, drawn to certify the fact of investigative action, its progress and results.

“Applicant” – a person applying to investigation agencies for protection of his (some one else’s) actual or assumed right in the way of criminal procedure.

“Representatives” – persons, authorized to represent legal interests of a victim, civil claimant, civil defendant, as provided by law or treaty.

“Legal representatives”—parents, parents by adoption, trustees, guardians of the suspect, accused or of the victim of a crime, civil claimant, and also representatives of those organizations and persons who are in charge of the suspect, accused or the victim, public representatives.

The representatives of legal entities, political parties, professional unions, remedial and other public associations may be admitted as public representatives of an accused.

“Relatives” – persons related to each other, having common ancestors, spouses and parents of a spouse.

“Close relatives”—parents, spouse, children, parents by adoption, adopted children, own brothers and sisters, grandfathers, grandmothers, grandchildren.

“Criminal case” – individual proceeding conducted by investigating agency and court on one or several crimes committed (supposedly committed).

“Case procedure” – body of proceedings and decisions, taken on concrete criminal case in the course of its initiation, investigation, hearing and serving of a sentence (service).

“Case materials” – documents and items, being constituent part of the case or presented to be included in it; messages, documents and items, which may help in establishing circumstances of the case.

“Proceedings” – actions, undertaken in the course of criminal procedure as provided by this Code;

“Transcript of proceedings”—procedural document describing each proceeding taken by the agency conducting the criminal procedure.

“Procedural decisions” – formal documents of application of procedural criminal law, made by agencies conducting criminal procedure, within the limits of their competence, and verdicts, resolutions, conclusions, petitions, sanctions presented in the form provided by this Code.

“Resolution”—decision of an investigator, prosecutor, personal decision of a judge other than a verdict, made in the course of criminal proceedings on a case; decision of the Supreme Court of the Kyrgyz Republic.

“Personal ruling”— decision made by a court which brings violations of laws, reasons and circumstances assisting the commission of crimes to the attention of state agencies and demands certain measures to be taken.

“Verdict”—decision of a court of primary jurisdiction, appellate jurisdiction rendered during the trial on a criminal case which determines whether the defendant is guilty and, if so, establishes the penalty, or not guilty.

“Ruling”—any decision other than verdict made at the trial by appellate instance of a court.

“Sanction (Warrant)” – document of prosecutor’s approval of procedural decision, made by the agency of investigation.

“Explanation” – verbal or written arguments brought forward by participants of the procedure and applicants to justify one’s claim, or the claim of a person one presents.

“Appeal” – petition of an accused, justified, defender, victim and his representative, civil claimant and civil defendant or their representatives against the court decisions.

“Petition”—petition of a prosecutor against decisions of a court.

“Personal complaint”—petition file by one of participants of the proceedings, except prosecutor, against the resolution of the judge.

“Personal petition”—petition of a prosecutor against the resolution of a judge.

“Motion” – request of a party or the applicant, towards the agency, which conducts the criminal proceedings.

“Scientific and technological facilities” – devices, special facilities, materials legally used to discover, withdraw, and investigate identifying evidences.

“Dwelling house” – premises or building for temporary or permanent residence of one or more persons, including: own or leased apartment, house, cottage, hotel room; verandahs, terraces, galleries, balconies, cellars and attics attached to them, except for apartment house.

“Night time”—from 10 P.M. till 6 A.M. local time.

“Damage” – moral, physical or property damage subject to money compensation.

"Pre-trial proceedings" - criminal proceedings from the point in time when a report of a crime is received until the time the criminal case is forwarded by the procurator to a court for trial on the merits.

"Criminal proceeding" - a pre-trial or judicial proceeding in a criminal case.

"Detention" - a coercive procedural action, which essentially consists in imprisoning a suspected person for a short period (up to forty-eight hours) pending a judicial warrant.

"Imposition of a pre-trial restraint measure" - a decision by an investigator, procurator, or court applying coercive measures to an accused or a defendant.

"Arrest" - a coercive procedural action, which essentially consists in incarcerating an accused under a court decision.

"Juror" - a person summoned in accordance with the procedures established by this Code to take part in a trial and render a verdict by a trial court.

"Evidentiary privilege" - the right of persons not to testify against themselves or their close relatives, and also under other circumstances specified in this Code.

"Representation for review" - an act by a procurator in reaction to a judicial decision, filed in accordance with the procedures established by this Code.

"Mediator" – a specially trained person capable of holding discussions between a victim and accused (defendant, convict) on compensation for harm and settlement.

"Estimated rate" – a standard monetary unit used to determine the amount of economic sanctions, administrative punishment and penalties to be approved by Zhogorku Kenesh of the Kyrgyz Republic on the proposal of the Government of the Kyrgyz Republic.

(As amended by the Law of the KR dated 13 March 2003, #61, 11 June 2003, #98, 8 August 2004 #111)

## **CHAPTER 2. PRINCIPLES OF CRIMINAL PROCEDURE**

### **Article 6. Legality During Criminal Proceedings**

- (1) During criminal proceedings, an investigator, court, prosecutor, and other persons participating in criminal proceedings shall strictly observe provisions of the Constitution of the Kyrgyz Republic, of this Code, other laws issued under the Constitution of the Kyrgyz Republic, and other legal regulations, conformable with laws, common principles and provisions of jus gentium, international treaties of the Kyrgyz Republic.
- (2) No one can be put on trial as suspect or accused, arrested, imprisoned, committed, searched, brought to court, or imposed to any other measures of procedural compulsion, or be condemned, punished or in any way limited in his rights other than in the way and order provided by law.

- (3) In administration of justice one shall not use evidences that have been acquired with violation of the procedural criminal law.

#### **Article 7. Administration of Justice Only by Courts**

- (1) In the Kyrgyz Republic only the court shall administer justice on criminal cases.
- (2) No one shall be found guilty of having committed a crime, no criminal penalty shall be imposed unless there is such verdict of the court.
- (3) Competence of court, limits of its jurisdiction, the order of criminal proceedings in court shall be as provided by law and shall not be changed arbitrarily. Foundation of extreme and special courts for criminal cases trial is prohibited. Verdicts and other decisions by extreme courts and other illegally founded courts shall have no legal effect and shall not be served.
- (4) Verdict and other decisions of a court administrating justice on the case beyond its jurisdiction, or in any other way violating principles of criminal proceedings provided by this Code, shall be illegal.
- (5) Verdict and other decisions of a court on a criminal case may be checked and reviewed only by proper courts in the procedure, provided herein.

#### **Article 8. Participation of the Prosecutor in Criminal Proceedings**

- (1) Exact and uniform observance of legislative acts by field-research and investigating agencies shall be supervised by the Office of Public Prosecutor of the Kyrgyz Republic within its authority.
- (2) The Office of Public Prosecutor shall execute criminal prosecution and participate in hearing in cases and in the order provided by this Code.

#### **Article 9. Protection by the Court**

- (1) Each person shall be guaranteed the protection of his rights and freedoms by the court at any stage of the procedure.
- (2) The victim shall be provided with access to justice and shall be compensated for the damage caused by the crime in the cases and in the order provided by law.

#### **Article 10. Respect to the Rights, Freedoms and Dignities of a Person**

- (1) All state agencies and officials involved in criminal proceedings shall respect individuals and secure their rights, freedoms, and dignities.
- (2) Threats, violence and other illegal actions shall be prohibited in the cause of interrogation and other investigational and court proceedings.
- (3) Conditions of custody shall be favorable for the life and health of the arrested or detained person.

#### **Article 11. Inviolability of the Person**

- (1) No one shall be taken into custody otherwise there is a cause provided herein.

- (2) A court, prosecutor, investigator shall immediately release a person illegally detained or arrested, illegally put in a medical institution, or a person who was under arrest for a period exceeding the limitation provided for by law or by the court decision.
- (3) No participant of criminal proceedings shall suffer violence or shall be treated in a cruel or humiliating way.

#### **Article 12. Protection of Rights and Freedoms of Individuals in the Course of Criminal Proceedings**

- (1) A court, judge, prosecutor, investigator shall protect rights and freedoms of persons involved in criminal proceedings, they shall create conditions favorable for such protection and shall take timely actions to satisfy lawful claims of participants of criminal proceedings.
- (2) No one shall be obliged to testify against oneself, the spouse and close relatives as defined herein.
- (3) Damage caused to a person in the result of a violation of his rights and freedoms in the course of criminal proceedings shall be compensated on the basis and in accordance with the procedure provided for by law.
- (4) In case of sufficient evidence that a victim, witness or other participants of criminal proceedings on the case, as well as members of their families or close relatives are threatened with a murder, violence, destruction or damage to their property or with other dangerous illegal actions, the court, prosecutor, investigator, agency of preliminary investigation shall take necessary legal measures within their authority to protect the lives, health, honor, reputation, and property of these persons.
- (5) No one shall be convicted only on the basis of his own confession in crime commitment.  
(As amended by the Law of KR dated 8 August 2004 #111)

#### **Article 13. Sanctity of Home, Protection of Private Life and Confidentiality of Correspondence, Telephone Conversations, Postal, Telegraph and Other Communications.**

- (1) Sanctity of home shall be guaranteed to the citizens. No one shall have the right to get into a dwelling against the will of the persons residing therein except in the situations and in the manner described in this Code.
- (2) The honor and good name of the citizens shall be protected by the law. Confidentiality of correspondence, telephone and other conversations, postal, telegraph, and other communications shall be protected by the law. Infringement of this right shall be permissible only under a procurator's authorization.
- (3) A search, seizure, interception of postal or telegraph communications, wiretaps undertaken at communications offices, monitoring and recording of telephone or other conversations or communications may be conducted in the situations and in the manner described in this Code.  
(As amended by the Law of the Kyrgyz Republic of 25 June 2007 #91; July 14, 2008, #142).

#### **Article 14. Inviolability of Property**

- (1) No one may be deprived of property otherwise so provided herein.

- (2) Any property may be seized only if it is considered an exhibit or other evidence for the case, as well as in cases and in accordance with procedure provided herein.

### **Article 15. Presumption of Innocence**

- (1) A person shall be considered innocent until his guilt is proved as provided herein and is sustained by the guilty verdict of the court which took effect.
- (2) The defendant shall not carry the burden of proving his innocence.
- (3) Any doubt cast on the evidence of the prosecution which may not be resolved within the rules of criminal procedure provided herein shall be to the benefit of the defendant. Any doubt aroused in the course of application of criminal and criminal procedure law shall be to the benefit of the defendant.

### **Article 16. Equality of Persons Before the Law and the Court**

- (1) Justice shall be administered on the basis of equality of persons before the law and the court, regardless of their social origin, property status and official capacity, races and nationalities, sexes, education, languages, religions, beliefs, membership in non-governmental organizations, places of residence, and other facts.
- (2) Terms of criminal proceedings on the persons possessing immunity against criminal prosecution shall be defined by the Constitution of the Kyrgyz Republic, this Code, laws and international treaties, ratified by the Kyrgyz Republic.

### **Article 17. Independence of Judges**

- (1) Judges shall be independent and shall be governed only by the Constitution of the Kyrgyz Republic and by laws of the Kyrgyz Republic.
- (2) Influence on judges in administering justice shall be prohibited and shall be punished by law.
- (3) Independence of judges is guaranteed by the Constitution of the Kyrgyz Republic.

### **Article 18. Adversarial Trial**

- (1) Criminal proceedings shall be based on principles of adversarial trial and equality of the parties.
- (2) Prosecution, defense, and court decision of the case shall be separated from each other and shall be executed by different agencies and officials.
- (3) The prosecutor shall prove the charge brought against the defendant.
- (4) The advocate shall use all means and methods provided by the law to defend the accused.
- (5) The court shall not take any of the parties' side and shall not express any interests other than the interests of law.
- (6) The court, insuring impartiality and objectiveness, shall make favorable conditions so that the parties could enjoy their procedural rights and perform their duties.
- (7) The parties involved in the criminal proceeding are equal in their rights. The court shall base the procedural decision only on the evidences (proofs), that were equally accessible for studies (examination) for both parties.

- (8) During the criminal proceedings the parties shall choose their position, means and methods to stand upon it independently from the court and other agencies and persons. At request of the party, the court shall assist in acquiring necessary materials in accordance with procedure provided herein.
- (9) Public prosecutor and private prosecutor may choose to support the accusation or refuse from accusation in the cases provided by the law. The defendant shall have the right to plead guilty or not guilty. The civil claimant shall have the right to cancel the claim and choose voluntary settlement with civil defendant. The civil defendant shall have the right to admit the claim and conclude a voluntary settlement with the civil claimant.

#### **Article 19. Thorough, Complete and Objective Detection of Circumstances of a Case**

- (1) An investigator shall take all measures provided by this Code in order to thoroughly, completely and objectively detect circumstances and facts of the case, to find out evidence both establishing the guilt of the suspect and accused and justifying him as well as both aggravating and mitigating circumstances.
- (2) The court, insuring impartiality and objectiveness, shall provide for the necessary conditions for both prosecution and defense to fully realize their rights to thorough investigation on the case. The court may decide on the case only on the basis of true evidence and facts.
- (3) During investigation process and hearing of the criminal case the investigator and the court shall be obliged to find out reasons and circumstances contributing to committing the crime. In case there is a ground for it, the investigator shall make a resolution, the court – personal ruling, which shall draw the attention of officials of governmental agencies and other organizations towards the established facts of law violation for the case, reasons and circumstances, which have contributed to committing the crime and which demand adequate measures to be taken. A personal ruling may also be made in case the court finds out facts of civil rights violation and other violations of law committed during investigation procedure. A personal ruling may be made by a superior court in case it finds out facts of law violation committed during investigation or during the trial at inferior court.

#### **Article 20. Guaranteeing the Suspect, Accused or Defendant the Right to Defense**

- (1) The suspect, the accused or defendant have the right to defense. Agency of preliminary investigation, investigator, prosecutor, and the court shall provide for the right of the suspect, the accused and defendant to defend himself by means provided for by law, as well as for protection of his personal and property rights.
- (2) The right to defense shall be also guaranteed to the defendant if the case involves compulsory medical treatment.

#### **Article 21. Protection of Rights of the Victim of a crime, abuse of power, and court mistakes**

- (1) The rights of victims of crimes, abuse of power, as well as the rights of illegally abused disqualified persons shall be guaranteed during the criminal procedure.

- (2) The victim of a crime shall have the right to demand to institute prosecution, participate in criminal procedure as a complainant, private prosecutor, and claim compensation for the caused damage, following procedures provided herein.

#### **Article 22. Publicity of Court Proceedings**

- (1) Hearing of cases in all courts shall be open to the public except those cases when it endangers national security.
- (2) A hearing may be closed if there is a well-grounded ruling of the court or resolution of the judge, if the crime heard by court involves sexual assault or other offense so that to prevent disclosure of information concerning intimate matters of private life of participants of court proceedings, and in cases when it is necessary for the security of the victim, witness or other participants of court proceedings, their close relatives and family members.
- (3) Closed hearings of cases shall be governed by regular procedural requirements.
- (4) All verdicts shall be announced in public.

#### **Article 23. Language of Court Proceedings**

- (1) Court proceedings shall be administered in the national language or in the Russian language.
- (2) Persons participating in the proceedings who do not speak the language the hearing is administered in, shall be secured the right to make statements, to testify, to put forward motions, to study the dossier of the case, to speak in court in their native languages and use services of an interpreter.
- (3) A copy of the document of accusation and of the verdict (ruling, resolution) shall be handed to the accused or the convicted person with translation into his native language or any other language he speaks.

#### **Article 24. Guaranteeing Access to Justice**

- (1) Any time there are discovered any corpus delicti, an investigator and prosecutor shall, within their authorities, institute prosecution and shall take all actions provided by law in order to determine circumstances of the crime and persons who committed the crime.
- (2) Investigator and prosecutor shall ensure the right of the victim of a crime to access justice.

#### **Article 25. Appeal From Procedural Actions and Decisions**

- (1) Actions and decisions of the agency of preliminary investigation, the investigator, and prosecutor may be appealed as provided herein.
- (2) The convicted person has the right to appeal from the verdict to the higher court as provided herein.
- (3) The convicted person has the right to ask for pardon or mitigation of the sentence.

## **CHAPTER 3. ACCUSATION**

### **Article 26. Cases for Personal, Personal-and-Public, and Public Accusation**

- (1) Depending on the character and gravity of the committed crime, criminal prosecution and accusation in court may be ‘personal’, ‘personal and public’, and ‘public’.
- (2) Cases for personal accusation include crimes stipulated by Article 112(2), Article 126(1), Articles 127, 128, Article 134, Article 135, part one and two of Article 136, part one of Article 137, part one of Article 139, Articles 140, 141, 146, 150, 151, 178, 194, part one of Article 324.

Criminal prosecution on such cases may be initiated only by the complaint of the victim and shall be dismissed upon reconciliation of the parties. Reconciliation may take place only before the verdict comes into effect.

- (3) Cases for personal-and-public accusation include minor misdemeanors and misdemeanors stipulated by Articles 10 and 11 of the Criminal Code of the Kyrgyz Republic, and offenses stipulated by Article 129/Part 1 and Article 130/Part 1 of the Criminal Code of the Kyrgyz Republic.
- (4) All other offenses shall be considered cases for public accusation.

(As amended by the Laws of KR dated 5 August 2003 #192, 14 November 2003 #221, 8 August 2004 #111; July 14, 2008, #142)

### **Article 27. Right of Persons to Participate in Criminal Proceedings and Accusation**

- (1) The victim or, in case of his death or inability due to age or health express his personal will in the course of criminal proceedings, any of his adult close relative has the right to participate in criminal proceedings as provided herein, and—in cases for personal accusation—to suggest and support the charge against the defendant. The victim or his representative may refuse to support the charge any time during criminal proceedings.
- (2) Refusal of the prosecutor to charge shall not preclude the victim from the right to support accusation.

(As amended by the Law of KR dated 8 August 2004 #111)

### **Article 28. Circumstances Ruling Out Criminal Proceedings**

- (1) Prosecution shall not be instituted and criminal case shall be dismissed in the following cases:
  - 1) if no crime was committed;
  - 2) if no corpus delicti was found;
  - 3) if actions of the person who caused any damage were justified as provided by the criminal law (justifiable defense; extreme necessity, damage caused while making an arrest of the suspect; execution of an order or other command; justifiable risk);
  - 4) when the case is not initiated by the victim in cases provided herein;
  - 5) when the offender has been already sentenced upon the same accusation and the sentence came into effect, or when there is any other valid decision of the court ruling on inadmissibility of criminal prosecution;

- 6) when there is a valid resolution of the investigator or prosecutor to dismiss the case on the same offense;
  - 7) if the offender is dead by the time of criminal court proceedings, except for cases when the case proceeding is necessary for the rehabilitation of deceased or investigation concerning other persons;
  - 8) if the person voluntarily refused to commit the crime;
  - 9) if the person shall be relieved of criminal liability in accordance with provisions of the General Part of the Criminal Code of the Kyrgyz Republic;
  - 10) as a result of amnesty when such eliminates the penalty for a certain action;
  - 11) in the event of expiration of limitation period;
  - 12) if the victim refuses to support private or private-public prosecution, except in criminal cases provided for by Article 281 (3) of the Criminal Code of the Kyrgyz Republic committed by the guilty persons in a state of intoxication, caused by the use of alcoholic drinks, narcotics or other stupefying substances;
  - 13) if the prosecutor will refuse to support the personal-and-public charge in the criminal case, where the citizen (person) is not a victim;
  - 14) if the victim and prosecutor will refuse to support the public charge.
- (2) If circumstances envisaged herein by paragraphs 1 and 2 of Part 1 of this Article are discovered in the course of court proceedings [trial], the court shall conclude the hearing of the case and shall render the verdict of not guilty.
- (3) A case shall not be dismissed upon circumstances envisaged by paragraphs 10 and 11 of this Article/Part 1, if the accused objects it. In this event the proceedings shall be followed pursuant to regular procedure and shall result, if there are grounds for it, in the guilty verdict with the release of the convicted person from penalty.
- (As amended by Laws of the Kyrgyz Republic dated 28 June 2001 #62, 8 August 2004 #111)

### **Article 29. Dismissal of a Criminal Case with the Release from the Criminal Liability**

- (1) In accordance with provisions of Articles 65 and 66 of the Criminal Procedure Code of the Kyrgyz Republic, the court (judge), the prosecutor and the investigator, upon approval from prosecutor, may dismiss a criminal case and release the person from criminal liability:
- 1) in case of change in the situation, if the action committed has no longer public threat and the person is no longer public threatening.
  - 2) in case of reconciliation with the victim as provided by Article 281 of this Code. The grounds for the criminal case dismissal, according to what provided herein this paragraph, shall be the written statement of the victim, his representative:
    - on reconciliation with the accused, defendant and on the repentant apologies offer to the victim, including cases in court reviewing res judicata verdicts;
    - on material damages award (partially or fully);
    - on the execution of some work or rendering services for him.
    - as regards cases specified under this item, the investigator, procurator, court shall advise the accused (defendant) and the victim of their right to hold discussions over compensation for harm and settlement by way of a settlement procedure via a mediator.

- (2) The Court (judge) shall dismiss the criminal case when the offender committed illegal criminal action in the state of diminished responsibility.  
(As amended by the Law of KR dated 24 March 2004 #47)

## **PART II. COURT, PARTIES AND OTHER PARTICIPANTS OF CRIMINAL PROCEEDINGS**

### **CHAPTER 4. COURT**

#### **Article 30. Court**

- (1) Court as the body of judicial branch shall administer justice on criminal cases.  
(2) A criminal case shall be heard only by a legal, independent, competent and impartial court.

#### **Article 31. Composition of the Court**

- (1) The criminal cases shall be examined by the collective of judges or by one judge  
(2) The hearing of criminal cases involving persons being charged with a crime punishable by life imprisonment shall be by a trial court, including a presiding judge and jurors.  
(3) The examination of criminal cases in an appeal shall be conducted by the panel of judges consisting of three judges.  
(4) The examination of criminal cases in cassation shall be conducted by the panel of judges of regional court and court equal to it consisting of three judges.  
(5) The hearing of cases in reviewing procedure shall be conducted by the Panel of Judges on criminal cases and cases about administrative offence of the Supreme Court of Kyrgyz Republic consisting of three judges.  
(6) During the examination of the criminal case by the court consisting of three judges, one of them shall be the chairman according to the on the instructions of the chairman or his deputy of this court.  
(7) Deleted.  
(8) Deleted.  
(As amended by the Laws of KR dated 24 May 2004 #68, 8 August 2004 #111, 25 June 2007 #91, 5 August 2008 # 193)

#### **Article 32. Powers of a Court**

- (1) The court shall be entitled to:
- 1) find the person guilty in committing the crime and apply the punishment;
  - 2) acquit the defendant;
  - 3) apply compulsory medical treatment;
  - 4) apply compulsory educational treatment;
  - 5) to make a particular decision.
- (2) In the course of judicial or pre-trial proceedings, only a court may make the following decisions:
- 1) imposing a pre-trial restraint in the form of incarceration or house arrest;
  - 2) to extend a term of pre-trial detention;

- 3) to commit a suspect or accused who is not in custody to a medical or psychiatric in-patient institution for forensic medical examination or forensic psychiatric examination;
- 4) to implement measures of protection for witnesses, victims and other participants of criminal proceedings.

(3) In the course of pre-trial proceedings, a court is empowered to review complaints against actions or inaction and decisions of the procurator, investigator, inquiry agency, or inquiry officer in the situations specified and in accordance with the procedures specified by Article 131 of this Code.

(4) The decision of the court may be repealed or changed only by a higher court which is authorized to make a new decision on the case.

(5) The court shall be entitled to reconsider the case due to the newly discovered evidence.

(As amended by the Laws of KR dated 24 May 2004 #68, 8 August 2004 #111, 25 June 2007 #91; July 14, 2008, #142, 14 July 2008 #143)

## **CHAPTER 5. PARTICIPANTS OF PROCEEDINGS AND PERSONS PARTICIPATING IN COURT PROCEEDINGS, REPRESENTING INTERESTS OF THE STATE**

### **Article 33. Prosecutor**

- (1) A prosecutor is a state official who, within his authorities, performs criminal prosecution. The prosecutor shall have the right to institute prosecution and investigate the case in full volume, or put an investigator in charge of the case investigation as provided herein. The prosecutor shall support prosecution on behalf of the state at all stages of criminal proceedings. A prosecutor participating in court proceedings and representing prosecution is called counsel for the government [state attorney for prosecution].
- (2) Prosecutor has the right to file a suit against the accused or the person who is responsible for finances of the former in interests of:
  - 1) the victim if in the helpless or dependable state or if unable due to other reasons to use his right on his own;
  - 2) the state.
- (3) Prosecutor shall be independent in criminal proceedings and shall be governed only by law. He shall also fulfill written orders by a higher prosecutor.

### **Article 34. Authorities of a Prosecutor in Criminal Proceedings**

- (1) In course of criminal proceedings a prosecutor is authorized to:
  - 1) institute prosecution and put in charge an investigator or hand over the case to an investigator to carry out investigation in exceptional cases, disregarding their agency membership;
  - 2) control for legality of investigation on criminal cases.
- (2) While performing review for legality of criminal cases investigation the prosecutor is authorized to:
  - 1) make sure requirements of the law are followed during registration and processing of reports on committed or preparing crimes;
  - 2) charge an investigator or a group of investigators with the investigation of a criminal case;

- 3) approve a rejection of an investigator and his rejection of his nomination;
  - 4) issue written instructions to an investigator regarding the direction of the investigation, qualification of a crime and the performance of procedural actions, provided those are covered by procuratorial powers as specified by this Code;
  - 5) consider objections of an investigator as provided herein when the investigator disagrees with orders of the prosecutor provided that the prosecutor carries out the prosecutorial review;
  - 6) repeal illegal and ungrounded resolutions of an investigator and lower-rank prosecutor, make resolutions for adjournment, dismissal of proceedings for the case;
  - 7) consider complaints and petitions from decisions and actions of the agency of preliminary investigation, of the investigator and lower-rank prosecutor;
  - 8) discharge the investigator and lower-rank prosecutor from further participation in criminal proceedings on the case provided that they violated the law;
  - 9) address pertinent agencies with petitions to deprive the immunity persons enjoying the right of immunity provided that criminal proceedings should be instituted against them;
  - 10) represent prosecution in court;
  - 11) return cases to the investigator for additional investigation on the gaps in the case;
  - 12) dismiss the criminal case against the defendant and change the charge;
  - 13) give instructions to an inquiry agency to conduct tactical investigative operations related to proceedings in the criminal case and secure the appearance of persons required to take part in the trial;
  - 14) give orders concerning protection of the victim, witness and other participants of the criminal proceedings;
  - 15) release persons detained in violation of the provisions specified by Articles 94 and 95 of this Code;
  - 16) extend the investigation period;
  - 17) consent to the investigator filing a motion in court seeking an order imposing a pre-trial restraint measure in the form of detention or house arrest or extending the detention period for the suspect or accused, allowable under a judicial decision.
- (3) Prosecutor shall be charged with other authorities as provided herein.
- (4) Orders of the prosecutor to the agencies of preliminary investigation and investigation concerning the institution of criminal proceedings and investigation of criminal cases shall be binding for the latter provided that the orders were given in accordance with the procedure provided herein. Appeal of such orders to a higher-rank prosecutor shall not suspend their execution.
- (As amended by the Law of the KR dated 28 June 2001 #62, 25 June 2007 #91; July 14, 2008, #142)

### **Article 35. Investigator**

- (1) An investigator is a state official who, within his authorities, performs investigation of criminal cases.
- (2) Investigator initiates prosecution, investigates the case and carries out all investigational proceedings provided herein.
- (3) Investigator shall personally decide on issues of investigation and actions of investigation except those cases when, in accordance with the law, an action shall be authorized by a

judicial warrant or a prosecutor in cases specified by this Code. The investigator shall be totally responsible for the legality of such actions and for their timely fulfillment.

- (4) In the event of disagreement of an investigator with decisions of a prosecutor on the criminal case, the investigator has the right to address to a higher-rank prosecutor with his objections and comments in writing. In this event the prosecutor of a higher rank shall either annul the decision of the subordinate prosecutor or transfer the case to another investigator.

(As amended by the Law of the KR dated 25 June 2007 #91)

### **Article 36. Authorities of the Investigator**

- (1) In course of investigation of a criminal case the investigator shall be authorized to:
- 1) interrogate the suspect, accused, victim, witness, expert and specialist, ask for expertise, perform searches, examinations, seizures, and other investigative actions as provided for by this Code;
  - 2) take necessary measures to recover damages caused to the victim;
  - 3) ask for documents, materials that may contain information about the offense and persons involved in its commission;
  - 4) demand for inspection, auditing, inventory, departmental expertise, and other measures of checking;
  - 5) receive information from the agency of preliminary investigation concerning the detection and search and other measures taken in order to discover the crime, find missing persons and lost property;
  - 6) give necessary orders in writing to the agency of preliminary investigations concerning the detection and search necessary for the criminal case;
  - 7) authorize the agency of preliminary investigation with execution of writs on detention, arrest, other proceedings; also receive at first request assistance from the agency of preliminary investigation during investigational and other proceedings;
  - 8) authorize the agency of preliminary investigation with the execution of protection of witnesses, victims and other participants of criminal proceedings;
  - 9) authorize the agency of preliminary investigation with the execution of certain investigational proceedings;
  - 10) ask for interpreters, specialists, experts;
  - 11) detain persons suspected in the commission of a crime;
  - 12) provide for an advocate to participate in the criminal case procedure;
  - 13) charge the suspect with a crime, make a resolution on institution of criminal proceedings against the accused;
  - 14) recognize certain persons as victims, civil plaintiffs, civil defendants and admit their representatives to participation in criminal case proceedings;
  - 15) approve challenges to witnesses, interpreters, specialists, experts;
  - 16) approve motions dealing with the criminal case proceedings;
  - 17) approve petitions within the authority;
  - 18) make resolutions on the choice, change, and repeal of sanctions and application of other compulsory procedural measures unless a judicial warrant and/or a procurator's authorization is required by this Code;
  - 19) make resolutions on suspension of criminal proceedings on the case;
  - 20) execute written orders of the prosecutor;

- 21) perform other functions provided herein.
- (2) Resolution of an investigator concerning the criminal case is binding for all persons, heads of companies and organizations. Failure to fulfill a resolution of an investigator shall result in liability in accordance with the law of the Kyrgyz Republic.  
(As amended by the Law of the KR dated 25 June 2007 #91, 14 July 2008 #143)

### **Article 37. Authorities of the Head of Investigational Department (Section, Division)**

- (1) The head of investigational department authorizes one of investigators with the investigation of a criminal case, controls timely actions of investigators on criminal cases they are charged with, controls time limits and terms for the investigation on criminal cases and time limits for custody, controls execution of orders of a prosecutor, instructions of other investigators in cases provided herein; gives instructions on the investigation; transfers the case from one investigator to another; authorizes a group of investigators with the investigation of a criminal case. The head of the investigational department may participate in the investigation of a case another investigator is charged with, and heads of sections, divisions and their deputies may personally execute investigation, and in doing so they enjoy the authorities of an investigator.
- (2) Instructions of the Head of investigational department concerning a criminal case shall not limit independence of the investigator and his rights provided in Art. 36. of this code. Instructions to an investigator shall be given in writing and they shall be binding for execution, although they may be appealed to the prosecutor.  
(As amended by the Law of the KR dated 28 June 2001 # 62)

### **Article 38. The Agency of Preliminary Investigation**

- (1) The following shall be considered agencies of preliminary investigation:
- 1) police [bodies of internal affairs];
  - 2) heads of correctional facilities and investigational isolation wards – for the cases of crimes committed by officers of these institutions in performing their duties, as well as for the cases of crimes committed in the premises of these institutions.
  - 3) commanding officers of military divisions and heads of military institutions;
  - 4) agencies of national security;
  - 5) the agency of Kyrgyz Republic on drug control;
  - 6) commanders of frontier troops;
  - 7) chiefs of geological parties, expeditions and chiefs of remote winter settlements;
  - 8) customs agencies;
  - 9) tax police;
  - 10) agencies of state fire fighting service.
- (2) Agency of preliminary investigation may do the following:
- 1) provide for the registration of information or reports on the commission of a crime;
  - 2) provide for safety of incident evidences;
  - 3) provide for detection and search in order to discover the attributes of the crime and offenders;
  - 4) provide the prosecutor and investigator, acting within their authority, with the materials they ask for;

- 5) execute orders and instructions of the prosecutor and investigator, including those concerning execution of certain proceedings and protection of victims, witnesses, other persons participating in criminal proceedings as well as makes decisions to use [or not to] those measures;
- 6) execute writs of the court;
- 7) exercise the control over the maintenance of sanction chosen by the investigator, prosecutor, court regarding to the accused, except the sanction in the form of detention.  
(As amended by the Laws of the KR dated 4 August 2001 #81, 20 March 2002 #41, 14 November 2003 #221, 28 March 2004 #52, 22 July 2005 #112, 14 July 2008 #143)

## **CHAPTER 6. PARTICIPANTS OF CRIMINAL PROCEEDINGS DEFENDING THEIR RIGHTS AND INTERESTS OR RIGHTS AND INTERESTS OF PERSONS THEY REPRESENT**

### **Article 39. Suspect**

- (1) The suspect is a person:
  - 1) against whom prosecution was initiated;
  - 2) who was detained before any other sanction was chosen on the grounds of suspicion that he committed the crime.
- (2) Criminal prosecution shall not detain a person as a suspect for more than 48 hours. By the time limit for his detention, the agency for criminal prosecution shall either release the suspect or make the resolution on the institution of criminal proceedings against him [charge him with a crime] and decide on the sanction.  
Whenever detention or house arrest is deemed necessary as a pre-trial restraint measure, an investigator with a procurator's consent shall file an appropriate motion with the court, according to procedures specified by this Code
- (3) Agency for criminal prosecution shall inform close relatives of the suspect about the time and place of his detention.
- (4) A person shall not be considered the suspect starting from the moment of signing the resolution on dismissal of the criminal case by agency of criminal prosecution or when the charge is brought in.  
(As amended by the Law of the KR dated 25 June 2007 #91; July 14, 2008, #142)

### **Article 40. Rights and Responsibilities of the Suspect**

- (1) The suspect has the right to:
  - 1) know what he is suspected of;
  - 2) get a copy of resolution on institution of criminal proceedings against him or a copy of the record of detention;
  - 3) get a copy of the list of his rights;
  - 4) have a counsel from the moment of the first interrogation, and in case of detention – from the moment of actual arrival to the agency of preliminary investigation;
  - 5) make statements in concern of the crime he is suspected of; refuse to make statements;
  - 6) make statements in his native language or the language he speaks;
  - 7) use services of an interpreter;

- 8) introduce evidence;
  - 9) present motions and challenges;
  - 10) study records of the investigational proceedings he was involved in and comment on such records, such comments shall be included into the official records;
  - 11) participate in investigational proceedings taken upon his motions or motions of his counsel or legal representative with the consent of the investigator;
  - 12) file complaints about actions of preliminary investigator, actions and decisions of the investigator, prosecutor;
- (2) The suspect shall:
- 1) appear if summoned by the agency performing the investigation of the case;
  - 2) obey orders of the investigator, prosecutor
- (3) By request of the agency performing investigation of the case the suspect may be exposed to:
- 1) search and personal search;
  - 2) medical examination, dactyloscopy, taking his picture, taking his blood test, taking tests of his secretions;
  - 3) examination;
  - 4) expertise.
- (4) The suspect enjoys some other rights and carries other responsibilities provided herein.
- (5) Any time a suspect is brought to temporary detention isolation ward, and each time he, his council, relatives appeal from physical assault from officers of preliminary investigation and investigation, he should be obligatory medically examined with records of examination. Administration of the temporary detention isolation ward shall be responsible for medical examination.

#### **Article 41. Accused, defendant, convicted**

- (1) The accused is a person who was decided to be charged with the crime, by a resolution in the order provided herein.
- (2) The accused whose case undergoes court proceedings shall be called the defendant, the defendant in whose respect the verdict was announced shall be called the convicted.

#### **Article 42. Rights and Responsibilities of the Accused, defendant, convicted (acquitted)**

- (1) The accused has the right to:
  - 1) get copies of resolution on his charge, on appointment of an expert;
  - 2) make statements on the crime he is charged with or refuse to make statements;
  - 3) introduce evidence;
  - 4) make motions and challenges;
  - 5) testify and speak his native language or the language he knows;
  - 6) use services of a translator and also of an attorney, including during judicial review of an investigator's motion that detention is deemed necessary as a pre-trial restraint measure;
  - 7) participate in investigational proceedings if requested by him or by his defense attorney;
  - 8) study reports of the expert;
  - 9) communicate with his counsel confidentially and without limitation of time and number of meetings;

- 10) study the dossier of the case after the investigation and write out the information concerning the charge brought against him;
  - 11) make petitions against actions of the preliminary investigator, actions and decisions of investigator, prosecutor.
- (2) the defendant has the right to participate in court proceedings in courts of primary, and enjoy all rights of a party of the trial, as well as the right for the last word, to appeal from the actions and decisions of the court.
- A defendant may not be deprived of the right to have his criminal case heard in a court and by a judge having jurisdiction over that case as provided by this Code
- (3) The accused shall:
- 1) appear when summoned by an agency performing investigation;
  - 2) when in custody, agree to personal search;
  - 3) agree to medical examination, dactyloscopy, taking his picture, taking his blood test, taking tests of his secretions;
  - 4) obey orders of the investigator, prosecutor.
- (4) The defendant shall:
- 1) appear when subpoenaed by the court;
  - 2) obey the presiding judge;
  - 3) not leave the court room until the announcement of the break and without the permission of the presiding judge;
  - 4) follow the rules of behavior in the court room
- (5) The accused, defendant enjoy some other rights and carry other responsibilities provided herein.
- (6) As provided herein, rights and interests of an underaged or disabled accused shall be represented by his legal representative.
- (7) Any time an accused is brought to temporary detention or investigation isolation ward, and each time he, his council, relatives appeal from physical assault from officers of preliminary investigation and investigation, he should be obligatory medically examined with records of examination. Administration of the temporary detention or investigation isolation ward shall be responsible for medical examination.
- (8) The accused or acquitted has the right to:
- 1) study the transcript of court hearing and make notes on it;
  - 2) get copies of decisions of the court and appeal against them;
  - 3) learn about complaints and petitions brought in respect of the case and challenge them;
  - 4) participate in court consideration of complaints and petitions.

(As amended by the Law of KR dated 24 March 2004 #47, 25 June 2007 #91)

#### **Article 43. Legal Representatives of an Underaged Suspect, Accused, Defendant**

- (1) Legal representatives shall be invited to participate in criminal proceedings on crimes committed by underaged suspects.
- (2) The procedure for participation of legal representatives of underaged suspects, accused, defendant is specified in Chapter 44.

#### **Article 44. Defense Attorney**

- (1) Defense attorney is a person defending interests and rights of the suspect, accused, defendant, witness in criminal cases and rendering them legal services by all legal means.
  - (2) Only advocates may perform functions of defense attorneys. Close relatives and legal representatives of the accused may be allowed to act as defense attorney in court.
  - (3) Defense attorney shall start his participation in the case from the moment of the first interrogation of suspect (accused), witness or actual detention of the suspect (accused).
  - (4) In the event the defense attorney chosen by the suspect or accused may not appear within 24 hours from the moment of detention or custodial placement, the investigator or prosecutor may suggest to invite another counsel or shall appoint a counsel from the bar association [association of professional advocates].
  - (5) One and the same person shall not be a defense attorney of two suspects, accused, witnesses, defendants if they have contradicting interests.
- (As amended by the Law of KR dated 13 March 2003, #61)

#### **Article 45. Invitation, Assignment, Substitution of the Defense Attorney, His Payment**

- (1) A defense attorney shall be invited by the suspect, accused, defendant, witness, their legal representatives, or by other persons if so requested by or at the consent of the suspect, accused, defendant, witness.
  - (2) If so requested by the suspect, accused, defendant a defense attorney shall be assigned by the investigator, the court.
  - (3) In the event the defense attorney, chosen or assigned, may not participate in the case, the investigator, the court may suggest the suspect, accused, defendant, witness invite another counsel or shall assign a counsel from the bar association [association of professional advocates].
  - (4) Payment for of advocate's work shall be done in correspondence with the current legislation.
  - (5) When a defense attorney participated in the investigation or trial upon assignment, his services shall be paid by the state. In this event the convict may be maid pay back these expenses to the state.
- (As amended by the Law of KR dated 13 March 2003, #61)

#### **Article 46. Obligatory Participation of a Defense Attorney**

There shall be provided obligatory participation of a defense attorney in criminal proceedings in the following cases:

- (1) if so requested by the suspect, accused, defendant;
- (2) when it is hard for the suspect, accused, defendant to independently realize his right to defense due to sufficient malfunctioning of organs of vision, hearing, speech, due to long serious disease, imbecility, obvious mental retardation, or due to other physical or psychic disabilities;
- (3) when the suspect, accused, defendant does not speak or does not know rather well the language the proceedings are administered in;
- (4) the suspect, accused, defendant is underaged;
- (5) when the person is suspected of or charged with a felony;
- (6) the suspect, accused, defendant is on the regular military service;

- (7) when suspects, accused, or defendants have different interests provided that one of them has a defense attorney;
- (8) when representative of the victim (personal prosecutor) or of the civil plaintiff participate in the proceedings on the case;

The participation of the attorney is necessary during the judicial review of a motion of the investigator on choosing the sanction in the form of taking into custody. This rule shall be applied also on the procedure concerning the extension of the detention term.

(As amended by the Laws of KR dated 24 March 2004 #47, 8 August 2004 #111, 25 June 2007 #91)

#### **Article 47. Waiver of the Right to Counsel**

- (1) The suspect, accused, defendant has the right to waive the counsel. Such waiver shall be allowed only upon the initiative of the suspect, accused, defendant himself and shall not preclude participation of a prosecutor, as well as defense attorneys of other suspects, accused, defendants.
- (2) When waiving a counsel, the suspect, accused, defendant shall defend himself.
- (3) Waiver of the counsel by the suspect, accused, defendant in cases provided in points 2 – 5 of Article 46 of this Code shall not be binding for the investigator, the court.
- (4) Waiver of the counsel shall be registered by a resolution of the investigator, judge, or by a ruling of a court.

(As amended by the Law of KR dated 8 August #111)

#### **Article 48. Rights and Responsibilities of a Defense Attorney**

- (1) In rendering legal assistance, an advocate shall participate in court proceedings as a defense attorney or other representative on the basis of adversarial trial and equality of the parties.
- (2) A defense attorney shall use all legal means of defense to find out evidence justifying the suspect, accused, defendant or evidence mitigating the charge or sentence, as well as to render necessary legal assistance.
- (3) Starting from the moment of participation in the case, the defense attorney is entitled to:
  - 1) personally or with assistance of private detective collect materials being to credit of suspect, accused, defendant, witness;
  - 2) get written statements and explanations of witnesses, make personal records of site studying;
  - 3) introduce evidence to the investigation and court;
  - 4) be present when the charge is announced;
  - 5) participate in the interrogation of the suspect, accused, defendant, witness as well as in other investigational proceedings in which they are involved or which were requested by the defense itself or the suspect, accused, defendant;
  - 6) meet with the suspect, accused, defendant in private, confidentially and without any limitations of time and number of such meetings;
  - 7) study records of the detention, resolutions on the sanction, records of investigational proceedings in which the suspect, accused, defendant or the defense attorney himself were involved, documents which were given and which should have been given to the

suspect, accused, and, after the completion of the investigation, study the whole dossier of the case;

- 8) make copies of dossier files, write out any information from the dossier;
  - 9) make motions;
  - 10) participate in court proceedings;
  - 11) make challenges;
  - 12) appeal from actions of preliminary investigator, actions and decisions of the prosecutor, investigator, and the court and participate in consideration of such appeals;
  - 13) use any other legal means for defense.
- (4) The defense attorney when present during any investigational proceeding, may ask the interrogated persons any questions if allowed by the investigator. The investigator may decline any question of the defense attorney, such questions and the decision to decline them shall be recorded. The defense attorney may make comments in writing in the records concerning the authenticity and completeness of the records.
- (5) The defense attorney has no right to refuse to work on the case he agreed to.
- (6) The defense attorney shall not take any actions against the interests of the defendant, to disclose secrets revealed in respect of defense and other assistance he is rendering.
- (7) The materials collected by the defense attorney if so requested by the defense attorney shall be binding to depositing to the case. Such materials shall be examined and assessed by investigator, prosecutor, court as provided herein.
- (As amended by the Law of KR dated 13 March 2003)

#### **Article 49. Victim**

A person who suffered moral, bodily or property damages in the result of a crime, shall be deemed a victim. A person shall be recognized the victim by the resolution of an investigator or a judge. The decision to recognize a person as the victim of the crime shall be taken after establishment of the corpus delicti of the crime in the result of which the damage was caused and it shall not depend on the age, mental or physical condition of the victim.

#### **Article 50. Rights and Responsibilities of a Victim**

- (1) The victim has the rights to:
- 1) know about kind of the charge brought against the accused;
  - 2) testify;
  - 3) introduce evidence;
  - 4) make motions and challenges;
  - 5) testify in the native language or the language he speaks;
  - 6) use services of an interpreter;
  - 7) have a legal representative;
  - 8) participate in investigational proceedings requested by him or his legal representative;
  - 9) study records of the investigational proceedings he was involved in and comment on such records;
  - 10) study the dossier of the case after the investigation and write out the necessary information;

- 11) get copies of resolutions on initiation of criminal proceedings on the case, on his recognizance as the victim or on denial to recognize him a victim, on dismissal of criminal proceedings, a copy of the resolution on the charge, and copies of decisions of the court;
  - 12) participate in court;
  - 13) speak in court, support the prosecution;
  - 14) study the transcript of court proceedings and comment on it;
  - 15) make petitions against actions of preliminary investigator, actions and decisions of the investigator, prosecutor, and the court;
  - 16) appeal from decisions of the court;
  - 17) know about appeals and petitions filed on the case and object them;
  - 18) participate in court proceedings on consideration of appeals and petitions;
  - 19) reconcile with the defendant in cases provided herein;
  - 20) be compensated by the state for damages caused by the crime;
  - 21) receive back the property withdrawn as exhibits or due to other reasons, originals of documents that belong to him, receive back his property confiscated from the offender;
  - 22) request from the convicted compensation of moral damage, caused by the crime.
- (2) The victim shall:
- 1) appear if summoned by the investigator, prosecutor, or the court;
  - 2) testify, give true information concerning the case;
  - 3) provide objects, documents and articles he has for the comparative analysis;
  - 4) agree to examination if so requested by the investigator, prosecutor or the court;
  - 5) not disclose evidence on the case known to him;
  - 6) obey orders of the investigator, prosecutor, the court;
  - 7) follow the rules of behavior in the court room.
- (3) In the event of failure of the victim to appear without plausible excuse, he may be brought to court or other agency of criminal prosecution and investigation and be fined in the amount of two times the estimated rates as provided in Articles 120 and 121 of this Code.
- (4) In the event of refusal to testify or if perjuring, the victim shall be liable in accordance with Articles 330 and 331 of the Criminal Code of the Kyrgyz Republic.
- (5) If the victim was murdered or died as a result of the crime, the rights provided by this article shall be enjoyed by his close and other relatives.

### **Article 51. Personal Prosecutor**

- (1) Personal prosecutor is a person who filed a petition for personal prosecution and who supports prosecution during the trial as well as a victim on public and personal-and-public accusation who represents prosecution himself if the public prosecutor refused to represent prosecution.
- (2) Personal prosecutor shall be entitled to the rights provided herein Article 258.

### **Article 52. Civil Plaintiff**

- (1) Civil plaintiff is a person or legal entity that suffered pecuniary loss from a crime and brought a civil claim to be compensated. Civil claim may also ask for compensation of moral

damages. A person or legal entity shall be recognized a civil plaintiff by a resolution of the investigator or judge.

- (2) Legal representatives or prosecutor may file a civil claim on behalf of the underaged or persons recognized incapable to act on their own.

### **Article 53. Rights and Responsibilities of Civil Plaintiff**

- (1) Civil plaintiff has the right to:
  - 1) support the civil claim;
  - 2) introduce evidence;
  - 3) give explanations on the claim he filed;
  - 4) make motions and challenges;
  - 5) make statements and testify in his native language or any language he speaks;
  - 6) use services of a translator;
  - 7) have a representative;
  - 8) participate in investigational proceedings requested by him or by his representative;
  - 9) study records of investigational proceedings in which he was involved;
  - 10) study those materials from the dossier of the case that deal with the civil claim and write out the necessary information;
  - 11) know about decisions that touch upon his rights and get copies of procedural decisions on the civil claim brought by him;
  - 12) participate in court;
  - 13) speak in court;
  - 14) study the transcript of court proceedings and comment on it;
  - 15) make petitions against actions of preliminary investigator, actions and decisions of the investigator, prosecutor, and the court;
  - 16) appeal from the decisions of the court regarding the civil claim brought by him;
  - 17) know about appeals and petitions lodged on the case and object them;
  - 18) participate in court proceedings on consideration of the lodged appeals and petitions, ask the agency of the preliminary investigation, investigator, and the court to take measures necessary for consideration of the civil claim brought in by him;
  - 19) take off the civil claim at any time during the proceedings on the case;
- (2) The civil plaintiff shall:
  - 1) appear if summoned by the investigator or the court;
  - 2) make copies of the notice of the civil claim for each civil defendant;
  - 3) provide objects, documents and samples he has for the comparative analysis if such requested by an agency responsible for the proceedings on the case;
  - 4) obey orders of the investigator, the prosecutor, the court;
- (3) Civil plaintiff may be summoned as a witness.
- (4) Civil plaintiff has other rights and responsibilities provided herein.
- (5) Civil plaintiff may personally or through his representative realize his rights and fulfill his responsibilities. As provided herein, rights of the underaged or incapable civil plaintiff shall be realized on his behalf by his legal representative.

### **Article 54. Representatives of the Victim, Civil Plaintiff**

- (1) Advocates, close relatives or other persons authorized by law may represent legal interests of a victim, civil plaintiff in criminal proceedings .
- (2) Legal representatives shall be invited to stand for the rights and legal interests of the victim, civil plaintiff, if the latter is underaged or recognized incapable due to his physical or psychic state to stand for his rights and legal interests himself.
- (3) Legal representatives and representatives of a victim, civil plaintiff have the same procedural rights and responsibilities as a victim or civil plaintiff themselves.
- (4) Personal participation of the victim, civil plaintiff in the proceedings on the case shall not preclude their right for legal representatives.

### **Article 55. Civil Defendant**

Civil defendant is a person or legal entity that is responsible by law for damages caused by the crime or for illegal actions of an irresponsible person. A person may be recognized a civil defendant by a resolution of the investigator and judge.

### **Article 56. Rights and Responsibilities of Civil Defendant**

- (1) Civil defendant has the right to:
  - 1) know about a type of the charge and civil claim;
  - 2) object the claim;
  - 3) be informed by the prosecuting agency about decisions that touch upon his rights and interests and, if requested by the civil defendant, get copies of such decisions, a copy of a resolution on institution of civil proceedings against him and a copy of the verdict, ruling of the court of appellate jurisdiction and other final decisions of courts;
  - 4) give explanations, statements in concern of the claim brought against him;
  - 5) have a legal representative;
  - 6) introduce evidence;
  - 7) make motions and challenges;
  - 8) after the conclusion of the investigation on the case, study those materials of the dossier of the case that deal with the civil claim and write out the necessary information;
  - 9) participate in court;
  - 10) speak in trial, lodge complaints about actions of the preliminary investigator, actions and decisions of the investigator, prosecutor, the court;
  - 11) study the transcript of court proceedings and comment on it;
  - 12) appeal from decisions of the court regarding the civil claim brought against him;
  - 13) know about appeals and petitions lodged on the case and object them;
  - 14) participate in court proceedings on consideration of the lodged appeals and petitions;
- (2) The civil defendant shall:
  - 1) appear if summoned by the prosecuting agency;
  - 2) provide objects, documents and samples he has for the comparative analysis if such requested by an agency responsible for the proceedings on the case;
  - 3) obey orders of the investigator, the court;
- (3) Civil defendant may be summoned as a witness.
- (4) Civil defendant enjoys some other rights and carries other responsibilities provided herein.

- (5) Civil defendant may personally or through his representative realize his rights and fulfill his responsibilities.

#### **Article 57. Representatives of Civil Defendant**

- (1) Advocates, close relatives or other persons authorized by law may represent legal interests of a civil plaintiff in criminal proceedings .
- (2) Representatives of the civil defendant have the same procedural rights as a civil defendant himself.
- (3) Participation of the civil defendant in the proceedings on the case shall not preclude his right for a representative for the case.

#### **Article 58. Duty to Explain and Insure the Rights of Persons Participating in Criminal Proceedings**

The investigator and the court shall explain to persons participating in criminal proceedings their rights and shall insure their opportunity to realize these rights.

#### **Article 59. Duty of the Investigator, Prosecutor, Court to Take Measures to Compensate for Damages Caused to a Person by Illegal Actions**

- (1) When dismissing a criminal case on the basis of the absence of a crime, lack of corpus delicti or the not guilty verdict, the investigator, prosecutor, court shall explain to the person the procedure for restitution of his lawful rights and shall take measures to compensate for damages caused to the person by illegal accusation, illegal institution of criminal proceedings against him, or illegal conviction.
- (2) Conditions and procedure for compensation for damages shall be determined by the law of the Kyrgyz Republic.

### **CHAPTER 7. OTHER PERSONS PARTICIPATING IN CRIMINAL PROCEEDINGS**

#### **Article 60. The Witness**

- (1) Witness is any person summoned by the investigator, prosecutor, defense attorney or the court to testify about known to him circumstances of the criminal case.
- (2) A witness shall not participate in the case as a prosecutor, defense attorney, representative of the victim, civil plaintiff or civil defendant.
- (3) Participation in the case of legal representatives of the victim or the accused shall not preclude an opportunity for them to be interrogated as witnesses.
- (4) The following persons shall not be interrogated as witnesses:
  - 1) a judge, who knows about circumstances of the case as he participated in criminal proceedings for the case;
  - 2) the defense attorney and representative of the victim, civil plaintiff, civil defendant who learnt about circumstances of the case in the course of their work on the criminal case;

- 3) an advocate, assistant of an advocate who learnt about circumstances of the case while rendering legal services to any participant of the case, or when any of the participants turned to him for such services;
  - 4) a person who may not properly realize the situation which is necessary for the case and who may not testify due to a mental disease or physical disability;
  - 5) a priest who learnt about circumstances of the case in the course of confession;
  - 6) close relatives of the suspect, the accused, the defendant.
- (5) If persons mentioned in paragraph 6 of item 4 of this Article want to testify, they shall be interrogated pursuant to the rules of this Code.

### **Article 61. Rights and Duties of a Witness**

- (1) Witness has the right to:
  - 1) testify in his native language or in any other language he speaks, use services of an interpreter;
  - 2) challenge the interpreter participating in his interrogation;
  - 3) personally write down the testimony;
  - 4) study the transcript of the interrogation, make necessary additions and changes to it;
  - 5) use written notes and documents when giving his testimony;
  - 6) lodge complaints against actions of the preliminary investigator, investigator, prosecutor, and the court;
  - 7) be reimbursed for his expenses incurred during the proceedings on the criminal case, and for damages caused unlawfully by actions of the agency conducting the criminal proceedings;
  - 8) receive back the property seized by the agency conducting the criminal proceedings as exhibits for the trial or on the other grounds and the originals of the official documents belonging to him;
  - 9) have a defense attorney when interrogated.
- (2) Witness shall:
  - 1) appear when summoned by the investigator, prosecutor, court;
  - 2) truthfully report all that he knows regarding the case and answer questions;
  - 3) not divulge, without the permission of the interrogator, the information about the circumstances of the case that are known to him;
- (3) When the witness fails to appear without justifiable reasons, he may be brought to court and fined in the amount of up to two estimated rates as provided herein by Articles 120 and 121.
- (4) For perjury and for refusal or evasion to testify, the witness shall be liable in accordance with Article 330 and 331 of the Criminal Code of the Kyrgyz Republic.  
(As amended by the Law of the KR dated 28 June 2001 #62)

### **Article 62. Expert**

- (1) Expert is a person not personally interested in the criminal case, assigned by the investigator, the court or, if requested by them, by the head of the expert institution to decide issues, which occur during investigation or trial with the use of specific knowledge in science, technology, art, profession and give the conclusion on this basis. Expert may be assigned from the list of persons suggested by the participants of the criminal proceedings on the case or invited by the parties.
- (2) Expert shall possess the specific knowledge in science, technology, art, profession enough to make the conclusion on the presented questions;
- (3) A person may not be assigned or otherwise summoned to the proceedings on the criminal case as an expert on legal issues;
- (4) When there is a necessity, there may be several experts assigned on the case;

- (5) Summons of expert, his assignment and proceedings of the expert examination shall be accomplished pursuant to this Chapter.

### **Article 63. Rights and Duties of an Expert**

- (1) Expert has the right to:
- 1) study the materials of the case relevant to the subject matter of the expert examination;
  - 2) receive objects and materials necessary for the comparative analysis and for making his conclusion;
  - 3) ask for additional materials necessary for making his conclusion or for conducting additional examination with participation of other experts;
  - 4) refuse to make the conclusion if the presented questions are beyond his specific competence;
  - 5) be present during the proceeding of the investigative actions and ask questions relevant to the subject matter of the expert examination carried out by him;
  - 6) participate in the court proceedings regarding the subject matter of the expert examination;
- (2) Expert shall:
- 1) appear when summoned by the investigator or the court;
  - 2) give objective answers to questions placed before him;
  - 3) not divulge materials of the investigation;
  - 4) follow the rules of behavior during investigative proceedings of the investigative actions and during the trial;
- (3) When the expert fails to appear without justifiable reasons, there may be imposed a fine of up to five estimated rates as provided herein by Articles 120 and 121.
- (4) For refusal or evasion to perform his duties without justifiable reasons, the expert shall be liable in accordance with Article 331 of the Criminal Code of the Kyrgyz Republic. And for perjury he shall be liable in accordance with Article 330 of the Criminal Code of the Kyrgyz Republic.
- (5) Expert has no right to:
- 1) conduct negotiations with participants of the procedure regarding the issues, related to expert examination;
  - 2) collect research materials by himself;
  - 3) conduct researches that may cause complete or partial destruction of the presented objects, or their shape and main characteristics, if there was no special permission from the investigator, the court.

### **Article 64. Specialist**

Specialist is a person not personally interested in the criminal case, summoned by the investigator, the court to assist in investigative or other proceedings actions with the use of specific skills and knowledge in science, technology, art, profession. Educational specialist participating in the interrogation of a juvenile victim, suspect, accused, defendant, witness is also considered a specialist. Specialist may be assigned from the list of persons suggested by the participants of the criminal proceedings on the case.

### **Article 65. Rights and Duties of a Specialist**

- (1) Specialist has the right to:
- 1) know the purpose of his summons;
  - 2) refuse to participate in the proceedings on the case if he does not possess necessary skills and knowledge;
  - 3) with the permission of the investigator, or the court, to ask questions of the participants of the investigative proceeding;

- 4) study the transcript of the proceeding of investigation in which he takes part, and make statements and comments subject to recording;
  - 5) lodge complaints against actions of the investigator, court;
  - 6) receive a reward for the work performed by him, reimbursement of his expenses incurred during the proceedings on the criminal case;
- (2) Specialist shall:
- 1) appear when summoned;
  - 2) participate in investigative proceedings of the actions and in the court proceedings by using specific knowledge, skills and scientific-technical means;
  - 3) give explanations regarding actions performed by him;
  - 4) follow the rules of behavior during investigative proceedings and during the trial;
  - 5) not divulge the information about facts of the case and other information that became known to him in connection with his participation in the case;
- (3) For refusal or evasion of the specialist to fulfill his duties without justifiable reasons, there may be imposed a fine of up to five estimated rates as provided herein by Articles 120 and 121.

### **Article 66. Interpreter/Translator**

- (1) Interpreter/translator is a person not personally interested in the criminal case, having a command of a foreign language, and also understanding deaf and mute signs knowledge of which is necessary for the translation, summoned for participation in the investigative and court proceedings in cases when the suspect, accused, defendant, their defense attorneys or the victim, civil plaintiff, civil defendant or their representatives, and also the witnesses and other participants of the trial do not have a command of the language used in proceedings on the case, as well as for translation of written documents.
- (2) A person shall be appointed an interpreter/translator by a resolution of the investigator or the judge, or by a ruling of the court.

### **Article 67. Rights and Duties of Interpreter/Translator**

- (1) Interpreter/translator has the right to:
  - 1) study the transcript of proceedings of the investigative action in which he has participated, and also with the transcript of the court proceedings and make comments subject to recording;
  - 2) refuse to participate in the proceedings on the case if he does not possess the knowledge necessary for the translation;
  - 3) lodge complaints against actions of the preliminary investigator, investigator, prosecutor, court;
  - 4) receive a reward for the work performed by him, reimbursement of his expenses incurred;
- (2) Interpreter/translator shall:
  - 1) appear when summoned by the investigator, the court;
  - 2) accomplish precisely and completely the assigned to him translation;
  - 3) certify correctness of the translation by his signature in the transcript of investigative proceedings made with his participation, and also in the procedural documents that are handed over to the participants of the trial translated in their native language or any other language that they have a command of;
  - 4) not divulge the information about facts of the case and other information that became known to him in connection with his involvement in the case as an interpreter/translator;
  - 5) follow the rules of behavior during investigative proceedings during the trial;
- (3) If failed to appear or to fulfill his duties without justifiable reasons, there may be imposed a fine of up to five estimated rates as provided herein by Articles 120 and 121. In case of deliberately incorrect translation an interpreter/translator shall be liable in accordance with Article 330 of the Criminal Code of the Kyrgyz Republic.

### **Article 68. Identifying Witness.**

Identifying witnesses are adult persons, not less than two, summoned with their consent, having no interest in the case outcome, to participate in investigational actions in the cases provided herein. The accused, victim, civil claimant, civil defendant, relatives, defense attorney; officers, including those who work not on the permanent staff, of the agency of investigation, prosecutors office and the court in charge of the criminal procedure of the case, shall not be summoned as identifying witness.

#### **Article 69. Rights and Duties of Identifying Witness.**

- (1) The identifying witness has the right to:
  - 1) ask for introduction of his comments to the transcript of proceedings in respect of the actions, carried out with his participation;
  - 2) receive reimbursement of his expenses incurred during his participation in the criminal case proceedings.
- (2) The identifying witness shall:
  - 1) be present when certain investigative action is taken from its beginning to the end;
  - 2) certify the fact, contents and results of the actions, at which he was present;
  - 3) obey legal orders of the person conducting the investigative action;
  - 4) not divulge the materials of the case.

### **CHAPTER 8. FACTORS PREVENTING PARTICIPATION IN CRIMINAL PROCEEDINGS. CHALLENGES**

#### **Article 70. Factors Preventing a Judge from Participating in Criminal Proceedings.**

A Judge shall not participate in proceedings on the case:

- (1) in the event he is a victim, civil plaintiff, civil defendant, or if he participated in the case as a witness, expert, specialist, translator, investigator, prosecutor, defense attorney, clerk of the court, legal representative of the accused, defendant, representative of a victim, civil plaintiff, or civil defendant;
- (2) In the event he is a relative of the victim, civil plaintiff, civil defendant, or their representatives, a relative of the accused, defendant, or his legal representative, a relative of the prosecutor, defense attorney, investigator, clerk of the court;
- (3) In event there are other circumstances that may arouse doubt of the judge's impartiality.

#### **Article 71. Inadmissibility of Repeated Participation of a Judge in Consideration of the Case**

- (1) The judge who has participated in the consideration of the case in trial court cannot participate in considering the same case in appellate and cassation procedures, in reviewing procedure, and also during the new consideration of this case in trial court after the verdict, or resolution (ruling) on trial dismissal rendered by him was repealed.
- (2) The judge who has participated in the consideration of the case in appellate and cassation court cannot participate in reviewing of this case in reviewing procedure.
- (3) Judge cannot repeatedly participate in consideration of the case in appellate and cassation courts or courts of reviewing procedure, the decision on which was made with his participation was repealed.

- (4) Judge who has participated in consideration of the case in appellate, cassation, or reviewing procedure, or due to the newly discovered evidence, cannot participate in consideration of this case in trial court.

(As amended by the Law of KR dated 8 August 2004 #111)

#### **Article 72. Recusal of a Judge**

- (1) Under the circumstances stipulated in Articles 70 and 71 of this Code, a judge shall be obligated to exclude himself from participation in a case. For the same reason a judge may be recused by the parties.
- (2) The recusal shall be announced before the beginning of court proceedings. Later recusal shall be permitted only in case when the reason for it has become known to the person recusing the judge only after beginning of the court proceedings.

(As amended by the Law of KR dated 5 August 2008 #193)

#### **Article 73. Procedure for Recusal of a Judge, claimed by the participants of proceedings**

- (1) Court shall decide on recusal of a judge as well as other participants of the process in a separate room;
- (2) Recusal of a judge shall be decided by other judges in the absence of the judge in question, though the judge has the right to present to other judges his explanation concerning his recusal. If the vote is even, the recusal shall be considered sustained;
- (3) Recusal of several judges or the whole panel shall be resolved by the court in full session by the majority vote;
- (4) A motion for recusal of a judge hearing a case alone shall be decided by that same judge, who shall issue an order to this effect. This order may be challenged by submitting a private complaint pursuant to Article 339 hereof. The private complaint shall be reviewed within five days after it was filed. The ruling made based on review of a private complaint shall not be subject to appeal.
- (5) In the event of simultaneous recusal and objection to the judge and prosecutor, defense attorney, clerk of the court, translator, expert, or specialist, recusal to the judge shall be considered first.

(As amended by the Law of KR dated 8 August 2004 #111)

#### **Article 74. Challenge\* to a Prosecutor**

- (1) Under the circumstances foreseen in Article 70 of this Code, the prosecutor shall not participate in proceedings on a case, or if he participated in this case as a judge;
- (2) Prosecutor shall cease his participation in the case when there is a basis for a challenge to him. For the same reason prosecutor may be challenged by the suspect, accused, defendant, defense attorney, victim or his representative, civil plaintiff, civil defendant or their representatives.

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\* Challenge is used hereinafter in the meaning of an objection to a person involved in or carrying out the criminal proceedings, that is questioning professional or personal qualifications, capability of a person for a particular function or due to possible conflict of interests

- (3) The issue of the challenge to a prosecutor shall be resolved in court by the panel considering the case.

#### **Article 75. Challenge to an Investigator**

- (1) Investigator shall not participate in proceeding on the case under circumstances stipulated in Article 70 of this Code, or if he participated in this case as a judge.
- (2) Under the circumstances stipulated in item 1 of this Article, investigator shall be obliged to cease his participation in this case. He may also be challenged by the suspect, accused, their legal representatives, defense attorney, victim and his representative, civil plaintiff, civil defendant or their representatives.
- (3) The issue of his discharge or challenge to him shall be resolved by a prosecutor.
- (4) The notice of challenge to investigator shall be submitted to the prosecutor no later than 24 hours to the prosecutor, who shall resolve the challenge within three days.
- (5) Until the challenge is resolved, the investigator shall continue the proceeding on the case.

#### **Article 76. Challenge to a Clerk of the Court**

- (1) The rules stipulated in Article 70 of this Code shall be also applied to a clerk of the court. His prior participation in the case as a clerk shall not serve as a basis for a challenge.
- (2) A challenge to a clerk of the court shall be decided by the judge, or court considering the case.

#### **Article 77. Challenge to a Translator**

- (1) Translator shall not participate in proceedings under circumstances stipulated in Article 70 of this Code, or in case of his incompetence.
- (2) Under the above circumstances, the suspect, accused, defendant, their legal representative, defense attorney, prosecutor, victim and his representative, civil plaintiff, civil defendant and their representatives may challenge a translator.
- (3) In case translator is incompetent, a witness whose testimony he is translating may challenge him.
- (4) Prior participation in the same case as a translator shall not be the basis for a challenge.
- (5) Investigator shall resolve the challenge to the translator during the investigation, and the court considering the case shall resolve such a challenge during the trial.

#### **Article 78. Challenge to an Expert**

- (1) An expert may not participate in proceedings on the criminal case:
  - 1) under circumstances stipulated in Article 70 of this Code. His prior participation in the case as an expert shall not be the basis for a challenge;
  - 2) in the event he is or was dependent on the investigator, prosecutor, judge, suspect, accused, defendant, their defense attorneys and legal representatives, victims, civil plaintiff, civil defendant or their representatives;
  - 3) in the event he was responsible for audit on this case;
  - 4) in the event he is found to be incompetent.

- (2) An expert shall not be challenged in the event he participated in the proceedings as a specialist except for cases of participation of a physician—specialist in forensic medicine for corpse’s external examination and criminalist participating in inspection of locus criminis;
- (3) Challenge to an expert shall be resolved according to Article 77, Item 5 of this Code.

#### **Article 79. Challenge to a Specialist**

- (1) The specialist may not participate in proceedings on the case under circumstances stipulated in Articles 70 and 77 of this Code . His prior participation in the case as specialist shall not be the basis for a challenge.
- (2) Challenge to a specialist shall be resolved according to Article 77 of this Code.

#### **Article 80. Circumstances Preventing Defense Attorney, Representatives of a Victim, Civil Plaintiff or Civil Defendant from Proceedings.**

- (1) Defense attorney, as well as the representative of a victim, civil plaintiff or civil defendant shall not participate in criminal proceedings:
  - 1) in the event of his prior participation in the case as a judge, prosecutor, investigator, clerk of the court, witness, expert, specialist, translator;
  - 2) in the event he is a relative to a judge, prosecutor, investigator, clerk of the court who participated or is participating in the investigation or proceedings on this case; if he is a relative of a person whose interests are in conflict with the interests of the participant of proceedings to whom he agreed to provide legal assistance;
  - 3) in the event he is a judge, prosecutor, investigator except for cases when he is a legal representative of the underage or incapable suspect, accused, defendant, as well as when a representative of the organization he works for, provided that this organization is a civil plaintiff or civil defendant;
  - 4) in the event he is providing legal assistance or did it before to a person whose interests are in conflict with the interests of the suspect accused, defendant, he is defending on the pending criminal case or with the interests of a victim, civil plaintiff, civil defendant, represented by him.
- (2) Challenge to a defense attorney, representative of a victim, civil plaintiff or civil defendant shall be resolved according to Article 77, Item 5 of this Code.

### **SECTION III. EVIDENCE AND PROOF**

#### **CHAPTER 9. EVIDENCE**

#### **Article 81. Evidence**

- (1) Evidence is any actual information on circumstances and facts of a criminal case, based on which and in accordance to the Laws, the investigator, prosecutor and court decide on commission or not commission of an offense as defined by the Criminal Code, commission of this offense by the suspect or accused, and guilt or innocence of the accused, as well as other circumstances which are significant for the just decision.

- (2) Sources of this information include:
  - 1) testimony of the suspect, accused, victim, witness;
  - 2) expert's opinion;
  - 3) exhibits;
  - 4) transcripts of investigation and judicial actions;
  - 5) other documents.
- (3) Information obtained with a substantial violation of the rules hereof shall be considered inadmissible and shall not be used as evidence and shall not to be used to prove any circumstances stipulated in Article 82 of this Code.
- (4) The inadmissible evidence is:
  - 1) the testimony of a suspect, accused on the perpetration of public wrong, given during the investigation procedure in the attorney's absence, including cases of waiver of the right to defense attorney, also the testimony of an accused in the absence of attorney given during the trial;
  - 2) the testimony of a victim, witness based on the conjecture, assumption, hearsay, also the testimony of a witness who cannot point out the source of his knowledge, if it is not confirmed by the totality of examined evidence during the investigation or trial;
  - 3) any other evidence obtained with a violation of rules herein.

(As amended by the Law of KR dated 24 March 2004 #47)

#### **Article 82. Facts and Circumstances Requiring Evidence in a Criminal Case**

In the criminal case the following shall be proved:

- 1) the occurrence of a crime (time, place, method and other circumstances of commission of the crime and its harmful consequences);
- 2) type of guilt, motives for the crime; justifiable damages;
- 3) circumstances influencing the degree of liability of the accused;
- 4) circumstances characterizing personality of the accused;
- 5) character and the amount of harm caused by crime;
- 6) circumstances for dismissal of a criminal case;
- 7) circumstances leading to release from criminal liability.

#### **Article 83. Testimony of a Witness, Victim, Suspect, Accused**

- (1) Witness and victim may be interrogated concerning all circumstances of the case to be proven including facts characterizing personality of the suspect, accused and victim as well as his relationship with the suspect, accused, or of the witness with the victim.
- (2) Information the source of which is unknown shall not be considered as evidence.
- (3) The suspect shall be interrogated regarding the circumstances of the case and circumstances related to his detention.
- (4) The accused has the right to make statements concerning the charge against him, and also concerning other circumstances of the case known to him and any evidence.
- (5) Testimony of the accused as well as pleading his guilt shall be checked and assessed together with all evidence on the case.

#### **Article 84. Conclusions of an Expert**

- (1) Expert's conclusions shall be done in writing and they shall contain answers to questions placed before him by the investigator, the court. Such conclusions shall be based on special skills of the expert in the area of science, technologies, art or profession, or on studying materials of the criminal case, exhibits, samples and other objects. Conclusions shall also indicate the methods used, explanations on his answers to the questions and circumstances substantial for the case and discovered with the assistance of the expert.
- (2) In cases stipulated in Article 200 of this Code the examination shall be obligatory.
- (3) Expert's conclusions shall not be binding for the investigator, prosecutor and court, but their disagreement shall be justified correspondingly in resolution, verdict, or ruling.

#### **Article 85. Exhibits**

Exhibits refer to objects if there are grounds to suppose that they were used as the weapon in the commission of a crime, objects which have retained traces of the crime, or which were the object of a crime, or money and other values, as well as other objects and documents which may serve to discover the crime, establish actual circumstances of the case, or to discover the offender, or to reject the charge, or mitigate the sentence.

#### **Article 86. Storage of Exhibits.**

- (1) Exhibits shall be described in detail in inspection reports, if it is required, they shall be video recorded and photographed. By resolution of the investigator, the judge, or by ruling of the court, the exhibits shall be attached and stored with the dossier of the case.
- (2) If various objects may not be stored with the dossier of the criminal case, they shall be photographed or video recorded and stored as indicated by the investigator or court.
- (3) Big exhibits which have to be stored in special warehouses requiring substantial expenditures for storage, with short expiration date shall be immediately transmitted to appropriate facilities, organizations for usage or sale with the consent of the prosecutor and judgment enforcement officer provided that they may not be returned to the owner after the criminal proceedings.
- (4) Exhibits shall be transmitted together with the case when the case is given from one investigator to another, or while addressing case to the prosecutor and court, or transferring the case from one court to another, except for cases stipulated in item 2 and 3 of this Article.

#### **Article 87. Terms of Exhibits' Storage**

- (1) Exhibits shall be stored until all issues on the case are solved by legally binding verdict, or until the terms for filing an appeal are over, or dismissal of the case.
- (2) In some cases exhibits may be returned to the owners prior to the terms stipulated in item 1 of this Article provided that it will not harm the investigation and court proceedings.

#### **Article 88. Measures Taken in Respect to the Exhibits upon Completion of the Proceedings on the Case**

In the verdict, as well as in a ruling or dismissal resolution the issue of exhibits shall be resolved according to the following rules:

- (1) weapons used in the crime belonging to the accused shall be confiscated;
  - (2) items which are banned shall be transferred to an appropriate institutions or destroyed;
  - (3) items of no value shall be destroyed, provided that they may be of no further use, or in case of the motion by interested persons or institutions they may be given to them;
  - (4) money and other valuables obtained illegally shall become the state revenue, pursuant to the verdict, ruling of the court, resolution of the judge or, if the case is dismissed due to the death of the accused or his recognizance as irresponsible, then pursuant to the resolution of the investigator; the rest shall be given to their owners and if the owners are not known, they shall become the state property. Disputes concerning the ownership for such items shall be solved according to the rules of civil procedure;
  - (5) Money and other valuables that were the subject of a bribe or smuggled goods shall be turned over to the State pursuant to a court judgment as provided for by the criminal law. If a person has voluntarily reported the fact of extortion of a bribe and provided assistance in catching the bribe taker red-handed, the subject of a bribe shall be returned to the owner pursuant to a court judgment;
  - (6) documents which are considered exhibits shall remain with the case dossier throughout the time of its storage or shall be transferred to appropriate institutions.
- (As amended by the Law of the KR dated 28 June 2001 #62)

#### **Article 89. Other Documents**

- (1) Documents shall be considered evidence if the information stated, or certified by organizations, officials, and citizens is significant for the criminal case.
- (2) Documents may contain information both in writing and viva voce. Documents may be photos and movies, sound and video records received, requested or supplied in compliance with this Code and considered evidence for the case.
- (3) Documents shall be attached to the case dossier during the whole time of storage. If required for accounting, reports or other legal purposes, documents seized and attached to the dossier of the case may be returned to their owners or given for temporal use provided that it will not cause any harm to the criminal case, or their copies shall be made.
- (4) Documents shall be considered exhibits if they have the attributes specified in Article 85 of this Code.

#### **Article 90. Records of Investigation and Court Proceedings**

Documents of investigation actions made as provided herein, fixing circumstances apprehended by the person in charge of the criminal case, and discovered during search, inspection, examination, seizure, detention, identification, disinterment of corpse, checking testimony at the site, experiment, telephone and other conversations, and other proceedings on the criminal case as well as transcripts of the court proceedings, showing the progress of court actions and their results, shall be considered records for the criminal case.

## **CHAPTER 10. COLLECTING, TESTING, EVALUATING EVIDENCE**

### **Article 91. Proof**

- (1) Proof consists of collection, testing evaluation on the evidence in order to establish facts of significance for legal, well-grounded and just case resolution.
- (2) Collection of the evidence shall be performed during the investigation and court proceedings by way of questioning, confrontation, identification, seizure, search and inspection, experiments, audits, expertise, requesting documents and other investigational and court proceedings stipulated by the law.
- (3) Investigator, court, shall be entitled within their proceedings on the cases to summon any person for questioning or for the expert's opinion as stipulated by this Code; to inspect, search and conduct other investigational proceedings; require from organizations, associations, officials, persons, and investigation agencies documents and things significant for the case; require audit and check from appropriate bodies and officials.
- (4) The defense attorney shall be entitled to introduce evidences and to collect information required for legal assistance, as well as to demanding information, references and other documents from different organizations and their associations, which, in their turn, shall be obliged to provide such documents or their copies; with the consent of the client to inquire experts' conclusions in order to clarify questions occurred while providing legal assistance when such questions require special skills; utilize services of private detectives or detective agencies in order to obtain information related to the case pursuant to the Law on Advocacy and Advocate Activity.
- (5) The suspect, accused, defendant, defense attorney, prosecutor, victim, civil plaintiff, civil defendant and their representatives, any citizen, organization and their associations shall be entitled to provide written and spoken information, things and documents which may be considered evidence.
- (6) The prosecutor shall be obliged to prove the guilt of the accused.

### **Article 92. Verification of Evidence**

Collected evidence on the case shall be thoroughly and fully verified. Verification consists in analyzing the received evidence, comparing it with other evidence, gathering new evidence, verification of the sources of evidence.

### **Article 93. Evaluation of Evidence**

The investigator, prosecutor, court shall evaluate the evidence according to their own feelings based on comprehensive, complete and objective consideration of all facts of the case and, while doing so, they shall be guided by law.

## **SECTION IV. PROCEDURAL SANCTIONS**

### **CHAPTER 11. DETENTION OF THE SUSPECT**

#### **Article 94. Grounds for Detention of a Person Suspected in Committing a Crime**

- (1) Grounds for detention are:
  - 1) the person is caught during the commission of a crime or directly after its commission;
  - 2) eyewitnesses, including the victims, directly point out the person as the offender;
  - 3) the suspect, his clothes, or his dwelling have evident traces of the crime.
- (2) The person may be detained in the presence of other facts that give grounds to suspect the person in committing the crime, if attempted to escape, when he does not have a permanent place of residence or when his identification is not established.

#### **Article 95. Procedure for Detaining a Person Suspected in Committing a Crime**

- (1) No later than three hours after the delivery of the detained, there shall be made the transcript of detention proceedings. The transcript shall contain the grounds and reasons, place and the time (with indication of hour and minute), the results of the personal search. The transcript of proceedings shall be read to the suspect, and he shall be explained his rights provided for herein by Article 40. The transcript of detention shall be signed by the person who has written it and by the detained. The investigator is obliged to inform the prosecutor in writing about the detention within twelve hours starting from the moment of writing the transcript of detention.
- (2) The detained shall be interrogated in accordance with the rules provided herein in Article 191.

#### **Article 96. Personal Search of the Detained**

The detained may be subject to a personal search in cases when there is a probable cause to suppose that the suspect has a weapon on him or will attempt to free himself from the evidence proving his guilt in committing the crime. A person carrying out the detention has the right to perform the personal search without delay according to the rules of Article 185 of the present Code.

#### **Article 97. Grounds for Release of the Person Detained on the Suspicion of Committing a Crime**

- (1) The detained shall be released by the resolution of the investigator or the prosecutor, if:
  - 1) the suspicion in committing the crime has not been confirmed;
  - 2) there are no grounds or necessity in detaining the suspect;
  - 3) period of detention established by the law has expired.
- (2) If within seventy two hours no resolution about the sanction of custodial placement has not been received by the head of detention place of deferred, the head of detention place of deferred shall inform the prosecutor immediately, where upon, if prosecutor will not apply the sanction in the form of detention of the deferred, the head of the detention place of deferred shall release him immediately and draw up the protocol.
- (3) When releasing the detained, the latter shall receive a reference which indicating by whom he was detained, the ground, the place and the time of detention, as well as the grounds and the time of release.  
(As amended by the Law of KR dated 13 March 2003, #61)

#### **Article 98. Conditions for Custody of the Detained on the Suspicion of Committing a Crime**

The detained on the suspicion of committing a crime shall be placed in the temporary detention center. The procedure for and the conditions custody for the detained shall be provided by the legislation of the Kyrgyz Republic.

### **Article 99. Notice of the suspect's Relatives of his Detention**

- (1) Within twelve hours the investigator shall notify any member of the family of the suspect or, in their absence, other relatives or close to him persons about his detention.
- (2) If the detained is a person of another state, an embassy or a consulate of his state shall be notified within the stated time limit. There shall be a record about the notice in the case.

### **Article 100. Interrogation of the Detained on the Suspicion of Committing a Crime**

- (1) A person detained on suspicion of committing a crime shall be interrogated as the suspect with participation of defense attorney.
- (2) Before an interrogation the detained shall be explained the rights provided by Article 40 of this Code. He shall be informed what crime he is suspected of.

## **SECTION 12. SANCTIONS**

### **Article 101. Sanctions and Their Types**

- (1) Sanctions are enforcement measures inflicted on the accused in order to prevent his undue behavior in the course of the criminal case investigation and trial and to provide for an enforcement of the sentence.
- (2) Sanctions may be as follows:
  - 1) recognizance not to leave the place;
  - 2) personal guarantee;
  - 3) transfer for the command probation;
  - 4) transfer of a juvenile under supervision of parents or persons, organizations substituting parents;
  - 5) bail;
  - 6) house arrest;
  - 7) taking into custody.

(As amended by the Law of KR dated 24 March 2004 #47)

### **Article 102. Grounds for Inflicting Sanctions**

In case there are serious grounds to think that the accused will escape from investigation or trial, that he will prevent an objective investigation and trial of a case or will continue his criminal activity and as well as in order to provide for the execution of the sentence, the investigator, prosecutor and court, within their authority, shall be entitled to inflict a sanction on such person as stipulated by the Article 101 herein.

(As amended by the Law of the KR dated 28 June 2001, # 62).

### **Article 103. Circumstances to Taken into Account when a Sanction Is Selected**

When an issue is considered on the necessity of inflicting a sanction as well as selection of a sanction the investigator, prosecutor, or court apart from facts stipulated by Article 102 of this Code shall also take into account the gravity of the charge, the personality of the accused, his occupation, age, health condition, family status, and other circumstances.

(As amended by the Law of the KR dated 28 June 2001, #62).

#### **Article 104. Resolution and Ruling on a Sanction Selection**

- (1) The investigator, prosecutor, judge shall render a motivated resolution and the court shall issue a ruling on a sanction selection that shall specify a full name, year and the place of birth of the accused, type of the charge, the Criminal Code Article according to which a person is charged, type of the selected sanction, and grounds for its selection.
- (2) The resolution of the investigator on sanction selection shall be announced to the accused and he has to sign it; a copy of the resolution shall be filed with a prosecutor. At the same time he shall be explained the procedure for an appeal of the decision on a sanction selection as provided by Section 15 of this Code.

(As amended by the Law of the KR dated 28 June 2001, #62).

#### **Article 105. Recognizance not to Leave the Place**

- (1) Recognizance not to leave the place is a written obligation of the accused not to leave the place of his permanent or temporary place of living without the permission of the investigator, prosecutor or the court, not to prevent an objective investigation and court proceedings and to come when summoned on the set date.
- (2) If the accused violates the recognizance not to leave the place, a more serious sanction may be inflicted upon him and he shall be informed about such possibility when he recognizes not to leave the place.

(As amended by the Law of the KR dated 28 June 2001, #62).

#### **Article 106. Personal Guarantee**

- (1) Personal guarantee is a written obligation of trustworthy persons certifying that they guarantee that the accused will fulfill his responsibilities specified in item 1 Article 105 of this Code. The number of guarantors shall not be less than two.
- (2) Selection of a guarantee of defendant's appearance as a sanction shall be acceptable only upon a written motion of a guarantor and with the consent of the accused.
- (3) Guarantor shall provide a guarantee of defendant's appearance that has to certify that he has explained the type of the charge of the persons for whom he acts as a guarantor bearing all liabilities coming out of it, including imposition of a fine in case the accused commits acts for the prevention of which the sanction was inflicted.
- (4) In case the accused commits acts for the prevention of which the guarantee was undertaken, the court shall impose a fine on each guarantor in the amount from 100 up to 500 estimated rates in accordance with the procedure foreseen by Articles 120,121 of this Code.

#### **Article 107. Military Unit's Command Probation of Members of the Armed Forces**

- (1) Military unit's command probation of the accused on military service or who is a member of the armed forces or was called to participate in military training means undertaking measures foreseen by the regulations of the armed forces of the Kyrgyz Republic. If on probation, the commodity officer shall provide for due behavior of such person and his appearance when summoned by the investigator, prosecutor, or the court.
  - (2) Military unit command shall be informed about the type of the case for which this type of sanction is selected. Upon undertaking probation, commanding officer shall inform about it in writing the body that selected this type of a sanction.
  - (3) In case the accused commits acts for the prevention of which this sanction was inflicted the command shall immediately inform about it the body that selected this sanction.
- (As amended by the Law of the KR dated 28 June 2001, #62).

### **Article 108. Transfer of a Juvenile under the Supervision**

- (1) Transfer of a juvenile under the supervision of parents, guardians, curators, and other trustworthy persons, as well as representatives of special children agencies means undertaking by one of the mentioned persons of an obligation in writing to provide due behavior of the juvenile and his appearance when summoned by the investigator or the court.
  - (2) Transfer of a juvenile under the supervision of parents and other persons is possible only upon their written motion.
  - (3) When undertaking supervision over a juvenile, parents, guardians, curators, representatives of special children agencies shall be informed about the type of the crime the juvenile is charged with and about their responsibility in case of a violation of the undertaken supervisor's liabilities.
  - (4) The persons supervising a juvenile, in case they fail to fulfill the undertaken obligation, may be sanctioned in accordance with item 4 Article 106 of this Code.
- (As amended by the Law of the KR dated 28 June 2001, #62).

### **Article 109. Bail**

- (1) Bail is an amount of money placed by the accused or other person or organization on a special account as a guarantee that the accused will not commit acts enumerated in item 1, Article 105 of this Code.
- (2) Bail as a sanction shall be applied by the investigator, prosecutor with a warrant of the supervising prosecutor, or by court ruling or resolution of the judge.
- (3) Bail shall not be applied to persons charged with felony.
- (4) The bail amount shall be determined by the body that selected the sanction and shall vary from 50 to 1000 estimated rates.
- (5) Transcript of proceedings shall be compiled on bail acceptance and a copy of the transcript shall be filed with a surety. At the same time the surety shall be informed about the type of the case for which the sanction was selected and the grounds based on which the bail will be appropriated by the state; it shall be specified in the transcript of the proceedings.
- (6) The bail shall be appropriated by the state if the accused committed one of the following violations:
  - 1) without a valid cause failed to appear when summoned by the investigator or the court;
  - 2) escaped from the investigation or the court;

- 3) committed acts aimed at prevention of determination of the truth on the criminal case;
  - 4) committed another intentional offense.
- (7) The investigator shall compile a transcript of proceedings on violations mentioned in item 6 of this Article that shall state facts of the violation and facts certifying the committed violation. The transcript of proceedings shall be signed by the accused, surety and persons certifying the specified in the transcript facts. In case the mentioned violations are committed by the accused in the course of court proceedings, the facts of such violation shall be stated in the transcript of court proceedings.
- (8) In case the accused escaped from the investigation and the court, the transcript of proceedings shall be signed by the persons listed in item 7 of this Article.
- (9) An issue of a bail return shall be resolved by the court in its resolution, ruling, verdict for the criminal case. In case of termination of the legal proceedings at the stage of investigation an issue of a bail return or its appropriation by the state shall be resolved by a motivated resolution of the investigator, or the prosecutor.
- (10) In the case of the sanction change from the bail to taking into custody, if it is not concerned with improper behavior of the suspect or accused, the sum of the bail shall be returned to depositor.
- (As amended by the Laws of the KR dated 28 June 2001, #62, 8 August 2004 #111, 25 June 2007 #91).

#### **Article 109-1. House Arrest**

- (1) The house arrest shall be understood as the limitations concerned with freedom of movement of an accused, and also as a prohibition on:
- 1) communication with certain people;
  - 2) receive and send the correspondence;
  - 3) leave the dwelling at night time;
  - 4) to leave the scope of the administrative territory without the permit of investigator, court, or agency, which has the criminal case in procedure.
- (2) The house arrest as a sanction shall be chosen concerning the accused by the judge's warrant in the presence of grounds and as prescribed in Articles 102, 103 herein, taking into consideration his age, state of health, marital status and other circumstances.
- (3) In the investigator's, prosecutor's resolution on choosing the sanction should contain the concrete limitations which apply to the accused, also it shall indicate the agency or official which is responsible for implementation of supervision of an established limitations.
- (As amended by the Law of KR dated 24 March 2004 #47, 25 June 2007 #91)

#### **Article 110. Detention in Custody**

- (1) Detention as a pre-trial restraint measure shall be imposed by court order on an accused charged with a crime punishable by imprisonment for a term exceeding three years if it is impossible to use a different, less-restrictive pre-trial restraint measure. In exceptional circumstances, this pre-trial restraint measure may be imposed on a person accused of a

crime punishable by imprisonment for a term less than three years if any of the following circumstances exist:

- 1) the person has no permanent residence on the territory of the Kyrgyz Republic;
  - 2) the person's identity has not been ascertained;
  - 3) the person has fled from investigation agencies or from the court.
- (2) Whenever detention is deemed necessary as a pre-trial restraint measure, an investigator with a procurator's consent shall file an appropriate motion with the court. Any order that the motion be filed shall state the reasons for the motion and the grounds that demonstrate the need to detain the accused and render other pre-trial restraint measures impossible. Materials supporting the grounds for the motion shall be attached to the order. If the motion is filed in connection with an accused suspect who has been arrested pursuant to Articles 94 and 95 of this Code, the determination and such materials shall be submitted to the judge within forty-eight hours after the accused was detained but no later than 2 hours before the expiration of the detention period.
- (3) An order to file a motion seeking detention as a pre-trial restraint measure shall be heard by a judge of a district (city) court or military garrison court sitting alone in the presence of the accused, a procurator, and defense counsel in the venue of the investigation or the place of arrest within two hours after the time when the materials were filed with the court. An accused, detained pursuant to Articles 94 or 95 of this Code, shall be brought to the court proceeding. The legal guardian of a minor accused shall have the right to participate in the court proceeding. The failure of parties, except for defence, who received timely notice of the time of such court proceeding to appear shall not preclude the hearing of the motion. During the court hearing a defense counsel may file, in oral or written form, a motion seeking pre-trial restraint measures other than detention in custody. A written motion shall be attached to the case file. The absence of the defense counsel may be excused if there is a valid ground for missing a court hearing (illness, a business trip, etc.). In this case the defense counsel's motion shall be attached to a criminal case file. Under circumstances that make it impossible for the defense counsel to participate (grave illness, death), he shall be replaced by another defense counsel.
- (4) At the start of the court hearing, the judge shall announce what motion is to be heard and inform those in attendance at the hearing of their rights and obligations. Then, the procurator or the official who filed the motion on the procurator's instructions shall present the grounds for the motion, after which the other persons attending the court proceeding shall be heard.
- (5) During a court hearing, the judge shall enter one of the following decisions:
- 1) a decision recognizing the detention as valid;
  - 2) a decision recognizing the detention as invalid and ordering that the person detained be immediately released in the courtroom;
  - 3) a decision imposing detention on recognizing that the accused was detained on valid grounds.
- (6) The judge's order shall be forwarded to the official who filed the motion, the procurator, and the accused, and shall be implemented immediately.
- (7) A repeat motion for the detention of the same person in the same criminal case after one such motion has been denied by a judge's order may be filed with the court only if new circumstances arise that establish that it is essential that the person be detained.
- (8) If the issue of whether to detain a defendant as a pre-trial restraint measure or apply to him some other pre-trial restraint measure arises while the case is in court, the decision on the

issue shall be made by the court on its own initiative, which decision shall be reflected in a ruling or order.

(9) If detention as a pre-trial restraint measure was applied under a judicial warrant in the absence of the person or under (1) items 3) or 4) hereof, that person shall be delivered to court to review the validity of and grounds for detention within forty-eight hours after the person was delivered to an investigation agency.

(10) An official or an office in charge of the criminal case shall immediately provide notification of the place of detention or of any change in the place of detention to any close relative and, if the person detained is a military serviceman, also to the command structure of the military unit.

A complaint regarding the judge's decision ordering application of a pre-trial restraint measure or denying it may be filed in a higher court within five days.

(11) Relatives and other persons visitation may be granted to a person detained in custody only with the permission of an official or an office in charge of the case proceedings.

(As amended by the Laws of the KR dated 28 June 2001, #62; 24 March 2004 #47, June 25 2007 #91).

#### **Article 111. Time Limits on Pre-Trial Detention and Extension Procedures**

(1) The pre-trial restraint measure imposed during criminal proceedings shall be applied under a judicial warrant for a term of up to two months.

(2) If it is impossible to complete a preliminary investigation within the two-month time period and no grounds exist for altering or revoking the pre-trial restraint measure, a judge of a district (city) court or military garrison court may extend the time period:

1) for six months - on motion of the investigator on consultation with a supervising procurator;

2) for nine months - on motion of the investigator on consultation with Deputy Procurators General of the Kyrgyz Republic;

3) for one year - on motion of the investigator on consultation with the Procurator General of the Kyrgyz Republic.

(3) There shall be no further extension of time periods. The accused held in detention is subject to immediate release. A different pre-trial restraint measure shall be imposed with regard to the person released.

(4) An order with regard to filing a motion on extending a detention period shall be submitted to a court in the venue of the preliminary investigation no later than five days before the expiration of the detention period. The order should reflect reasons necessitating the extension of the time period, circumstances to be investigated and grounds for applying this pre-trial restraint measure. The motion shall be reviewed by a judge, according to procedures specified by Article 110(5) of this Code.

(5) The judge, not later than three days after he received the motion, shall make one of the following decisions:

1) extending the detention period;

2) declining the investigator's motion and denying the release of the accused from custody.

(6) The period of detention during investigation shall be calculated from the time when the accused is detained until the time when the criminal case is forwarded to the court. The time

period during which the accused was examining the case files, as provided for by (2) of this Article shall be counted as part of the detention period.

- (7) Also counted as part of the detention period is the time period:
  - 1) for which the person was held as a suspect;
  - 2) of any house arrest;
  - 3) of any involuntary commitment to a medical or psychiatric institution pursuant to a court decision;
  - 4) during which the person was detained on the territory of a foreign state pursuant to a request for legal assistance or for extradition of the person to the Kyrgyz Republic.
- (8) In the event of the repeat detention of an accused in the same criminal case or upon his criminal case being joined with or severed from another criminal case, the duration of the relevant detention period shall include the period of time during which the accused had been detained earlier.
- (9) When the case is sent back for filling the gaps of investigation, during which the detention period has expired, but detention as a pre-trial restraint measure is left unaltered due to the circumstances of the criminal case, the period of detention shall be calculated from the time when the case is sent back to a procurator and may not be longer than one month. Further extension of the said period shall be done according to the procedures and within time limits specified by (2) of this Article.
- (10) A complaint regarding the judge's order extending the detention period or denying this may be filed in a higher court, according to procedures established by Article 132-1 of this Code. (As amended by the Law of the KR dated 28 June 2001, #62, 25 June 2007, #91).

#### **Article 112. Reversal or Change of a Sanction**

(1) Any sanction may be reversed when there is no further necessity in it or there is a change to a more severe sanction or a less severe one due to the circumstances of the case. The reversal or change of a sanction shall be undertaken upon a motivated resolution of the investigator, prosecutor, judge, or by ruling of the court. Reversal or change of a sanction of keeping in custody, bail, shall be undertaken by the court, or by resolution of the investigator, prosecutor with consent of the supervising prosecutor.

(2) A sanction may be changed on more severe only if:

the new accusation will be brought to the accused in committing the aggravated or particularly aggravated crime, provided in Articles of Criminal Code of Kyrgyz Republic;

the accused had violated an obligation or allowed the breach of rule stated in part one Article 105 or part six Article 109 hereof;

(3) In situations where criminal prosecution has been stopped, the investigation period has not been extended, or an act of amnesty has been applied, a pre-trial restraint measure based on a judicial decision may be modified or revoked under a court decision, or under an investigator or procurator's resolution with the consent of a supervising procurator. The court that has passed such decision shall be informed thereof.

(As amended by the Law of the KR dated 28 June 2001, #62; 13 March 2003 #61, 25 June 2007, #91; July 14, 2008, #142).

#### **Article 113. Transfer of Juvenile under Supervision and Undertaking Measures to Protect the Property of the Person Taken into Custody**

- (1) The investigator, court shall:
  - 1) when a person taken into custody has juveniles who are left without supervision, transfer them under supervision of the relevant persons or institutions;
  - 2) when a person taken into custody has some property or a dwelling house left without supervision, undertake measures to protect it.
- (2) On the undertaken measures the investigator, court shall inform the accused who is in custody.

#### **Article 114. Short-term Detention and Taking into Custody of Juveniles**

Taking into custody as a sanction may be applied to a juvenile only in exceptional cases when it is caused by the repeated nature of public wrongs qualified as grave crimes, or by the charge in committing the particularly aggravated crimes.

(As amended by the Law of KR dated 8 August 2004 #111)

### **SECTION 13. OTHER MEASURES OF PROCEDURAL ENFORCEMENT**

#### **Article 115. The Grounds for Undertaking Other Measures of Procedural Enforcement**

- (1) In order to provide for the stipulated by this Code procedure for investigation and trial of criminal cases and due enforcement of a sentence the investigator, or the court are authorized to undertake towards the suspect or accused the following measures of procedural enforcement: recognizance to appear, bringing to court, temporary dismissal from office, imposing of arrest upon property.
- (2) In cases stipulated by this Code the investigator or court shall be authorized to undertake towards a victim, witness or other participants of the proceedings measures of procedural enforcement: recognizance to appear, bringing to court, fine.

#### **Article 116. Recognizance to Appear**

- (1) When there are enough reasons to consider that the suspect, accused, as well as a witness or a victim may deviate from participation in the investigational and court proceedings or if they actually fail to appear without valid causes, the mentioned persons may be obliged to give recognizance to appear.
- (2) Recognizance to appear is a written obligation of the suspect, accused, as well as a witness or a victim to appear when summoned by the investigator or court and inform about the change of their residence.

#### **Article 117. Bringing to Court**

- (1) In case of a failure to appear without valid causes when summoned, the suspect, accused, as well as a witness or victim upon a motivated resolution of the investigator, judge or court ruling may be brought to court (forced bringing). The valid causes for a failure to appear shall be circumstances specified in Article 215 of this Code. Any suspect, accused, as well as

a witness or a victim shall inform the summoning body about valid causes that prevent their appearance on the assigned time when summoned.

- (2) Resolution (ruling) on bringing to court shall be announced to the suspect, accused as well as a witness and a victim, they shall sign the resolution (ruling) for certification.
- (3) Bringing to court at night shall be prohibited.
- (4) Juveniles under the age of 14 years old, pregnant women, as well as sick persons who due to the health conditions may not or shall not leave the place of their staying shall not be brought to court.
- (5) Bringing to court shall be undertaken by an agency of preliminary investigation.

#### **Article 118. Suspension of an Official from Office**

- (1) A procurator, an investigator with a procurator's consent or court shall have the right to suspend an accused or defendant from their offices provided there are sufficient grounds to believe that those may obstruct unbiased investigation or court proceedings, compensation for the damage caused or continue to engage in criminal activities connecting with their occupying their offices.
- (2) An order suspending an accused or defendant from their offices shall be sent to the head of an organization where they work, in which case the latter shall implement and inform a person or a body thereof within three days after receiving the order.
- (3) A suspension of an accused or defendant from office shall be revoked by an order of a court, a resolution of an investigator, procurator when the application of the measure is no longer needed.

(As amended by the Law of the KR dated 25 June 2007 #91; July 14, 2008, #142)

#### **Article 119. Attachment of Property**

- (1) In order to secure the execution of the civil part of a judgment, other financial penalties or a potential forfeiture of property, a procurator, or an investigator authorized by a procurator shall attach the property of a suspect, accused or persons responsible by law for their conduct.
- (2) An attachment of property consists in an order prohibiting the proprietor or owner from disposing of, or, when necessary, using such property, and also orders for seizures and transfers of property for safekeeping.
- (3) Property held by other persons may also be attached if there are sufficient grounds to believe that such property was obtained as a result of criminal conduct of a suspect or accused.
- (4) Attachment may not be levied on property enumerated in the List of Property Exempt from Forfeiture under a Court Judgment, as provided for by the Correctional Code of the Kyrgyz Republic.
- (5) A forensic specialist may participate in the process of attaching property.
- (6) Property that has been attached may be seized or transferred for safekeeping, at the discretion of the attaching official, to the property owner or person in possession, who shall be warned of the responsibility for keeping the property safe, about which fact an entry shall be made in the official record.
- (7) When there is an attachment of the cash assets or other valuables of a suspect or an accused that are located in accounts or deposits or in safe-deposit boxes at banks or other financial

credit organizations, such accounts maybe frozen entirely or partially up to the amount of assets or other valuables that were attached. The heads of banks or other financial credit organizations are required to provide information about cash assets upon the request of a court, a procurator, or an investigator, acting with the consent of a procurator.

- (8) When property is attached, an official record shall be executed pursuant to Articles 184 and 186 of this Code. If property to be attached is missing, this shall be indicated in the official record. A copy of the official record shall be served on the person whose property is attached.
- (9) An attachment of property shall be revoked pursuant to an order or ruling issued by the official or agency to which the criminal case is assigned when the application of the measure is no longer needed.

(As amended by the Law of the KR dated 25 June 2007 #91; July 14, 2008, #142)

### **Article 119-1. Attachment of Securities or Security Certificates**

- (1) In order to secure a potential forfeiture of property or compensation for harm caused by a crime, securities or security certificates shall be attached where they are located or where the owner's rights are registered, complying with the requirements of Article 119 of this Code.
- (2) Bearer securities held by a bona fide purchaser shall not be subject to attachment.
- (3) The official record of a securities attachment shall indicate:
  - 1) the total number, kind, category (type) or series of the securities attached;
  - 2) the securities' par value;
  - 3) the securities' government registration number;
  - 4) information about the issuer of the securities or those who have registered the ownership rights and the place of registration; and
  - 5) information about the document certifying ownership rights to the securities attached.
- (4) The procedures for redeeming securities that have been attached, and for paying income from them, converting them, exchanging them or performing other operations with them shall be set by law.

(As amended by the Law of the KR dated 25 June 2007 #91)

### **Article 120. Fine**

A fine may be imposed on a victim, witness, specialist, interpreter, and other persons for failure to fulfill procedural liabilities and violation of the procedure in cases stipulated by Articles 50, 61, 63, 65 and 67 of this Code. It shall be done according to the procedure established by Article 121 of this Code.

### **Article 121. Procedures for Imposing Financial Penalty and Forfeiting Bail to the State**

- (1) A financial penalty may only be imposed by a court in cases specified by Article 120 of this Code.
- (2) If the violation in question is committed during a court proceeding, the penalty shall be imposed by the court in which the violation took place, as to which a relevant ruling or order shall be issued by the court.
- (3) If the violation in question is committed during pre-trial proceedings, an official record of the violation shall be executed by the investigator or procurator. The official record of violation

shall be forwarded to a district court to be reviewed by a judge within five days after it is filed. The person against whom a financial penalty maybe imposed and the person who executed the official record shall be summoned to the court hearing. The violator's failure to appear without valid reason shall not prevent review of the official record.

- (4) As a result of the review of the official record, the judge shall issue an order imposing or declining to impose a financial penalty. A copy of the order shall be forwarded to the person who executed the official record and the person on whom the financial penalty is imposed.
- (5) In imposing a financial penalty, a court may delay execution of its order or spread out the time for payment of the penalty over three months.
- (6) A decision whether bail should be forfeited to the State in the situations specified by Article 109(6) of this Code shall be determined in accordance with the procedure established by (3) and (4) of this Article.

(As amended by the Law of the KR dated 25 June 2007 #91)

## **PART V. MOTIONS AND PETITIONS**

### **SECTION 14. MOTIONS**

#### **Article 122. Persons Having the Right to Motion**

Participants of the proceedings as well as other persons, organizations shall have the right to file a motion with the investigator, prosecutor or court to undertake investigational, procedural and other actions in order to substantiate the facts relating to the case, secure rights, legal interests of the person who filed a motion or the person whom he represents.

#### **Article 123. Motion Filing**

- (1) Motion filing is possible at any stage of the proceedings. Written motions shall be enclosed to the record of the proceedings and oral ones shall be compiled into a transcript of proceedings.
- (2) Denial of a motion shall not preclude the applicant from applying.

#### **Article 124. Motion Consideration Terms**

Any motion shall be considered and decided directly after its filing. In cases when it is impossible to take a decision on the motion filed in the course of investigation immediately, it shall be decided not later than 3 days after the day of its filing.

#### **Article 125. Motion Consideration**

- (1) Motion shall be granted if it promotes thorough and objective investigation of facts of the case, secures rights and legal interests of the participants of proceedings and other persons.
- (2) Investigator, prosecutor, or a judge shall render a resolution and the court shall render a ruling on the complete or partial grant of the appeal or its denial that shall be announced to the person who filed the motion. The decision taken on the motion may be appealed according to the general rules on motion filing and consideration established by this Code.

## **SECTION 15. APPEAL FROM ACTIONS AND DECISIONS OF STATE BODIES AND OFFICIALS ADMINISTRATING PROCEEDINGS ON A CRIMINAL CASE**

### **Article 126. The Right to Appeal from Actions and Decisions of the Court, Officials Adminstrating Criminal Case Proceedings**

In accordance with Article 25 of this Code actions of the preliminary investigator, investigator, prosecutor, court, may be appealed, in the procedure established by this Code, by participants of the proceedings, persons, organizations if the undertaken procedural actions influence their interests.

### **Article 127 Appeal Filing**

- (1) Appeals shall be filed with a state body or official who administrates criminal case proceedings and is authorized by the law to consider appeals and take decisions on them.
- (2) Appeals may be oral and written. Oral appeals shall be compiled into the transcript of proceedings that shall be signed by the applicant and the official who received the appeal. Additional materials may be enclosed with the appeal.
- (3) Any person who does not know the language in which criminal case proceedings are conducted shall be given the right to compile an appeal in his native language or the language he knows.

### **Article 128. Appeal Filing Procedure for Persons Detained or Taken into Custody**

- (1) Administration of detention centers shall immediately transfer to the investigator, prosecutor, court addressed to them appeals of persons in custody or detained on grounds of suspicion of committing a crime.
- (2) The administration of detention centers shall immediately file appeals of persons in custody on the actions of preliminary investigator, the actions or decisions of the investigator, with the court, or the prosecutor who supervises the case investigation; appeals against actions and decisions of the prosecutor shall be filed with a superior prosecutor. The administration of detention centers shall transfer other appeals to a person or a body that administrates the case proceedings not within 24 hours from the moment of their filing.

### **Article 129. Appeal Filing Terms**

Appeals against actions of preliminary investigator, actions and decisions of the investigator, prosecutor, judge or court may be filed at any moment during investigation or court proceedings. Appeals against the decision to dismiss a criminal case, against verdicts passed by courts of primary jurisdiction shall be filed within the terms established by this Code.

### **Article 130. General Procedure for Appeals Consideration**

- (1) It shall be prohibited for the appeals to be considered by the same prosecutor or judge whose acts are appealed as well as by the official who affirmed the appealed decision.
- (2) While considering an appeal, a prosecutor or judge shall thoroughly check the facts stated in the appeal, require, if necessary, additional materials in respect of the appealed acts and decisions.
- (3) Any prosecutor or judge considering an appeal shall, within the limits of his authority, immediately take measures to restore the violated rights and legal interests of participants of criminal proceedings and other persons.
- (4) If the Appealed wrongful acts or decisions caused some moral, physical or property damage, the person shall be explained his right and procedure to retribute or eliminate the damage and the procedure to exercise the right.

### **Article 131. Complaints against Actions or Decisions of an Investigator or Procurator**

- (1) Complaints regarding orders of an investigator or a procurator's decision declining to initiate a criminal case or dismissing a criminal case, and any other decisions or actions or inaction that infringe on the constitutional rights and freedoms of participants in criminal proceedings or impede citizens' access to justice, may be filed in a district court in the venue of the preliminary investigation..
  - (2) A complaint for review may be filed by the complainant or his defense counsel, legal guardian or designated representative either directly with the court or through an investigator or a procurator..
  - (3) A judge shall determine whether the actions, inaction or decisions of the investigator or procurator are lawful and well-founded no later than five days after the complaint for review is filed at a court proceeding attended by the complainant, his defense counsel or representative, if they are taking part in the criminal case, and by other persons whose interests are directly affected by the action, inaction or decision being complained against, and by a procurator. Failure of a person to appear who was duly notified of the hearing of the complaint for review and who does not insist on taking part in the hearing shall not prevent review of the complaint by court.
  - (4) At the start of the court proceeding, the judge shall announce what complaint is to be heard, introduce himself to those in attendance and advise them of their rights and duties. Then the complainant, if present at the proceeding, shall present the grounds for his complaint, whereupon other persons attending the court proceeding shall be heard. The complainant shall be provided with an opportunity to make a rebuttal.
  - (5) Following the hearing on the merits of the complaint, the judge shall make one of the following decisions:
    - 1) finding that the action, inaction or decision of the particular official was unlawful or not well-founded, and requiring that the official rectify the violation committed;
    - 2) dismissing the complaint without ordering relief.
  - (6) Copies of the judge's order shall be forwarded to the complainant and the procurator.
  - (7) The filing of a complaint for review does not suspend the operation of the decision being challenged or its implementation, unless suspension is found to be necessary by the investigator, procurator or judge.
- (As amended by the law of the Kyrgyz Republic dated 25 June 2007 #71)

**Article 132. The Court Procedure for Consideration of Appeals on Investigator's, Prosecutor's Decisions**

(As amended by the law of the KR dated 16 October 2002 # 141)

- (1) Any person or a legal entity shall be authorized to file appeals with the court against the denial to institute criminal proceedings or to dismiss it, or the decision to initiate a search or seizure.
- (2) Any appeal shall be considered individually by a judge within three days from the moment of its filing.
- (3) The judge after examining the appeal shall make one of the following decisions:
  - 1) dismiss the appeal grant, as it is ungrounded;
  - 2) satisfy the appeal;
  - 3) declare the investigator's resolution on execution of search, removing, approved by prosecutor, as illegal;
  - 4) declare the decisions of investigator, prosecutor on the denial to institute criminal proceedings, dismiss the criminal proceeding as illegal, and to direct the case materials to the prosecutor for making the legal decision;
- (4) Any judge's resolution passed in accordance with the rules of this Article may be reviewed by way of cassational or reviewing procedure.

The resolution of the judge shall be the subject to immediate execution by the investigation and prosecution agencies

(As amended by the laws of KR dated 16 October 2002 # 141, 8 August 2004 #111, 25 June 2007 #91; July 14, 2008, #142; 5 August 2008, # 193)

**Article 132-1. The Judicial Order of Considering the Complaint on the Court's Applying Taking Into Custody as a Sanction**

(As amended by the law of KR dated 25 June 2007 #91)

- (1) The complaint on the court's applying taking into custody as a sanction, or as equal – on prolongation of terms of detaining shall be brought by the person who is detained, his defense attorney or legal representative directly to the district (city) court or military garrison court at the place of detention of person.
- (2) The administration of the place of detention of a person at the time of receiving the complaint on the arrest or a prolongation of a detention term addressed to the higher court, shall immediately and, at least no later than 24 hours from the moment of its receipt send the complaint to the corresponding court with the notification of prosecutor.
- (3) The investigator and prosecutor shall within 24 hours send the complaint to the higher court along with all materials, which prove the legality and validity of applying taking into custody as a sanction or prolongation of term of detention. In the case if the complaint was brought through the administration of place of detention, the prosecutor shall send to the court the indicated materials within 24 hours from the moment of receiving the notification from the administration of place of detention on the complaint that was brought by that person.
- (4) Bringing a complaint right up to its solution shall not interrupt the resolution on choosing taking into custody as sanction and shall not lead to discharge the person from detention.

- (5) The judge shall examine the legality and validity of arrest or prolongation of term of detention no later than 3 days (72 hours) since the day of receiving the materials, which prove the legality and validity of taking into custody as sanction.
  - (6) The court examination of legality and validity of arrest or prolongation of term of detention shall be conducted in closed session with participation of prosecutor, defense attorney, if he participated in the case, and also the legal representative of a person who is taken into custody. The default without good reasons of parties, who were informed in proper time about the day of examination of complaint, shall not be an obstacle for the court examination.
  - (7) The court examination of legality and validity of arrest or prolongation of term of detention with the absence of a person who is taken into custody shall be allowed only in exceptional case when this person is applying for examination of the complaint in his absence or voluntarily refuses from participation in the trial.
  - (8) In the beginning of the trial the judge shall announce which complaint is a subject for examination, introduce him to the persons in the court room, explain their rights and obligations. After it the declarant, if he participates in the examination, substantiates his complaint, and after it the other persons participating in the session are heard.
  - (9) As a result of court examination the judge shall make one of the following resolutions:
    - 1) on the cancellation of the sanction in the form of taking into custody and on discharge the person from detention;
    - 2) on leaving the complaint without satisfaction.
  - (10) In the case if the materials, which prove the legality and validity of applying taking into custody as a sanction or the prolongation of term of detention, were not brought into the court session, the judge shall render a resolution on cancellation of this sanction and on discharge this person from detention.
  - (11) The resolution of the judge shall be well-grounded.
  - (12) The judge shall be authorized at the same time with rendering a resolution on cancellation the sanction in the form of taking into custody to choose any other sanction provided by the Law.
  - (13) The copy of the resolution of the judge shall be sent to prosecutor and declarant, and in the case of decision on discharging the person from detention – also to the place of detention for immediate execution. If the person who is taken into custody is participating in the trial, he shall be discharged from detention by the judge immediately in the court room in the mentioned case.
  - (14) In the case of leaving the complaint without satisfaction the repeated examination of the complaint of same person on the same case in order provided by this Article shall be allowed, if the sanction in the form of taking into custody was once again chosen after its cancellation or change.
  - (15) The resolution of the judge rendered according to this Article may be appealed in cassation procedure and in reviewing procedure.
- (As amended by the Law of KR dated 8 August 2004 #111, 25 June 2007 #91)

### **Article 133. Appeals (Petitions) Against the Verdict, Rulings, Judgments of the Court**

Appeal (petition) against the verdict, rulings and judgments of the courts of primary jurisdiction, appeal courts shall be filed in accordance with the provisions of Section 38 of this Code. Appeal

(petition) for revision of judgments that took effect shall be filed in accordance with provisions of Section 42 of this Code.

## **PART VI. OTHER PROVISIONS**

### **SECTION 16. CIVIL CLAIMS IN PROSECUTION**

#### **Article 134. Civil Claims that are Considered in Criminal Proceedings**

- (1) Civil claims of persons and legal entities on restitution of damages, caused directly by a crime or by a prohibited by the Criminal Code of the Kyrgyz Republic act of an irresponsible person shall be considered in criminal proceedings.
- (2) Civil claim considered within criminal proceedings, including the one separated from the criminal case for the consideration according to the civil procedure, shall be free from a state fee.
- (3) Jurisdiction of a civil claim connected with a criminal case shall be determined by jurisdiction of the criminal case.
- (4) Proof for of a civil claim brought within the prosecution shall be made according to rules established by this Code and the Civil Procedure Code of the Kyrgyz Republic.

#### **Article 135. Filing a Civil Claim**

- (1) Any person, who suffered from damages in the result of a crime or of a prohibited by the Criminal Code of the Kyrgyz Republic act of an irresponsible person, or his representative shall be authorized to file a civil claim from the moment of initiation of the prosecution but before the beginning of court proceedings.
- (2) Civil claim may be filed both in written and oral forms. Oral claim shall be compiled into transcript of proceedings of the court.
- (3) Any person who failed to file a civil claim within the prosecution, as well as a person whose civil claim was left without consideration shall be authorized to file it according to the civil.
- (4) Any prosecutor shall be authorized to file a civil claim within the prosecution in cases when it is dictated by the protection of rights of persons, the state and public interests.

#### **Article 136. Recognizance as a Civil Plaintiff**

- (1) If from the materials of a criminal case it becomes clear that a crime or a prohibited by the Criminal Code of the Kyrgyz Republic act of the irresponsible person caused some damages to a person or a legal entity, the investigator, judge, or court shall explain them or their representatives the right to file a civil claim.
- (2) Any person or a legal entity filing a civil claim shall be recognized as a civil plaintiff. Any person who filed a claim or his representative shall be announced a resolution (ruling) on his recognizance as a civil plaintiff and explained his rights stipulated by Article 53 of this Code.

#### **Article 137. Denial to Recognize as a Civil Plaintiff**

When there are no grounds stipulated by Article 135 of this Code for filing a civil claim, the person or the legal entity who filed the claim may be denied in their recognizance as civil plaintiffs and a motivated resolution or ruling on that shall be rendered and the right to appeal shall be explained.

#### **Article 138. Summoning as a Civil Defendant**

When determined that the person liable for damages caused by the crime or by a prohibited by the Criminal Code of the Kyrgyz Republic act of irresponsible person, and when a civil claim was filed in the course of prosecution, the investigator or court shall proceed against such person as a civil defendant according to the procedure established by Article 55 of this Code. Any civil defendant or his representative shall be announced a resolution (ruling) on proceedings against him as a civil defendant and explained the rights stipulated by Article 56 of this Code.

#### **Article 139. Enforcement of Rules on the Grounds, Conditions, Volume and the Way of Damage Restitution**

While considering a civil claim filed in the course of prosecution, the grounds, conditions, volume and the way of damage restitution shall be determined in accordance with the norms of civil, labor and other legislation. International treaties shall be applicable in cases stipulated by the law.

#### **Article 140. Withdrawal of a Civil Claim**

- (1) Any person or a legal entity shall have the right to withdraw the filed by him civil claim.
- (2) Plaintiff's notice for withdrawal of a civil claim shall be compiled into the transcript of investigation or court proceedings. If the withdrawal of a civil claim was made in a written notice, it shall be enclosed with the prosecution documentation.
- (3) Withdrawal of a civil claim shall be accepted by the investigator any time during the investigation on a criminal case. Withdrawal of a claim may be accepted by a court that renders a resolution, ruling during court proceedings but before the court leaves to a conference room to pass a verdict.
- (4) Acceptance of the withdrawal of a claim leads to conclusion of the proceeding on it.
- (5) Prior to acceptance of the withdrawal of a claim the investigator, court shall explain the plaintiff the consequences of the withdrawal of his claim that are established by item 4 of this Article.
- (6) Any investigator or court shall not accept the plaintiff's withdrawal of a claim if such acts contradict the law or violate someone's rights and protected by the law interests, and a motivated resolution or ruling shall be rendered on that matter.

#### **Article 141. Decision on a Civil Claim**

- (1) While passing a guilty verdict or rendering a ruling on compulsory medical treatment, the court shall satisfy a civil claim in whole or in part or deny it.
- (2) In case of the complete or partial satisfaction of the claim the court shall specify in the sentence a term for the voluntary performance of the judgement regarding the civil claim.

Forced enforcement shall be made according to the procedure established by law on enforcement of judgements.

- (3) If it is impossible to make the detailed calculation on a civil claim without the postponement of the prosecution, the court may decide on the satisfaction of the claim and transfer the issue on its amount to the civil procedure.
- (4) While passing a non-guilty verdict or rendering a ruling or resolution on the dismissal of a criminal case concerning compulsory medical treatment, the court shall:
  - 1) deny the civil claim if the fact of a crime or a prohibited by the Criminal Code of the Kyrgyz Republic action of the accused has not been substantiated or the participation of the accused or the person, with regard to whom there was resolved the issue on compulsory medical treatment, in commission of the crime or the prohibited by the Criminal Code of the Kyrgyz Republic action has not been proved;
  - 2) leave the claim without consideration if the accused is found non-guilty, due to absence of grounds to apply compulsory medical treatment to the person who, due to the nature of a committed by him crime and his condition, does not represent a threat for the society and does not require a compulsory treatment;
- (5) When a case is dismissed on the grounds stipulated by Articles 28 and 29 of this Code a court shall leave the claim without consideration.
- (6) If because of the grounds stipulated by paragraph 9 of item 1 of Article 28 of this Code a criminal case is dismissed at a pretrial stage of proceedings, a person or a legal entity or their representatives shall be authorized to file a claim according to the civil procedure.

#### **Article 142. Obligation to Provide for a Civil Claim and Property Confiscation Stipulated by the Law**

- (4) If there are sufficient facts proving property damage caused by the crime, the agency of preliminary investigation, investigator, prosecutor, and the court are obliged to take measures to provide for the filed or potential civil claim.
- (5) For the cases on crimes for which the criminal law stipulates confiscation of property, the investigator, or the agency of preliminary investigation shall take necessary measures to provide for execution of the sentence regarding possible confiscation, by rendering an appropriate resolution on that.
- (6) Providing for the civil claim and possible confiscation of property is executed through imposing arrest on deposits, values and other property, as stated in the inventory, of the accused or the persons, who bear property responsibility, as stipulated by the law, for the actions of the accused, and also through withdrawal of the arrested property.
- (7) If a civil claim is satisfied, before the verdict takes effect, the court shall be authorized to render a resolution on enforcement measures to provide for execution of the claim if such measures have not been taken yet.

#### **Article 143. Execution of a Sentence and Court Ruling Regarding a Civil Claim**

When a civil claim was satisfied by court a sentence as well as ruling on enforcement of compulsory medical treatment in respect of the civil claim shall be executed according to the procedure stipulated by Judgement Enforcement Law.

## **SECTION 17. PROCEDURAL TIME LIMITS. PROCEDURAL COSTS**

### **Article 144. Calculation of time limits**

- (1) Procedural time limits shall be calculated by hours, days, months, and years.
- (2) Calculation of a time limit shall be made with the observation of the following rules:
  - 1) the day in calculation of a time limit shall be considered consisting of 24 hours. When a time limit is calculated in days, it shall expire at 12 p.m. of the last day;
  - 2) the day, when a time limit starts, shall not be taken into account in calculation of time limits;
  - 3) a month and a year shall be calculated according to the calendar; when a time limit is calculated in months and years it shall expire on the corresponding date of the last month, year. If the end of a time limit calculated in months shall be in a month that lacks the corresponding date, the time limit shall end on the last day of the month;
  - 4) if the end of a time limit is not a working day, the last day of the time limit shall be the first working day after a week-end or a holiday except for the cases of calculation of a time limit for those who are detained, are in custody or in a medical center.
  - 5) when detained, a time limit shall be calculated from the moment (hour) of the actual enforcement of the sanction.
- (3) The time limit shall not be considered expired if an appeal, motion or other document is filed with a post office or given or declared to the person authorized to take it and for persons who are in custody or are in a medical center—if an appeal or other document is filed with the administration of the detention center or medical center before the expiration of the time limit.

### **Article 145. Extension and Restoration of the Missed Time Limit**

- (1) Time limits of proceedings may be extended only in cases and according to procedures stipulated by this Code.
- (2) Missed due to some valid cause time limit shall be restored upon a resolution of the investigator or the judge. The denial to restore a time limit may be appealed according to the established procedure.
- (3) On motion of an interested person, an execution of the appealed decision upon the course in which a time limit was missed shall be suspended until the resolution regarding on restoration of the missed time limit is taken.

### **Article 146. Procedural Costs**

- (1) Procedural costs shall consist of:
  - 1) the amounts paid to witnesses, victims and their representatives, experts, specialists, interpreters in order to cover their expenses to arrive to the place proceedings and to return back, to rent dwelling and to pay per diem.
  - 2) amounts paid to witnesses, victims and their representatives who do not have permanent salaries for their distraction from usual occupation;

- 3) amounts paid to witnesses, victims and their legal representatives who have permanent jobs and have permanent salaries in order to reimburse the unpaid amounts for the time spent because of being summoned by the investigator or court;
  - 4) reimbursement of experts, interpreters, specialists for the execution of their responsibilities in the course of investigation or in court except cases when such responsibilities were executed as official duties;
  - 5) amounts paid for providing legal aid in cases when the suspect, accused is released from the payment or when a defense attorney participates in an investigation or in court upon assignment without a contract;
  - 6) amounts spent on safe-keeping and sending of material evidence;
  - 7) amounts spent on search of the suspect, accused escaped from the investigation or court;
  - 8) amounts spend on conducting expert examination in expert institutions;
  - 9) other expenses made in the course of prosecution.
- (2) Amounts mentioned in subitems 1-5, 8 of item 1 of his Article shall be paid based upon a resolution of the investigator, judge or court ruling.

#### **Article 147. Collection of Procedural Costs**

- (1) Procedural costs shall be collected from the convicted or paid at the expense of the state.
- (2) The court shall be authorized to collect procedural costs from the convicted except for the amounts paid to the interpreter as well as to the defense attorney in the case stipulated by item 5 of this Article. Procedural costs may be imposed on the convicted released from punishment as well as on the convicted without a punishment.
- (3) Procedural costs, connected with interpreter's participation in proceedings shall be paid at the expense of the state. If the interpreter executed his official duties, he shall be paid by the state through the organization where he works.
- (4) If the suspect or accused waived their right to defense attorney but the waive was not accepted and the defense attorney participated in proceedings upon assignment, the payment to the defense attorney aid shall be made at the expense of the state.
- (5) In case the accused was found non-guilty or in case of the dismissal of a case in accordance with subitems 1 and 2 item 1 of Article 28 and subitem 2 item 1 Article 225 and 316 of this Code procedural costs shall be paid at the expense of the state. If the accused was found non-guilty only in part the court shall oblige him to cover procedural expenses connected with the charge upon which, he was found guilty.
- (6) Procedural expenses shall be paid at the expense of the state in case of the bankruptcy of the person on whom they have to be imposed.
- (7) When several accused were found guilty in a case, the court shall determine what amount of procedural expenses shall be imposed on each of them. The court shall take into account the nature of the fault, the level of responsibility for the crime, and property situation of the accused.
- (8) In cases connected with crimes committed by juveniles the court may impose procedural costs on parents of the juvenile or on persons replacing them.
- (9) When the accused is found not guilty in a personal charge, the court shall be authorized to impose procedural costs completely or partially on the person who initiated the criminal proceedings. When a case is dismissed because of reconciliation of the parties, procedural costs shall be imposed on one or both parties.

## **SECTION 18. JOINING AND APPORTIONMENT OF CRIMINAL CASES**

### **Article 148. Joining of Criminal Cases**

- (1) In one proceedings there may be joined cases on charging several persons in committing one or several crimes, cases on charging on person in committing several crimes, as well as cases on charging for concealment the same crimes not promised in advance.
  - (2) Joining of cases shall be made upon a resolution of the investigator, judge as well as a ruling of the court in whose jurisdiction one of the cases is.
  - (3) The time limit of proceedings for a case in which several cases are joined shall be calculated starting from the day of initiation of proceedings of a case that timely was initiated first.
- (As amended by the Law of KR dated 8 August 2004 #111)

### **Article 149. Apportionment of criminal cases**

- (1) Any investigator, judge or court shall be authorized to apportion in a separate proceeding a criminal case with regard to the accused whose place of staying is unknown or because of his serious decease.
- (2) Any criminal case which became known in the course of investigation crime committed by another person not connected with actions the accused is charged of in the investigated case shall be apportioned into a separate proceeding. In such cases the materials necessary for additional testing, as well as for the initiation and investigation of a criminal case on the became known crime may be apportioned from a criminal case.
- (3) In case a juvenile participated in a crime together with adults, his case may be apportioned into a separate proceeding in the course of the investigation.
- (4) Apportionment of materials of a criminal case shall be made upon a resolution of the investigator, judge, court ruling. The list of apportioned materials in originals or copies shall be enclosed to a resolution.
- (5) Apportionment shall be acceptable if it does not influence a thorough and objective investigation, consideration of a case being in proceeding.
- (6) For a criminal case apportioned to separate proceeding due to failure to establish the companion in crime, the investigator, judge, shall give an order to the agency of preliminary investigation for his search.

## **SPECIAL PART**

### **PART VII. INSTITUTION OF THE CRIMINAL CASE (PROSECUTION)**

#### **SECTION 19. REASONS AND GROUNDS FOR INSTITUTION OF PROSECUTION**

##### **Article 150. Reasons and Grounds for institution of Prosecution**

- (1) There are the following reasons for institution of prosecution:

- 1) Reports by persons;
  - 2) Reports of someone pleading guilty;
  - 3) Statement of an official of an organization;
  - 4) Information in mass media;
  - 5) Preliminary investigation agency's, investigator's, or prosecutor's direct discovery of facts indicating to some elements of a crime.
- (2) Presence of sufficient facts indicating to elements of a crime shall be the grounds for prosecution initiation.

#### **Article 151. Reports by Persons**

- (1) Reports by persons on crimes may be oral or written. Any written report shall be signed by the applicant.
- (2) Written reports shall be compiled into the transcript of proceedings that shall be signed by the applicant, and the official who accepted the report (preliminary investigation agency, investigator or prosecutor). The record shall contain information on the applicant, place of his residence and work.
- (3) Any applicant shall be warned about criminal responsibility for an intentionally false accusation and there shall be an entry on that in the transcript of proceedings certified with the applicants' signature.

#### **Article 152. Report of someone pleading guilty**

- (1) Report of someone pleading guilty is a voluntary statement of a person on prepared crime, criminal attempt, or the committed by him crime when it is not yet known to the agency of preliminary investigation, investigator, or prosecutor.
- (2) Report of someone pleading guilty may be made both in oral and written forms and shall be filed by an applicant with the agency of preliminary investigation, investigator or prosecutor. Any oral report shall be compiled in a transcript of proceedings that shall contain a detailed description of a made statement. The transcript of proceedings shall be signed by a person who pleaded guilty and an official who received a report.

#### **Article 153. Statement of an official of an organization**

- (1) Statement of an official of an organization on a crime shall be made in a written form.
- (2) Some documents and other materials that prove circumstances of the committed crime may be enclosed with the statement.

#### **Article 154. Mass Media Information**

- (1) Mass media information may be a ground for institution of prosecution when it is published in a newspaper or a magazine or spread by radio or television.
- (2) Officials of a mass media agency that published or spread information on a crime, on a request of the person authorized to institute prosecution shall transfer documents and other materials that are in their disposal and prove published or broadcast made information and

name the source of information except for cases when with person who provided the information made it on a condition of confidentiality.

### **Article 155. Obligation of Acceptance and Consideration of Reports and Statements on Crimes**

- (1) Any agency of preliminary investigation, investigator and prosecutor shall accept, register and consider a report or a statement on the committed or planned crime. Any applicant shall be given a document on registration of the accepted report or statement that shall specify the person who received a report or statement, its registration.
- (2) Unmotivated waiver of report or statement on a crime may be appealed to a prosecutor or court according to the procedure established by Articles 131 and 132 of this Code.
- (3) Any report or statement received by court shall be filed with a prosecutor and the applicant shall be notified on that.

### **Article 156. Decisions of the Investigator and a Prosecutor Taken as Result of Consideration of Reports and Statements on Crimes**

- (1) In each case when a report or statement on a crime is received or in case of a direct discovery of a crime the investigator or prosecutor, after a proper testing, shall institute prosecution or shall deny its institution. If such reports or statements are the jurisdiction of other agencies, they could be transferred there.
- (2) The decision to institute or to deny prosecution shall be taken within three days, and in exceptional cases within ten days.
- (3) Any person, company, establishment, organization, or official from whom a report or statement was received shall be informed about institution or denial of prosecution.
- (4) If the received statement contains information about administrative or disciplinary violation, investigator, prosecutor shall be authorized to hand over the statement for consideration in administrative or disciplinary procedure.

(As amended by the Law of the KR dated 28 June 2001 #62)

#### **Article 156-1. Denial to initiate prosecution (criminal case)**

If there are no grounds and reasons to institute prosecution the prosecutor, investigator shall render a resolution of denial to initiate prosecution. He shall notice the person, company, establishment, organization, or official from whom a report or statement was received, and explain the appeal procedure. Within seven days from such notice the applicant can appeal the denial to the reviewing prosecutor or the court.

(As amended by the Law of the KR dated 28 June 2001 #62)

### **Article 157. Actions of an agency of preliminary investigation in respect of a committed crime**

In respect of a committed crime an agency of preliminary investigation shall enforce all necessary measures to protect locus criminis, vestiges of a crime, undertake investigatory and

urgent actions in order to discover persons who committed the crime, find the stolen property, find out facts that may be used as evidence.

## **SECTION 20. PROCEDURE OF INSTITUTION OF PROSECUTION**

### **Article 158. Institution of prosecution of public charge**

- (1) When there is a reason and grounds stipulated by Article 150 of this Code, the investigator or prosecutor shall render a resolution on institution of prosecution.
- (2) The resolution shall specify the time and place when it was rendered who compiled it, the reason and grounds for institution of prosecution, a Criminal Code article on elements of which the prosecution is instituted as well as further direction of the prosecution. A copy of the investigator's resolution on institution of prosecution shall be filed with a prosecutor within 24 hours.

### **Article 159. Institution of Prosecution of Personal-and-Public Charge**

- (1) Personal-and-Public prosecution shall be instituted only upon a victim's report. Any investigation and court proceedings shall be enforced according to the general procedure.
- (2) Any prosecutor shall be authorized on his own initiative to institute personal-and-public prosecution only in the following cases:
  - 1) if an action damages the interests of the public and the state;
  - 2) if an action damages the interests of a person who is helpless or dependent or because of some other reasons may not individually realize belonging to him rights.
- (3) A copy of the investigator's resolution on institution of prosecution shall be filed with a prosecutor within 24 hours.  
(As amended by the Law of the KR dated 28 June 2001 #62)

### **Article 160. Direction of prosecution after its initiation**

After the resolution on institution of prosecution has been rendered:

- (1) The investigator shall start investigation or transfer the case to a prosecutor to be further sent to the appropriate jurisdiction;
- (2) A prosecutor shall send a case to an investigator to carry out the investigation.

## **SECTION 21. GENERAL INVESTIGATION CONDITIONS**

### **Article 161. Investigation Agencies**

Investigation of criminal cases shall be enforced in accordance with the determined by this Code procedure by investigators of agencies of procuracy, agencies of the Ministry of Internal Affairs, National Security agencies, the agency of Kyrgyz Republic on drug control of criminal-procedural system of Ministry of Justice of Kyrgyz Republic, financial police and tax police agencies.

(As amended by the Laws of KR dated 11 June 2003, #98, 28 March 2004 #52)

## **Article 162. Obligatoriness of investigation**

- (1) Investigation shall be obligatory for all criminal cases with the exception for cases initiated on private charge.
- (2) Investigation shall be obligatory for all criminal cases when a crime was committed by a juvenile or a person who due to being disabled physically or mentally can not realize his right to defense.

## **Article 163. Investigative Jurisdiction**

- (1) As regards criminal cases involving crimes against life and health (Articles 97 – 106, 111, Article 112(1), Articles 113-122 of the Criminal Code of the Kyrgyz Republic), crimes against freedom, honor and dignity of a person (Articles 123 – 125, Article 126(2) of the Criminal Code of the Kyrgyz Republic), crimes against inviolability of sex and sexual freedom of a person (Articles 129-133 of the Criminal Code of the Kyrgyz Republic), crimes against family and juveniles (Articles 153-163 of the Criminal Code of the Kyrgyz Republic), property-related crimes (Articles 164, 165, 166, 167, 168, 170, 172-172-2, 174, 177 of the Criminal Code of the Kyrgyz Republic), crimes against public security (Articles 230, 231, 234-245 of the Criminal Code of the Kyrgyz Republic), crimes against public health and morality (Articles 255-264 of the Criminal Code of the Kyrgyz Republic), crimes against security of traffic and vehicles operation (Articles 280-288 of the Criminal Code of the Kyrgyz Republic), crimes against justice (Articles 336-339 of the Criminal Code of the Kyrgyz Republic), crimes against the governance system (Articles 343-345; 347, 349, 351-353 of the Criminal Code of the Kyrgyz Republic), they shall be investigated by investigators of the Internal Affairs agencies.
- (2) As regards criminal cases involving crimes against public safety (Articles 226-229, 232, 233 of the Criminal Code of Kyrgyz Republic), crimes against the fundamentals of the constitutional system and national security (Articles 292-302 of Criminal Code of Kyrgyz Republic), crimes related to the illegal crossing of the state boundary (Article 346 of Criminal Code of Kyrgyz Republic), crimes against peace and security of mankind (Articles 373-376 of Criminal Code of Kyrgyz Republic), they shall be investigated by the investigators of the National Security agencies.
- (3) As regards criminal cases involving crimes against the constitutional rights and freedoms of a person and citizen (Articles 136(3), 137(2), 138, 139(2),(3), 142 – 145, 146-1-149, 152 of the Criminal Code of the Kyrgyz Republic), environment-related crimes (Articles 265-279-1 of the Criminal Code of the Kyrgyz Republic), malfeasance-related crimes (Articles 304-1, 305-1, 305-2 of the Criminal Code of the Kyrgyz Republic), crimes against justice (Articles 317-323, 324(2),(3), 325-335 of the Criminal Code of the Kyrgyz Republic), crimes against the governance system (Articles 340, 341 of the Criminal Code of the Kyrgyz Republic), they shall be investigated by investigators of procuracy agencies.
- (4) As regards criminal cases involving crimes committed by military servicemen, and also by those called up for military training, they shall be investigated by investigators of military procuracy agencies.

- (5) As regards criminal cases involving economic crimes (Articles 179-186, 188-193, 195-203, 208, 209, 211-225 of the Criminal Code of the Kyrgyz Republic), they shall be investigated by investigators of financial police.
- (6) As regards criminal cases involving crimes related to computer-contained information (Articles 290, 291 of the Criminal Code of the Kyrgyz Republic), they shall be investigated by investigators of the financial police and national security bodies.
- (7) As regards criminal cases involving economic crimes (Articles 205 – 207 of the Criminal Code of the Kyrgyz Republic), they shall be investigated by investigators of customs agencies.
- (8) As regards criminal cases involving economic crimes (Article 210 of the Criminal Code of the Kyrgyz Republic), they shall be investigated by investigators of customs agencies and financial police.
- (9) As regards criminal cases involving crimes against public health and morality (Articles 246-254 of the Criminal Code of the Kyrgyz Republic), they shall be investigated by the investigators of the Kyrgyz Drug-Enforcement Agency, customs and national security bodies.
- (10) As regards criminal cases involving economic crimes (Article 183 of the Criminal Code of the Kyrgyz Republic), illegal actions against property subjected to distraint or seizure, or subject to confiscation (Article 335 of the Criminal Code of the Kyrgyz Republic), crimes against the governance system (Articles 348, 350 of the Criminal Code of the Kyrgyz Republic), property-related crimes (Articles 166, 171, 173 of the Criminal Code of the Kyrgyz Republic), they shall be investigated by investigators of the Internal Affairs and financial police agencies.
- (11) All crimes committed on the territory of penal institutions shall be investigated by the investigators of the penal system of the Ministry of Justice of the Kyrgyz Republic.
- (12) As regards criminal cases involving malfeasance-related crimes (Articles 303, 304, 305, 306-309, 315, 316 of the Criminal Code of the Kyrgyz Republic), they shall be investigated by the investigators of procuracy, financial police, Home Ministry, national security and customs bodies.
- (13) As regards criminal cases involving malfeasance-related crimes (Articles 310-314 of the Criminal Code of the Kyrgyz Republic), they shall be investigated by the investigators of procuracy, financial police, Home Ministry, national security bodies.
- (14) As regards criminal cases involving migration-related crimes (Articles 204-1 и 204-2 of the Criminal Code of the Kyrgyz Republic), they shall be investigated by the investigators of Home Ministry and national security bodies.
- (15) As regards criminal cases involving economic crimes (Article 204 of the Criminal Code of the Kyrgyz Republic), they shall be investigated by the investigators of financial police, customs and national security bodies.
- (16) A criminal case being under jurisdiction of different agencies shall be investigated by an investigator of the agency, which has instituted the prosecution.
- (17) In the case of cumulative crimes stipulated by this Article, which refer to jurisdiction of different agencies, the jurisdiction shall be established considering the gravest crime.
- (18) Investigation of crimes that are not under proper investigative jurisdiction shall be impermissible except in situations specified in Article 34(1)(1).

(As amended by the Laws of the KR dated 22 June 2001 #55, 4 August 2001 #81, 16 October 2002 # 141, 11 June 2003 #98, 28 March 2004 #52, 8 August 2004 #111, 6 February 2006 #35; July 14, 2008, #142).

#### **Article 164. Place of Investigation**

- (1) Investigation shall be carried out in the region where the crime was committed. In order to provide for most quick, objective and complete investigation it may be carried out at the place of the crime discovery, as well as the place of staying of the suspect, accused or majority of victims.
- (2) Having determined that a case is beyond his authority, the investigator shall carry out investigatory actions and after that shall file the case with a prosecutor for him to transfer it to the appropriate agency.
- (3) If it is necessary to enforce investigatory actions in another regions the investigator shall be authorized to carry out them personally or authorize the investigator of an investigation agency of this region to carry out the actions. Investigator shall be authorized to authorize an agency of preliminary investigation in the place of investigation or place of prosecution to carry out some investigatory actions. Any investigator's request shall be fulfilled within the time limit of not later than 10 days.

#### **Article 165. The Beginning of Investigation**

- (1) Any investigation shall start only upon institution of prosecution.
- (2) Any investigator shall immediately start investigation on the instituted by him or filed with him case. When he accepts a case in his proceedings, he shall render a resolution. If prosecution was instituted by the investigator and he accepted it in his proceedings, he shall render a joint resolution on institution of prosecution and its acceptance in his proceedings. Any investigator shall file a copy of the resolution with a prosecutor not later than within 24 hours.

(As amended by the Law of the KR dated 28 June 2001 #62)

#### **Article 166. Investigation Time Limit**

- (1) Investigation of cases on misdemeanors shall be completed not later than within a month, investigation of all other cases shall be completed within 2 months after institution of prosecution.
- (2) The investigation timeframe shall include the time during which the defense counsel and accused were examining the criminal case file in cases provided for by (4) and (5) of this Article as well as by Article 111(2)(3) of this Code.
- (3) The investigation time limit shall not include the time in the course of which investigation was suspended on the grounds stipulated by this Code.
- (4) The investigation time limit established by item 1 of this Article can be extended by a prosecutor of oblast or prosecutor of a city of Bishkek.  
If the case was returned by the court to fill the gaps of investigation, and in institution of a suspended or a dismissed case, investigation time limit shall be established by the prosecutor

reviewing the investigation, for up to one month from the moment of the case filing with him. Further extension of a time limit shall be enforced based on the general grounds.

- (5) For cases investigation of which is especially complicated the time limit may be extended to up to 9 months by a deputy of the Prosecutor General of the Kyrgyz Republic, and in some exceptional cases the time limit may be further extended by the Prosecutor General of the Kyrgyz Republic.
- (6) In case it is necessary to extend investigation time limit, the investigator shall compile a motivated resolution on that and file it with the relevant prosecutor not later than 7 days before the expiration of an investigation time limit.

(As amended by the Law of the KR dated 28 June 2001 #62, 25 June 2007 #91)

### **Article 167. Investigation Enforced by a Group of Investigators**

- (1) Investigation of a criminal case when being complicated or because of its big volume may be given to a group of investigators (investigation group) and that shall be specified in a separate resolution on institution of prosecution or a special resolution shall be rendered. The resolution shall specify all investigators who were authorized to carry out investigation including the investigator being a group leader who accepts the case in his proceedings and supervises actions of other investigators.
- (2) Any suspect, accused, victim, civil plaintiff and defendant and their representatives shall be notified with the resolution on case investigation with a group of investigators and they shall be explained the right to challenge any investigator of a group.

### **Article 168. Investigation Group Leader Authority**

- (1) Investigator—leader of an investigation group shall accept a criminal case in his proceedings, carry out the investigation personally, utilizing the authorities of an investigator, organize the work of an investigation group, make decisions on the case.
- (2) Decisions on joining and apportionment of cases, initiation of motions on extension of an investigation time limit, enforcement of such sanction as taking into custody and its extension, suspension and recommencement of a case shall be taken only by the leader of the investigation group.
- (3) Resolution on charge and resolution on filing a case with court shall be compiled by the leader of an investigation group.

### **Article 169. General Rules of Investigatory Actions Enforcement**

- (1) Any investigator initiating investigatory actions provided by law shall check identification of the participants of investigatory actions, explain them their rights and responsibilities as well as the procedure of the investigatory action.
- (2) Enforcement of the investigatory action at night shall be prohibited with the exception for cases of no delay.
- (3) While enforcing investigatory actions, technical facilities and scientifically proved methods or discoveries for fixing and taking vestiges of a crime and material evidence may be applied.

- (4) While enforcing investigatory actions, violence, threats and other illegal actions as well as causing threat to the life and health of participating in such proceedings persons shall be prohibited.

#### **Article 169-1. Procedure for Obtaining a Judicial Warrant to Conduct Investigative Actions**

- (1) In the circumstances specified in Article 32(2) of this Code, an investigator with a procurator's consent may file a motion in court seeking to conduct an investigative action, which motion the investigator shall authorize by a resolution.
  - (2) A motion to conduct an investigative action shall be heard by a district or military garrison court judge in the same venue sitting alone where the preliminary investigation or investigative action is being conducted no later than 24 hours after such motion is filed.
  - (3) The procurator and an investigator may take part in the court proceeding.
  - (4) Upon reviewing such motion, the judge shall issue an order authorizing the investigative action or denying permission to undertake it with a statement of the reasons for the denial.
  - (5) An order issued by the judge pursuant to (4) of this Article shall take legal effect immediately and its implementation shall be mandatory. Seeking cassational or supervisory review of such an order shall not suspend its implementation.
- (As amended by the law of the KR dated 25 June 2007 #91)

#### **Article 170. Transcript of Investigatory Proceedings**

- (1) Transcript of investigatory proceedings shall be compiled in the course of the investigatory proceedings or right after its completion.
- (2) The transcript of proceedings may be written by hand or typed on a typing machine or a computer. In order to make a transcript of proceedings complete, stenography, film, photo, video, and audio coverage may be used. Stenography, records of the films, pictures, and audio and video tapes shall be kept together with the dossier of the case.
- (3) The transcript of proceedings shall specify the place and date of the investigational proceeding, time of its beginning and completion, the name of the person who compiled the transcript of proceedings, full name of each person participating in the proceeding and, if necessary, their addresses. The transcript of proceedings shall describe procedural actions according to the sequence that took place in reality, discovered in its enforcement essential facts as well as reports of persons who participated in the proceeding.
- (4) If in the course of the investigatory proceeding photography, video and audio coverage was used or moulds, finger prints, blueprints, charts, plans were made, the record shall also specify technical devices applied in the course of the investigatory proceeding, conditions and procedure for their utilization, objects to which the devices were applied and the received results. The transcript of proceedings shall also specify that all persons participating in proceeding were notified beforehand on the application of the technical device.
- (5) The transcript of proceedings shall be submitted for acknowledgment to all persons participating in the investigatory proceeding. They shall be explained their right to make remarks that shall be recorded in the transcript of proceedings. The registered in the transcript of proceedings remarks, additions and changes shall be specified in the transcript of proceedings and certified with signatures of those persons.

- (6) The transcript of proceedings shall be signed by the investigator, the interrogated person, interpreter, specialist and other persons who participated in the investigatory proceeding.
- (7) The transcript of proceedings shall be enclosed with negatives and pictures, video tapes, slides, audio and video cassettes, blueprints, charts, plans, moulds, and finger prints made in the course of the investigatory proceeding.
- (8) When there are grounds to believe that it is necessary to protect a victim, his representative, witness or their relatives, the investigator shall be authorized not to specify information on them in the transcript of proceedings of the investigatory proceeding. In this case the investigator shall render a resolution in which he shall disclose reasons for his decision to keep in secret the information on participant of the investigational proceeding, identify his pseudonym and model of his signature that he is going to use in transcript of proceedings on investigatory actions with his participation. The resolution shall be placed into a glued envelope which, apart from the investigator, may be disclosed only by a supervising prosecutor or a judge.

#### **Article 171. Certification of the Fact of Refusal to Sign or Impossibility to Sign the Transcript of Investigational Proceedings**

- (1) If the suspect, accused, witness or other person refuses to sign the action transcript of investigational proceedings an entry on that shall be made in the transcript of proceedings that shall be certified with a signature of the person who enforced the investigational proceeding.
- (2) Any person who refuses to sign a transcript of proceedings shall be given a possibility to provide an explanation on the reasons of his refusal and an entry on that shall be made in the transcript of proceedings.
- (3) If it is impossible for the suspect, accused, victim or witness to sign the record of his interrogation because of being physically disabled or due to his health condition, the investigator shall invite a third person who with a consent of the interrogated person shall certify with his signature the correctness of entry of his testimony. This transcript of proceedings shall be signed also by the investigator who interrogated the person. If due to the same reasons one of the persons specified in item 1 of this Article is deprived of a possibility to sign a transcript of another investigatory action an entry on that shall be made in the transcript of proceedings that shall be certified with the investigator's signature.

#### **Article 172. Obligatoriness to Explain and Provide for the Rights of Prosecution Participants**

Any investigator shall explain to the suspect, accused as well as to a victim, civil plaintiff and defendant and their representatives as well as to other persons participating in investigatory proceedings their rights and provide for realization on of their rights in the course of investigation of the case. At the same time they shall be explained the imposed on them responsibilities and the consequences of the failure to fulfill them. The fact of explanation of rights and responsibilities to the listed in this Article persons shall be certified with their signatures.

#### **Article 173. Inadmissibility of Disclosure of investigational Information**

- (1) The information received in the course of prosecution shall not be disclosed.
- (2) Any investigator shall inform a witness, victim, defense attorney, civil plaintiff and defendant, their representatives, expert, specialist, interpreter, and other persons participating in investigatory proceedings on inadmissibility to disclose investigational information and shall be authorized to take from them a recognizance with a warning on responsibility.

#### **Article 174. Specialist participation**

- (1) Any investigator shall be authorized to summon a specialist to participate in the investigatory proceedings and such specialist shall not be interested in the result of the case. The investigator's request to summon a specialist shall be binding for the chief of a company, establishment, or organization where a specialist works,
- (2) Prior to the investigatory proceedings the investigator shall check specialist's competence and find out his relation to the accused and victim. Any investigator shall explain a specialist his rights and responsibilities stipulated by Article 65 of this Code and warn of the responsibility for evasion or refusal to fulfill his responsibilities established by this Article. An entry on that shall be made in transcript of investigational proceedings that shall be certified with the specialist's signature.

#### **Article 175. Interpreter participation**

- (1) In cases stipulated by item 2 of Article 23 and Article 66 of this Code the investigator at interrogations and other investigatory proceedings shall invite an interpreter.
- (2) Prior to an investigatory proceeding the investigator shall explain the interpreter his rights and obligations stipulated by Article 67 of this Code and warn him of the established by this Article responsibility for evasion from the fulfillment of his responsibilities and for intentionally wrong translation that shall be specified in transcript of investigational proceedings and certified with the interpreter's signature.

#### **Article 176 Participation of identifying witnesses**

In the cases provided by this code, investigatory proceedings shall be carried out with participation of not less than two identifying witnesses, who shall be summoned to certify the fact of the carried out investigatory action, its progress and result.

Prior to the investigatory proceeding the investigator shall explain the identifying witnesses the purpose of the proceeding, their rights and responsibilities, stipulated by Articles 68, 69 of this Code.

### **SECTION 22. INSPECTION, EXPERT EXAMINATION, INVESTIGATORY EXPERIMENTATION**

#### **Article 177. Grounds and Procedure for Inspection**

- (1) Inspection shall be carried out with participation of identifying witnesses. In exceptional cases (in out-of-the-way place, when there are no good facilities, as well as when the

inspection is connected with a threat to human life and health), the inspection may be carried out without participation of identifying witnesses.

- (2) Any inspection of the site of an event, territory, dwelling, objects, documents, and other material objects, shall be enforced in order to discover traces of the crime and other facts that are important for the case.
  - (3) In the course of inspection, the investigator shall be authorized to summon the accused, suspect, victim, witness as well as a specialist for participation.
  - (4) In necessary cases in the course of inspection, some measurements, video and audio taping, plans, charts making, moulding and printing of traces may be made and, if possible, prints together with objects or their parts may be withdrawn, if received with and by the permitted by the law technical devices and methods.
  - (5) Inspection of the discovered prints and other material evidence shall be made at places of their discovery. If such inspection requires a lot of time and it is very difficult to make inspection of the place of their discovery, the objects shall be withdrawn, packed, sealed and without damaging transferred to another more comfortable for such inspection place.
  - (6) All discovered and withdrawn in the course of inspection shall be shown to participants of the examination.
  - (7) Only objects that are related to the case shall be subject for withdrawal. The withdrawn objects shall be packed and sealed.
  - (8) Persons participating in the inspections shall be authorized to draw the investigator's attention to everything they believe may promote the discovery of the circumstances of the case.
  - (9) Inspection of a dwelling may take place only with the consent of the persons residing therein or pursuant to a procurator's authorization.
  - (10) If a dwelling house is the site of an event and its inspection shall be enforced without a delay, the inspections shall be enforced on the basis of the investigator's resolution.
  - (11) In the course of a dwelling house inspection the presence of adult residents shall be provided. In case it is impossible to provide to his presence, representatives of a dwelling agency or a local administration body shall be invited.
  - (12) Inspection of premises of companies, organizations or establishments shall be enforced in the presence of their representatives.
  - (13) Inspection of premises where diplomatic officers are located as well as inspection of premises where members of diplomatic service and their families live may be enforced only upon a request or consent of a diplomatic representative and in his presence. The consent of a diplomatic representative shall be asked through the Ministry of Foreign Affairs of the Kyrgyz Republic. The presence of a prosecutor and a representative of the Ministry of Foreign Affairs shall be necessary when such inspection is enforced.
- (As amended by the law of the KR dated 25 June 2007 #91; July 14, 2008, #142)

#### **Article 178. Inspection of a Corpse. Exhumation.**

- (1) An investigator shall conduct an inspection of a corpse at the place where the latter was found in the presence of attesting witnesses, with the participation of a forensic medical expert, and, when his participation is impossible, with the participation of physician. If necessary, other forensic specialists may be invited to view the corpse.
- (2) Unidentified corpses shall be subject to mandatory photographing and fingerprinting.

- (3) When it is necessary to remove a corpse from its burial place, the investigator shall issue an order of exhumation and notify the relatives of the deceased of such order. The order shall be binding upon the administration of the relevant burial place. If close relatives of the deceased object to the exhumation, an authorization to carry it out must be issued by the court.
- (4) Exhumation and inspection of a corpse shall be conducted with the participation of the persons referred to in (1) of this Article.
- (5) Costs connected with the exhumation and reburial of a corpse shall be reimbursed to the relatives of the deceased, in accordance with the procedures established by Article 146 of this Code.

(As amended by the law of the KR dated 25 June 2007 #91)

#### **Article 179. Exhibits expert examination**

Any objects that according to Article 85 of this Code are considered to be exhibits and were discovered in the course of inspection of a site of event, territory or dwelling, withdrawn in the course of a search, seizure, investigatory experimentation and other investigatory proceedings or submitted upon the investigator's request by companies, organizations, establishments and persons shall be examined according to the rules established by Article 177 of this Code.

#### **Article 180. Examination**

- (1) In order to discover on a body of a person some specific signs, vestiges of a crime, body damages, to find out whether a person is drunk and some other elements that are important for a case and if there is no need in making an expert examination in order to do that there may be enforced an examination of the suspect, accused, victim and a witness. Investigator shall render a resolution on examination enforcement.
- (2) Examination shall be made with participation of identifying witnesses, and in some necessary cases expert examination may be made with a participation of a doctor or other specialist.
- (3) Any investigator shall not be present at examination of a person of another sex if in the course of examination a person is nude. In such a case examination shall be made by a doctor with participation of identifying witnesses of the same sex.

#### **Article 181. Transcript of examination and expert examination proceedings**

- (1) Any investigator shall compile a transcript of expert examination and examination proceedings in accordance with the requirements of this Article and Article 177 of this Code.
- (2) The transcript of the proceedings shall specify investigator's actions and all discovered in the course of examination facts in the same sequence as they were discovered in the course of examination and in the same conditions as they were observed at the moment of examination. The transcript of proceedings shall enumerate and describe all the objects that were withdrawn in the course of examination.
- (3) The transcript of proceedings shall specify what time, under what weather conditions the expert examination or examination was enforced, what technical devices were applied and what results were obtained; who was attracted to enforce expert examination or examination and how they participated; what objects were sealed and with what seal; where a corpse and objects that are important for a case were sent to after an examination.

## **Article 182. Investigatory experimentation, the transcript of the investigatory experimentation proceedings**

- (1) In order to check and define more precisely the data that is important for a case the investigator shall be authorized to make the investigatory experimentation by means of reproducing the actions, conditions and other circumstances of the event and make necessary experimental actions. In the course of experimentation a possibility of perception of some facts, enforcement of certain actions, happening of some events or the sequence of an event that took place and the mechanism of formation of vestiges may be checked. Any investigatory experimentation shall be enforced only if it does not create a threat for the health or dignity of the participating in it persons.
- (2) Identifying witnesses shall be present during investigatory experimentation. When it is necessary the suspect, accused, victim, witness as well as a specialist, expert and persons enforcing experimentation actions may be summoned for participation in the investigatory experimentation. Investigatory experimentation participants shall be explained the aims and the procedure of its enforcement.
- (3) In necessary cases in the course of the investigatory experimentation some measurements, photographing, video and audio taping may be made, some charts or plans may be drafted.
- (4) Any investigator shall compile a transcript of investigatory experimentation proceedings. The transcript of investigatory experimentation proceedings shall specify conditions, course and results of the investigatory experimentation and specify the aim, when, where and under what conditions the experimentation was enforced; how the situation and circumstances of the event were reproduced, what experimental actions and in what sequence, with whom and how many times were enforced and what results were obtained.

## **Article 183. Restoration of the situation and circumstances of an event. Checking testimony at site.**

- (1) Any investigator, court may enforce restoration of the situation and circumstances of a definite event with participation of identifying witnesses, in order to check and make more precise the data received in the course of inspection, examination, identification and other investigatory actions. In necessary cases in the course of their enforcement the investigator, court may make measurements, photographing, video and audio surveys, make plans and charts.
- (2) If it is necessary for the restoration of the situation and circumstances of an event the suspect, accused, victim, witnesses and the relevant specialists may be summoned.
- (3) Statements (testimony) of the suspected, accused, victim, or witness may be checked and defined more precisely at the site, related to the investigated event, in order to establish new actual facts, rout and places, where the tested actions took place, and to check the authenticity of statements by matching them to the event circumstances. During it:
  - 1) checking statements at site may consist of the following actions by the person, who is testifying: reproduces at the site the conditions and circumstances of the investigated event; finds and shows objects, documents, traces, important for the case; demonstrates certain actions; shows the role of certain objects in the investigated event; draws attention

to the changes in the site conditions; concretizes and makes more precise his prior statements. Any interference in these actions and leading questions shall be prohibited.

- 2) in necessary cases checking statements at site may be carried out with presence of specialist;
  - 3) checking statements at site of several persons at once shall be prohibited;
  - 4) checking statements shall start from the offer to the person to show the route and the place, where his statements will be checked. After free narration and demonstration of actions the person, whose statements are being checked may be asked questions. Such person as well as other participants of the proceedings shall be authorized to require additional interrogation in relation to the enforced investigational experimentation.
- (4) The transcript of restoration of the situation and circumstances, and checking statements at site, proceedings shall be compiled considering the requirements of Articles 170 and 171 of this Code. The transcript of proceeding shall indicate conditions, course and results of checking statements at site.

## **SECTION 23. SEARCH, SEIZURE, IMPOSING OF AN ARREST ON MAIL SENDING, CONTROL AND RECORDING OF CALLS**

### **Article 184. Grounds and procedure for search and seizure enforcement**

- (1) If there is enough information to believe that in some premises or place or in someone's possession there may be an instrument of a crime, objects, documents, valuables that may be important for a case that shall be a basis for a search enforcement. The search may be also enforced to discover searched persons and corpses.
- (2) Seizure shall be enforced when it is necessary to withdraw some objects and documents that are important for a case and when it is definitely known where they are situated and who owns them.
- (3) A search or seizure, including a search or seizure in a dwelling, may be conducted in the presence of attesting witnesses based on an investigator's written order authorized by a procurator.
- (4) In some exception cases, when there is a real threat that the searched object that has to be withdrawn may, because of a delay in its discovery, be lost, damaged or utilized with criminal aims, or that a searched person may escape, a search may be conducted under an investigator's order unauthorized by a procurator, in which case a procurator shall be notified thereof within 24 hours.
- (5) Any search, except for the cases when a delay is impossible, shall not be enforced at night.
- (6) In necessary cases a search shall be enforced with a participation of a specialist and an interpreter.
- (7) Starting a search the investigator shall make a suggestion to give out voluntary objects and documents that are subject for withdrawal.
- (8) In the course of a search closed premises and storage's may be broken and entered when an owner does not want to open them voluntarily. While doing this it shall be prohibited to break other than necessary for opening locks of doors and other objects.
- (9) In the course of seizure the investigator shall suggest to give out objects and documents that are subject for seizure and in case of a wave he shall enforce a compulsory seizure.

- (10) Any search and seizure enforced in dwelling houses against the will of living in them persons shall be enforced according to the rules of items 9 of Article 177 of this Code.
- (11) Any search and seizure in dwelling houses, premises of companies, organizations and establishments shall be enforced in the presence of persons specified in items 11 and 12 of Article 177 of the Code.
- (12) Any search and seizure in premises occupied by diplomatic representations as well as dwelling houses in which members of diplomatic representations and their families live shall be enforced with observation of the requirements established by item 13 of Article 177 of this Code.
- (13) Any investigator shall undertake measures not to disclose the discovered in the course of a search or seizure circumstances of a private life of a person who stays in a dwelling house or other persons.
- (14) Any investigator shall be authorized to prohibit persons that are in a dwelling house or place where a search or seizure are enforced or persons who came to such dwelling house or place to leave it or communicate with each other or other persons before the completion of a search or seizure.
- (15) In the course of a search or seizure while withdrawing objects the investigator shall be strictly limited with objects and documents that are related to a case. Any objects or documents prohibited for circulation shall be withdrawn irrespective of their relationship to a case.
- (16) All withdrawn objects and documents shall be submitted to the persons who are present and shall be packed and sealed at the place of search or seizure enforcement and shall be certified with signatures of the persons who are present.  
(As amended by the law of the KR dated 25 June 2007 #91)

#### **Article 185. Personal search**

- (1) Any personal search of a suspect or accused shall be enforced in accordance with the requirements of this Article of this Code when there are grounds stipulated by Article 184. Upon the investigator's request it shall be enforced with an aim to discover and withdraw objects and documents that are on searched person's body, in his clothes or belonged to him things by an officer of an agency of preliminary investigation or some other person.
- (2) Any personal search shall be enforced by a person of the same with a searched sex with a participation of identifying witnesses and, if necessary, of a specialist.

#### **Article 186. Transcript of search or seizure proceedings**

- (1) Transcript of search and seizure proceedings shall be compiled in accordance with the requirements of Articles 170 and 171 of this Code.
- (2) Any transcript shall specify in what place and under what circumstances objects or documents were discovered, whether they were given out voluntarily or whether there was a forced withdrawal. All withdrawn objects shall be enumerated in a transcript with the precise specification of their amount, size, weight, individual signs and if possible value.
- (3) If in the course of search and seizure enforcement there were attempts to destroy or hide objects or documents that were subject for withdrawal it shall be specified in a transcript and the undertaken measures shall also be specified.

- (4) A copy of a transcript of search and seizure proceedings shall be given to a searched or seized person or an adult member of his family and when there are none—to a representative of a dwelling agency or a local administration body and they shall sign a receipt on that. If a search or seizure were enforced in organization, a copy of the transcript shall be given to their representatives who shall sign a receipt.

#### **Article 187. Interception, Inspection and Seizure of Postal and Telegraph Correspondence**

- (1) When sufficient grounds exist to believe that objects, documents or information that are relevant to the criminal case may be contained in packages, parcels or other mail and telegraph correspondence or in telegrams or radio messages, they may be intercepted.
- (2) The interception, inspection and seizure of postal and telegraph correspondence at communications offices shall be carried out under an investigator's order authorized by a procurator.
- (3) The investigator's order for interception, inspection and seizure of post and telegraph correspondence shall indicate:
  - 1) the last name, first name, patronymic and address of the person whose post and telegraph correspondence is to be impounded;
  - 2) the grounds for interception, inspection and seizure;
  - 3) the types of post or telegraph correspondence subject to interception; and
  - 4) the name of the communications office that is required to hold the postal and telegraph correspondence in question.
- (4) When authorized by a procurator, an investigator shall forward an order to the relevant communications office which shall be assigned the task of holding postal and telegraph correspondence and notifying the investigator immediately.
- (5) Inspection, seizure, and copying of intercepted postal and telegraph correspondence shall be carried out by the investigator at the relevant communications office with the participation of attesting witnesses selected from among employees of that office. When necessary, the investigator may summon a forensic specialist or interpreter to take part in the inspection and seizure. Whenever an inspection of postal and telegraph correspondence is undertaken, an official record shall be executed which shall indicate what correspondence was subject to inspection, copying and forwarding to its addressee and by whom.
- (6) Interception of postal or telegraph correspondence shall be terminated by the investigator with mandatory notice thereof to the procurator when it is no longer necessary, but in no event may it continue beyond the date the investigation in that criminal case is completed.  
(As amended by the law of the KR dated 25 June 2007 #91; July 14, 2008, #142)

#### **Article 188. Monitoring of Communications**

- (1) If sufficient grounds exist to believe that telephone or other communications of a suspect, accused or other persons may contain information that is relevant to the criminal case, monitoring and recording thereof shall be permitted in proceedings in criminal cases of serious and very serious crimes, under an investigator's order authorized by a procurator.
- (2) When there is a threat of violence, extortion or other criminal actions against a victim or witness or their close relatives, other relatives or close associates, monitoring and recording

of the telephone or other communications shall be permitted upon written request of such persons or, in the absence of such request, under a procurator's authorization.

- (3) An investigator's order to conduct monitoring and recording of telephone and other communications shall indicate:
  - 1) the criminal case in which the given measure is necessary;
  - 2) grounds for conducting such an investigative action;
  - 3) last name, first name, and patronymic of the person whose telephone and other communications are to be monitored or recorded;
  - 4) the time limit on the monitoring or recording; and
  - 5) the name of the agency given the task of employing the technical means for carrying out the actual monitoring or recording.
- (4) An order to conduct monitoring or recording of telephone or other communications shall be forwarded by the investigator to the relevant agency for execution.
- (5) Monitoring or recording of telephone or other communications may be conducted for a maximum time period of 6 months. It shall be discontinued pursuant to the investigator's order when no longer needed, but in no event may it continue beyond the date the preliminary investigation in that criminal case is completed.
- (6) The investigator, at any time during the period of monitoring or recording telephone and other communications, may officially request a tape recording from the agency conducting these actions for inspection and listening. The recording shall be sent to the investigator under seal and with a cover letter specifying the date and time of the beginning and end of the recording of communications, and brief technical specifications of the equipment used.
- (7) After inspecting and hearing the recording, the investigator, with the participation of attesting witnesses and, if necessary, a forensic specialist, and also of the persons whose telephone and other communications were recorded, shall execute an official record containing a verbatim transcript of that part of the recording which, in the investigator's opinion, is relevant to that criminal case. Persons taking part in inspecting and hearing the tape recording have the right to make comments, either in the same official record or separately.
- (8) The complete tape recording shall become part of the criminal case file as physical evidence pursuant to the investigator's order and shall be stored under seal in such way as will make it impossible for unauthorized persons to listen to or make copies of it, will preserve the physical integrity of the recording and will make it fit for repeated listening, including listening in a court proceeding.

(As amended by the law of the KR dated 25 June 2007 #91; July 14, 2008, #142)

## **SECTION 24. INTERROGATION, CONFRONTATION, IDENTIFICATION**

### **Article 189. Place and time of interrogation**

- (1) Interrogation shall be made according to the place of prosecution. If the investigator considers it necessary he shall be authorized to make interrogation on place of staying of an interrogated.
- (2) Interrogation shall not last for more than 24 hours without breaks. Continuation of an interrogation shall start after not less than an hour break to have rest and meals and the total length of interrogation within a day shall not exceed eight hours. In case of medical evidence an interrogation length shall be established on the basis of doctors' conclusions.

### **Article 190. Summon for interrogation procedure**

- (1) Any witness, victim as well as the suspect who is not in custody, the accused shall be summoned for interrogation with a citation. It shall specify who and in what capacity is summoned, to whom and to what address, time of appearance for interrogation and the consequences of a failure to appear without valid causes.
- (2) Any citation shall be served upon a person and he has to give a receipt on that. When a summoned is absent a citation shall be served upon a full aged member of his family and if there is none—to a dwelling agency or a local administration body or to an administration of his work for them to transfer it to the summoned and they shall be obliged to do that. Any person may be summoned through utilization of other means of communication.
- (3) The persons specified in item 1 of this Article shall appear for interrogation. If they fail to appear without valid causes they may be applied procedural enforcement measures to, stipulated by Articles 120,121 of this Code.
- (4) Persons taken into custody shall be summoned for interrogation through an administration of his place of custody.
- (5) Summoning of a person as a witness or a victim when such person has not reached 16 years old shall be enforced through his parents or other legal representative. Another procedure shall be accepted only if that is dictated by the circumstances of a case.

### **Article 191. General interrogation rules**

- (1) Before interrogation the investigator shall check an information on a personality of an interrogated. If he has any doubts whether an interrogated knows the language of the proceedings he has to find out what language an interrogated would like to give testimony.
- (2) Any person summoned for interrogation shall be informed in what capacity and on what criminal case he will be interrogated, he shall be explained the rights and responsibilities provided by this Code and an entry on that shall be made in a transcript of proceedings. Any person who is summoned for interrogation as a witness or a victim shall be warned about a criminal responsibility for the wave or deviation from giving testimony as well as for providing a deliberately wrong testimony.
- (3) Any interrogation shall start with a suggestion to tell about the known to a person circumstances of an event. If an interrogated talks about circumstances nor related to the case he shall be informed on that.
- (4) After a completion of a free story an interrogated may be asked questions aimed at making a testimony more precise and obtaining some additional information. It shall be prohibited to ask leading questions.
- (5) If a testimony is connected with some figures or other information that is difficult to keep in a memory an interrogated shall be authorized to use documents or records that on the investigator's initiative or with a consent of an interrogated or on a motion of an interrogated may be enclosed to a transcript of proceedings.
- (6) In the course of interrogation an interrogator may submit exhibits or documents to an interrogated and after a completion of a free story he may announce a testimony kept in the materials of a criminal case, play audio, video tapes.

- (7) If an interrogation is interrupted a transcript shall specify a reason for an interruption that shall be certified with signatures of an interrogated, present at that persons and an interrogator.

#### **Article 192. Witness and victim interrogation procedure**

- (1) Any witness and victim summoned for one and the same case shall be interrogated separately and in the absence of other witnesses and victims. Any investigator shall undertake measures for witnesses and victims of one and the same case not to communicate with one other.
- (2) Before interrogation the investigator shall specify a personality of a witness or victim, find out his relation to the accused or suspect, explain them the procedural rights and responsibilities, warn about criminal responsibility for wave or deviation to provide testimony, for providing a deliberately wrong information. And interrogator shall explain that a witness and a victim have the right to wave providing testimony that establish their or their close relatives' guilt in committing crimes. Any witness or victim waved this right shall be warned about a criminal responsibility for providing intentionally wrong information. An entry shall be made into a transcript of proceedings on explanation to a witness or victim their rights and responsibilities, warning on a criminal responsibility for the wave or deviation to provide testimony and for providing a deliberately wrong testimony and that shall be certified with a signature of an interrogated.
- (3) Any interrogation of a witness or a victim shall be enforced according to the rules stipulated by Article 191 of this Code.

#### **Article 193. Special features of interrogation of a juvenile witness or victim**

- (1) If an interrogated witness or victim has not reached 14 years old, and upon the investigator's consideration when he is at the age from 14 till 16 years old, a pedagogue shall be called for interrogation. Authorized representatives of a juvenile interrogated as a witness or victim shall be authorized to be present at interrogation.
- (2) Witnesses and victims at the age under 16 years old shall not be warned about the responsibility for a wave to provide testimony and providing of a deliberately wrong information. In the course of explanation to such witness and victims of their procedural rights and responsibilities they shall be announced that it is necessary for them to tell only the truth. Any juvenile witness or victim shall be explained the right to wave providing testimony that establishes their or their close relatives' guilt in committing a crime. An entry shall be made in a transcript of proceedings on the explanation of rights and responsibilities that shall be certified with a signature of a witness or a victim.
- (3) The present at interrogation persons specified in item 1 of this Article shall be explained the right to make remarks that are to be entered into a transcript of proceedings on the violation of rights and legal interests of interrogated and, upon the investigator's permission, to ask an interrogated questions. Any interrogator shall be authorized to draw a question off but he shall enter it into a transcript of proceedings and specify a reason for drawing a question off.

#### **Article 194. Utilization of audio and video recording in the course of interrogation**

- (1) Upon the investigator's decision audio and video recording may be utilized in the course of interrogation of the suspect, accused, victim, or witness. Audio and video recording may be also utilized upon a request of the suspect, accused, victim or witness.
- (2) Having taken a decision on utilization of an audio or video recording the investigator shall inform the accused about that before an interrogation.
- (3) Audio and video records shall reflect the information specified in items 3 and 4 of Article 170 of this Code and the whole course of interrogation. Audio and video recording only of a part of interrogation as well as a repetition especially for recording of some testimony provided in the course of the same interrogation shall be prohibited.
- (4) After the completion of an interrogation an audio or video tape shall be fully played to an interrogated. After the completion of listening to or watching the tape an interrogated shall be asked whether he has some additions to the said by him and whether he certifies the correctness of the record. Additions to the audio and video records of testimony shall be made by an interrogated also on a video and audio tape. Audio and video records shall be completed with a statement of an interrogated certifying their correctness.
- (5) Any testimony received in the course of interrogation with utilization of audio and video recording shall be entered into a transcript of interrogation proceedings in accordance with the rules of this Code. The transcript of interrogation proceedings shall contain a remark on utilization of audio and video recording and a remark that an interrogated was notified on that; information on technical devices and the conditions of audio and video recording; a statement of an interrogated on utilization of audio and video recording in the course of interrogation; certification on the correctness of the transcript of proceedings and audio and video records made by an interrogated and the investigator. Audio and video records shall be kept together with a case and after completion of investigation shall be sealed.

#### **Article 195. Transcript of interrogation proceedings**

- (1) The course and the results of interrogation shall be revealed in a transcript of proceedings compiled in accordance with the requirements of Articles 90 and 170 of this Code. Any testimony shall be recorded on behalf of the first person and if possible word by word. Questions and answers to them shall be recorded according to the sequence that took place in the course of interrogation. The transcript of proceedings shall also reveal the questions of the persons participating in an interrogation that were drawn off by the investigator or the questions that an interrogated waved to answer and shall specify the motives of a drawing off or a wave.
- (2) Showing exhibits and documents, announcement of transcripts of proceedings and playing of audio and video records of investigatory actions as well as testimony provided by an interrogated with regard to this shall be revealed in the transcript of proceedings.
- (3) In the course of the investigatory action an interrogated may make charts, blueprints, diagrams that shall be enclosed to a transcript of proceedings and an entry on that shall be made in the transcript of proceedings.
- (4) After a free story an investigated shall be authorized to provide his testimony himself/herself in writing. After that an interrogated shall sign a written by him testimony and the investigator may ask additional questions, making the information more precise.

- (5) After the completion of an interrogation a transcript shall be submitted to an interrogated for him to read it or announced upon his request. The requirements of an interrogated to make some additions to a transcript of proceedings shall be executed.
- (6) The fact of acknowledgment with a testimony and correctness of its recording shall be certified by an interrogated with his signature at the end of a transcript of proceedings. Any interrogated shall also sign each page of a transcript of proceedings.
- (7) If an interpreter participated in an interrogation he also shall sign each page and a transcript of proceedings as a whole. He shall also sign the translation of the written by an interrogated testimony.
- (8) The transcript shall specify all persons participated in an interrogation. Each of them shall sign a transcript of proceedings.

### **Article 196. Confrontation**

- (1) Any investigator shall be authorized to enforce a confrontation between two earlier interrogated persons in whose testimony there are considerable contradictions.
- (2) Before the beginning of a confrontation the investigator shall explain its participants their rights and responsibilities and the procedure of this investigatory action proceedings. If a confrontation is enforced with a participation of a witness and a victim they shall be warned about the responsibility for a wave or deviation from providing testimony and deliberately wrong evidence and there shall be a record on that in a transcript of proceedings.
- (3) Any investigator shall find out from confronted persons whether they know each other and what kind of relationship there is between them. Any confrontation shall start with an interrogation of a person who describes the circumstances to discover which a confrontation was enforced. The participants one by one shall be suggested to provide testimony on the circumstances to discover which a confrontation was enforced. After having provided testimony each of the interrogated shall be asked questions by the investigator. The persons between whom a confrontation is enforced may ask questions to each other upon the investigators' permission and an entry on that shall be made in a transcript of proceedings.
- (4) In the course of a confrontation the investigator shall be authorized to bring the enclosed to a case exhibits and documents.
- (5) Announcement of confrontation participants' testimony contained in transcripts of previous interrogation proceedings as well as playing of audio and video records of that testimony shall be made only after their providing of testimony at a confrontation and its entry into a transcript of confrontation proceedings.
- (6) Any testimony of interrogated persons shall be entered into a transcript of proceedings according to the sequence they were provided. Each confrontation participant shall sign his testimony and each page of a transcript of proceedings.

### **Article 197. Bringing for identification**

- (1) Any investigator may submit for identification a person or an object to a witness, victim, suspect or accused. Any corpse may also be brought for identification.
- (2) The identifying persons shall be previously interrogated on the circumstances under which they observed a definite person or an object, on specific marks and peculiarities by which they may enforce identification.

### **Article 198. The procedure for bringing for identification**

- (1) Any person shall be brought for identification together with other persons similar in appearance, age and clothes with an identified. The total amount of persons brought for identification shall not be less than three. This rule shall not be spread on a corpse identification.
- (2) Before the beginning of identification proceedings an identifying person shall be suggested to take any place among the brought persons and an entry on that shall be made in a transcript of proceedings.
- (3) When it is impossible to bring a person for identification he may be identified on the basis of a photo brought together with photos of other similar with an identifying persons in the amount of not less than three.
- (4) Any object shall be brought in a group of similar objects in the amount not less than three.
- (5) If an identifying person is a witness or a victim before identification he shall be warned about the responsibility for a wave or deviation from providing testimony and providing a deliberately wrong information and entry on that shall be made in a transcript of proceedings.
- (6) An identifying shall be suggested to identify a person or object on which he shall provide testimony. The leading questions shall be prohibited.
- (7) If an identifying identified one of the brought persons or objects he shall be suggested to explain based on what specific marks and features he identified a person or an object.
- (8) In order to protect an identifying person identification may be enforced under conditions that exclude a visual observation of an identifying by an identified. Any identifying shall be given an opportunity of a visual observation of persons brought for identification.
- (9) A transcript of identification proceedings shall be compiled in accordance with all the requirements of Articles 170 and 171 of this Code. The transcript shall specify the conditions, course, identification results and, if possible word by word explanations provided by an identifying. If identification was enforced under conditions that exclude visual observation of an identifying by an identified that shall also be entered into a transcript of proceedings.

## **SECTION 25. EXPERT EXAMINATION ENFORCEMENT**

### **Article 199. Procedure for Ordering an Expert Analysis**

- (1) Upon determining that a forensic expert analysis is necessary, an investigator shall issue an order to that effect or, in the situations specified in Article 32(2)(3) of this Code, shall file a motion with the court, which motion shall indicate:
  - 1) the grounds for ordering the forensic expert analysis;
  - 2) the last name, first name and patronymic of the expert or the name of the institution where the forensic expert analysis is to be conducted;
  - 3) the questions the expert is to answer; and
  - 4) the materials to be made available to the expert.
- (2) A forensic expert analysis shall be conducted by government forensic experts or other experts who possess special knowledge.

- (3) The investigator shall familiarize a suspect or accused and his defense counsel with the order for forensic expert analysis and shall advise them of the rights specified in Article 202 of this Code. An official record to that effect shall be executed, and signed by the investigator and the persons who have been notified of the order.
- (4) A forensic expert analysis involving a victim, except in the situations specified in Article 200 (2, 4) of this Code, and also of a witness shall be conducted with their consent or consent of their legal guardians, which must be given by such persons in writing.  
(As amended by the law of the KR dated 25 June 2007 #91)

### **Article 200. Obligatory appointment of an expert examination and expert examination enforcement**

Expert examination appointment and enforcement shall be necessary if in a case it is necessary to substantiate the following:

- (1) the reasons of death, the nature and the level of damage to someone's health;
- (2) the age of the suspect, accused, victim when it is important for a case or there are no documents on the age or they are doubtful;
- (3) the mental or physical state of the suspect, accused when there are doubts on their being insane or ability independently protect their rights and legal interests in a criminal case;
- (4) mental or physical state of a victim, witness in cases when there is a doubt on their ability to percept correctly the circumstances that are important for a case and provide testimony on them

### **Article 201. The presence of an investigator at expert examination enforcement**

Any investigator shall be authorized to be present at an expert examination enforcement.

### **Article 202. The rights of the suspect, accused, victim in appointment and enforcement of an expert examination**

- (1) At appointment and enforcement of an expert examination the suspect, accused and a victim shall have the right:
  - 1) to be acknowledged with a resolution on expert examination appointment;
  - 2) challenge an expert or file a motion on removal of an expert agency from an expert examination enforcement in case they substantiate the circumstances that make it doubtful that an expert agency in which a knowledgeable person works is not interested in the expert examination results;
  - 3) ask to assign specified by him persons being experts of some definite medical expert agencies;
  - 4) submit additional issues in order to receive expert's opinion on them;
  - 5) be present at an expert examination enforcement and provide explanations to an expert and ask him questions;
  - 6) get acknowledged with an expert's opinion.
- (2) The rights specified in item 1 of this Article shall also belong to a victim who was examined by an expert.

- (3) Any expert examination of victims and witnesses shall be enforced with their consent that shall be given in a written form. If such persons have not reached 16 years old or were recognized by court as insane a written consent on expert examination enforcement shall be given by their representative by operation of law.
- (4) In case of redress of a motion that was filed with a person specified in items 1 and 2 of this Article the investigator shall accordingly change and amend his resolution on expert examination appointment. In case a motion is waved the investigator shall render a resolution that shall be announced to the person who filed a motion and he shall give a receipt on that.

#### **Article 203. Expert examination enforcement in an expert agency**

- (1) If an expert examination is enforced in an expert agency the investigator shall file with the agency his resolution and the necessary materials.
- (2) The leader of an expert agency shall: assign an expert or several experts to enforce expert examination, notify the investigator about them and explain experts their rights and responsibilities foreseen by Article 63 of this Code, warns them about criminal responsibility for providing deliberately wrong opinion and take their receipts on that and file together with an expert's opinion with the investigator.

#### **Article 204. Expert examination enforcement outside an expert agency**

- (1) If an expert examination is enforced outside an expert agency the investigator before rendering a resolution on expert examination appointment shall certify the personality of a person to whom he is going to assign to enforce expert examination, substantiate his relationship with the accused, suspect, victim or a person who will be examined and check whether there are grounds to challenge an expert.
- (2) Having substantiated the necessary data the investigator shall render a resolution on expert examination appointment file it with an expert, explain him his rights and responsibilities foreseen by Article 63 of this Code and warns about a criminal responsibility for providing deliberately wrong opinion. The investigator shall make an entry in the resolution on expert examination appointment that shall be certified with an expert's signature.

#### **Article 205. Commission expert examination**

- (1) Commission expert examination shall be appointed in cases when it is necessary to enforce a complicated expert research that shall be made by several experts of one profile.
- (2) In the course of a commission expert examinations experts together analyze the obtained results and when arrive to a joint opinion write it down and provide a single opinion ( or act on impossibility to provide an opinion).
- (3) In case there are contradictions among experts each of them or part of experts may provide a separate opinion or an expert whose opinion is different from the opinion of the majority shall formulate it in a separate opinion.

#### **Article 206. Complex expert examination**

- (1) Complex expert examination shall be appointed in cases when in order to make a research the knowledge in different fields is necessary. It shall be enforced by experts being knowledgeable in different fields within the limits of their competence.
- (2) Any complex expert examination opinion shall specify what research and in what volume each expert made and what opinion each of them has. Each expert shall sign the part of an opinion that contains his research. In case there are contradictions among experts the research results shall be compiled according to the rules of item 3 Article 202 of this Code.

#### **Article 207. Receiving of samples for a comparative research work**

- (1) In order to undertake a comparative research the investigator shall be authorized to receive samples of handwriting and other samples necessary from the suspect or the accused.
- (2) Any investigator shall be also authorized to receive samples of handwriting and other samples for a comparative research from a witness or victim but only with their consent and in cases when it is necessary to check whether they left prints in a place of event or on exhibits.
- (3) It shall be prohibited in receiving samples for a comparative research to use methods that are dangerous for the life and health of a person or humiliate his dignity.
- (4) Any investigator shall render a resolution on receiving of samples for a comparative research of alive persons. In necessary cases the receiving of samples shall be made with a participation of specialists and a transcript on proceedings shall be compiled on that in accordance with the requirements established by Articles 170 and 171 of this Code.
- (5) If receiving of samples is a part of an expert's research it shall be made by an expert. In this case an expert shall reveal an information on the action in his opinion.

#### **Article 208. Commitment of a Person to a Medical or Psychiatric Institution for Expert Evaluation**

- (1) If upon a forensic medical or psychiatric evaluation being ordered or conducted, the need arises for an in-patient examination of a suspect or accused, such suspect or accused may be committed to a medical or psychiatric in-patient institution.
- (2) A suspect or accused who is not in custody may be committed to a medical or a psychiatric in-patient institution for forensic medical or forensic psychiatric evaluation only pursuant to a court order issued in accordance with the procedures established by Article 169-1 of this Code.
- (3) If a suspect is committed to a psychiatric in-patient institution for a forensic psychiatric evaluation, the running of the time period for presenting charges against him under Article 39 of this Code shall be suspended until the expert's report is received.  
(As amended by the law of the KR dated 25 June 2007 #91)

#### **Article 209. The content of an expert's opinion, information on impossibility to provide an opinion**

- (1) Having made a research with regard to its results an expert or experts in their name shall compile an opinion that shall specify when, who, whom (full name, education, profile, labor experience, scientific degree, position) and on what grounds made an expert examination; the

remark certified with an expert's signature that he was warned about a criminal responsibility for a wave of or deviation from providing an opinion, who was present at an expert examination enforcement and what explanations were provided, what materials an expert used and what research made, questions asked to an expert and his motivated answers. If in the course of expert examination enforcement an expert substantiates the circumstances that are important for a case with regard to which he was asked questions he shall be authorized to specify them in his opinion.

- (2) If an expert finds out that the asked questions are beyond the limits of his special knowledge or submitted to him materials may not be used or are insufficient for providing of an opinion and may not be executed or the state of scientific and expert practice does not let him answer the asked questions he shall compile a motivated information on impossibility to provide an opinion and shall file it with a body or person who assigned an expert examination.

#### **Article 210. Expert interrogation**

- (1) Any investigator shall be authorized to interrogate an expert in order for him to explain the provided by him opinion. Any expert may himself provide his explanations. The transcript of his interrogation shall be compiled in accordance with the rules established by Articles 170 and 195 of this Code.
- (2) Expert's interrogation before providing of his opinion shall be prohibited.

#### **Article 211. Expert examination opinion submittance to the suspect, accused, victim and witness**

- (1) Expert examination opinion or his announcement on impossibility to provide an opinion, as well as a transcript of an expert's interrogation proceedings before a completion of a prosecution shall be submitted to the suspect, accused, victim as well as a witness who was examined who shall be authorized to provide their explanations and state their objections on expert examination opinion. In case such a motion is redressed or waved the investigator shall render a relevant resolution that shall be announced to a person who filed a motion and a receipt on that shall be taken from him.
- (2) The transcript of proceedings shall be compiled on acknowledgment with an expert examination opinion and a transcript of his interrogation proceedings that shall reveal the stated statements or objections
- (3) The rules of this Article shall be also applicable in cases when an expert examination was enforced before the attraction of a person as the accused or his recognizance as the suspect or a victim.

#### **Article 212. Additional and repeated expert examination**

- (1) When an expert opinion is not detailed or complete or there appeared new issues on the earlier researched circumstances an additional expert examination may be appointed assigned to be enforced by the same or another expert.
- (2) In case there appeared some doubts in the correctness of an expert opinion a repeated expert examination may be appointed assigned to be enforced by another expert or experts.

- (3) Additional and repeated expert examinations shall be appointed and enforced in accordance with the requirements of Articles 199, 202, 206, 209 of this Code.

## **SECTION 26. IMPLEADING AS THE ACCUSED. BRINGING OF A CHARGE**

### **Article 213. Impleading as the accused**

When there is enough evidence pointing at committing of a crime by a definite person the investigator shall render a motivated resolution on the person's impleading as the accused.

### **Article 214. Resolution on impleading as the accused**

- (1) Any resolution on impleading as the accused shall specify:
  - 1) the time and place of its compiling, who compiled it, a full name of a person impleaded as the accused, the date, month, year and a place of his birth;
  - 2) description of the accused's incriminated crime and specification of the time, place of its commitment and other circumstances that are to be proved in accordance with Article 82 of this Code;
  - 3) Criminal law (article, part, item) that foresees responsibility for the crime;
- (2) When a person is charged with several crimes that are punished in accordance with different articles of the Criminal Code a resolution on impleading as the accused shall specify what concrete actions the accused is charged in for each article of the Criminal Code.
- (3) Any resolution shall contain a decision on impleading a person as the accused in an investigated case.

### **Article 215. Accused's obligation to appear**

- (1) Any accused who is not in custody shall be summoned for an interrogation with a subpoena. It may be done through a phone message or a telegram.
- (2) Any subpoena shall specify who is summoned in the capacity of the accused, where, day and hour of the appearance and the consequences if someone fails to appear.
- (3) Any subpoena shall be given to the accused and he has to give a receipt on that. In case he is temporary absent a subpoena may be given to a full aged member of his family or a representative of administration of his work or study or a local administration body representative for them to transfer it to the accused.
- (4) Any accused who is not in custody shall appear on the appointed time being summoned by the investigator.
- (5) The valid causes for a failure not to appear when summoned shall be as follows:
  - 1) disease, that makes it impossible for the accused to appear;
  - 2) death of close relatives;
  - 3) acts of god;
  - 4) unreceipt of a subpoena;
  - 5) other circumstances that deprived the accused of a possibility to appear on the appointed time.

- (6) Any accused shall be obliged to acknowledge the investigator about the reasons of a failure to appear.
- (7) If the accused fails to appear without valid causes he may be brought to appear.
- (8) Any accused who is in custody shall be summoned through the administration of his custody place.

#### **Article 216. Bringing of a charge**

- (1) Any charge shall be brought in the presence of a defense attorney if a participation of a defense attorney is binding according to the law or if the accused filed a motion on that but not later than within 3 days from rendering of a resolution on impleading a person as the accused. If the accused or his defense attorney fails to appear a charge may be brought after the expiration of three days.
- (2) Any accused brought to appear shall be charged on a day of bringing.
- (3) Any investigator having certified a personality of the accused shall announce the accused and his defense attorney a resolution on impleading as the accused.
- (4) Any investigator shall explain to the accused the merits of his charge.
- (5) Enforcement of actions specified in items 3 and 4 of this Article shall be certified with signatures of the accused, defense attorney and the investigator put on a resolution on impleading as the accused and the date and time of bringing a charge shall also be specified on it.
- (6) In case the accused waves signing a resolution on impleading as the accused the investigator and a defense attorney shall certify on a resolution that the text of the resolution was announced to him.
- (7) Any accused shall be given a copy of the resolution on his impleading as the accused.
- (8) A copy of the resolution shall be filed with a prosecutor.

#### **Article 217. Explanation of rights and responsibilities to the accused in the course of investigation**

Having acknowledged of the accused with a resolution on his impleading as the accused in an investigated case the investigator shall explain him rights and responsibilities as the accused foreseen by Article 42 of this Code and an entry on that shall be made in a resolution. The entry shall be certified with a signature of the accused as well as his defense attorney signature.

#### **Article 218. Interrogation of the accused**

- (1) Any investigator shall interrogate the accused immediately after bringing him a charge.
- (2) Defense attorney of the accused shall participate in an interrogation.
- (3) The wave of to use a defense attorney shall not be accepted in bringing a charge or interrogation of the accused who is a minor, or a person who because of his physical or mental defects may not himself/herself enjoy his right for defense, or one who does not know the language in which the proceedings are conducted or when a person is charged in committing a crime for which a penalty is in an imprisonment for a term more than 15 years.
- (4) Any interrogation of the accused shall be enforced according to the rules of Articles 189-193 of this Code.

- (5) Accused summoned for one and the same case shall be interrogated separately and the investigator shall undertake measures for them not to communicate with one another.
- (6) At the beginning of an interrogation the investigator shall find out from the accused whether he pleads his guilt partially or fully or pleads not guilty with regard to a brought to him charge and a relevant entry on that shall be made in a transcript of interrogation proceedings.
- (7) In cases when it becomes necessary to make more precise provided earlier testimony or make additions to it on the circumstances of an investigated case a repeated (additional) interrogations of the accused may be enforced.

#### **Article 219. Transcript of interrogation proceedings of the accused**

Any investigator shall compile a transcript of proceedings on each interrogation of the accused in accordance with the requirements of Article 195 of this Code.

#### **Article 220. Charge change and amendment. Partial dismissal of a case**

- 1) If in the course of investigation some grounds appear for a change or an amendment of a charge of the accused in accordance with the requirements of Article 214 of this Code the investigator shall render a new resolution on impleading as the accused and submit it to the accused according to the procedure established by Articles 216 and 217 of this Code.
- 2) If in the course of investigation some part of the charge of the accused was not confirmed the investigator shall terminate this part of criminal case with his resolution and announce to the accused.

### **SECTION 27. INTERRUPTION AND REINSTITUTION OF INVESTIGATION**

#### **Article 221. Grounds order and terms of investigation interruption.**

- (1) Any investigation shall be interrupted because of one of the following grounds prohibiting its continuation and completion:
  - 1) in case when the place of staying of the accused has not been substantiated;
  - 2) in case of a derangement or another serious disease of the accused certified by a doctor working in a state medical agency;
  - 3) because of a failure to determine a person subjected to be summoned as the accused;
  - 4) when place of staying of the accused is known but there is no real possibility of the accused participation in the case connected with the accused immunity depriving or his extradition by a foreign state.
- (2) Any investigator shall render a motivated resolution on interruption of an investigation a copy of which shall be filed with a prosecutor.
- (3) If two or several persons were impleaded as accused and the grounds for interruption do not relate to all of them, the investigator shall be authorized to apportion into a separate proceedings and interrupt proceedings for some of the accused or interrupt all proceedings if an investigation may not be continued without the participation of all the accused.

- (4) In cases foreseen in items 1 and 3 of this Article an investigation may be interrupted only on expiration of the time limit of its proceedings; and in cases foreseen by item 2 of this Article it may be interrupted even before the completion of an investigation time limit.
- (5) After interruption of an investigation the investigator shall enforce all investigatory actions that may be enforced when the accused is absent and undertake all measures for a discovery and determination of a person who committed a crime.

#### **Article 222. Investigator's actions after interruption of an investigation**

- (1) After an investigation interruption in a case foreseen by subitem 3 item 1 of Article 221 of this Code the investigator himself or with special subdivision of investigatory agencies shall undertake measures for a person discovery liable to institute criminal proceedings and in case of necessity can enforce investigation;
- (2) Having interrupted an investigation the investigator shall in a written form notify on that a victim, his representative, civil plaintiff and defendant or their representatives and at the same time explain to them that a resolution on an interruption of a preliminary investigation may be appealed with a prosecutor within 5 days. In case of an investigation interruption because of the grounds foreseen by subitem 2 item 1 Article 221 of this Code the accused and his defense attorney shall be notified.

#### **Section 223 Search of the accused**

- (1) When a place of staying of the accused is not known the investigator shall be authorized to give a commission to inquiry bodies to enforce search. This commission shall be specified in a resolution on interruption of an investigation or a separate resolution shall be rendered.
- (2) The search of the accused may be announced both in the course of investigation and at its interruption.
- (3) When there are grounds specified in Article 102 of this Code a sanction may be imposed on a searched accused.

#### **Article 224. Reinstitution of an interrupted investigation**

- (1) Any interrupted investigation may be reinstated upon a motivated resolution of the investigator after there are no grounds to interrupt it any longer.
- (2) Any interrupted investigation may be reinstated also upon a motivated resolution of a prosecutor in connection with the cancellation of the investigator' resolution on suspension.
- (3) Any investigator shall notify the accused and his defense attorney as well as a victim, his representative, civil plaintiff and defendant or their representatives on the reinstatement of an investigation.

### **SECTION 28. DISMISSAL OF A CASE**

#### **Article 225. Grounds for dismissal of criminal case**

- (1) Any criminal case shall be dismissed by the investigator:

- 1) if there are the grounds specified in Article 28 of this Code.
  - 2) in the absence of sufficient evidence pointing to committing of a crime by the accused or if there are no possibilities left for collecting additional evidence;
- (2) In case of a case dismissal on the grounds specified in Article 28 of this Code the investigator shall undertake all the foreseen by the law measures for a rehabilitation of a person and redress of a material damage caused to him as a result of illegal detention or an arrest.

#### **Article 226. The procedure for a case dismissal**

- (1) Any investigator shall compile a motivated resolution on a case dismissal that shall provide information on the personality of the accused, disclose the merits of the case and the grounds for its dismissal with substantiation of evidence and reference to the pages of a case.
- (2) The resolution shall resolve an issue of exhibits in accordance with the rules of Article 88 of this Code and a penalty reversal as well as measures for providing a civil claim and property confiscation.
- (3) The resolution shall be signed by the investigator and shall specify the place and time of its compiling.
- (4) Any investigator shall file a copy of the resolution on a case dismissal with a prosecutor and at the same time notify a person against whom criminal proceedings were instituted, a victim and an agency on the report of which a criminal case was initiated, it shall specify the grounds for dismissal and appeal right explanation.
- (5) On a request of a civil plaintiff and defendant, a victim or their representatives the investigator, a prosecutor shall acknowledge them with the materials of a dismissed case.

#### **Article 227. Appeal of a resolution on a criminal case dismissal**

Investigator's resolution on a criminal case dismissal may be appealed by the accused, his defense attorney, a victim and his representative, civil plaintiff, defendant and their representatives as well as a person or a representative of an establishment upon report of which a criminal case was initiated, prosecutor who enforced review in the course of investigation and in court.

#### **Article 228. Reinstitution of Proceeding**

- (1) The discontinued proceeding may be reinstated by the resolution of the prosecutor, should the resolution of the investigator to discontinue the proceeding be abrogated.
- (2) The proceedings may be reinstated only in the instances where prescriptive terms for initiation of criminal proceedings have not expired.
- (3) The notice on reinstatement of the proceeding shall be served to the defendant in the case, defense counsel, victim and his/her representative, civil plaintiff, civil defendant, and their representatives, and an individual or an institution, by whose petition the proceedings were initiated.

## **CHAPTER 29. REFERRAL OF CRIMINAL CASE TO PROSECUTOR**

### **Article 229. Familiarization of Victim, Civil Plaintiff, Civil Defendants and Their Representatives with Case File**

- (1) The investigator shall familiarize the victim or his/her representative, civil plaintiff, civil defendant, or representatives thereof, with the entire case file, or with a part thereof, which these persons wish to familiarize with.
- (2) The familiarization shall be carried out in compliance with the procedure provided by Article 231 hereof.

### **Article 230. Announcement on End of Investigation and Referral of Case to Prosecutor**

- (1) After finding that all investigation activities in case were completed, and sufficient evidence were gathered to issue a resolution on end of investigation, the investigator must inform the defendant on that, and explain the defendant his/ her right to familiarize himself/ herself with the entire case file filed, numbered, and in listed appearance (inventarization sheets) without fail, both personally, and with the assistance of the defense counsel, and his/ her right to file motions on additional investigation, or adoption other decisions on the case. A record shall be made on announcement of end of investigation to the defendant, and explanation of his/ her rights, in conformity with requirements of Articles 170 and 171 hereof.
- (2) The investigator must inform the defense counsel, if such participates in the case, and the defendant and his representative, civil plaintiff, civil defendant, and their representatives, on the end of investigation and their right to familiarize themselves with the case file, and submit motions.
- (3) If the defense attorney, or the representative of the victim, civil plaintiff, or civil defendant, and their representatives are not able to appear to familiarize themselves with the case file at the specified time, the investigator may postpone the familiarization for a period of up to five days. Should the defense counsel or representative fail to appear within this period of time, the investigator shall take measures necessary to provide appearance of other defense counsel or representative.
- (4) After familiarization of victim, civil plaintiff, civil defendants and their representatives with case file the investigator issues a resolution on end of investigation in which he informs that all investigated activities were carried out conclusive evidences are enough to refer the case to court.

(As amended by the Law of the KR dated 16 October 2002 # 141)

### **Article 231. Familiarization of Defendant and Defense Counsel with the Entire Case File**

- (1) Upon performance of requirements of Article 230 hereof, the investigator presents to the defendant and defense counsel the entire case file, which should be attached, numbered, and listed (inventarization sheets) without fail. In the case when the investigator or the official conducting the investigation fails to meet these requirements, the defence attorney and the defendant have the right to refuse from familiarization with criminal case file, on which the note in the protocol shall be made, and note on this in written form (letter, teletype, telegram,

fax,, and etc.) to corresponding prosecutor, and also to higher prosecutor. Exhibits shall be also presented, and all sound, video tapes, and slides, if such were attached to records of investigation acts may be reproduced at the request of the defendant or his/her counsel. By the request of the defendant, or defense attorney, they may familiarize with the case file together, or separately.

- (2) Defendant or defense attorney in the process of familiarization with the case file, if it comprises several volumes may refer to them repeatedly, make copies, including the use of technical devices. Excerpts and copies of documents from the case file, which contain the data comprising state, commercial or other secret protected by law, shall be stored in the case file and handed to the defendant and defense counsel during the trial, except data on individuals whose protection needs to be ensured.
- (3) After the familiarization by the defendant and the defense counsel with the case file, the investigator must clarify whether they want to file any motions, in which respect, and whether they wish to make any other statements. It should be established, whom of the interrogated witnesses and participating experts, specialists, attesting witnesses they wish to summon to court, for interrogation and support of the position of the defense.
- (4) No time limitations may be established for familiarization of the defendant and the defense counsel with the entire case file. However, if the defendant or defense counsel are apparently delaying the familiarization with the case file, the investigator may issue a motivated resolution on establishing a certain period sufficient for familiarization with the case file. The time period of familiarization of the defendant and the defense counsel with the case file, as provided for by Article 166(4) and (5) and Article 111(2) and (3) of this Code, shall be counted as part of the investigation period and time of detention in custody.
- (5) The investigator shall advise the accused of his right to request a trial by jury in the situations specified in Article 31(2)(2) of this Code. In connection with such advice, the investigator shall explain the special features of jury trials of criminal cases, the rights of an accused in jury trials and the procedure for appealing a jury verdict and judgment. If one or more out of multiple accuseds waives a jury trial, the investigator shall decide whether to sever the criminal cases against those accuseds into separate proceedings. If severance of a criminal case into separate proceeding is impossible, the entire criminal case shall be tried before a jury.

(As amended by the LAW of KR dated 16 October 2002, # 141, 25 June 2007 #91)

#### **Article 232. Record on Familiarization with Case File**

- (1) Records shall be made on familiarization with the case file of the defendant and defense counsel, and the victim, or his/her representative, civil plaintiff and civil defendant, and representatives thereof, in conformity with the requirements of Articles 170 and 171 hereof. The records shall contain indications on materials presented and motions submitted, and other statements made.
- (2) Where the defendant refuses to familiarize himself/ herself with the case file, such refusal must be reflected in the records, with the indication of reasons for that.

#### **Article 233. Submission and Resolution of Motions**

- (1) Motions by the defendant and the defense counsel, and those by the victim, civil plaintiff, civil defendant, and their representatives, declared verbally after familiarization with the case file, shall be included into the record on familiarization with the case file.
- (2) Where a participant of the proceedings expresses his/ her intention to state the motion in writing, a time required for its preparation may be given, which should be marked in the records, and such written motion shall be attached to the case file.
- (3) In accordance with Article 121 hereof, the investigator may not dismiss the motion on establishing the circumstances relevant to the case. In such instances the investigator must add the investigation, while the further familiarization of other participants of the proceedings with the case file does not impede the resolution of motions, and, should they be granted, exercise of investigation activities.
- (4) Upon exercise of additional investigation activities, the investigator must provide new notices on end of investigation to the participants of the proceedings, and provide them an opportunity to familiarize themselves with additional the case file, or with the entire case file, if requested.
- (5) Should the presented motions be completely or partially dismissed, the investigator makes a ruling on that, and send a copy of such ruling to the petitioner.
- (6) Dismissal of the motion may be appealed to the prosecutor within three days after receipt of a copy of the resolution on dismissal. Filing of a petition suspends referral of the case to the prosecutor pending the resolution of such petition.

#### **Article 234. Resolution on Completion of Investigation.**

- (1) Investigation is completed by the investigator with resolution rendering to refer the case to the Court for Low-suit on the substance of the case or solution of using forced measures of medical characters or taking solution on dismissal of the case in accordance with the rules of this Code.
- (2) It must be pointed out in the resolution on end of investigation who rendered the resolution, place and time of its rendering, accused personality information, brief formula of charge and the investigator's decision on referral of case to Prosecutor.

#### **Article 235. Attachments to Ruling on End of Investigation**

- (1) A list of victims, witnesses, experts to be summoned to court hearing shall be attached to the ruling on end of investigation. The list must consist of two parts—list proposed by the investigator (prosecution list), and the list of individuals nominated by the defendant and defense counsel (defense list).
- (2) Information on the period of investigation, on selected measures to ensure defendants' appearance in court, including the period in custody, on exhibits, on a civil lawsuit, on measures taken to ensure the civil lawsuit and possible confiscation of the property, and on procedural expenditures must be attached to the ruling on end of investigation.
- (3) The list of persons to be summoned to court, should contain the information on their residence or whereabouts, and lists from the case file containing their testimony, or opinions. In instances, provided by part 8 of Article 170 hereof, such list shall contain pseudonyms of individuals to be summoned to court.

### **Article 236. Referral of Case to Prosecutor**

Upon issuance of ruling on end of the investigation by the investigator, the case must be referred to the prosecutor within one day.

## **CHAPTER 30. ACTIONS AND DECISION OF THE PROSECUTOR ON CASE SUBMITTED WITH THE RESOLUTION ON END OF INVESTIGATION**

### **Article 237. Issues Resolved by the Prosecutor in the Case Submitted with the Resolution on End of Investigation**

The prosecutor must within five days period study the submitted case file, and establish:

- (1) that an act incriminated to the defendant had taken place, and that this act contains the elements of crime;
- (2) that the case contains any circumstances which may result in discontinuing the proceedings;
- (3) that the charge is fair, and that it is proven by the evidence presented in the case;
- (4) that the defendant is charged for all established and proven criminal acts;
- (5) that all individuals, in whose respect there is proven evidence committed crime, are brought to trial as defendants;
- (6) that all acts of the defendant were properly qualified;
- (7) that proper sanctions were applied and there are no grounds for its alteration or dismissal;
- (8) that all measures were taken to secure the civil lawsuit, including possible confiscation of property;
- (9) that no substantial violations of the law on criminal procedure were admitted in the investigation.

### **Article 238. Decision Made by Prosecutor in Case Submitted with Resolution on End of Investigation**

The prosecutor or his deputy, upon consideration of the case submitted by the investigator with the resolution on end of the investigation, may take any of the following decisions:

- (1) approve the resolution on bringing an individual to trial as defendant;
- (2) rule to dismiss certain items of the charge, or re-qualify the acts of the defendant, subject to the law on a less grave crime, unless the language of the charge changes;
- (3) return the case to the investigator with written instructions to discontinue the proceeding, or initiate additional investigation;
- (4) dismiss the case.

### **Article 239. Referral of Case to Court**

- (1) After approval of resolution on bringing an individual to trial as a defendant, the prosecutor ensures that the defendant be served with the copy of resolution on summoning the individual to trial as a defendant, and resolution on end of investigation. The copy of the resolution on bringing an individual as a defendant shall be served on the victim, provided that he filed a

motion on that. The receipts of accuses and victim on receiving the copy of resolution shall be attached to the case file.

- (2) The prosecutor shall send the case to court with the appropriate jurisdiction, and notifies the defendant, defense counsel, the victim and his/her representative, the civil plaintiff, civil defendant, or their representatives on that.

(As amended by the Law of KR dated 8 August 2004 #111)

## **SECTION VIII. PROCEEDINGS IN ORIGINAL JURISDICTION**

### **CHAPTER 31. JURISDICTION**

#### **Article 240. Jurisdiction over Criminal Cases**

- (1) A district (city) court has the jurisdiction over all criminal cases, except those indicated in part two of this Article.
- (2) Garrison Military Courts have the jurisdiction over all criminal cases about crimes committed by servicemen, and also by summoned for compulsory temporary military training.
- (3) In bringing a charge against one person or group of persons in committing several crimes, if at least one of the crimes is under jurisdiction of Military Court, and others – under jurisdiction of regional (city) court, the case concerning all crimes shall be under jurisdiction of Military Court
- (4) In bringing a charge against a group of persons in committing one or several crimes, if at least one of the crimes is under jurisdiction of Military Court, and others – under jurisdiction of regional (city) court, the case concerning all accused shall be under jurisdiction of Military Court with the impossibility of separation concerning the serviceman in a separate trial.

(As amended by the Law of KR dated 13 March 2003 #61, 11 June 2003 #98, 28 March 2004 #52 8 August 2004 #111)

#### **Article 241. Territorial Jurisdiction over Criminal Cases**

- (1) A criminal case must be tried at the place where it was committed.
- (2) If a crime was initiated at a place subject to jurisdiction of one court, and accomplished at a place in the jurisdiction of another court, the case must be tried at the place of end of the investigation.
- (3) If the place where the crime was committed cannot be established, or if crimes were committed at several places, the case shall be tried at a place where investigation was completed.

#### **Article 242. Referral of Criminal Case Subject to Territorial Jurisdiction**

- (1) A judge, while setting a date of a trial, and on establishing that the submitted case is not subject to the jurisdiction of this court, shall make a resolution on referral of the case to the court which has a territorial jurisdiction over such case.

- (2) In the presence of circumstances, stated in Articles 70, 71 hereof, the Chairman of the Supreme Court of Kyrgyz Republic or his deputy shall be authorized to render a resolution to pass the case from one court to another. Under the same grounds the chairman of regional court, Bishkek city court shall be authorized to pass the case from one district (city) court to another, the chairman of the Military Court of Kyrgyz Republic shall be authorized to from one garrison military court to another, on which the resolution shall be rendered.
- (3) The higher court when repealing the decision of subordinate court shall be authorized to send the case for a new examination in the presence of circumstances stated in Articles 70 and 71 hereof.  
(As amended by the Law of KR dated 8 August 2004 #111)

### **Article 243. Disputes Regarding Jurisdiction Are Inadmissible**

Any disputes between courts regarding jurisdiction are inadmissible. A court to whom any case was referred by another court, must initiate proceedings on such case, in compliance with procedure provided by Articles 241 and 242 hereof.

## **CHAPTER 32. PREPARATION TO TRIAL**

### **Article 244. Powers of Judge on Submitted Case**

- (1) Prior to commencement of the trial the judge shall make one of the following decisions on the referred case:
  - 1) set the jurisdiction;
  - 2) having taken the case to his proceedings he shall:
    - suspend the trial;
    - dismiss the case on the basis provided by law;
    - files the case for court trial.
- (2) The judge shall make a decision in a form of a resolution, where he/ she specifies:
  - 1) time and place where the resolution was made;
  - 2) family name of a judge who made the resolution;
  - 3) grounds and essence of the decisions made;
- (3) Decision must be made within fourteen days after receipt of the case by court.  
(As amended by the Law of KR dated 24 March 2004 #47)

### **Article 245. Issues to Be Clarified on Referred Case**

- (1) In deciding an issue whether a date of the trial may be set, the judge must clarify except circumstances specified in the following article 244 of this Code regarding each defendant:
  - 1) that no violations of the law on criminal procedure were admitted, which may impede setting the date of the trial;
  - 2) that a copy of resolution on charging was served on time;
  - 3) that a sanction may be changed or dismissed;
  - 4) that measures ensuring indemnification of the losses inflicted by the crime, and possible confiscation of the property were taken;

- 5) that motions and petitions should be granted or dismissed;
- (2) While making resolutions on petitions and motions the judge may summon a person or a representative of an organization who filed the motion. Motions to summon additional witnesses, and attachment of other evidence must be granted, if such motions are relevant to the case.

#### **Article 246. Suspending Case**

- (1) The judge may rule to suspend the proceedings in the following instances:
    - 1) When the accused escaped and his residence is unknown;
    - 2) defendant's disease, certified by a doctor of a state medical institution;
    - 3) initiation of proceedings by the Constitutional Court of the Kyrgyz Republic on the petition on breach of rights and freedoms of a citizen by the criminal law, applicable in the given criminal case;
    - 4) inquiry by the court to the Constitutional Court of the Kyrgyz Republic on verifying the conformity with the Constitution of a law applied to a certain criminal case;
    - 5) setting an expert examination.
  - (2) The judge may issue a resolution to suspend the proceedings in the case.
  - (3) In suspending the case on the ground provided in part 1 of this Article the case is referred to Prosecutor except the case provided in part 2 of Article 259 of this Code.
- (As amended by the Law of KR dated 8 August 2004 #111)

#### **Article 247. Setting Trial**

- (1) A judge, when making a conclusion that all requirements of this Code aimed at ensurance of the rights of the individual were observed and there are no other grounds which impede the trial of the case in court, shall make a decision to set a court trial.
- (2) The resolution setting the trial, shall include the following issues, besides those indicated in Article 244, 245 of this Code:
  - 1) place and time of court trial;
  - 2) summoning participants of the trial to court;
  - 3) hearing a case in a close court session, in instances provided by Article 22 and parts 1, 2, 3 and 4 of Article 254 hereof.
- (3) Along with issues indicated in part 2 of this Article, the resolution must also include decisions to set a trial, sanctions in relation to a person charged in the case, his/ her identity and qualification of a crime incriminated to him/ her
- (4) The parties shall be informed on the date and time of the trial within no less than 10 days to the settled date.

#### **Article 248. Measures to Ensure Civil Lawsuit Including Confiscation of Property**

Should the investigator fail to take measures ensuring the indemnification of the harm inflicted by the crime and possible confiscation of the property, the judge obligates the bodies of investigation to take necessary measures to secure the lawsuit.

#### **Article 249. Discontinuing Proceedings**

- (1) A judge makes a resolution to discontinue the proceedings on the grounds indicated in Article 28 hereof. After making a decision to discontinuing the proceedings, the judge dismisses the sanction, measures of securing a civil lawsuit, and confiscation of property, and resolves an issue on exhibits. A copy of the resolution of a judge to discontinue the proceedings shall be sent to the prosecutor, and served to a person who was brought to criminal liability, and to the victim.
  - (2) The question on discontinuing the proceedings shall be allowed by the judge (court) in court session with participation of prosecutor, victim, accused, defense attorney, legal representative, civil plaintiff, civil defendant. Default of any trial participant shall not be an obstacle of conducting a trial. Discontinuing the proceedings on the basis, stated in points 10 and 11 of part one Article 28 hereof, shall be allowed only if the accused will agree. The question on validity of guiltiness of accused shall not be discussed in the court session, the evidence shall not be examined.
  - (3) The chairman shall inform the appeared persons on the aim of conducting the court session. The judge (court) hears the speech of each participant of the trial and shall move to conference room. The judge (court) renders a resolution in accordance with the requirements of Article 268 hereof. In court session the clerk of the court shall keep the minutes.
- (As amended by the Law of KR dated 8 August 2004 #111)

#### **Article 250. Providing an Access to The case file**

After setting the date of a court trial, the judge must provide both parties with the right to access to the entire case file, and the right to make copies and write out all necessary data.

(As amended by the Law of KR dated 13 March 2003, # 61)

#### **Article 251. Subpoenas to Appear at the Trial**

The judge shall order that the persons participating in the court proceedings be subpoenaed to appear at trial and shall take other measures in preparation for the trial.

The appearance in court of the said persons shall be the responsibility of the prosecution and the defense. If the said persons fail to appear in response to subpoena without a valid reason, they may be subject to arrest for the purpose of compelling attendance by police bodies.

(As amended by the Law of KR dated 8 August 2004 #111, 13 June 2007 #87)

#### **Article 252. Period of Trial**

- (1) The judge (court) shall begin the examination of criminal case no later than 14 days from the day of rendering a resolution on setting the trial of the criminal case.
- (2) The criminal case about the crime on crimes of low gravity and less heavy crime shall be the subject to examination in essence by the judge (court) no later than one month, and the case about grave and particularly aggravated crimes – within two months since the day of receipt by the court.
- (3) The term of court examination shall not include the time which was granted to the parties for familiarization with all case materials, in accordance with Article 250 hereof, and also the time for which the court examination was interrupted on the basis of Article 265 hereof.

(As amended by the Law of KR dated 8 August 2004 #111)

## **CHAPTER 33. GENERAL TERMS OF TRIAL**

### **Article 253. Direct and Verbal Trial**

- (1) All evidence must be directly examined in the court trial. The court must hear the testimony of the defendant, victim, witnesses, expert's opinion, examine exhibits, read out records and other documents, and exercise other court actions to examine the evidence.
- (2) The verdict of the court must be based only on the evidence, which were examined in the trial.

### **Article 254. Ensuring Publicity of Court Trial**

- (1) The court must ensure a public trial except in cases when this may lead to divulgence of the state, military, commercial or other secret protected by law.
- (2) Also, the closed court trial may be held based on a motivated decision of the court (resolution of judge) on cases involving sexual and other crimes, to prevent the divulgence of information on intimate life of persons participating in the case, or information which humiliate their dignity, and also in cases when this is required by the interests of security of the participants and witnesses involved in the trial, members of their families and kin relatives.
- (3) Cases shall be heard in closed trial with compliance of all rules of court proceedings. Decision of the court (resolution of judge) on hearing a case in closed trial may be made in respect to the entire trial, or certain part thereof.
- (4) For the purposes of protection of the secret of correspondence and telegraph communications, the personal correspondence and personal telegraph communications of individuals may be divulged in open court session only with the consent of the persons who participated in that correspondence or telegraph communication. Otherwise, such correspondence and telegraph communications shall be read out and examined in a closed trial.
- (5) Those attending the opened trial may take written notes and sound recording of the hearing. Taking pictures, movie and video shooting are allowed only with the permission of the judge presiding over the hearing and the consent of the parties.
- (6) The verdict shall be read out in publicly.

### **Article 255. Presiding Judge**

The presiding judge conducts the hearing of the court, and takes all measures provided by this Code to ensure equality of rights of all parties, to whom the court provides all conditions necessary for complete and detailed examination of the circumstances of the case, while the court remains impartial and unbiased. The presiding judge also ensures the compliance with the schedule of the hearing, and explains to all participants of the court trial their rights and duties, and the procedure for their implementation. Should any person participating in the trial object to the actions of the presiding judge, these objections shall be entered into the minutes of the hearing.

### **Article 256. Equal Rights of Parties in Trial**

The prosecutor, defendant, defense counsel, and the victim, civil plaintiff, civil defendant, and their representatives shall enjoy equal rights to petition removals, and submit motions, to provide evidence and to participate in their examination, to speak in judicial pleadings, and to participate in consideration of all issues arising in the course of the trial.

### **Article 257. Clerk of the Court**

- (1) The clerk of the court verifies appearance of all persons participating in the hearing of the court, and performs other actions provided by this Code, at the instruction of the presiding judge.
- (2) The clerk of the court keeps the record of the trial. He must provide accurate and full statement of actions and decisions of the court, and actions performed by the participants in the course of the trial.
- (3) Should any debate arise between the clerk of the court and the presiding judge regarding the content of the record, the clerk of the court may attach to the record his/ her remarks which will be considered in compliance with the procedure established by Article 273 hereof.

### **Article 258. Participation of Prosecutor in Trial**

- (1) The prosecutor supports the state charge in front of the court in all criminal cases, except the private charge, provides the evidence of the defendant's guilt, and participates in the examination thereof, and provides his/ her observations in respect to application of the criminal legislation.
  - (2) The prosecutor files or supports a civil lawsuit presented by the victim, if it is necessary to protect the state or public interests, or the rights of citizens.
  - (3) The prosecutor may *mitigate* (\*\*) the charge or dismiss the charge completely or partially.
  - (4) If a more grave charge is established in the trial as compared to that originally presented (\*\*), the court shall give the prosecutor the time to make up for the shortcomings of the investigation and ensure the rights of the participants of the trial, after that the court shall resume the trial of the case.
  - (5) Should the new circumstances be established in the course of the court trial, which circumstances indicate that the crime had been committed by persons in whose respect no criminal proceedings were initiated, the prosecutor shall take measures to initiate criminal proceedings against such persons, and submits such materials for exercise of investigation.
- (As amended by the Law of KR dated 8 August 2004 #111)

### **Article 259. Participation of the Defendant on Trial**

- (1) Hearing of a criminal case by a trial court shall take place with the participation of the defendant, whose attendance shall be mandatory.
- (2) A trial in the absence of the defendant shall be permissible if:
  - 1) the defendant is outside the Kyrgyz Republic and avoids appearing when subpoenaed by the court;

2) after being subpoenaed additionally, the defendant fails to appear in court and inform the court about the reasons for his absence.

- (3) If the defendant fails to appear, the trial of the criminal case must be postponed. In such an event, the judge or the court shall require the prosecutor to ensure that the defendant appear in court.

(As amended by the Law of KR dated June 25 2007 #91)

#### **Article 260. Participation of Defense Counsel in Trial**

(1) The defense counsel provides evidence and participates in examination of the evidence, and states in court his opinion on the merits of the charges, and its being proven, and on mitigating circumstances of the defendant, or acquitting him, and on the punishment, as well as other issues arising in the course of the trial.

(2) Should the defense counsel fail to appear in court, and his replacement impossible, the trial of the case shall be postponed. The defense counsel may be replaced only in accordance with rules provided by part five of Article 44 and point 3 of Article 45 hereof.

(3) A defense counsel who is new to the trial shall be given the time which is sufficient to prepare to participation in the trial.

(As amended by the Law of KR dated 8 August 2004 #111)

#### **Article 261. Participation of Victim in Trial**

(1) The case shall be tried in original and appellate jurisdiction with participation of the victim, or his/her representative.

(2) Should the victim fail to appear, the court shall decide whether the case may be tried in his/her absence, or it should be postponed, depending on whether all circumstances of the case may be clarified, and the rights and lawful interests of the victim be completely protected in the absence of the victim. Should the representative of the victim appear, the court shall refer to the representative's opinion, while resolving this issue.

(3) By the motion of the victim, the court may relieve him/her from the duty to appear in court, and impose an obligation on him/ her to appear on a certain day to testify.

(4) In cases involving personal charge, the victim's failure to appear in court without justifiable reason, shall entail discontinuing the proceedings.

#### **Article 262. Participation of Civil Plaintiff or Civil Defendant in Trial**

(1) A civil plaintiff, or civil defendant, or their representatives shall participate in the trial.

(2) The court shall try the civil lawsuit regardless of the civil plaintiff's or his/her representative's appearance or failure to appear.

(3) Should a civil plaintiff, or his/her representative fail to appear in court of original jurisdiction, the civil lawsuit may be dismissed, while the civil plaintiff retains his/ her right to file the lawsuit in compliance with civil procedure.

(4) Failure of a civil plaintiff or his representative to appear in court shall not impede the trial of the civil lawsuit.

#### **Article 263. Participation of Expert, Specialist in a Trial**

An expert, specialist shall participate in the trial in compliance with the procedure provided by Articles 62, 63, 64 and 65 of this Code.

(As amended by the Law of KR dated 8 August 2004 #111)

#### **Article 264. Limits of Court Trial**

- (1) The case shall be tried in court only in respect to the defendants, and only on the charge brought up in the case.
- (2) The change of the accusation shall be allowed in the court if the principles of adversary criminal proceedings and equality of accusation and defendant parties are not breached.
- (3) In the case of changing of a charge in the trial for a more severe or essentially different from the charge brought, necessity of bringing to account other accessories of a crime, and also of additional investigation on the gaps in the case the prosecutor shall, and a victim and other participants of the trial have a right, to present an application on passing the case for execution of investigation. The judge after examining the application has the right to render a resolution on returning the case to a prosecutor or reject the application and continue the trial. The court is authorized to pass the case to a prosecutor in the case of impossibility to investigate the gaps in the case in the court. After executing the necessary investigation actions the investigator and prosecutor execute the procedural actions in compliance with Articles 229 – 239 hereof, and the trial shall be continued in common order.

(As amended by the Laws of KR dated 13 March 2003 # 61, 24 May 2004 #68, 8 August 2004 #111)

#### **Article 265. Postponement of Trial and Suspension of Case**

- (1) Should the trial be impossible due to failure by any of the summoned persons to appear, or due to necessity to obtain new evidence by the motion of any party, the court by its ruling (judge by his resolution) shall postpone the trial of the case. The court shall also obligate the parties to take measures necessary for summoning persons who failed to appear in court.
- (2) In a case of sickness of a defendant, which deprives him of appearance in the court, the court shall suspend the proceedings against this defendant pending his/ her recovery and confirm the case trial in respect to the rest defendants. If separate proceeding is impossible the case should be interrupted as a whole.
- (3) In the instances where several defendants participate in the case, and one of them escapes, the court separates the materials related to such defendant into a separate proceeding, and continues the trial in respect to the rest defendants. If separation of the case impedes the proper resolution of the case, it shall be returned to the prosecutor.
- (4) While addressing to the Constitutional Court of the Kyrgyz Republic concerning issue 6 of the constituted legality subject to use the Court shall interrupt the case proceedings until the Constitutional Court of the Kyrgyz Republic makes decision.
- (5) When the expert examination is appointed the court shall interrupt the criminal procedure until the expert examination will be submitted to court.

(As amended by the Law KR dated 8 August 2004 #111, 25 June 2007 #91)

#### **Article 266. Dismissal of Case in Court Hearing**

- (1) The case shall be dismissed in court hearing, if in the course of the trial circumstances will be discovered specified in points 4--11 of Article 28 hereof.
- (2) The court may rule to discontinue the proceedings in court hearing on the grounds indicated in Article 29 hereof.

**Article 267. Resolution of Issue on Applying Sanctions. Term of Detention and the Order of Its Determination**

- (1) Since the moment of admission of the case to the examination before the executing the verdict (ruling, resolution), the judge (court) may choose, change or dismiss the sanction in respect to the accused (defendant, acquitted).
- (2) The sanction in the form of taking the accused (defendant) into custody can be applied for the term of the trial. This term is calculated since the day of case receipt by the court, if the sanction in the form of taking into custody chosen by investigator, prosecutor was left without change by the judge.
- (3) In exceptional cases by the valid resolution of the judge when it is impossible to end a trial and when the grounds for changing or dismissal of the sanction are absent, the term of detention of the defendant may be prolonged till the end of case examination.
- (4) In the case of repeated detention of the defendant in the same case, and also in the connected to it or separated of it criminal case, the term of detention shall be calculated taking into account the earlier detention.
- (5) The court shall render the ruling, and the judge shall render the resolution on prolongation of detention of the defendant no later than 7 days till the end of the term. Decision shall be valid.

(As amended by the Law KR dated 8 August 2004 #111)

**Article 268. Procedure of Rendering the Resolutions and Rulings in Trial**

- (1) The judge shall render resolutions, the court shall render rulings regarding all issues being resolved by the court pending the trial, which must be announced during the session.
- (2) Resolutions on returning of the case to the prosecutor, to discontinue the proceedings, on choosing, altering or dismissal of the sanction, or dismissals, on appointment of expertise shall be made in a conference room, and stated in separate documents.
- (3) All other resolutions of the judge shall be made either in compliance with the procedure specified in point (2) of this Article, or in the court room, with attachment of the resolutions (rulings) into the record of the hearing.

(As amended by the Law KR dated 8 August 2004 #111)

**Article 269. Schedule of Court Hearing**

- (1) The trial shall be held in conditions which facilitate a normal work of the court and safety of the participants of the trial.
- (2) When judges enter the court, all present in the courtroom shall rise.

- (3) All participants of the trial shall rise to address the court, give testimony, or make pleas. Exception may be made with the permission of the presiding judge.
- (4) All participants of the trial, and all present in the court room must obey the rulings of the presiding judge to observe the order in the court hearing. Those under influence of alcohol or drugs or toxic substances, are not allowed in the court room.

#### **Article 270. Bailiff**

Bailiff shall ensure the order in the court hearing, and perform the rulings of the presiding judge, and other obligations imposed on him by law. Demands of the bailiff are binding for persons present in the court room.

#### **Article 271. Measures of Pressure for Breach of Order in Court**

- (1) A participant who breaches the order in the court room, or fails to obey the rulings of the presiding judge, shall be warned that a repeated breach of the order will entail his/her removal from the court room, or fine in the amount of up to five estimated rates. Any participant of the trial may be removed, except the prosecutor and the defense counsel, the fine may not be imposed on the prosecutor, defense counsel, and defendant.
- (2) If the defendant was removed from the court room, the verdict must be announced in his/her presence, or read to him/ her on signature immediately after announcement in the court room.
- (3) The court shall make a decision (resolution) on removal of a participant from the court room, and imposing a fine on him/ her.
- (4) Should persons present in the court room, who are not participants of the trial, break the order in the court room, shall be removed by the decision of the presiding judge. Moreover, the court may impose a fine on them, amounting to two estimated rates.
- (5) If the court recognizes that a participant of the trial or a person present in the court room committed an administrative offense, related to obvious contempt to court, or the rules established in the court, the court, after interrogating the offender, and verifying his/her arguments, may rule (decide) to apply to him one of the several administrative penalties provided by the Code of the Kyrgyz Republic on Administrative Offenses.

#### **Article 272. Record of Hearing**

- (1) The record shall be kept in the hearings held by the court of the original and appellate jurisdiction.
- (2) The record may be handwritten, or typed, or word processed. To ensure that the record is complete, the shorthand and sound recording may be used.
- (3) The record of the hearing must include the following: the place and date of hearing, the time when it started and ended; the name and panel of the court; secretary, interpreter, prosecutor, defense counsel, defendant, and also the victim, civil plaintiff, civil defendant, and their representatives, and other persons summoned by court; the case being tried; identity of the defendant and sanctions; acts of the court in the succession they had been taken; petitions, objections and motions by persons participating in the case; the decisions of the court (resolutions by the judge), made without retirement to the conference room; indications on decisions (resolutions) made in the conference room, explanation to persons participating in

the case of their rights and duties; detailed statement of testimony; questions addressed to the expert, and his/ her answers; results of examinations made in the court; indications to facts which the persons participating in the court requested to reflect in the record; the essence of remarks made by the parties in the course of judicial pleadings, and the final statement of the defendant; indication on reading of the verdict and explanation of the procedure and period of its appeal. Moreover, the record shall also include the facts of contempt to court, if they had taken place, and the identity of the offender, and the information of the measure of pressure applied by the court to this offender.

- (4) The record must be prepared and signed by the presiding judge and the secretary no later than 5 days after the hearing. The record may be prepared in parts in the course of the hearing, which should be also signed by the presiding judge and the clerk of the court.
- (5) The presiding judge must ensure that the parties be able to familiarize themselves with the record in full volume.

### **Article 273. Observations on Record of Hearing and Reviewing Thereof**

- (1) Within three days after signing the record, the prosecutor, defense counsel, defendant, victim, civil plaintiff, civil defendant, and their representatives may file their observations on the record.
- (2) Observations on the record of the hearing shall be reviewed by the judge (court), who, if necessary, may summon the persons who presented observations.
- (3) As a result of reviewing the observations, the judge shall make a motivated resolution, court – ruling, to certify the accuracy of the observation, or to dismiss them. The observations on the record, and the resolution of the judge, ruling of the court shall be attached to the record of the hearing.

(As amended by the Law KR dated 8 August 2004 #111)

## **CHAPTER 34. PREPARATION OF HEARING**

### **Article 274. Opening of Hearing**

The presiding judge shall open the hearing, and announce the case to be tried.

### **Article 275. Establishing Appearance**

The clerk of the court reports on appearance of persons summoned to court, and reports the of their failure to appear.

### **Article 276. Explaining to Interpreter His Rights and Duties**

- (1) The presiding judge explains to the interpreter his/ her rights and duties provided by points (1) and (2) of Article 67 hereof.
- (2) The presiding judge shall warn the interpreter on his/ her criminal liability for knowingly wrong translation, an a recognizance shall be taken from him, which shall be attached to the record of the hearing. The interpreter shall be also warned on a monetary penalty which may

be imposed on him/ her in compliance with procedure established by point (3) of Article 67 hereof, for avoidance of performance of his/ her duties.

#### **Article 277. Removal of Witnesses from Court Room**

The appeared witnesses shall be removed from the court room for a time being before their interrogation. The presiding judge shall take measures necessary to prevent the witnesses who were not interrogated by the court from contacts with those interrogated, and with other individuals present in the court room.

#### **Article 278. Establishing Identity of Defendant and Timely Serving to Him a Copy of Resolution on Summoning to Court as Defendant**

- (1) The presiding judge shall establish the identity of the defendant, his family name, given name and patronymic, age, place of birth, place of residence, occupation and other information relevant to his/her identity.
- (2) The presiding judge shall interrogate the defendant, whether he/ she was served a copy of resolution on summoning him/ her to court as the defendant, and the exact time of serving.
- (3) If a copy of resolution on summoning to court as defendant was not served, the trial of the case may be postponed, and the prosecutor shall take all necessary measures aimed at immediate serving of the copy of the resolution on summoning him/ her to court as defendant. In such instances the trial of the case must not be started earlier than 3 days as of the moment of serving such document.

#### **Article 279. Announcement of Presiding Judge, Other Participants of the Proceedings, and Explanation the Right to Dismiss**

The presiding judge shall announce the composition of the court, and inform, who is the accusant, defendant, the defense counsel, victim, his/ her representative, civil plaintiff, civil defendant, and their representatives. The presiding judge explains to the parties their right to dismiss the presiding judge, as well as any other aforementioned participants, in compliance with the rules provided by Chapter 8 hereof.

(As amended by the Law KR dated 8 August 2004 #111)

#### **Article 280. Explanation of Defendant's Rights and Duties**

The presiding judge shall explain to the defendant, his legal representative their rights and duties in the court trial, provided by Articles 42, 43 hereof.

#### **Article 281. Explanation to Victim, Civil Plaintiff and Civil Defendant Their Rights and Duties**

The presiding judge shall explain to the victim, civil plaintiff and civil defendant, and their representatives their rights and duties in the court trial, provided respectively by Articles 50, 53, and 56 hereof. The victim in the case initiated on personal charge, or personal and public charge,

and also in cases initiated on petty crimes, provided in Article 66 of the Criminal Code of Kyrgyz Republic shall be also explained his/ her right to reconcile with the defendant.  
(As amended by the Law KR dated 8 August 2004 #111)

#### **Article 282. Explanation to Expert His Rights and Duties**

The presiding judge shall explain to the expert his/her rights and duties provided by Article 63 hereof, and warns him/ her on criminal liability for providing knowingly false opinion, with taking a recognizance from him/ her which shall be attached to the record of the hearing.

#### **Article 283. Explanation to Specialist His Rights and Duties**

The presiding judge shall explain to the specialist his/ her rights and duties provided by Article 65 hereof, and warned him/ her on the liability established by that Article for refusal or avoidance of performing his duties.

#### **Article 284. Filing and Resolution of Motions**

- (1) The presiding judge shall interrogate the parties about motions to summon new witnesses, experts, and specialists to court, and to attach exhibits and documents to the case file. A person who files a motion must indicate, which circumstances will be established by additional evidence.
- (2) The court, after hearing other participants of the trial must review any filed motion, grant it, if circumstances to be established are relevant to the case, or make a motivated ruling to dismiss the motion.
- (3) A person whose motion was dismissed may file it in the future.

#### **Article 285. Resolution of an Issue of Possible Trial of Criminal Case in the Absence of Any Participating Persons**

- (1) Should any of the participants of the trial, or witness, expert, or specialist fail to appear in court, the court shall hear the opinion of parties whether the trial of the case is possible, and make a decision (resolution) to continue or postpone the trial.
- (2) Prior to resolution of the issue on postponement of the trial, the court may interrogate the appeared witnesses, expert or specialist, victim, civil plaintiff, civil defendant, and their representatives, and then make a decision (resolution) to postpone the trial of the case. Should the case be tried by the same panel of judges, the second summoning of interrogated persons to court is allowed only if necessary.

### **CHAPTER 35. COURT TRIAL**

#### **Article 286. Commencement of Court Trial**

- (1) The court trial shall commence with statement of the substance of the charge brought against the defendant, and in instances of personal charge—with statement of the petition by a person who filed this petition with the court, or his/ her representative.
- (2) The presiding judge interrogates the defendant, whether he understands the charge, and in necessary cases explains to him/ her the essence of the charge, and finds out, whether he is willing to express to the court his/ her attitude to this charge.

#### **Article 287. Establishing Procedure for Examination of Evidence**

- (1) After fulfillment of requirements of Article 286 hereof, the presiding judge, upon coordination with the parties establishes the procedure for examination of the evidence, the court shall make a decision on that.
- (2) The defendant may testify at any time of the trial.

#### **Article 288. Interrogation of Defendant**

- (1) Before the interrogation of the defendant, the presiding judge explains his/ her right to testify or refrain from testifying on the charge brought against him/ her and other circumstances of the case, and that all his testimony may be used against him/ her. If the defendant agrees to testify, the defense counsel and participants for the defense shall interrogate him first, after that—the state prosecutor and the participants for prosecution. The presiding judge eliminates suggestive questions and questions not relevant to the case.
- (2) The presiding judge ~~and associate judges~~ shall ask questions to the defendant after interrogation by the parties, however eliciting questions may be asked at any time of interrogation.
- (3) If the defendant pleads guilty, and wishes to testify on the brought charge in the form of a story, the court hears him without interruption, except in instances when his testimony is not relevant to the case.
- (4) A defendant may be interrogated in the absence of another defendant by the initiative of the court, or by the motion of the parties, upon a special decision (resolution) of the court. In this case, when the defendant returns to the court room, the presiding judge informs him on the testimony given in his/ her absence, and allows him/ her to ask questions to the defendant interrogated in his/ her absence.

(As amended by the Law KR dated 8 August 2004 #111; 5 August 2008, # 193)

#### **Article 289. Announcement of Defendant's Testimony**

- (1) The defendant's testimony, given in the process of investigation may be announced, and an audio or video tape, or a film attached to the record may be reproduced by the motion of the parties in the following cases:
  - 1) should there be a substantial conflict between the testimony given by the defendants in the course of the investigation, and testimony given in the trial;
  - 2) should the defendant refuse to testify in court;
  - 3) should the case be tried in the absence of the defendant;
- (2) Rules provided by point (1) hereof also apply to announcement of testimony given by the defendant previously in court.

- (3) The audio and video tape, or film may not be reproduced in court without prior announcement of the testimony reflected in the respective record of the interrogation, or the record of the court hearing. A note shall be made in the record of the hearing on reproduction of the audio or video tape, or the film.

#### **Article 290. Interrogation of Victim**

The victim shall be interrogated pursuant to the rules established for interrogation of witnesses provided in parts (2), (3), (4), and (5) of Article 291 hereof.

#### **Article 291. Interrogation of Witnesses**

- (1) The witnesses shall be interrogated separately from each other, in the absence of the witnesses who have not been interrogated.
- (2) Prior to the interrogation, the presiding judge shall establish the identity of the witnesses, find out his/ her relation to the defendant and the victim, explains his/ her civil duty and the obligation to give true testimony on the case, and the liability for refusal to testify or giving knowingly false testimony. Individuals released by law from the duty to testify, shall be informed on the liability for giving knowingly false testimony. The witness shall give the recognizance that his rights and duties were explained to him/ her. This recognizance shall be attached to the record.
- (3) The witness shall be interrogated by the prosecutor victim, civil defendant, and their representatives, the defendant and his/ her counsel. The first will be the party who filed the motion to summon this witness to the court.
- (4) The presiding judge shall eliminate all suggestive questions and questions which are not relevant to the case. The judges shall clarify the testimony after interrogation by the parties. Then the presiding judge ~~and the associate judges~~ may ask questions to the witness.
- (5) The interrogated witnesses shall remain in the court room and may not leave it until the end of the court trial, without permission of the court and the consent of the parties.

(As amended by the Law KR dated 8 August 2004 #111; 5 August 2008, # 193)

#### **Article 292. Use of Written Notes and Documents by Victim and Witness**

- (1) The victim and witness may use written notes. These notes must be presented to court by its demand.
- (2) The victim and witness are allowed to read their documents, relevant to their testimony. These documents shall be presented to the court, and by the decision (resolution) thereof may be attached to the case.

#### **Article 293. Particularities of Interrogation of Minor Victim or Witness**

- (1) In interrogation of victims and witnesses in the age under fourteen, and at the discretion of the court—in interrogation of such persons in the age from fourteen to sixteen, a teacher shall be summoned. If necessary, the minor's parents or other legal representatives may be summoned. These person may ask questions to the victim and witness, with the permission of the presiding judge.

- (2) Prior to the interrogation of a victim or witness under the age of sixteen, the presiding judge shall explain them the significance of complete and true evidence. Such persons are not informed on the liability for knowingly false testimony, and shall not give the recognizance.
- (3) By the motion of the parties, or by the initiative of the court, the minor victim and witness may be interrogated in the absence of the defendant, and the court shall make a decision on that. Upon returning of the defendant in the court room, he/ she must be informed of the testimony of such persons, and allowed to ask questions to such persons.
- (4) The victim and the witnesses under the age of sixteen shall be removed from the courtroom after the interrogation, except in instances when the court finds their further presence necessary.

#### **Article 294. Announcement of Testimony of Victim and Witnesses**

- (1) The testimony of the victim and witness given in the course of investigation may be announced, and the audio tape of their testimony, or video tape or a film may be reproduced by the motion of the parties, in the following cases:
  - 1) in the presence of substantial conflict between these testimony and testimony provided in court;
  - 2) in the absence of the victim or witness in the court due to reasons which exclude their appearance;
  - 3) in case of their refusal to testify.
- (2) The rules specified in point (1) of this Article shall also apply to the instances of announcement of the testimony by victim or witness previously given in the court.
- (3) Testimony of the victim and the defendant interrogated in accordance with point (2) of Article 285 hereof, may be also announced in the hearing.
- (4) The audio record of the testimony of a victim or witness, the video tape or a film of the interrogation may be also reproduced in accordance with the rules established in point (3) of Article 289 hereof.

#### **Article 295. Conduct of Expertise in Court**

- (1) By the motion of parties, the court may appoint an expertise in the hearing. The experts who gave their opinion during investigation, or other experts appointed by court shall conduct that expertise.
- (2) The expertise shall be conducted in court in accordance with the rules stated in Chapter 25 hereof.
- (3) After announcement of the decision (resolution) on appointment of expertise, the presiding judge shall explain to the parties their right to dismiss an expert, to file a motion to include in the number of experts a person indicated by a party, to conduct the expertise by representatives of another expert institution, or to conduct the expertise in the presence of parties.
- (4) In the course of the hearing, the expert may ask questions to the interrogated persons, familiarize himself/ herself with written evidence, records of investigative actions, opinions of other experts, participate in examination, experiments, and other court actions relevant to the subject of the expertise.

- (5) Should it be necessary that the expert obtain the samples for comparative examination, rules of Article 207 hereof shall apply.
- (6) In clarifying all circumstances, significant for giving opinion, the presiding judge suggests that parties present their questions to the expert in writing. The posed questions must be announced, and opinions of the participants of the trial must be heard. The court shall review these questions and decide to exclude those of them which are not relevant to the case or the competence of the expert, and also formulate the new questions, after that the expert commences the expertise and composes the opinion.
- (7) The expert shall give his/ her opinion in writing, and announce such opinion in the hearing which then shall be attached to the case file. The expert may include in the opinion his conclusions regarding the circumstances of the case, relevant to his/ her competence, which were not included in the questions.
- (8) If an expert was summoned to court, who gave the opinion in the course of investigation, the court may, upon announcement of the opinion, if it does not cause any objections of the parties, refrain from appointment of the expertise, and confine to the interrogation of the expert.

#### **Article 296. Interrogation of Expert**

- (1) Upon announcement of the opinion by the expert, he may be asked questions for explanation, or for adding to his/ her opinion.
- (2) The questions to the expert shall be asked by the parties, where the first will be the party who filed a motion to appoint the expert. The court may ask questions at any moment of the interrogation.

#### **Article 297. Conduct of Additional or Repeated Expertise**

- (1) In the instances provided by Article 212 hereof, the court may appoint an additional or repeated expertise, on what a decision (resolution) shall be issued.
- (2) Additional or repeated expertise shall be conducted in accordance with rules established by Article 199 hereof.

#### **Article 298. Examination of Exhibits**

- (1) Exhibits attached to the case during the investigation, and newly presented exhibits must be examined by the court and presented to the parties.
- (2) Exhibits may be examined in any moment of the trial, both by the motion of parties, and by the initiative of the court. Exhibits may be presented for examination by witnesses, expert and specialists. Persons to whom exhibits were presented may attract the attention of the court to investigations related to the examination. Results of the examination shall be reflected in the record of the court hearing.
- (3) The court may examine the exhibits at the place of location thereof, with compliance with the rules established by point (1) of this Article.

#### **Article 299. Announcement of Records of Investigative Actions and Documents**

- (1) The record of investigative actions certifying the circumstances and facts established while examination, inspection, seizure, search, arrest of property, detention, presenting for identification, investigative experiment, overhearing of telephone and other conversations of the defendant, or other persons related to the crime, and also documents attached to the case, or submitted during the hearing, if they verify or state the circumstances relevant to the case, must be announced completely or partially.
- (2) Documents submitted at the court hearing may be attached to the case file.

### **Article 300. Inspection of Locality or Premises**

- (1) The court finding necessary to inspect any premises or locality, shall conduct the inspection with the participation of parties. If necessary, the experiment may be conducted with participation of the witnesses, expert and a specialist. The court shall make a decision on such inspection.
- (2) Upon arrival to the site of inspection, the presiding judge shall announce on continuation of the hearing, and the court starts inspection, where the defendant, victim, witnesses, expert and specialist may be asked questions related to the inspection.
- (3) Results of the inspection shall be reflected in the record of the hearing.

### **Article 301. Conduct of Experiment**

- (1) If for verification or clarification of facts of the case some actions, situation or other circumstances of a certain event some actions need to be reproduced, and other tests performed, the court may conduct an experiment.
- (2) The court shall conduct the experiment with the participation of other parties. In cases of necessity, a witness and a specialist may be involved engaged.
- (3) The court shall conduct an experiment with observance of rules provided by Article 182 of this Code.

### **Article 302. Presenting for Identification**

In instances where a person or an object must be identified, the identification shall be conducted in accordance with rules established in Articles 198 hereof.

### **Article 303. Inspection**

- (1) Inspection shall be conducted in the hearing by the decision of the court in the instances provided by point (1) of Article 180 hereof.
- (2) Inspection accompanied by stripping shall be conducted in a separate premises by a doctor, or other specialist who upon completion of the inspection produce and sign the act on inspection. After that, the specified persons shall return to the court room, where, in the presence of the parties, and of the person inspected shall inform the court on the traces and signs on the body, should any be discovered, and answer the questions of the parties and judges. The act on inspection shall be attached to the case file.

### **Article 304. Completion of Court Examination**

- (1) Upon completion of examination of all evidence, the presiding judge shall ask the parties whether they wish to add to the trial, and what additions they have. Should any motions be submitted on addition of the trial, the court shall discuss these motions and resolve them.
- (2) Upon resolution of the motions and performance of necessary court actions, the presiding judge announces the court examination completed.

### **Article 305. Essence and Procedure of Judicial Pleadings**

- (1) Upon completion of the court examination, the court shall transfer to judicial pleadings, which consist of the speeches of the prosecutor, victim, his/ her representative, civil plaintiff and civil defendant, or their representatives, the defendant and defense counsel. The court shall establish the succession of presentations of the participants of judicial pleadings, based on their proposals, however, the state or private prosecutor shall be the first to speak, who must substantiate the opinion on the defendant's being guilty, the qualification of his/ her misdeeds, based on the results of the court trial, and shall state his/ her personal opinion on the punishment which should be imposed on the defendant, or dismiss his/ her charge.
- (2) Participants of the pleadings may not refer to the evidence which were not taken into consideration in the hearing; if it is necessary that new evidence be presented, they may file a motion on reopening of court trial.
- (3) The court may not restrict the length of pleadings by a certain period of time, however, the presiding judge may interrupt persons participating in the pleadings if they refer to circumstances which are not relevant to the case being tried.
- (4) After all presentations by all participants of the pleadings, each of them may make one more presentation with observations (remarks) regarding the presentations made by the representatives of the parties. The right to final remark is given to the defendant or his defense counsel.
- (5) Each participant of pleadings may submit to court his/ her language of the decision on issues specified in items 1)-6) of point (1) of Article 312 hereof, in writing. The proposed language shall not be binding for the court.

### **Article 306. Final Statement by Defendant**

- (1) Upon completion of court pleadings, the presiding judge shall provide the defendant the right to make a final statement. No questions to the defendant while the final statement shall be allowed.
- (2) The court may not restrict the length of the final statement of the defendant by a certain time, however the presiding judge may interrupt the defendant in instances when his statement refers to circumstances which are not relevant to the case in question.

### **Article 307. Reopening Examination**

If persons who make presentations in the judicial pleadings, or the defendant in his/ her final statement inform the court on the new circumstances which are substantial to the case, or refer to previously unexamined evidence relevant to the case, the court, by the motion of the parties, or

by its initiative shall reopen the proceedings. Upon completion of the reopened proceedings, the court shall reopen judicial pleadings, and gives the defendant the right to make final statement.

### **Article 308. Retirement of Court to Conference Room to Establish Verdict**

On hearing the final statement by the defendant, the court shall immediately retire to the conference room to render a sentence, the presiding judge (members of the composition of the court) inform the persons present in the court room on that.

(As amended by the Law KR dated 8 August 2004 #111)

## **CHAPTER 36. RENDERING VERDICT**

### **Article 309. Rendering Verdict in the Name of the Kyrgyz Republic**

The court of the Kyrgyz Republic shall render a verdict in the name of the Kyrgyz Republic.

### **Article 310. Lawful and Substantiated Verdict**

- (1) The verdict must be lawful and substantiated.
- (2) The verdict shall be deemed lawful, if it is rendered in accordance with all requirements of the law, and is substantiated on the law.
- (3) The verdict is deemed substantiated, if it is rendered based on all-round and objective examination of the evidence presented to court.
- (4) The verdict must be fair.

### **Article 311. Rendering a verdict**

- (1) The court shall render the verdict in a separate premises—conference room. Only members of the composition of the court may be in the room while rendering the verdict. Presence of back-up judges and other persons is not allowed.
- (2) In the night time, and if necessary, during the day, the court has the right to recess. Rendering verdict shall be also interrupted for days off and holidays.
- (3) Period of rendering the verdict must be announced by participants of the process.
- ~~(4) During rendering the verdict by the members of the composition of the court all the questions shall be resolved by simple majority vote. The judge or the associate judge shall not abstain from voting. The presiding judge shall be the last to vote.~~
- ~~(5) The judge or the associate judge, who has a special opinion, may state it in written form. Special opinion shall not be announced during the proclamation of the verdict, but it shall be attached to a case file.~~
- ~~(6) The judge and associate judges shall not be authorized to announce the judgment reasoning when pronouncing the verdict.~~

(As amended by the Law KR dated 8 August 2004 #111; 5 August 2008, # 193)

### **Article 312. Issues Resolved by Court While Rendering Verdict**

- (1) In rendering verdict, the court shall resolve in the conference room the following issues:

- 1) whether the act incriminated to the defendant had taken place;
  - 2) whether it is proven that the act was committed by the defendant;
  - 3) whether this act is a crime and which article of the criminal law envisages it;
  - 4) whether the defendant is guilty of commission of this crime, and whether there are any mitigating or aggravating circumstances;
  - 5) whether the defendant is subject to punishment of the committed crime;
  - 6) which punishment must be assigned;
  - 7) whether there are grounds for rendering verdict without assignment of punishment, or dismissal from it;
  - 8) the type and regime of the penitentiary institution where the convict should serve the punishment;
  - 9) whether the civil lawsuit is eligible for rendering, in whose favor, and in which amount, and also whether the property damage is eligible for indemnification, if the civil lawsuit was not filed;
  - 10) how arrested property should be disposed of to render the lawsuit and possible confiscation;
  - 11) what should be done with the exhibits;
  - 12) who should pay procedural fees, and the amount of such fees;
  - 13) whether the court must deprive the defendant of special or military ranks, in instances provided by Article 51 of the Criminal Code of the Kyrgyz Republic;
  - 14) on applying compulsory medical measures in instance provided by Article 91 of the Criminal Code of the Kyrgyz Republic;
  - 15) on sanctions to be applied to the defendant.
- (2) If the defendant is charged of commission of several crimes, the court shall resolve issues specified in items 1)-6) of point (1) hereof, on each separate crime;
- (3) If several defendants are charged of commission of a crime, the court shall separately resolve these issues regarding the role and degree of participation of each defendant in the act committed.
- (As amended by the Law KR dated 8 August 2004 #111)

### **Article 313. Resolution of Issue of Putability of the defendant**

- (1) While rendering the verdict, the court must discuss the issue of putability of the defendant.
  - (2) If the court recognizes, that at the moment of commission of the crime the defendant was imputable, or became mentally sick beyond recovery after commission of the crime, and due to such sickness he/ she is not able to be aware of his/ her actions, and that they are harmful, or manage his/ her actions, the court shall make a resolution to dismiss the criminal case, and to apply to the defendant the compulsory medical measures.
- (As amended by the Law KR dated 8 August 2004 #111)

### **Article 314. Types of Verdicts**

- (1) The verdict by the court may be guilty and non-guilty.
- (2) Guilty verdict may be rendered:
  - 1) with assignment of criminal punishment, to be served by the defendant;
  - 2) with assignment of a criminal punishment and release from serving the punishment;

- 3) without criminal punishment.

### **Article 315. Grounds for Rendering Guilty Verdict**

- (1) The guilty verdict shall be rendered only if the guilt of the defendant in commission of the crime was proven in the court trial by an aggregate of investigated evidence, and may not be based on presupposition.
- (2) While rendering a guilty verdict with assignment of criminal punishment to be served by the defendant, the court must determine a precise type of the punishment, the amount and the starting period of calculation of the serving period.
- (3) The court shall render guilty verdict with assignment of punishment and release from its serving in the instances where by the moment of rendering the verdict:
  - 1) an amnesty act was adopted, which released from the punishment assigned to the defendant by this verdict;
  - 2) the time spent by the defendant in custody in this case, with consideration of the rules of reckoning the preliminary confinement established by Article 61 of the Criminal Code of the Kyrgyz Republic, absorbs the punishment assigned by the court.
- (4) The court shall render the guilty verdict without assignment of punishment in the instances when by the moment of rendering:
  - 1) the person is no longer publicly dangerous;
  - 2) the person has got sick seriously, which prevents him/her from serving the criminal punishment for this crime;
  - 3) the statute of limitations for criminal liability for such crime has expired.

### **Article 316. Grounds for Rendering Non-Guilty Verdict**

- (1) Non-guilty verdict is rendered in instances when:
    - 1) the event of crime is absent;
    - 2) the acts of the defendant do not contain elements of crime;
    - 3) the participation of the defendant in commission of the crime is not proven;
    - 4) the action, which had caused the damage in view of the criminal law, is lawful (justifiable defense; extreme necessity, damage caused while making an arrest of the suspect; execution of an order or other command; justifiable risk).
  - (2) Acquittal on any of the listed grounds means finding the defendant non-guilty, and entails his/ her complete rehabilitation.
  - (3) Where in rendering non-guilty verdict based on unproved participation of the defendant in the commission of the crime, the person who actually committed this crime remains unknown, the court, after effectuation of the verdict shall submit the case to the prosecutor to take measures on establishing a person who actually committed this crime.
- (As amended by the Law KR dated 8 August 2004 #111)

### **Article 317. Compounding the Verdict**

- (1) After issues indicated in Article 312 hereof are resolved, the court shall transfer to compounding of the verdict. The verdict shall be stated in the state or Russian language, and consist of introduction, description and motivation, and resolution.

- (2) The verdict shall be written in hand, or produced with the help of technical means by one of the judges participating in the rendering this verdict, and shall be signed by all judges. Should the verdict be amended, such amendments must be stipulated and certified by signatures of all judges in the conference room, prior to the announcement of the agreement.
  - (3) The verdict shall be signed by the judge.
- (As amended by the Law KR dated 8 August 2004 #111; 5 August 2008, # 193)

### **Article 318. Introduction**

Introduction of the sentence shall indicate:

- (1) that the verdict is rendered in the name of the Kyrgyz Republic;
  - (2) the time and place of rendering the verdict;
  - (3) the name of the court that rendered the verdict, name, patronymic, family name of presiding judge, ~~associate judges~~, clerk of the court, accuser, defense attorney, victim, legal representative, civil plaintiff, civil defendant;
  - (4) the given name, patronymic, and family name of the defendant, the year, month and day of his/ her birth, place of residence, place of work, occupation, education, family state, and other data on the identity of the defendant relevant to the case.
  - (5) the criminal law, which envisages the crime of which the defendant is charged.
- (As amended by the Law KR dated 8 August 2004 #111; 5 August 2008, # 193)

### **Article 319. Description and Motivation in Guilty Verdict**

- (1) The description and motivation in guilty verdict must contain the description of the criminal act, which is deemed proven by court, with indication of the place, time, method of its commission, the form of guilt, motives, goals and the consequences of the crime. The verdict shall also include the evidence, on which the opinion of the court is based in respect tot he defendant and the motives based on which other evidence were dismissed by the court. Mitigating and aggravating circumstances shall be also specified, and should any part of the charge be deemed non-substantiated, or a wrong qualification of the crime be established—grounds and motives for alteration of the charge.
  - (2) The court must also give the motives for resolution of all issues relevant to assigning a criminal punishment, relieve from the punishment, or actual serving thereof, or applying other measures of pressure.
  - (3) The description and motivation must also contain the substantiation fro adopted decisions on issues specified in Article 312 hereof.
- (As amended by the Law KR dated 8 August 2004 #111)

### **Article 320. Resolution in Guilty Verdict**

- (1) The resolution of the guilty verdict must indicate:
  - 1) family name, full name and patronymic of the defendant;
  - 2) decision on finding the defendant guilty of commission of the crime
  - 3) article of the criminal law based on which the defendant was found guilty.
  - 4) type and amount of punishment assigned to the defendant for each crime, of which he was found guilty; the final punishment to be served based on the articles of the Criminal

Code of the Kyrgyz Republic; type and regime of the penitentiary institution, where the convict is to serve his term of punishment;

- 5) length of probation period, in case of probation, and duties imposed on the convict;
  - 6) decision on deprivation of a special or military rank;
  - 7) decision on reckoning the preliminary confinement term if the defendant prior to rendering the sentence was detained or sanctions in the form of custody or placement to a mental institution were applied to him;
  - 8) decision on applying a sanction to the defendant prior to effectuation of the verdict.
- (2) If the defendant is charged on several Articles of the criminal law, the resolution of the verdict must specify precisely on which of those charges the defendant is acquitted, and convicted.
- (3) If the defendant is relieved from the serving the punishment, or a verdict was rendered without assignment of punishment, the resolution part of the verdict must indicate that.

### **Article 321. Description and Motivation of Non-Guilty Verdict**

- (1) The description and motivation of non-guilty verdict shall state: the essence of the charge, circumstance of the case established by court; evidence which served the ground for acquittal of defendant; motives explaining why the court finds the evidence of guilt of the defendant non-authentic or insufficient; motives of the resolution regarding the civil lawsuit.
- (2) Any statements which question the fact of the defendant being innocent are not allowed in the non-guilty verdict.

### **Article 322. Resolution of Non-Guilty Verdict**

- (1) The resolution of non-guilty verdict should contain:
  - 1) family name, first name and patronymic of the defendant;
  - 2) decision on finding the defendant non-guilty, his acquittal, and grounds for such acquittal;
  - 3) decision on dismissal of sanction, if such was chosen;
  - 4) decision on abrogation of ensurance of confiscation of the property, if such measures were taken.

### **Article 323. Other Issues to Be Included in Resolution of Verdict**

The resolution of both guilty and non-guilty verdict, besides the issues listed in Articles 320 and 322 hereof, shall include the following:

- (1) decision on filed civil lawsuit;
- (2) decision on exhibits;
- (3) decision on distribution of procedural fees;
- (4) explanation of procedure and period of appellate review of the sentence.

### **Article 324. Announcement of Verdict**

- (1) After signing the verdict, the court shall return to the court room, where the presiding judge shall read the verdict. All present in the court room, without exception for the panel of judges, shall rise to listen to the verdict.
- (2) If the sentence is stated in a language which is unknown to the defendant, the consecutive or simultaneous verbal translation of the verdict into the native language of the defendant, or any other language familiar to the defendant by the interpreter.
- (3) The presiding judge shall explain to the defendant, and other parties the content of the verdict, the procedure and deadline for its appellate review. If the defendant was convicted to life imprisonment, an explanation shall be provided to him/ her, how to file a motion for mercy.

(As amended by the Law KR dated 8 August 2004 #111, June 25 2007 #91)

### **Article 325. Releasing the Defendant from Custody**

Whenever a defendant held in custody is acquitted or there are a judgment of conviction with no sentence imposed, a judgment of conviction exempting the defendant from serving it or involving conditional imprisonment, a judgment of conviction and sentence that does not involve imprisonment he shall be released immediately after the judgment takes legal effect.

(As amended by the Law KR dated June 25 2007 #91)

### **Article 326. Serving a Copy of Verdict**

No later than three days after announcement of the verdict, a copy thereof must be served to the convicted or acquitted defendant, defense counsel, and the prosecutor. Within the same term, the copy shall be served to the victim, civil plaintiff, civil defendant, and their representatives, if requested by these persons.

### **Article 327. Issues Resolved by Court Along with Rendering Verdict**

- (1) Should a defendant convicted for imprisonment have minor children, aged parents, or other dependents who are left without care, the court shall, along with the rendering the guilty verdict, resolve the issue, and rules on assignment of tutelage or curatorship over these persons by other relatives or other individuals or institutions, and where the defendant has unwatched property and housing—on taking measures necessary to ensure safety thereof.
- (2) In the instances where the defense counsel participated in the case on assignment, the court shall, rule, along with rendering the verdict, on the amount of compensation to be paid to the legal consultancy agency.
- (3) Where there are grounds provided by the point (3) article 19 hereof the court render particular decision.
- (4) All procedural decisions specified herein must be announced in the court room after reading of the verdict.

(As amended by the Law KR dated 8 August 2004 #111)

### **Article 328. Providing Meeting with Convicted Person**

Prior to enforcement of the verdict, the presiding judge or the chief justice of the court must provide the close relatives of the convicted person in the custody, with the opportunity to meet him, by their request.

**CHAPTER 36-1. THE SIMPLIFIED ORDER OF THE TRIAL AND TAKING THE  
DECISION UNDER THE CONSENT OF AN ACCUSED WITH A CHARGE  
PRODUCED TOWARDS HIM**

(Chapter is as edited by the Law of KR dated 24 March #47)

**Article 328-1. The order of filing a petition**

(1) The petition on the assignment of the punishment without the court examination in common procedure, in the view of the consent with the produced charge on criminal case about crimes of low gravity and less heavy crimes the accused has the right to declare in the presence of a defense attorney. The juvenile accused, defendant shall file a petition in the presence of a defense attorney after conducting the consultation with him. If the defense attorney is not invited by the accused, his representative, legal representative or other people by their commission, then the participation of the defense attorney shall be provided by investigation agency, court.

(2) The accused has a right to file a petition:

1) at the moment of familiarization with the criminal case materials, which shall be indicated in the protocol of familiarization with the criminal case materials in accordance with the part three of Article 231 of herein;

2) in the preparation stage of the trial - in accordance with Article 280 of herein.

**Article 328-2. The Actions of the Court Concerning the Petition Filing of the Accused, Defendant on the Assignment of the Punishment without the Court Examination in Common Procedure**

(1) In the case provided in the part one of this Article, the court shall resolve the verdict without the court examination in common procedure, if the following will be established:

1) the accused acknowledges the charge brought toward him fully, acknowledges the character and the consequences of the petition filed by him;

2) the petition was filed voluntarily.

3) no objections are raised by the public or private prosecutor and the victim with regard to the motion of the accused.

(2) If the court will determine that the conditions provided in the part one of this Article, under which the accused filed a petition, were not followed, then it appoints the court examination in common procedure. On satisfaction of the petition of the accused, defendant or on the denial in satisfaction of the petition the court shall render the grounded resolution, decision.

(3) The requirements of this Article shall not be applied to the criminal cases, where at least one accused, defendant does not agree with the charged brought toward him.

(As amended by the law of the KR dated 25 June 2007 #91)

**Article 328-3. The Order of Rendering the Verdict and the Scope of its Appeal**

- (1) The session of the court by the petition on the assignment of the punishment without the court examination in common procedure, in the view of the consent with the charge, shall be conducted according to the requirements of Chapter 36 herein.
- (2) The hearing must be held with the mandatory participation of the defendant and his defense counsel.
- (3) The hearing on the motion of the defendant for entry of judgment without trial shall commence with the public prosecutor setting out the formal charges against the defendant and, in criminal cases of private prosecution, with the private prosecutor setting out the charges.
- (4) The judge shall ask the defendant whether he understands the charges, whether he agrees with the charges made and whether he supports his motion for entry of judgment without trial, whether the motion is made voluntarily and after consultation with the defense counsel, and whether he understands the consequences of entry of a judgment without trial. In the event that the victim participates in the hearing, the judge shall ask him what his position is regarding the defendant's motion.
- (5) The judge shall not conduct a hearing or evaluation of the evidence gathered in the criminal case. However, any circumstances illuminating the character of the defendant and any circumstances mitigating or aggravating punishment may be examined. The judge shall hear the closing arguments and the final statement of the defendant whereupon immediately retires to consider his judgment.
- (6) In the event there is an objection to rendering judgment without trial on the part of the defendant, the public or private prosecutor or the victim or, on the court's own initiative, the judge shall issue an order terminating the simplified trial procedure and setting the case for trial in accordance with regular procedures.
- (7) If the judge concludes that the charges that the defendant has stipulated to are well-founded and supported by the evidence gathered in the criminal case file,<sup>93</sup> he shall enter a judgment of conviction and impose on the defendant a sentence not exceeding two-thirds of the maximum term or amount of the most severe punishment provided for the crime committed.
- (8) The narrative-rationale part of a judgment of conviction must contain a description of the criminal conduct with which the defendant is charged and with which he agrees, as well as the findings of the court regarding compliance with the conditions of rendering the judgment without a trial. No analysis of the evidence or its evaluation by the judge shall be reflected in the judgment.
- (9) Before the resolution the court shall examine the accused, victim, announces the testimonies of the witnesses, expert examinations, hears the opinion of public prosecutor, defense attorney or representative (legal representative).
- (10) If the court will come to the conclusion on validity, which was agreed by the defendant, then it dooms and appoints the punishment towards the defendant, which shall not be in excess of two thirds of maximum term or size of the most severe punishment provided for the committed crime.
- (11) After the announcement of the verdict the judge shall explain to the parties the right and order of its appeal provided by Article 38 herein.
- (12) The procedural costs provided by Article 147 herein shall not be levied from the accused.

- (13) The verdict resolved in accordance with Article 328-3 herein may not be reviewed by way of appellate, cassational or supervisory procedures on the grounds specified in Article 349(1) herein.

(As amended by the law of the KR dated 25 June 2007 #91)

## **CHAPTER 37. PROCEEDINGS ON PERSONAL CHARGE**

### **Article 329. Initiation of Proceedings on Personal Charge**

- (1) A person initiates proceedings on personal charge by filing a report with the court on bringing another person to criminal liability.
- (2) The motion must contain the name of the court, where it was filed: description of a site where the event of the crime took place, the site and time when it was committed, with indication of evidence; the request to court to initiate proceedings on the case; information on a person who is brought to criminal liability; the list of witnesses whose summoning to court is mandatory. The report must be signed by a person who files it.
- (3) The report shall be filed with the court with attached copies, which number is equal to the number of persons against whom proceedings on personal charge are initiated.
- (4) As of the moment of initiation of proceedings on the case by the court, a person who filed this report shall be the private prosecutor, and his/ her rights must be explained of the rights provided to him/ her by Articles 27 and 50 hereof.

### **Article 330. Powers of Judge in Proceedings on Private Prosecution Prior to Commencement of Trial**

- (1) Where the filed report does not comply with the requirements of points 2 and 3 of Article 329 hereof, the judge shall suggest that a person who files such report should provide the evidence, eliminate the shortcomings, and establish a deadline for that. Should the person who filed the report fail to perform that instruction, the judge shall rule on dismissal of the proceedings on the report and notify on that the person who filed that this report.
- (2) By the motion of the private prosecutor, the judge must provide assistance in gathering the evidence.
- (3) Where there are grounds to set up a meeting, within up to seven days after receipt of the report by the court, the judge must summon a person against whom the record was filed to familiarize him with the case file, hand in the copy of the filed record, and explain the rights of the defendant in court hearing provided by Article 42 hereof, and find out, who, in this person's opinion, must be summoned to court as witnesses for the defense.
- (4) The judge must explain to the parties the possibility to reconcile. If the parties file the record on reconciliation, the judge shall rule on discontinuation of proceedings on the case, based on Article 29 hereof.
- (5) If the parties fail to reconcile, the judge, upon exercise of requirements of points 3 and 4 of this Article shall set the trial of the case in compliance with rules of Article 247.

### **Article 331. Court Trial of Case**

- (1) The trial of case on personal prosecution may be combined into single proceeding along with the proceedings on counter-claim. Such combination is permitted by the resolution of a judge prior to the court trial. Where lawsuits are combined into single proceeding the persons who filed them participate in the proceeding simultaneously, as personal prosecutor and defendant. The trial of the case may be postponed for no less than three days, for preparation to the defense in connection with filing of the counter claim and combination of proceedings. These persons shall be interrogated on the circumstances stated in the petitions, in conformity with the rules of interrogation of victim, and on the circumstances stated in the counter-claims—based on rules of interrogation of the defendant.
- (2) The prosecution in the proceedings on personal prosecution is supported by the personal prosecutor, or his/ her representative.
- (3) The court trial on cases of personal prosecution shall commence with statement of the petition the by person who filed it, or his/ her representative.
- (4) Failure by the personal prosecutor or his/ her representative to appear in the court trial without the substantial reason, shall be deemed as waiver of the filed petition and shall terminate the discontinuation of proceedings on the case.

## **SECTION IX. REVIEW OF VERDICTS, DECISIONS AND RESOLUTIONS WHICH DID NOT ENTER INTO LEGAL FORCE**

### **CHAPTER 38. APPELLATE AND CASSATIONAL REVIEW OF DECISIONS RENDERED BY COURT WHICH DID NOT ENTER INTO LEGAL FORCE**

#### **Article 332. Right to Appellate and Cassational Review of Verdict Which did not Enter Into Legal Force**

- (1) Verdicts rendered by court which were not effectuated may be reviewed in appellate or cassational procedure.
- (2) The right to appeal the verdict shall be provided to the convicted or acquitted person and his/ her legal representatives, the prosecutor, who participated in the court, the defense counsel, the victim, and his/ her representative. The civil plaintiff, civil defendant, or their representatives may appeal the sentence in a part relevant to the civil lawsuit.
- (3) The appellate procedure applies for reviewing petitions on verdicts and resolutions of court of original jurisdiction, rendered by a single judge or a panel of judges which did not enter into legal force.
- (4) The prosecutor having supported the prosecution of court of original jurisdiction shall render petitions on each illegal and ungrounded verdict.

#### **Article 333. Courts Reviewing Petitions on Verdicts Which Did Not Enter into Legal Force**

Verdicts of district (city) garrison military courts may be reviewed in appellate or cassational procedure in respectively Oblast, Bishkek City and Military Court of the Kyrgyz Republic.

#### **Article 334. Procedure of Filing Petitions on Verdict**

The petitions shall be filed to court which rendered the verdict. The petitions which were filed directly to courts of appellate or cassational jurisdiction shall be filed respectively to the court of original or appellate jurisdiction, for performance of requirements of Article 337 and point 2 of Article 338 hereof.

#### **Article 335. Deadline for Appeal of Verdicts**

- (1) Petitions on the verdict rendered by the court of original jurisdiction may be filed within ten days after announcement of the verdict, and for convicted persons in custody—within same days after serving a copy of the verdict on them.
- (2) The case may not be obtained from the court pending the deadline established for the appeal of the verdict.

#### **Article 336. Procedure of Restoration of Deadline for Filing Petition**

- (1) If the lapse of the deadline for filing a petition occurred due to a substantial reason, persons who have right to file a petition may file a motion to the court which rendered the verdict to restore the lapsed deadline. The motion to restore the deadline shall be considered in the hearing of the court by the judge who presided over the trial of the case, who may summon a person who initiated proceedings to give the explanations.
- (2) The resolution on dismissal of the motion to restore the lapsed deadline may be appealed to the superior court, which may restore the lapsed deadline, and try the case on the petition.

#### **Article 337. Notice on Filed Petitions**

- (1) The court which rendered the verdict shall notify the convicted or acquitted person, defense counsel, prosecutor, victim or his/ her representative, and the civil plaintiff, civil defendant, and their representatives on the petition filed, if such petition affects their interests, and shall explain that they may familiarize themselves with the petition, and submit their objections against such petition in writing. By their request, the court shall serve them copies of the petition filed by another party.
- (2) Objections filed on the petition shall be attached to the case.
- (3) The parties may confirm the grounds for or objections against filing such a petition by another party, by filing with the court new materials, or bring a motion to summon to court the witnesses and experts indicated by this party, if such case is to be tried in compliance with the appellate procedure.

#### **Article 338. Consequences of Filing Petition**

- (1) Filing of petition suspends execution of the verdict.
- (2) Upon expiration of a deadline established for appeal of the verdict, the court which rendered the verdict shall submit the case with the received petitions and objections to the court of appellate or cassational jurisdiction, with the notice of the parties.
- (3) A person who filed the petition may revoke them prior to the commencement of the hearing of the court of appellate or cassational jurisdiction.
- (4) A person who appealed the verdict may amend his/ her petition, or add new arguments in it.

### **Article 339. Appeal of Decision (Resolution) Rendered by Court of Primary Jurisdiction**

- (1) Persons indicated in point 2 of Article 332 hereof may file a personal complaint or personal petition to the decision (resolution) rendered by the court of original jurisdiction, with the exceptions established in point two of this Article.
- (2) Under the rules of this Chapter, decisions (resolutions) rendered in the trial regarding the procedure of examination of evidence, motions filed by the participants of the trial, choosing, alteration or dismissal of the sanction, and observation of the order in the court room, except decisions (rulings) on imposition of monetary sanction (fine), may not be appealed.
- (3) Personal complaint and petition to the decision (resolution) rendered by the court of original jurisdiction shall be filed to the superior court within ten days as of the date when the decision subject to appeal was rendered, and shall be reviewed in compliance with the rules provided by Article 345 hereof. Based on the results of consideration, the decision shall be rendered on dismissal of the complaint or petition, or repeal or amendment of the decision being appealed.
- (4) Persons who are not parties to the case may also appeal the decision or resolution of the court, if such decision or resolution affects their interests.

## **CHAPTER 39. APPELLATE REVIEW OF CASES BASED ON THE APPEALS, PETITION TO THE DECISIONS RENDERED BY A COURT WHICH DID NOT ENTER INTO LEGAL FORCE.**

### **Article 340. Appellate Complaint and Petition on Verdict Resolution, Formulation**

- (1) The appellate complaint (petition) must contain the following:
  - 1) the name of the court where the complaint is submitted;
  - 2) the information on a person who files the complaint (petition) with indication of his/ her procedural status and the place of residence or location;
  - 3) verdict or other decision which is appealed, and the name of the court which renders such decision;
  - 4) arguments of a person filed a complaint (petition) as to the mistakes made in the verdict, resolution, formulation and the substance of his/ her request;
  - 5) list of materials attached to the complaint (petition);
  - 6) signature of a person who files the complaint (petition).

### **Article 341. Subject of Appellate Review**

- (4) Based on the appeals and petitions, the court of appellate jurisdiction verifies that the facts of the case were established and criminal law was applied properly, as well as whether the norms of criminal procedure law were observed during trial.
- (5) In those cases where the case trial in respect of the convicted appealing against the verdict concerns other convicted, the case shall be tried in their respect too.

### **Article 342. Composition of Court while Appellate Review of Cases**

- (1) The appellate review of cases shall be exercised by the appellate collegium composed of three professional judges.
- (2) Oblast, Bishkek City Courts, Military Court of the Kyrgyz Republic shall exercise the case filed on petitions later 30 days after its filing. No later three days before the case review an announcement on reviling time is provided.

#### **Article 343. Setting the Hearing of Court of Appellate Jurisdiction**

- (1) After receipt of a case with appellate complaint or petition, the chief justice of the court, or his/her deputy shall appoint the panel of appellate collegium, and determine the presiding judge on this case.
- (2) In resolving issues related to setting the case to consideration in the appellate procedure, the presiding judge is governed by general rules provided by this Code.
- (3) The presiding judge shall render a resolution on the setting a hearing of the court, where the reporting judge on the case and summoned persons shall be indicated.

#### **Article 344. Order of Appellate Proceedings**

- (1) Appellate proceedings shall be conducted in accordance with the rules of procedure of the court of original jurisdiction, and in compliance with the provisions stated in this Chapter.
- (2) The parties shall be informed on the time when the case will be tried. Failure by persons who did not file a complaint to the verdict of the court of original instance shall not impede the examination of the case, and rendering the decision.
- (3) Participation of the following is mandatory in the court hearing:
  - 1) prosecutor;
  - 2) personal prosecutor who filed the complaint;
  - 3) defendant who filed the complaint, or whose interests are protected by the complaint filed by his defense counsel or legal representative, or in whose respect the prosecutor brought a report, or a complaint filed by the victim.
- (4) The schedule of court hearing and measures taken in respect to offenders are determined by Article 269, 271 hereof.
- (5) The court of appellate jurisdiction shall consider the cases in open court hearing, except the instances indicated in Article 254 hereof.

#### **Article 345. Appellate Court Trial**

- (1) The court trial starts with statement by the reporting judge the content of the verdict, and the essence of filed appellate complaints or petitions, and objections to them.
- (2) After hearing the statement made by the reporting judge, the court shall hear the presentations of a party, which should substantiate the arguments of the complaint or petition, or objections to them. Should the party fail to appear in the court, the written objections of this party to the complaint or petition shall be read.
- (3) After hearing the statements of parties, the court shall verify the evidence by hearing the testimony of summoned defendant, witnesses, victims, and read the documents, records and other the case file, both by the motion of the parties, and by its initiative. The court shall

establish the procedure of examination of evidence, with consideration of the parties' opinion.

- (4) Witnesses interrogated in the court of original jurisdiction shall be interrogated in the court of appellate jurisdiction, if the court found their summoning necessary by the motion of the parties, or by its own initiative.
- (5) The parties may file a motion on interrogation of new witnesses, attachment of exhibits and documents, and conducting the court expertise. The filed motions shall be resolved in compliance with the rules of Article 284 hereof, in this event the court of appellate jurisdiction may not dismiss the motion on the ground that it had not been granted by the court of original jurisdiction.
- (6) While adopting the decision, the court of appellate jurisdiction may refer to substantiation of its decision to read in the court the testimony of persons who were not summoned to the appellate court trial, however interrogated in the court of original jurisdiction. Should the parties challenge these testimonies, the persons who testified must be interrogated.

#### **Article 346. Judicial Pleadings. Final Statement by Defendant**

- (1) After completion of the examination of testimony, the presiding judge shall question the parties whether they have motions on addition go the court trial. The court resolves these motions and starts judicial pleadings.
- (2) Judicial pleadings are held in compliance with Article 305 hereof, where the person who filed the complaint (petition) speaks first.

#### **Article 347. Decision made by the Court of Appellate Jurisdiction**

- (1) As a result of consideration of case, the court of appellate jurisdiction makes a decision, which replaces in full or in part the verdict rendered by the court of original jurisdiction.
- (2) The court of appellate jurisdiction shall render the decision in accordance with general rules provided by Chapter 36 hereof, with consideration of requirements provided by ~~point three hereof~~.
- (3) The decision rendered by the court of appellate jurisdiction must indicate the grounds on which the verdict of the court of original jurisdiction is found correct, and arguments stated in the complaint (petition) are found groundless; reasons which served the ground for full or partial dismissal of the verdict rendered by the court of original jurisdiction, or alteration thereof.
- (4) Issues arising when a criminal case is heard by judges collectively shall be resolved by a majority vote. The judges may not abstain from voting. The presiding judge shall vote last. ~~A judge of an appellate court who dissents from the judgment entered shall sign the court decision marking his signature as "A Dissenting Opinion" and shall write out his dissenting opinion. The dissenting opinion shall be attached to the criminal case file, but shall not be read aloud to other participants in the criminal proceedings.~~
- (5) Should a judge of the court of appellate jurisdiction disagree with the decision made by the majority of judges, he will have to sign such a court decision without any reservations and may write out his opinion in the deliberation room. Such an opinion shall be submitted to the presiding judge and attached to the files of the criminal case in an envelope marked "The Dissenting Opinion". That dissenting opinion may be made available to the reviewing court

when it hears that criminal case. No notification of the dissenting opinion shall be given to the participants in the criminal proceedings nor shall that dissenting opinion be read aloud in the courtroom.

- (6) The decision shall be announced in the manner as provided for by Article 324 hereof and come into legal force immediately. No judge may disclose opinions voiced during the drafting of the decision.

(As amended by the law of the KR dated 25 June 2007 #91; 5 August 2008, # 193)

#### **Article 348. Types of Decisions Made by Court of Appellate Jurisdiction**

- (1) The court of appellate jurisdiction shall render one of the following decisions based on the results of consideration of the case:

- 1) verdict to leaving the verdict rendered by the court of original jurisdiction unchanged, and to dismiss of the appellate complaint (petition);
- 2) verdict to repeal the guilty verdict rendered by the court of original jurisdiction, and to acquit the defendant, or decision to discontinue the proceedings;
- 3) verdict to alter the verdict rendered by the court of original jurisdiction;
- 4) decision to repeal the non-guilt verdict rendered by court of original jurisdiction and decision on resolution of guilty verdict;
- 5) decision to repeal the resolution to dismiss the case in the court of appeal governing by Articles 345-347 hereof.
- 6) a ruling reversing the judgment of which review was sought and remanding the case to a trial court for a new trial or to a procurator for filling investigation gaps that could not be bridged during the trial

- (3) The Court of appellate jurisdiction renders formulation considering the results of personal complaints and personal petitions of the prosecutor.

(As amended by the law of KR dated 16 October 2002 #141)

#### **Article 349. Grounds to Repeal or Amend Verdict Rendered by Court of Original Jurisdiction**

Grounds to repeal or amend the verdict of original jurisdiction shall be as follows:

- (1) non-compliance of conclusions facts of the case stated by the court in the verdict with the evidence examined by the court of appellate jurisdiction;
- (2) improper application of the criminal legislation;
- (3) substantial breach of criminal procedural legislation;
- (4) incompliance of the imposed penalty with the gravity of the crime, and the defendant's identity.

#### **Article 350. Non-Compliance of Conclusions on Facts of the Case Stated in the Verdict with the Evidence Examined by the Court of Appellate Jurisdiction**

- (1) On establishing that the conclusions on facts of the case stated in the verdict of the court of original jurisdiction do not comply with the examined evidence, the court of appellate jurisdiction repeals the verdict in full or in part, and renders a new verdict in compliance with the results of the trial held.

- (2) The court of appellate jurisdiction, while evaluating the examined evidence, may recognize the facts which were not established by the verdict of the court of the original jurisdiction, and were not taken into consideration by the court.

#### **Article 351. Illegitimate Use of the Criminal Law**

- (1) Illegitimate use of the Criminal Law is deemed not using of the law which is to be used, using of the law which is not to be used illegitimate interpretation of the law which contradicts its essence.
- (2) Having recognized the legal assessment given to the committed in the course of a case examination incorrect, the court of appellate jurisdiction shall have the right to change the qualification of the crime pursuant to an article of the Criminal Law that provides liability for less aggravated crime.
- (3) Based on the results of a case examination, the court of appellate jurisdiction shall have the right to apply a law on a more grievous offense or impose a more severe penalty in cases, where the prosecution, victim, private prosecutor or their representatives petition therefore on these grounds, however, within the incriminated charge.
- (4) If there are new evidence aggravating the charge discovered in court, the court shall recall the verdict and send the case to the Court of original jurisdiction for a new consideration.

#### **Article 352. Substantial Violation of the Civil Procedure Law**

- (1) Substantial violations of the Civil Procedure Law shall be deemed as violations of the standards of this Code in legal proceedings which by way of deprivation of or encroachment upon the statutory guaranteed rights of the parties to a case, incompliance with the applicable statutory procedure or by any other way have hampered to investigate the particulars of a case in a versatile and objective (unbiased) manner, have influenced or could have influenced the just verdict of the court.
- (2) The verdict shall be subject to nullification, if there are evidences left undiscovered as a result of the incomplete and biased court proceedings on a case, disclosure of which could have been of substantial significance to the verdict-reaching process.
- (3) The verdict shall be subject to nullification in any case, if:
  - 1) the court fails to discontinue prosecution on a case on the grounds specified in Article 28 of this Code;
  - 2) the verdict has been issued with an illegal composition of the court;
  - 3) the case has been prosecuted without the accused, except cases provided in sections 2 and 3 of Article 259 of this Code;
  - 4) the case has been prosecuted without the participation of a defense attorney, when his/her participation is mandatory or in any other way the right of the accused to use a defense attorney has been violated;
  - 5) the right of the accused to use his/her native language and the right to use a translator have been violated;
  - 6) the accused has not been given the right to participate in the closing arguments;
  - 7) the accused has not been given a chance to deliver his/her closing pleading;
  - 8) the secrecy of the conference of the judges has been violated;

- 9) the verdict has not been signed by one of the participating judges;
- 10) there is no transcript (record) of the sessions of the court.

### **Article 353. Disparity in Sentencing and the Gravity of a Committed Offense and the Personality of the Accused**

- (1) Having recognized the sentenced penalty to be unfair due to its excessive severity incommensurate to the gravity of the committed offense and the personality of the accused, the appellate panel shall mitigate the sentence as guided by the general principles of passing sentences.
- (2) The appellate jurisdiction may impose a more severe sentence upon the accused than prescribed by the court, however, only in cases where the prosecution therefore petitions or an appeal is filed by the accused, private prosecutor or their representatives.

### **Article 354. Nullification or Alternation of a Non-guilty Verdict**

- (1) A non-guilty verdict may be recalled and replaced by a guilty verdict by the appellate jurisdiction only in cases where petitioned by the prosecutor or appealed by the victim, private prosecutor or their representatives against unjustifiable (frivolous) acquittal of the accused.
- (2) A non-guilty verdict may be altered in its motivational part as petitioned by the acquitted.

### **Article 355. Transcript of a Session of the Appellate Jurisdiction**

The clerk of a session of the appellate jurisdiction shall maintain a transcript (record) in the course of the session. The parties may have their comments entered on the record that are to be considered by the presiding judge pursuant to the procedure provided in Article 273 of this Code.

### **Article 356. Appeal of Sentences and Rulings of the Appellate Jurisdiction**

- (1) After rendering Sentences and rulings of the appellate jurisdiction together with the case shall be filled to the Court of original jurisdiction for execution not later than five days.
- (2) Verdict and ruling of the appellate jurisdiction pursuant to which the convicted is to be released, is performed immediately in this part.

### **Article 357. Repeated Trial of a Case by the Cassational Jurisdiction**

- (1) If for any reasons cassational complaints or petitions filed in respect of other convicts in a timely fashion are received by the court of cassational jurisdiction after the completion of trial of the case in respect of other convicts, or if the missed deadline is restituted by the court pursuant to the procedure provided in Article 366 of this Code, and, equitably, if the cassational complaint by the convicted, his/her defense attorney or other legal representative is received after the case in respect of the convicted has been tried in accordance with the cassational procedure upon a cassational complaint or petition by other participant of the

case, the court of cassational jurisdiction shall be obligated to examine such complaint or petition and adopt a ruling in their respect.

## **SECTION X. EXECUTION OF A VERDICT**

### **CHAPTER 40. EXECUTION OF A VERDICT, RULING OR INJUNCTION**

#### **Article 358. Verdict Res Judicata and Its Execution**

- (1) A verdict by the court of original jurisdiction shall become res judicata and shall be subject to execution upon the expiration of the time limit given for appealation, if it is not appealed against.
- (2) A verdict by the court of appellate jurisdiction shall become res judicata and shall be subject to execution upon the expiration of the time period given for cassational appealation, if it is not appealed against. In cases where cassational complaints or petitions are filed, the verdict, if not recalled, shall become res judicata on the date when the cassational ruling is made.
- (3) Where there are several convicts and the verdict is appealed against only in respect of one or few accused, the verdict shall become res judicata in respect of other convicts from the moment the time period given for appealation or cassational complaint, or petition is over.
- (4) A verdict shall be executed by the court of original jurisdiction no later than three days after the verdict becomes res judicata or is sent back from the court of cassational jurisdiction.
- (5) A non-guilty verdict shall be executed immediately from the moment of its reading.
- (6) The review over the legality of the execution of a verdict shall be effectuated by the prosecutor or the court that has issued the verdict, or by the local court where the sentence is served.

#### **Article 359. Court Ruling (Injunction) Res Judicata and Its Execution**

- (1) A ruling (injunction) of a court shall become res judicata and shall be executed upon the expiration of the time limit given for appealation or if it is left intact by a higher court.
- (2) A ruling (injunction) of a court which is not subject to appealation shall become res judicata and shall be executed immediately upon its adoption.
- (3) A ruling of the court of cassational jurisdiction shall become res judicata from the moment of its reading and is deemed to be final, and may be reviewed only according to the procedure provided in Articles 42 and 43 of this Code.
- (4) A ruling of the court of cassational jurisdiction shall be executed pursuant to the procedure provided in Article 360 of this Code.

#### **Article 360. Court Injunction, Ruling, Verdict Execution Procedure**

- (1) A court verdict, ruling and injunction res judicata shall be mandatory for all enterprises, institutions, organizations, authorities and citizens.
- (2) The execution of a verdict, ruling and injunction shall rest with the court that has considered the case in the original jurisdiction. The verdict execution injunction shall be sent by the

judge together with a copy of the verdict to the body with which the obligation to execute the verdict rests pursuant to the Criminal Execution Legislation.

- (3) Bodies executing a verdict shall immediately notify the court that has issued the about its execution. The administration of the institution executing the verdict shall inform the court that has deduced the verdict about the location where the convicted serves his/her sentence.

#### **Article 361. Notification of Relatives of the Convicted and Civil Plaintiff of the Execution of the Verdict**

- (1) After the verdict becomes res judicata by virtue of which the convicted kept in custody is sentenced to arrest or imprisonment, the administration of the detention facility shall be bound to inform the convict's family about the location where he/she is sent to serve the sentence.
- (2) The civil plaintiff shall be informed upon the execution of the sentence in case the civil suit is satisfied.

### **CHAPTER 41. PROCEEDINGS ON THE EXAMINATION AND INJUNCTION OF ISSUES RELATED TO THE EXECUTION OF VERDICTS**

#### **Article 362. Deferment of the Execution of a Verdict**

- (1) The execution of a verdict sentencing a convict to communal works, custody or imprisonment may be deferred provided there is one of the following grounds present:
  - 1) the convict's illness preventing him/her from serving the sentence—till his/her recovery;
  - 2) the convict's pregnancy or minor children—till the youngest reaches the age of three years, except those convicted for particularly aggravated crimes;
  - 3) when immediate serving of the sentence may entail aggravated consequences for the convict or his/her family due to the fire or any other natural calamities, serious illness, the death of the only family member capable to work and other extraordinary circumstances—for the time period ordered by the court, however, no longer than for six months.
- (2) The payment of the fine may be deferred or extended by installments up to six months, if the immediate payment is impossible for the convicted.
- (3) The issue of deferment of the execution of a sentence shall be resolved by the court upon a petition lodged by the convict, his/her legal representative, close relatives, defense attorney or upon the prosecutor's petition.

(As amended by the law of the KR dated 25 June 2007 #91)

#### **Article 363. Release From Serving a Sentence Due to Serious Illness**

- (1) In cases where the convict begins to suffer from a mental disorder or any other serious illness when serving the sentence which prevents the convict from serving out the sentence, upon the petition of the chief officer of the administration of the detention institution executing the verdict and based on the expert statement of a medical commission, the court

shall have the right to discharge the convict prematurely release him/her from serving the sentence any further.

- (2) When releasing the convict who has begun to suffer from a mental disorder from serving out the sentence any further, the court shall have the right to simultaneously apply to him/her compulsory medical measures or transfer him/her to medical institutions or relatives to take care of.
- (3) When releasing convicts who have started to suffer from a serious illness that hamper them from serving out their sentences any further, except convicts suffering from mental disorders, the judge shall take into account the gravity of the committed crime, the convict's personality and other circumstances.
- (4) Releasing the convict from further serving out the sentence due to an illness, the court shall have the right to release him/her not only from the criminal grounds, but also from any additional penalties.

#### **Article 364. Courts Dealing with Issues Related to the Execution of Verdicts**

- (1) Issues related to the deferment of the execution of a verdict pursuant to Article 362 of this Code, to release from serving the sentence due to the expiration of the prescription term of a guilty verdict, as well as unclear and doubtful issues, arising in the course of execution of a verdict, shall be resolved by the court that has deduced the verdict.
- (2) If a verdict is executed outside of the jurisdiction of the court that has inferred the verdict, these issues shall be resolved by the court under which jurisdiction the location of the execution of the verdict falls. If this is the case, a copy of the injunction shall be sent to the court that has deduced the original verdict.
- (3) Regardless of what court has inferred the original verdict, the court with the jurisdiction over the area where the convict serves the sentence shall resolve issues of the premature discharge of the convict due to a serious illness, of the replacement of the unserved portion of the sentence with a mitigated penalty, of the cessation of application of a compulsory medical measure coupled with the execution of the sentence, the transfer from one institution of one type to another of a different type.
- (4) The court located in the place of residence of the convict shall resolve issues related to the nullification or extension of the probation period in case of a suspended sentence or the nullification of a parole.
- (5) Resolving of issues connected with the execution of a verdict shall be trailed at the Court session with a prosecutor participation.

#### **Article 365. Release on Parole**

- (1) Release on parole in cases provided in Article 69 of the Criminal Code of the Kyrgyz Republic shall be used by the court in the location where the convict serves the sentence upon the petition from the body executing the sentence. These measures (sanctions) shall also be applied to those serving their sentences in military disciplinary (correctional) units by court as petitioned by the Command of the military correctional unit.
- (2) Release on parole of persons who have committed offenses under 18 years of age shall be effectuated by court upon a joint petition from the body executing the sentence and the Juvenile Delinquency Commission.

- (3) If a parole petition has been rejected, the repeated examination of the same petition shall take place no earlier than one year after the rejection is deduced.
- (4) Releasing on parole, the court shall have the right to impose certain obligations upon the convict: not to change the place of permanent residence, to abstain from visiting certain places, as well as other obligations that are to facilitate his/her correction.
- (5) The bodies of the law enforcement agencies, and in respect of the military—the Command of military units and institution, shall watch the conduct of those let on parole.
- (6) If the paroled convict has committed an offense disturbing the public order and, therefore, an administrative penalty has been imposed on him/her, or repeatedly has avoided the obligations inferred on him/her by court during the unserved portion of his/her sentence, the court shall resolve to recall the parole and order to serve out the remained portion of the sentence upon a petition filed by the body specified in paragraph 5 of this article.
- (7) If the convict commits a new crime during the unserved portion of the sentence, the court shall pass a sentence upon the convict based on the strength of all verdicts.

#### **Article 366. Nullification of a Conditional Conviction and Extension of a Probation**

- (1) If prior to the expiration of a probation period the conditionally convicted has proven his/her correction, the court may recall the conditional conviction upon the petition by the body reviewing the conduct of the conditionally convicted.
- (2) If the conditionally convicted avoids performing the obligations imposed upon him/her by court or commits a disturbance of the public order for which an administrative sanction is imposed upon him/her, the court may extend the probation period up to one year upon the petition filed by the body specified in paragraph 1 of this article.
- (3) In case the conditionally convicted systematically fails to perform the obligations imposed upon him/her by court during the probation, the court shall resolve to recall the conditional conviction and to execute the deduced verdict upon the petition by the body specified in paragraph 1 of this article.
- (4) If the conditionally convicted commits a new intentional offense during the probation period, the court shall pass a verdict on him/her on the strength of all offenses.

#### **Article 367. Replacement of the Unserved Portion of a Sentence with a Less Severe Penalty**

The court may replace the unserved portion of a sentence with a less severe penalty for a person who is imprisoned with due consideration given to his/her conduct while in jail.

#### **Article 368. Cessation of the Compulsory Medical Measure**

The cessation of a compulsory medical measure joined with the execution of the verdict shall be effectuated by the court upon the petition of the body enforcing the judgment based on the evaluation statement of a Medical Commission.

#### **Article 369. Computation of Time of a Sojourn at a Medical Institution into the Term of Imprisonment**

If a person sentenced to imprisonment is placed at a medical institution, the time spent there by the convict shall be computed into the term of imprisonment.

### **Article 370. Procedure to Change the Terms of Imprisonment of Persons Sentenced to Imprisonment**

- (1) The transfer of a convict from a correctional facility with one regime into a correctional facility with a different regime on the grounds provided by the legislation of the Kyrgyz Republic shall be effectuated by court. The petition by the administration of a correctional facility for such transfer shall be considered by the court located in the place of imprisonment.
- (2) Petitions on changing the conditions of imprisonment of convicts shall be considered in court with the participation of a prosecutor.
- (3) Representatives of the concerned correctional facility and the convicted shall be summoned to appear in court for a trial.

### **Article 371. Execution of a Sentence with Other Unenforced Sentences**

In cases where there are other few unenforced sentences in respect of the convicted, the court who has passed the last sentence or the court located in the place where the sentence is to be executed shall be bound to render a resolution on the imposing of all deduced indicated sentences on the convicted.

### **Article 372. Procedure to Resolve Issues Related to the Execution of a Verdict**

- (1) Decision of issues connected with execution of a verdict, imposing of compulsory medical measures with simultaneous nullification of the penalty shall be effectuated by court with the participation of a prosecutor.
- (2) The prosecutor and the convict shall be notified about the date and time of consideration of issues related to the execution of a verdict. The issue as to whether to summon the convict kept in custody shall be resolved by court. If the issue is related to the execution of a verdict in its civil claim part, then the civil plaintiff shall also be summoned, however, whose failure to appear in court shall not preclude the court from hearing of a case.
- (3) A representative of the body overseeing the execution of a sentence shall be summoned to make appearance in court when the court is considering issues related to parole, to replacement of a portion of a sentence with a less severe penalty, transfer of the convict from one correctional facility with one regime to another with a different regime.
- (4) In cases when a case is heard upon a joint petition of the body executing the sentence and the Juvenile Delinquency Commission, the court shall notify these about the timing and the venue of hearing.
- (5) When the court hears the issue related to nullification of a conditional conviction or an extension of the probation of a convict, representatives of the body effectuating the review of the conduct of the convicted shall be summoned for trial.
- (6) The hearing shall begin with a speech by the judge upon which those appeared in court are heard.

- (7) Based on the results of the examination of an issue related to the execution of a sentence, the court shall deduce a resolution which is subject to reading in the court room. A copy of the resolution shall be sent within three days to the convict, the body that has petitioned the issue related to the execution of the sentence, as well as to the civil plaintiff, if the issue is related to the execution of the sentence in its civil claim part.
- (8) The resolution of judge may be appealed against to the Supreme Court of the Kyrgyz Republic for review.

### **Article 373. Court Examination of Motions Related to the Remittance of Criminal Records**

- (1) An issue related to the remittance of criminal records pursuant to Article 76 of the Criminal Code of the Kyrgyz Republic shall be resolved by the court with the jurisdiction over the place of residence of the person who served the sentence upon his/her petition.
- (2) The prosecutor shall be notified about a received petition. The prosecutor's failure to appear in court shall not preclude from the trial. The presence of the person in whose respect a petition to remit convictions is considered shall be mandatory.
- (3) The consideration of a petition to remit criminal records shall begin with a speech of the judge, and, thereupon, the judge shall hear those appeared in court and the prosecutor's conclusion.
- (4) In case a petition to remit criminal records is rejected, another petition may be filed no earlier than one year from the date the rejecting ruling is inferred.

## **SECTION XI. REVIEW OF RES JUDICATA VERDICTS, RULINGS AND RESOLUTIONS OF COURTS**

### **CHAPTER 41-1. CASSATION ORDER OF EXAMINATION OF CRIMINAL CASE** (Added by the Law of KR dated 8 August 2004 #111)

#### **Article 373-1. Cassational complaint of the verdicts**

- (1) In accordance with the requirements of this Chapter, the decisions of the trial courts, which have not been appealed and which had come into force, could be appealed by the trial participants in cassational order.
- (2) Cassational complaint or petition shall be brought through the trial court with compliance the requirements provided in Articles 334, 340 hereof.
- (3) Cassational complaint against the interests of acquitted, convicted, and a person, against whom the criminal case was dismissed, shall be allowed only within one year after the verdict had come into force.

#### **Article 373-2. Courts, Reviewing the Cassational Complaints and Petitions**

Decisions of district (city) courts, garrison military courts may be appealed accordingly to cassational jurisdiction of regional court, Bishkek city court and Military Court of Kyrgyz Republic.

### **Article 373-3. Subject of Cassational Trial in the Court of Cassational Jurisdiction**

The court of cassational jurisdiction shall examine the legality, validity and the justice of the verdict and other court ruling according to cassational complaints.

### **Article 373-4. Terms for Considering the Criminal Case by the Court of Cassational Jurisdiction**

The considering of the criminal case by the court of cassational jurisdiction shall be started no later than one month since the day it was received by the court of cassational jurisdiction.

### **Article 373-5. Order of Considering Cases by the Court of Cassational Jurisdiction**

- (1) When the case with the cassational complaint or petition is received by the court, the chairman of the court or his deputy shall appoint the composition, determine the presiding judge and reporting judge, to whom he passes the case along with the complaint or petition and other materials. The reporting judge after studying the case, complaint or petition, shall render a resolution on setting the court hearing, where he shall indicate the time, place of court session, persons, who are subject to summoning to the hearing
- (2) The court of cassational jurisdiction shall inform the parties about the day of examination of the case. The default of the parties shall not be an obstacle for case examination. The question on participation of the convicted (defendant), who is detained, shall be considered by the court of cassational jurisdiction.
- (3) Criminal cases shall be examined by the court of cassational jurisdiction in compositions provided by Article 31 hereof.
- (4) The presiding judge shall open the court session and announce which case is the subject to examination at the time appointed earlier.
- (5) The clerk of the court shall announce the list of notified trial participants and reports who from mentioned persons is present and the reasons of default of others. Presiding judge questions about the opinions of trial participants about the possibility to conduct a trial. The court on the place – in the court room or moving to conference room shall render a ruling on continuation of the trial or on its postponement. The ruling shall be announced by the presiding judge and it shall be entered in the minutes of the court session.
- (6) The presiding judge shall announce the composition of the court, last names of the clerk of the court, prosecutor, translator and shall question present persons of the case on the petitions for challenges. The challenge petitions are considered by the court in compliance with Article 73 hereof in the conference room with rendering a ruling as a separate document.
- (7) The presiding judge questions the present persons of the case if they have any petitions. According to the submitted petitions the court shall render a ruling, which shall be entered in the minutes of the court session.
- (8) The reporting judge states the merits of case, main case arguments, petitions, their objections, announces the additional materials. Judges shall be authorized to question the reporting judge.
- (9) The court hears the statement of the party, which submitted the complaint or petition, then the statement of the other party. Judges shall be authorized to question the parties.
- (10) After the parties finish their statements, the judges shall move to the conference room.

- (11) The decision of the court of cassational jurisdiction shall be made in the conference room by open voting. The judge shall not be authorized to abstain or from voting or not participate in it. The presiding judge shall be the last to vote. The decision of court of cassational jurisdiction shall be considered as accepted if the majority of the judges will vote for it.
- (12) On the session of the court of cassational jurisdiction the minutes shall be kept, which shall be signed by presiding judge and the clerk of the court.
- (13) The regulations of the court session and measures taken in respect to disturbers are determined by the rules provided in Articles 269, 271 hereof.
- (14) The review of the conviction, ruling, resolution of the court, which leads to worsening the situation of the convicted, as well as reviewing the verdict as “non-guilty” or ruling, resolution of the court on dismissal of case, shall be allowed within one year after it has become res judicata.

### **Article 373-6. Decision of the Court of Cassational Jurisdiction**

- (1) The court of cassational jurisdiction shall render one of the following decisions based on the results of consideration of the criminal case in cassational order:
  - 1) verdict to leaving the verdict that was complained in force;
  - 2) verdict to alter the verdict that was complained;
  - 3) verdict to repeal the verdict that was complained and to dismiss the criminal case;
  - 4) verdict to repeal the verdict that was complained and to file the case to the court of original jurisdiction for the new trial or to send the case to the prosecutor for additional investigation on gaps, which were not investigated in the court;
  - 5) verdict to dismiss the cassational proceeding on the basis of part fourteen of Article 373-5 hereof.
- (2) The decision of the court of cassational jurisdiction shall be rendered in the form of ruling.
- (3) The decision of the court of cassational jurisdiction shall be compiled in the conference room and shall be signed by all three judges that participated in considering the criminal case. In exceptional cases on particularly complicated case the compilation of the valid decision may be postponed on the term of no more than ten days, but the resolution part shall be compiled and signed by the judges in the conference room.
- (4) The decision shall be announced by the presiding judge or reporting judge. All persons that are present in the court room shall rise when hearing the decision.
- (5) Should a judge of the court of cassational jurisdiction disagree with the decision made by the majority of judges, he will have to sign such a court decision without any reservations and may write out his opinion in the deliberation room. Such an opinion shall be submitted to the presiding judge and attached to the files of the criminal case in an envelope marked "The Dissenting Opinion". That dissenting opinion may be made available to the reviewing court when it hears that criminal case. No notification of the dissenting opinion shall be given to the participants of the criminal proceedings nor shall that dissenting opinion be read aloud in the courtroom.
- (6) The decision of the court of cassational jurisdiction may be appealed in order of reviewing res judicata cases into the Supreme Court of Kyrgyz Republic.  
(As amended by the law of the KR dated 25 June 2007 #91; 5 August 2008, # 193)

### **Article 373-7. The Execution of the Decisions of the Court of Cassational Jurisdiction**

The decision of the court of cassational jurisdiction enters into legal force immediately and shall be executed in order provided herein and in Criminal-Executive Code of Kyrgyz Republic.

## **CHAPTER 42. REVIEW OF RES JUDICATA VERDICTS, RULINGS AND RESOLUTIONS OF COURTS PURSUANT TO THE PROCEDURE FOR REVIEW**

### **Article 374. A Supervisory Court Hearing Criminal Cases. Extent of Powers of a Supervisory Court.**

- (1) The Supreme Court of the Kyrgyz Republic shall be responsible for the supervisory review of local court judgments that have taken legal effect in response to complaints filed by participants in criminal proceedings and procuratorial representations.
- (2) The Judicial Panel for Criminal and Administrative Cases of the Supreme Court of the Kyrgyz Republic shall be responsible for the supervisory review of judgments entered by local appellate courts and courts of cassation.
- (3) If a criminal case filed with the Supreme Court of the Kyrgyz Republic has not been previously heard on appellate or cassational review, it shall be, along with the complaint and representation for review, sent to the local court of appropriate jurisdiction for review.
- (4) When hearing a criminal case on supervisory review the court is not limited to the arguments stated in the complaint or representation for supervisory review and may review the entire proceedings in the criminal case in full.
- (5) If multiple persons were convicted in the criminal case and the complaint or representation for supervisory review has been filed only by one of them or with respect to some of them, the court may review the criminal case with respect to all the convicted defendants.
- (6) In hearing a criminal case, a supervisory court may not worsen the position of the defendant, convicted or acquitted regarding whom there has been filed no representation by the procurator or complaint by the victim.

(As amended by the Laws of KR dated 24 May 2004 #68, 8 August 2004 #111, Decision of the Constitutional Court of Kyrgyz Republic dated 13 January 2006, 25 June 2007 #91)

**Article 374-1. The court reviewing the criminal cases on complaints and petitions on the rulings of district (city) courts which had come into legal force** Excluded by the Law of KR dated 8 August 2004 #111

### **Article 375. Appellation of Court Injunctions that have become res judicata.**

- (1) The convict, his/her legal representative and defender, as well as the victim and his/her legal representative, civil plaintiff, civil defendant and their representatives shall have the right to file a complaint, and the prosecutor who has participated in the case hearing and a superior prosecutor—a petition, to Supreme Court of the Kyrgyz Republic, regional and court equal to it. The prosecutor's petition may be suspended before the Court trial by a superior prosecutor.
- (2) Complaints and petition shall be reviewed by the court within no longer than two month from the date they filed with.

(As amended by the Laws of KR dated 24 May 2004 #68, 8 August 2004 #111)

### **Article 376. Grounds for Reviewing Court Decisions that Became Res Judicata**

(1) Grounds for reviewing verdicts, rulings, resolutions that have become res judicata are:

- 1) appeal of convicted, his legal representative and defense attorney, and victim and his representative, civil plaintiff, civil defendant and their representatives;
- 2) petition of the prosecutor, who participated in action as accuser, or of a superior prosecutor.

(1) Reviewing conviction, ruling, resolution of court resulting in worsening the situation of the convicted, as well as reviewing of verdict “of not guilty”, or a ruling, resolution of court on dismissal of case, shall be allowed within one year after it has become res judicata.

### **Article 377. Procedure of Submitting Appeals and Petitions for Examination in the Reviewing Procedure**

- (1) The appeal of the participant of the procedure, petition of the prosecutor for reviewing in the reviewing procedure shall be submitted with compliance of requirements provided in Article 130 hereof through the court of primary jurisdiction, which rendered the verdict, resolution, ruling.
- (2) The court, which had rendered the verdict, resolution, shall inform the convicted or acquitted person, defense counsel, accuser, victim and his representative, and also civil plaintiff, civil defendant, or their representatives on filing a complaint or petition into the court. After familiarization with the appeal or petition the court shall explain their right to submit written objections on the appeal or petition.
- (3) Objections filed on appeals or petitions shall be enclosed to the case.
- (4) Parties have a right to submit new materials to the court in order to confirm grounds of appeals or petitions of other party.
- (5) The court reviewing res judicata verdicts shall refuse institution of review proceeding, if the appeal and petition were submitted without compliance with the requirements of part one of this Article, and shall render a resolution in its respect. The court reviewing res judicata verdicts shall refuse institution of review proceeding, if the appeal and petition were submitted by the person exceed the scope of his rights granted to him herein.
- (6) The participant of the criminal proceeding shall be authorized to revoke his appeal or the appeal of his defense counsel and representative. Juvenile participant of the proceeding may revoke the appeal of his legal representative and defense counsel only since the day he came to age. The petition may be revoked by the prosecutor that filed it and by higher prosecutor. The revoke of the appeal or petition shall be allowed before judges move to conference room.
- (7) The revoke of petition and (or) appeal shall lead to dismissal of the reviewing res judicata verdict, on which the court shall render a resolution.

(As amended by the Laws of KR dated 24 May 2004 #68, 8 August 2004 #111)

### **Article 378. Procedure of Case trial by the Court Reviewing Res judicata Verdicts**

- (1) At the moment of receipt of the case with appeal or petition for reviewing the res judicata verdict, the chairman of the court reviewing res judicata verdicts or his deputy shall appoint the composition of the court, presiding judge on the case, and reporting judge, to whom he shall pass the case along with the appeal (petition) and other materials. The reporting judge, after studying the case, appeal and petition, shall render a resolution on appointment of the session of the court, where he shall indicate the time and place of court session, persons that are subject for summoning to the session.
- (2) The parties shall be notified by the court reviewing res judicata verdicts about the day of reviewing. The default of the parties shall not be an obstacle for reviewing the case. The question on participation of detained convicted (defendant) in the trial shall be decided by the court reviewing res judicata verdicts.
- (3) Criminal cases shall be reviewed by the court reviewing res judicata verdicts in compositions provided in Article 31 hereof.
- (4) The presiding judge shall open the court session and announces the case, which is subject for examination, on time appointed earlier for case reviewing.
- (5) The clerk of the court shall announce the list of notified trial participants and reports who from mentioned persons is present and the reasons of default of others. Presiding judge hears the opinions of trial participants about the possibility to conduct the trial. The court on the place – in the court room or moving to conference room shall render a ruling on continuation of the trial or on its postponement. The ruling shall be announced by the presiding judge and it shall be entered in the minutes of the court session.
- (6) The presiding judge shall announce the composition of the court, last names of the clerk of the court, prosecutor, translator and shall question present persons of the case on the petitions for challenges. The challenge petitions are considered by the court in compliance with Article 73 hereof in the conference room with rendering a ruling as a separate document.
- (7) The presiding judge questions the present persons of the case if they have any petitions. According to the submitted petitions the court shall render a ruling, which shall be entered in the minutes of the court session.
- (8) The reporting judge states the merits of case, main case arguments, petitions, their objections, announces the additional materials. Judges shall be authorized to question the reporting judge.
- (9) The court hears the statement of the party, which submitted the appeal or petition, then the statement of the other party. Judges shall be authorized to question the parties.
- (10) After the parties finish their statements, the judges shall move to the conference room
- (11) The decision of the court of reviewing res judicata verdicts shall be made in the conference room by open voting. The judge shall not be authorized to abstain or from voting or not participate in it. The presiding judge shall be the last to vote. The decision of court reviewing res judicata verdicts shall be considered as accepted if the majority of the judges will vote for it.
- (12) On the session of the court reviewing res judicata verdicts the minutes shall be kept, which shall be signed by presiding judge and the clerk of the court.
- (13) The regulations of the court session and measures taken in respect to disturbers are determined by the rules provided in Articles 269, 271 hereof.

(As amended by the Laws of KR dated 24 May 2004, 8 August 2004 #111)

### **Article 379. Resolutions (Rulings) of the Court Reviewing Res judicata Verdicts**

- (1) The court reviewing res judicata verdicts shall render resolution (ruling) on the case tried in reviewing procedure.
  - (2) The resolution (ruling) of the Panel of Judges of Supreme Court of Kyrgyz Republic shall be signed by all judges that participated in case trial. In exceptional cases on particularly complicated case the compilation of the valid decision may be postponed on the term of no more than ten days, but the resolution part shall be compiled and signed by all judges, who participated in the trial, in the conference room.
  - (3) The resolution (ruling) shall be announced by the presiding judge or reporting judge. All persons that are present in the court room shall rise when hearing the resolution (ruling).
- (As amended by the Laws of KR dated 24 May 2004, 8 August 2004 #111, 25 June 2007 #91)

### **Article 380. Special Opinion of Judge of the court reviewing res judicata verdicts**

Should a judge of the reviewing court disagree with the decision made by the majority of judges, he will have to sign such a court decision without any reservations and may write out his opinion in the deliberation room. Such an opinion shall be submitted to the presiding judge and attached to the files of the criminal case in an envelope marked "The Dissenting Opinion". No notification of the dissenting opinion shall be given to the participants in the criminal proceedings nor shall that dissenting opinion be read aloud in the courtroom.

(As amended by the Law of KR dated 24 May 2004 #68; 5 August 2008, # 193)

### **Article 381. Personal ruling of the court reviewing res judicata verdicts**

- (1) Simultaneously with rendering a resolution the court reviewing res judicata verdicts in necessary cases shall render a personal ruling to draw attention of heads of Ministries, State Committees, Administrative Departments and Enterprises, Institutes and Organizations irrespectively of the property forms and other officials to the established facts of law violation in the case, reason and conditions promoting to violation of the law.
  - (2) Mentioned persons shall within one month inform the court reviewing res judicata verdicts about measures undertaken by them in respect of the personal ruling.
- (As amended by the Law of KR dated 24 May 2004 #68)

### **Article 382. Execution of resolutions and rulings rendered by the court reviewing res judicata verdicts**

- (1) The resolutions and rulings rendered by the court reviewing res judicata verdicts shall come into legal force immediately after they have been taken and shall be executed in order provided herein and Criminal-Executive Code of Kyrgyz Republic
- (2) The resolutions and rulings of the ~~Presidium and~~ Panel of Judges on criminal cases and cases on administrative offences of the Supreme Court of Kyrgyz Republic shall be definitive and shall not be subject to complaint.

(As amended by the Law of KR dated 24 May 2004 #68, 8 August 2004 #111; 5 August 2008, # 193)

### **Article 383. Decisions taken by the court in reviewing procedure**

- (1) The court reviewing res judicata verdicts (the Panel of Judges on criminal and cases on administrative offences of the Supreme Court of Kyrgyz Republic) having tried the case in reviewing procedure shall take one of the following decisions:
  - 1) leave the verdict (verdicts) of local court in force, and the appeal and petition – without satisfaction;
  - 2) leave one of the verdict rendered at the case earlier and reverse all other verdicts;
  - 3) make alterations into the verdicts rendered by courts of primary, appellate jurisdiction within the brought accusation;
  - 4) reverse the verdicts rendered by courts of primary, appellate jurisdiction and dismiss the criminal case;
  - 5) suspend the reviewing of res judicata verdicts and send an inquiry to Jogorku Kenesh of Kyrgyz Republic on giving the official interpretation of the law, send an inquiry to the Constitutional Court of Kyrgyz Republic on examination of the law on accordance with the Constitution;
  - 6) reverse the verdicts rendered by courts of primary and appellate jurisdiction and take a new decision;
  - 7) reverse the judgments pronounced by local courts and pass the case for hearing by a trial court or a court of appellate jurisdiction;
- (2) The decisions taken by the Panel of Judges on criminal cases and cases on administrative offences of the Supreme Court of Kyrgyz Republic shall be rendered in the form of resolutions – on the basis of points 1, 2, 3, 4, in the form of resolution and verdict – on the basis of point 6, in the form of ruling – on the basis of point 5 or 7 of part one hereof.
- (3) The decisions of the Panel of Judges on criminal cases and cases on administrative offences of the Supreme Court of Kyrgyz Republic shall be definitive and shall not be subject to complaint.
- (4) The court reviewing res judicata shall dismiss the reviewing procedure.
  - 1) if the appeal and (or) petition were revoked;
  - 2) if the convicted, acquitted, or defendant, against whom the petition (appeal) was filed, had deceased;
  - 3) if the participant of the trial did not support his appeal or appeal of his defense counsel, representative during the trial;
  - 4) if the participant of the trial, who had came of age to the moment of reviewing the case in reviewing procedure, did not support the appeal of his former legal representative, defense counsel;
  - 5) if the procurator participating in the trial has not supported a representation for review;
  - 6) if the complaint is subject to review by a local court;
  - 7) pursuant to Article 376(2) of this Code.

(As amended by the Decision of Constitutional Court of KR dated 29 January 2004, Laws of KR dated 24 May 2004 #68, 8 August 2004 #111, 5 August 2008, # 193; Resolution of the KR Constitutional Court dated 13 January 2006, and law of the KR dated 25 June 2007 #91)

**Article 383-1. Grounds and Order for Making a New Decision by the Panel of Judges on Criminal Cases and Cases on Administrative Offences of the Supreme Court of Kyrgyz Republic**

- (1) The Panel of Judges on Criminal Cases and Cases on Administrative Offences of the Supreme Court of Kyrgyz Republic shall make the new decision on criminal case, if the court of primary and appellate jurisdiction had passed the verdict with the mistake in legal norm and evaluation of evidence.
- (2) The Panel of Judges on criminal cases and cases on administrative offences of the Supreme Court of Kyrgyz Republic shall be allowed to:
  - 6) repeal the verdicts of courts of primary and appellate jurisdiction and dismiss the criminal case;
  - 7) repeal the verdicts of courts of primary and appellate jurisdiction and render a new verdict(As amended by the Laws of KR dated 24 May 2004 #68, 8 August 2004 #111, 25 June 2007 #91)

**Article 383-2. The decisions made by presidiums of regional court and court equal to it, examining the criminal case as an appellate court on the decision of court of primary and appellate jurisdiction which had come into legal force**

Excluded by the Law of KR dated 8 August 2004 #111

**SECTION XII. REOPENING OF PROCEEDINGS ON A CASE DUE TO NEWLY DISCOVERED EVIDENCE**

**CHAPTER 43. REOPENING OF PROCEEDINGS ON A CASE DUE TO NEWLY DISCOVERED EVIDENCE**

**Article 384. Grounds for a Reopening of Proceedings on a Case**

- (1) A verdict, ruling or injunction *res judicata* by court may be recalled and the proceedings on the case may be restituted due to newly discovered evidence.
- (2) The grounds for the reopening of legal proceedings on a case due to newly discovered evidence shall be as follows:
  - 1) a new law has taken effect that makes the conduct no longer punishable or mitigates punishment.
  - 2) intentional fraudulence as supported by the verdict *res judicata* of the testimony of a victim or a witness, expert statement, and equally spuriousness of the proofs, the transcript of investigation and court actions and other documents, or intentional incorrectness of the translation that have entailed the issuance of an illegal or groundless verdict, ruling or injunction;

- 3) criminal actions of the investigator or prosecutor as established by the court verdict res judicata that have entailed the issuance of an illegal or groundless verdict, ruling or injunction;
  - 4) criminal actions of the judges committed by them in respect of the hearing of a given case as supported by the court verdict res judicata;
  - 5) other circumstances established by a check-up and listed by the prosecutor in his/her statement unknown to the court that has deduced the verdict or ruling that either on their own or coupled with other evidence demonstrate the innocence of a convict or prove another degree of the gravity of the offense committed thereby as compared with the offense for which he/she has been sentenced, or the guiltiness of the acquitted, or persons in whose respect the case has been discontinued.
- (3) The circumstances specified in items 1—3 of the second part of this article may be established not only by the verdict, but also by the ruling of a court, the injunction of a judge, prosecutor, investigator on the discontinuation of a case due to the expiration of the prescription term, due to the act of amnesty or free pardon, due to the death of the accused or due to his/her minority.

(As amended by the Law of the KR dated 25 June 2007 #91)

#### **Article 385. Courts reviewing cases due to newly discovered evidence.**

- (1) A res judicata verdict shall be reviewed due to newly discovered evidence by the court, which rendered this verdict as well as based on a new law that has taken effect making the conduct no longer punishable or mitigating punishment.
- (2) The trial court shall review its verdict on the case that had not been reviewed in appellate, cassational and reviewing proceedings.
- (3) The Panel of Judges on criminal cases and cases on administrative offences of regional court and court equal to it shall review its verdict and a verdict of a trial court on the case that had not been reviewed in the Supreme Court of Kyrgyz Republic.
- (4) The Panel of Judges on criminal cases and cases on administrative offences of the Supreme Court of Kyrgyz Republic shall review their verdicts and verdicts of all courts of common jurisdiction.

(As amended by the Law of KR dated 8 August 2004 #111, 25 June 2007 #91)

#### **Article 386. Time Limits for the Reopening of Proceedings**

- (1) No time limits shall be imposed in respect of the review of a guilty verdict due to newly discovered evidence in favor of the convict.
- (2) The death of a convict shall not hamper the reopening of legal proceedings due to newly discovered evidence in order to rehabilitate the convicted.
- (3) The review of a non-guilty verdict, ruling or injunction to discontinue a case, as well as the review of a guilty verdict on account of the amiability of a sentence or the necessity to apply a law on a more aggravated offense shall be allowed only during the prescription term to bear liability and no later than six months after upon newly discovered evidence are found.
- (4) The date of discovery of new evidence shall be recognized to be the following:
  - 1) in cases specified in items 1—3 of the second part of Article 384 of this Code—the date of the verdict (ruling/injunction) in respect of persons guilty of false testimony, provision

of false evidence, incorrect translation or other actions committed in the course of investigation and trial of the case;

- 2) in cases provided in item 5 of the second part of Article 384 of this Code—the date when the prosecutor signs the statement on the necessity to reconstitute legal proceedings on the case due to newly discovered evidence.
- 3) the date when a trial was reopened due to newly discovered circumstances pursuant to Article 384(2)(1)

(As amended by the Law of KR dated 25 June 2007 #91)

### **Article 387. Reopening of the Legal Proceedings**

- (1) The right to reopen proceedings due to newly discovered circumstances shall rest with the prosecutor, court in regard to reopening proceedings in view of newly discovered circumstances when a new law has taken legal effect making the conduct no longer punishable or mitigating punishment.
- (2) The grounds for the reopening of legal proceedings due to newly discovered evidence shall be recognized citizens' applications, information by the officers of institutions, organizations, enterprises, as well as data received in the course of investigation or trial of other criminal cases.
- (3) If there is a reference to a court verdict in a received application or information which has been deduced under circumstances specified in items 1 -3 of the second part of Article 384 of this Code, the prosecutor shall reconstitute legal proceedings on the case due to newly discovered evidence, conduct a necessary check-up, request a copy of the verdict and a court statement supporting that it has become res judicata.
- (4) If there are other circumstances referred to in a received application or information then those specified in item 5 of the second part of Article 384 of this Code, the prosecutor within his/her competence shall deduce an injunction to reconstitute legal proceedings due to newly discovered evidence, send the case to the investigator to review these evidence. The investigation of a case due to newly discovered evidence shall be effectuated pursuant to the requirements of this Code.

(As amended by the Law of KR dated 25 June 2007 #91)

### **Article 388. Actions of the Prosecutor upon Completion of a Check up or an Investigation**

- (1) Upon completion of a check up or investigation due to newly discovered evidence, provided there are grounds to reconstitute legal proceedings on a case, the prosecutor shall send the case with his/her statement attached to it to the corresponding Court.
- (2) If there are not grounds for the reopening of legal proceedings on a case, the prosecutor shall discontinue legal proceedings on the case due to newly discovered evidence by his/her grounded injunction.
- (3) An injunction in respect of discontinuation of legal proceedings shall be communicated to interested parties with an appropriate clarification of their right to contest it in court.

### **Article 389. Injunction by the Court Reviewing the Prosecutor's Statement**

Having reviewed the prosecutor's statement on reopening of legal proceedings on a case due to newly discovered evidence, the court shall deduce one of the following injunctions:

- (1) on nullification of the verdict, court ruling or injunction of a judge and transfer of the case for further investigation and new trial;
- (2) on nullification of the verdict, court ruling or injunction and on discontinuance of the case when no further investigation or trial is not needed to reach the final decision on the case;
- (3) on rejection of the prosecutor's statement.

### **Article 390. Legal Proceedings upon Nullification of Court Injunctions**

The investigation and trial of a case upon nullification of court injunction in its respect due to newly discovered evidence, as well as appealation of newly deduced court injunctions shall be effectuated pursuant to the general procedure.

## **SECTION XIII. PARTICULARS OF LEGAL PROCEEDINGS ON CERTAIN CATEGORIES OF CASES**

### **CHAPTER 44. LEGAL PROCEEDINGS IN RESPECT OF OFFENSES COMMITTED BY JUVENILE OFFENDERS**

#### **Article 391. Procedure for Legal Proceedings on Juvenile Cases**

The general rules (requirements) of this Code and the articles of this section shall guide legal proceedings on cases of juvenile delinquency.

#### **Article 392. Evidences to be Established (Discovered) in Respect of Cases of Juvenile Delinquency**

- (1) In addition to the evidence specified in Article 82 of this Code, the following evidence shall be established in legal proceedings and trial of cases of juvenile delinquency:
  - 1) the age of a minor offender (the date, month and year of birth);
  - 2) the living conditions (environment) and upbringing;
  - 3) the reasons that have forced a minor offender to commit a crime and the conditions that have conduced the commission of a crime;
  - 4) the presence of adult instigators and accomplices.
- (2) If there is evidence on the backwardness of a minor offender non-attributable to mental disorders, it shall be established if he/she could have realized the significance of his/her actions as publicly dangerous or managed them.
- (3) In order to inquire into this evidence, the minor's parents, school instructors, educators, tutors and other persons that may provide necessary information may be questioned (interrogated). Also, relative required documents may be requested, and other investigative and court actions may be effectuated.

#### **Article 393. Application of Sanctions and Detention to Minor Suspect, Accused**

- (1) Solving the issue of application of sanctions to a minor each court shall consider the possibility to choose to transfer of the minor under somebody's guardianship as such sanction as stipulated in Article 108 of this Code.
- (2) While reviewing legal grounds for detaining a minor, the procurator shall question him personally.
- (3) Taking into custody as a sanction, as well as detention may be applied to a minor under the age of sixteen only in exceptional cases if there are grounds specified in Articles 102, 103, 110, 114 of this Code.
- (4) The parents of a minor or his/her other legal representatives shall be notified of detention, custody or extension of the custody term.

(As amended by the Law of the KR dated 25 June 2007 #91)

#### **Article 394. Procedure to Summon the Minor Suspect, Accused**

A minor suspect, accused who is not under custody shall be summoned to the investigator or to the court through his parents or other legal representatives, and if the minor is kept in a special juvenile detention facility—through the administration board of this facility.

#### **Article 395. Interrogation of the Minor Suspect, Accused.**

- (1) Interrogation of the suspect, accused may not last more than two hours without interruption, and not more than four hours a day in total.
- (2) During interrogation of the minor suspect, accused the defense attorney, whose participation is mandatory pursuant to Article 46 of this Code, shall have the right to ask questions to the questioned, and upon the end of the interrogation—to look through the protocol and comment on correctness and completeness the testimony records.

#### **Article 396. Participation of a Teacher and Psychologist.**

- (1) Participation of a teacher and psychologist shall be mandatory in the interrogation of a minor suspect, accused under the age of sixteen, as well as those who have reached this age, however, recognized mentally retarded. The teacher or psychologist takes part in the interrogation of a minor suspect, accused who is over the age of sixteen according to the discretion of the investigator, prosecutor or according to the petition of a defense attorney.
- (2) A teacher or psychologist shall have the right to ask questions to the suspect, accused upon the permission of the investigator, and upon the end of the interrogation—to look through the protocol and comment on the correctness and completeness of the testimony records. These rights shall be explained by the investigator to the teacher or psychologist prior to interrogation of a minor of which is an appropriate note is entered in the protocol of the interrogation.
- (3) Participation of a teacher or psychologist in the interrogation of a minor suspect in court shall be effectuated by the rules of Sections I and II of this Code.

#### **Article 397. Participation of the Legal Representative of a Minor Suspect, Accused in the Investigation.**

- (1) A legal representative of a suspect or accused shall participate in the investigation and court proceeding of cases on crimes committed by minors.
- (2) A legal representative shall be allowed to participate in the case by the resolution of the investigator from the moment of the first interrogation of a minor as the suspect or accused. The legal representative shall be provided with an explanation of his rights mentioned in the third paragraph of this article.
- (3) A legal representative shall have the right: to know what a minor is suspected or accused of, to be present during the bringing of an accusation, to participate in the interrogation of a minor, as well as in other investigation actions carried out with the participation of a minor suspect or accused, and his/her defense attorney; to look through protocols of investigation actions in which he/she has participated, and make written notes of the correctness and completeness of records therein; to file petitions and challenges, submit petitions on actions and decisions of the investigator or prosecutor; to present evidence; upon the end of the investigation—to get familiarized with all materials of the case, to extract any information in any volume therefrom.
- (4) A legal representative may be debarred from the participation in the case if there are grounds to recognize his/her actions as bringing damage on the interests of a minor or as intended to hamper the fair investigation of the case. The investigator shall issue a grounded resolution on this. Another legal representative of a minor may be allowed to participate in the case.

#### **Article 398. Participation of a Legal Representative of the Minor Accused in the Court Proceedings**

- (1) The parents or other legal representatives of a minor accused shall be summoned to the session of the court. They shall have the right to participate in the examination of evidence, to testify, to present evidence, to file a petition and challenge, to submit complaints against actions and decisions of the court, to take part in the trial hearing the case in the appellation and cassation procedure, and to provide explanations on the petitions. The indicated rights shall be explained at the beginning of the court proceedings. Legal representatives shall be present in the court room throughout the court proceeding. They may be questioned as witnesses by the court upon their consent.
- (2) The legal representative of a minor may be debarred from the participation in the court proceedings by the injunction (resolution) of the court if there are grounds to recognize that his/her actions detriment the interests of a minor or intended to hamper the fair investigation of the case. In this case another legal representative of a minor accused shall be allowed to participate in the case.
- (3) Failure to appear of the representative of a minor accused shall not hamper the hearing of the case until the court finds his/her participation necessary.
- (4) If the legal representative of a minor is summoned to participate in the case as a defense attorney or civil defendant, he/she shall have the rights and obligations of the mentioned participants of the proceeding.
- (5) If the accused (defendant, convicted, acquitted) became eighteen years old before reviewing the case in the court of original jurisdiction, appellate, cassational procedure, or in reviewing procedure, the court shall render a resolution (ruling) on discontinuance of duties of legal representative.

(As amended by the Law of KR dated 8 August 2004 #111)

**Article 399. Sending Away of the Minor Accused from the Courtroom**

Upon the petition of a defense attorney or legal representative, and also by its own initiative the court shall have the right to make a decision to send away a minor from the court room taking into account the opinion of parties for the period of the examination of circumstances which may have a negative impact on him. After his coming back to the courtroom the chairman shall inform him of the content of the proceeding which happened during his/her absence in a necessary volume and form, and shall give him/her the opportunity to ask questions to those questioned without his/her participation.

**Article 400. Questions Allowed by the Court in Resolution of the Verdict to the Accused Minor.**

- (1) In resolution of the verdict to a accused minor the court shall, in line of issues specified in Article 312 of this Code, consider issues of probation, prescription of a penalty not related to imprisonment, as well as of release from liability.
- (2) In case of a probation, a prescription of a penalty not connected with imprisonment, placement in special educational or other educational facility, of application of compulsory educational measures, the court shall communicate this to the Juvenile Delinquency Commission and entrust it to implement control over the defendant's behavior.

**Article 401. Release of the Minor from Penalty with Applying Compulsory Educational Measures**

- (1) If in a case of crime with low gravity and less heavy crime it is recognized that a minor who has committed this crime may be corrected without applying measures of criminal punishment, the court shall be entitled to release the accused from serving sentence by resolving the guilty verdict and to apply compulsory educational measures specified in Article 83 of this Code. A copy of the verdict shall be sent to the Juvenile Delinquency Commission.
- (2) If a minor regularly fails to comply with requirements stipulated by the compulsory educational measures prescribed to him/her, the court shall recall the compulsory educational measures upon presentation to the Juvenile Delinquency Commission and prescribe a penalty pursuant to the law according to which the criminal proceeding has been instituted against him/her.

(As amended by the Law of KR dated 8 August 2004 #111)

**Article 402. Release of the Minor from Penalty With Sending to a Special or other Educational Facility**

- (1) If in the trial of a case with low gravity or crime with lower gravity it is recognized that the purpose of the punishment can be reached by placing a minor who has committed crime in a special educational facility for minors, the court, having resolved the guilty verdict, shall be

entitled to release the minor from serving the sentence and send him/her to one of the mentioned facilities until he/she reaches the age of competence.

- (2) Detention in a special educational or other educational facility may be suspended until the age of competence is reached if a minor does not need further application of this measure due to his correction. The extension of sojourn in a special educational facility after the person has reached the age of competence shall be allowed only after the completion of a secondary professional training. The issue of suspension or extension of the term of sojourn in a special educational facility shall be considered and solved upon the joint petition of the administration board of the facility and the Juvenile Delinquency Commission personally by the judge of that court which has resolved the verdict, or the court by in the place of sojourn of a minor defendant within 10 days from the date of filing a petition.
- (3) A minor defendant, his/her legal representative, lawyer, prosecutor, representative of the administration board of the facility and representative of the Juvenile Delinquency Commission shall be summoned in court. Failure to appear of the indicated persons shall hamper the trial of a case.
- (4) The petition shall be examined and opinions of those participating in the case shall be heard in court.
- (5) In the conference room the judge shall make a resolution on the results of the trial of the case which is subject to reading in the court room.
- (6) Within five days a copy of the resolution shall be sent to the legal representative of a minor defendant on the results of the trial of the case and the court which has resolved the verdict.

## **CHAPTER 45. COURT PROCEEDING ON CASES ON APPLICATION OF THE COMPULSORY MEDICAL MEASURES.**

### **Article 403. Grounds for Proceeding on Application of Compulsory Medical Measures.**

- (1) Proceeding on application of compulsory medical measures shall be enforced on cases in relation to persons who have committed actions prohibited by law in the condition of diminished responsibility or become mentally disturbed after committing a crime which makes it impossible to prescribe and execute the penalty.
- (2) Compulsory medical measures shall be prescribed only if the mental disturbances are dangerous in their nature to the offender or other persons, or potentially harmful.
- (3) Proceeding on cases of application of medical measures shall be determined by the general rules of this Code, as well as Article 46 of this Code.

### **Article 404. Circumstances Subject to Proof**

The following circumstances shall be found out in proceeding of the investigation on application compulsory measures:

- (1) the time, place, method and other circumstances of the committed action;
- (2) the commission of an action prohibited by the criminal law, by this person;
- (3) the nature and size of the damage inflicted by the action;
- (4) the conduct of the person who has committed the action prohibited by the Criminal Law, both before and after its commission.

**Article 405. Separation of the Case in Relation to a Person Who Committed the Action Prohibited by the Criminal Law in Condition of Diminished Responsibility or Mental Disorder after the Commission of a Crime.**

If during the investigation of a group case it is established that somebody has committed an action in the condition of diminished responsibility or become mentally ill after committing a crime, the case in relation to him/her may be separated into for an individual proceeding.

**Article 406. Rights of the Person in Relation to Whom the Case on Application of Compulsory Medical Measures is Proceeded**

- (1) A person in relation to whom the case on application of the compulsory medical measures is conducted shall be entitled, if it is not hampered by the nature and level of gravity of illness according to the conclusion of the judicial—psychiatric examination,
  - 1) to know what kind of a wrongdoing is incriminated to him/her;
  - 2) to give explanations;
  - 3) to provide evidence;
  - 4) to declare petition and challenge;
  - 5) to use his/her native language and the language he/she masters,
  - 6) to enjoy free assistance of an interpreter;
  - 7) to have a defense attorney and meet him/her privately and confidentially;
  - 8) to participate, upon the permission of the investigator, in the investigation actions carried out on his/her petition or petition of his/her defense attorney;
  - 9) to look through the protocols of these actions and give comments on them;
  - 10) to look through the resolution on assigning the expertise and the expertise's conclusion;
  - 11) to look through all material of the case upon the end of the investigation, and extract any information from it in any volume;
  - 12) to bring petitions against actions and decisions of the investigator, prosecutor and court;
  - 13) to get a copy of the resolution to send the case for trial for application of compulsory medical measures.
- (2) In the court proceeding of the case he/she shall be entitled
  - 1) to participate in the examination of evidence, and in pleadings,
  - 2) to look through the protocol of the trial and give comments on it;
  - 3) contest the decision of the court and get copies of the appealed decisions;
  - 4) to be informed of petitions and submissions on the case and give objections on them;
  - 5) to participate in the judicial review of the applied petitions and submissions.
- (3) The investor shall explain the rights to the person specified in the first part of this article. An explanation of rights in the court proceedings shall be included in the protocol of the trial.

**Article 407. Participation of the Legal Representative in Investigation and in Court**

- (1) A close relative of the person in relation to whom the case on application of the compulsory medical measures is tried shall be recognized as a legal representative of this person and be involved in participation in the case upon the decision of investigator or by decree (decision) of the court.

- (2) The legal representative shall have the right
  - 1) to know what action prohibited by law are incriminated to the person defended by him;
  - 2) to file petitions and challenges;
  - 3) to give evidence;
  - 4) to participate in investigation actions carried out on his/her petition or petition of the defense attorney;
  - 5) to look through the protocols of investigation actions in which he/she has participated, and make written comments on the correctness and completeness of records made therein;
  - 6) upon the end of the investigation to look through all the materials of the case,
  - 7) to extract any information and in any volume; to get a copy of the decision on cancellation of the case or on sending the case to the court for application of compulsory medical measures;
  - 8) to participate in the court proceeding;
  - 9) to bring petitions against actions and decisions of the investigator, prosecutor and court;
  - 10) to appeal decisions of the court and receive copies of the appealed decisions;
  - 11) to be informed of petitions and submissions on the case and give objections on them;
  - 12) to participate in the judicial consideration of the filed petitions and submissions.

#### **Article 408. Participation of the Defense Attorney**

- (1) Participation of the defense attorney in the proceeding of the case on application of compulsory medical measure shall be mandatory from the moment of identification of the fact of irresponsibility or mental disturbance of the person in relation to whom the proceeding is carried out if the defense attorney has not yet entered the case for other reasons.
- (2) From the moment of entering the case the defense attorney shall have the right to meet the client privately if it is not hampered by the state of the client's health, and also he shall enjoy all other rights stipulated by Article 48 of this Code.

#### **Article 409. Sending Case to Court**

- (1) Upon the end of the investigation the investigator shall made a decision to send the case to the court.
- (2) Annexes to the decision to send it to the court shall be compiled according to rules of Article 235 of this Code.
- (3) The investigator shall transfer the case with the decision to submit it to the court to the prosecutor who after it examination shall made one of the following decisions:
  - 1) he shall approve the decision of the investigator by his resolution and send to the court;
  - 2) he shall return the case to the investigator to fill up the gaps of the investigation.
- (4) A copy of the decision to send the case to the court for application of compulsory medical measures shall be handed over to the legal representative.

#### **Article 410. Appointment of the Session of the Court**

When the case on application of compulsory medical measures is received by the court the judge shall assign it for trial in the session of the court according to regulations stipulated in Chapters 33, 34 of this Code.

#### **Article 411. Court Examination**

- (1) Consideration of the case shall be carried out by general rules of the court examination.
- (2) The court examination is beginning with the prosecutor's grounding the necessity to apply compulsory medical measures to the person recognized as irresponsible or mentally disturbed. Evidence shall be investigated and parties shall speak according to rules specified in Chapter 35 of this Code.

#### **Article 412. Issues Solved by the Court in Decision Making Process on the Case**

- (1) Court examination proceeding of the case about application compulsory medical measures the following issues shall be investigated and solved:
  - 1) if the action stipulated by the criminal law has taken place;
  - 2) if the person on whom the case is proceeded has committed the action;
  - 3) if the person on whom the case is proceeded has committed the action in condition of irresponsibility;
  - 4) if this person has got a mental illness which makes it impossible to prescribe and fulfill penalty after committing the crime;
  - 5) if mental illness of this person is dangerous for him or other persons, or if there is possibility that it will bring other serious harm;
  - 6) if a compulsory medical measure shall be applied, and what particular measure;
- (2) The court shall also consider issues specified in items 9, 10, 11 of Article 312 of this Code.

#### **Article 413. Decision of the Court about Application Compulsory Medical Measures**

- (1) Having recognized that the person has committed socially dangerous action in condition of irresponsibility or that this person has got mentally disturbed after committing a crime, court shall make a decision to removal of action and in case of need to apply compulsory medical measure to him.
- (2) Having established that the action has been committed by the person in condition of responsible but after person has got mental disorders court shall make a decision to stay case till convalescence of the person and to apply compulsory medical measure to him. In condition of person convalescence Court cancels staying of case by its decision stops compulsory measures and sends case for further proceeding investigation.
- (3) In case when the court decides that participation of this person in commitment of this action is not proved, as well as in course of determination of circumstances stipulated by Article 28, 29 of this Code the court shall make a decision to removal of action by the reason established by it regardless of presence and nature of the illness of the person.
- (4) In case of removal action on the base reasons of specified in the second and third parts of this Article a copy of the decision of the court, within three days, shall be sent to medical

institutions for solving an issue on treatment or sending to the psychiatric institution for social security of persons needing psychiatric treatment.

- (5) Having decided that the mental illness of the person on whom the case is considered is not identified or that illness of the person having committed a crime does not eliminate application of measures to him the court shall return the case to the prosecutor by its decision.
- (6) Issues mentioned in Articles 323 of this Code shall be considered in the decision of the court.

#### **Article 414. Appellation of the Court's Decision**

Decision of the court may be appealed in the appellation order according to rules stipulated in Articles 332 of this Code.

#### **Article 415. Recall, Change and Extension of the Application of Compulsory Medical Measures**

- (1) The court recalls, changes or extends the application of compulsory medical measures for additional six months upon the submission of the administration board of the facility which renders the psychiatric aid and according to the decision of the commission of psychiatrists.
- (2) Issues on recall, change or extension of the application of the compulsory medical measures shall be considered in the court which has made the decision on application of compulsory medical measures or the court by place of the application of this measure.
- (3) The court shall inform the legal representative of the person to whom compulsory medical measures are applied, administration board of the medical institution, defense attorney and prosecutor of the person. Participation of the defense attorney and prosecutor in the session of the court is mandatory, non-appearance of other persons shall hamper consideration of the case.
- (4) Decision of the medical institution, conclusion of the commission of psychiatrists shall be investigated, opinions of parties participating in the trial shall be heard in the trial. If the conclusion of the commission of psychiatrists is doubtful the court may assign forensic psychiatric expertise by petition of participating persons or by its own initiative, require additional documents, and also question the person in relation to whom the issue of recall, change or extension of the application of compulsory medical measures if the psychiatric condition allows to do so.
- (5) The court shall recall or change the compulsory medical measure in if the psychiatric condition of the person excludes the necessity to prescribe other medical measure. The court shall extend the compulsory treatment if there are no reasons to recall or change the compulsory medical measure.
- (6) In the session room the court shall make a decision on recall, change or extension, as well as refuse to recall, change or extend the application of compulsory medical measure and read it in the court's session.

#### **Article 416. Revivor in Relation to the Person to Whom the Compulsory Medical Measure is Applied**

- (1) If the person to whom the compulsory medical measure is applied because he has got mental disturbance after committing a crime is recognized as cured by the commission of

psychiatrists the court shall make a decision to suspend application of compulsory medical measure basing on the conclusion of the medical institution and according to rules specified in the third part of Article 364 of this Code and shall consider the issue of sending of the case for investigation procedure, summon of this person as an accused and transfer of the case to the court on general bases.

(2) Time spent in the medical institution shall be included in the term of sentence.

## **CHAPTER 46. PROCEEDING ON THE RESTITUTION OF DAMAGES INCURRED BY UNLAWFUL ACTIONS OF THE COURT AND BODIES PROSECUTING THE CRIMINAL CASE.**

### **Article 417. Bases and Conditions of Formation of the Right to Restitution of the Damage**

(1) Damage harmed to a citizen as a result of unlawful:

- 1) detention;
- 2) custody;
- 3) dismissal from office;
- 4) placement in the medical institution;
- 5) conviction;
- 6) application of compulsory medical measures,

shall be redressed by the state in full scale regardless of fault of the agency of preliminary investigation, investigator, prosecutor or court.

(2) The right to restitution of damage shall occur if the detained or arrested person is released for non-proof of suspicion in committing a crime; if the criminal case is recalled for reasons stipulated in items 1, 2 of the first part of Article 28 and in item 2 of the first part of Article 225 of this Code; if there is a verdict of «non-guilty»; if the qualification of the action is changed to article of the law providing less heavy crime with prescription of milder penalty or exclusion of the prosecution and therefore lowering the penalty; recall of the unlawful decision of the court on application of compulsory medical measures.

(3) In case of death of the citizen the right to restitution of damage shall be transferred to its successors in the established procedure, and in part of receiving pensions and allowances payment of which has been suspended—to those members of the family who are referred to the persons who are provided with pension in case of losing the bread-winner.

(4) Damage shall not be subject to restitution if during investigation and trial the citizen promoted occurrence of consequences mentioned in the first part of this Article by means of self-accusation. However, self-accusation as a result of application of force, menace and other unlawful measures to the citizen shall not hamper restitution of the damage. In this the fact of applying unlawful measures shall be established by investigation bodies, prosecutor or court.

(5) Rules of this article are not extended to cases where applied procedural compulsion measures or resolved guilty verdict are recalled and changed due to issue of the amnesty act, expiration of the period of prescription, under age, or adoption of the law eliminating the criminal liability or softening punishment.

### **Article 418. Subject to Restitution**

If there are grounds and conditions specified in the first and second parts of Article 417 of this Code a citizen shall have the right to:

- (1) restitution of the property damage: wage, pension, allowance, other funds he has been deprived of as a result of unlawful actions, property illegally confiscated or transferred to the state budget income according to the verdict or decision of the court; fines and procedural expenses charged for implementation of unlawful verdict of the court; amounts paid for legal assistance, and other expenses;
- (2) elimination of results of the moral damage;
- (3) restoration of labor, pension, housing and other rights.

### **Article 419. Recognition of the Right to Restitution of Damage.**

Having recognized the decision on full and partial rehabilitation of a citizen, the court, prosecutor, investigator shall acknowledge his right to restitution of the damage. A copy of the preliminary verdict or decision (resolution ) to recall the criminal case or change of other unlawful decisions shall be issued or sent to the interested person by mail. Simultaneously a notification with explanation of the procedure for restitution of the damage and restoration of other rights shall be sent to him.

### **Article 420. Determination of the Amount of the Property Damage and the Procedure of its Restitution**

- (1) The property damage shall include restitution of the wage, pension, allowance, other funds he has been deprived of as result of illegal actions, property illegally confiscated to transferred to the state budget income on the basis of the verdict or decision of the court, fines and procedural expenses charged for implementation of unlawful verdict of the court; amounts paid for legal assistance, and other expenses.
- (2) During six months from the moment of receiving a copies of documents specified in Article 419 of this Code, with notification on the procedure of restitution of the damage a person shall have the right to apply with claim to restitution of the damage to the body which has issued a verdict, decision on recall of the case, recall or change of other unlawful decisions. If the case is recalled or the verdict changed by the a higher court the claim on restitution of damage shall be sent to the court having issued this verdict.
- (3) The court, prosecutor, investigator shall establish the amount of damage within one month from the date of receiving an application on restitution of the damage, if necessary, having requested accounts from financial bodies and bodies of social security, after which they shall made a decision to pay restitution of the damage.
- (4) Claims on restitution of the property damage shall be considered by the court in the procedure stipulated by Article 360 of this Code for solving issues related to implementation of the verdict.
- (5) A copy of the decision attested by the official stamp shall be given and sent to the person, and in case of his death—to persons mentioned in the third part of Article 417 of this Code for presentation to bodies which are to produce payment.

#### **Article 421. Appeal of Decisions to Produce Payments**

The decision of the investigator, judge to produce payment may be appealed in the procedure stipulated by Articles 131, 133 of this Code.

#### **Article 422. Elimination of Consequences of the Moral and Other Damage**

- (1) The body or official having made a decision on rehabilitation of a citizen shall be obliged to present official apologies to him for the damage harmed.
- (2) Actions on compensation in monetary expression for harmed moral damage shall be submitted in the order civil judicial proceedings.
- (3) If the information on detention, custody, dismissal from office, placement in the medical institution, conviction of a person and other unlawful actions applied to him were published in the press, distributed by radio, television or other mass media at the claim of this person, and in case of his death—by claim of his relatives or order of the court, prosecutor, investigation, correspondent bodies of mass media shall, within one month, make necessary notification of this.

#### **Article 423. Restoration of Other Rights**

- (1) If the claim of a citizen on restoration of labor, pension and housing rights and payment, as well as on return of the property or its cost is not satisfied or if the citizen does not agree with the decision made, he shall have the right to apply to the court in the order of the civil proceedings.
- (2) Titles shall be restored to persons who have been deprived of military and special titles in the established procedure.

#### **Article 424. Terms for Presenting Claims**

- (1) Claims on production of monetary payments to compensate the property damage may be presented within three years from the moment of receiving a decision or resolution to produce such payment by the citizen or persons specified in the third part of Article 417 of this Code.
- (2) Claim to restore other rights may be presented by a citizen within six months from the moment of receiving a notification explaining the procedure of restoring rights.
- (3) If case of overdue of these terms for good reasons they may be restored by the investigator, prosecutor or court according to an application of the interested persons.

SECTION XIV. BASIC PROVISIONS ON THE PROCEDURE OF INTERACTION OF COURTS, PROSECUTORS, WITNESSES WITH RELEVANT INSTITUTIONS AND OFFICIALS OF FOREIGN STATES ON THE CRIMINAL CASES

**CHAPTER 47. INTERACTION OF COURTS, PROSECUTORS, WITNESSES WITH RELEVANT INSTITUTIONS AND OFFICIALS OF FOREIGN STATES IN AS RENDERING LEGAL ASSISTANCE ON CRIMINAL CASES.**

**Article 425. Submission of the Instruction on the Investigative of Procedural Actions**

- (1) If it is necessary to conduct questioning, inspection, seizure, search, expertise and other certain investigation and judicial actions stipulated by this Code on the territory of a foreign state the court, prosecutor, investigator shall delegate their implementation to certain bodies of a foreign state with which there a contract or international agreement on mutual legal assistance.
- (2) The injunction to implement certain investigation actions shall be sent through the General Prosecutor of the Kyrgyz Republic, and judicial action—through the Judicial Department of the Kyrgyz Republic.
- (3) In formulation of the order the language of the foreign state to which it is sent to if not otherwise provided by the international agreement.

**Article 426. Content of the Order on Effectuation of Procedural Actions**

The injunction on effectuation of certain investigation and judicial actions shall be compiled in writing, signed by the official sending this order, attested by the official seal of the institution and shall contain:

- (1) name of the body from which this order is originating;
- (2) name and address of the body to which this order is sent to;
- (3) name of the case and type of the order;
- (4) information on persons in relation to whom this order is given, their citizenship, occupation, place of residence and place of stay, for legal entities—their name and location;
- (5) list of circumstances to be clarified, as well as list of documents requested, material objects and other evidence;
- (6) information on actual circumstances of the committed crime and its qualification, if necessary—information on the amount of the damage harmed by the crime.

**Article 427. Summon and Questioning of the Witness, Victim, Civil Plaintiff, Civil Defendant, Their Representatives, Expert**

- (1) A witness, victim, civil plaintiff, civil defendant, their representatives, expert if they are citizens of a foreign state, may be summoned upon their consent for implementation of investigation or judicial actions on the territory of the Kyrgyz Republic by the official who is responsible for proceeding of the criminal case.
- (2) The request on arrival of the summoned person shall be sent in the procedure stipulated by the second part of Article 425 of this Code.

- (3) Investigation and judicial actions with participation of the witness, victim, other participants of the proceeding mentioned in the first part of this article shall be carried out according to rules of this Code with following exemptions: bringing to court, monetary penalty.

#### **Article 428. Effectuation of the Injunction on Procedural Actions**

- (1) The court, prosecutor, witness shall implement orders of relevant institutions and officials of foreign states to carry out investigation and judicial actions delegate to him in the established order, according to general rules of this Code.
- (2) In implementation of the order procedural standards of a foreign state may be applied if this is stipulated by an international agreement of the state.
- (3) In cases stipulated by the international agreement, a representative of the relevant institution of a foreign state may be present at implementation of the order.
- (4) If the order cannot be implemented the documents received shall be returned through the General Prosecutor of the Kyrgyz Republic or Judicial Department of the Kyrgyz Republic to the foreign institution from which the order is originating with mentioning reasons preventing its fulfillment. In any case the order shall be returned if its implementation may harm the sovereignty or safety of the state if it contradicts the legislation of the Kyrgyz Republic.

#### **Article 429. Sending of the Case Dossier for a Continuation of the Criminal Persecution**

If the crime is committed on the territory of the Kyrgyz Republic by a citizen of a foreign state having left outside the territory of the Kyrgyz Republic all the material of the instituted and investigated case shall be submitted to the General Attorney's Office of the Kyrgyz Republic which considers the issue on sending them to relevant institutions of a foreign state to continue the criminal persecution.

#### **Article 430. Implementation of Requests to Continue the Criminal Persecution or Initiation of the Criminal Proceedings**

- (1) Transfer by a foreign state of the case for further investigation in relation to a Kyrgyz citizen who has committed crime on the territory of a foreign state and come back to the Kyrgyz Republic shall be considered by the General Prosecutor of the Kyrgyz Republic. In such cases the trial shall be conducted in the procedure stipulated by this Code.
- (2) Proof received during investigation of the case on the territory of a foreign state by an authorized official within his competence and in the established form, in continuation of the investigation in the Kyrgyz Republic shall have legal power equally with other proof collected on the case.
- (3) If the crime is committed on the territory of a foreign state by a person with the Kyrgyz citizenship and who has then come back to the Kyrgyz Republic before initiation of the persecution against him by place of committing the crime, the criminal case may be instituted and investigated by competent bodies of the Kyrgyz Republic basing on the material of this crime presented by the institution of a foreign state to the General Prosecutor of the Kyrgyz Republic.

## **CHAPTER 48. EXTRADITION OF A PERSON FOR CRIMINAL PROSECUTION OR EXECUTION OF THE VERDICT**

### **Article 431. Submission of the Claim on Extradition of a Citizen of the Kyrgyz Republic**

- (1) In case and procedure stipulated by the legislation of the Kyrgyz Republic and international Agreements, the General Attorney's Office of the Kyrgyz Republic shall apply to the relevant institution of the a foreign state with the claim extradition of a person who is a citizen of the Kyrgyz Republic having committed crime on the territory of the Kyrgyz Republic if the guilty verdict has been issued in relation to this person or decision on summoning him as an accused.
- (2) The claim on extradition shall contain:
  - 1) the surname, name, patronymic name of the convicted (accused), the date of birth, information on citizenship, description of the appearance, pictures;
  - 2) presentation of actual circumstances of the committed crime with citation of the text of the law providing the responsibility, with mandatory mentioning sanction;
  - 3) Extent of property damage was inflicted in result of crime.
  - 4) information on the place and time of issuing the verdict having got the legal power, or resolution to summon as an accused with attaching attested copies of relevant documents.

### **Article 432. Limits of the Criminal Liability of the Extradited Person**

- (1) A person extradited by a foreign state may not summoned to the criminal liability, subject to punishment, neither be transferred to a third state for other crime not related to extradition, without consent of the state having extradited him.
- (2) Rules of the first part of this article are not extended to cases when the crime is committed by the person after his extradition.

### **Article 433. Enforcement of a Claim to Extradite a Citizen of a Foreign State**

- (1) The claim to extradite a citizen of a foreign state who is accused in committing a crime, or convicted on the territory of the Kyrgyz Republic shall be considered by the General Prosecutor of the Kyrgyz Republic or his Deputy. If there are claims of several states to extradite a person the General Prosecutor shall make decision which state the person is to be extradited to.
- (2) Conditions and procedure of extradition are established by this Code or international agreement of the Kyrgyz Republic with foreign states.
- (3) In case when a citizen of a foreign state in relation to whom there is a request on extradition, is serving sentence for other crime on the territory of the Kyrgyz Republic, extradition may be postponed till the end of the sentence or release from liability by any legal reason. If the citizen is instituted the criminal proceeding his extradition may be postponed till the issue of the verdict, service of the sentence or release form the criminal responsibility or punishment for any reason. If the delay of the extradition may entail expiration of the limitation period of the criminal persecution or bring harm to investigation of the crime, a person who is required to be extradited according to the petition may be extradited temporarily.

#### **Article 434. Refuse to Extradite**

Extradition shall not allowed if:

- 1) the person has been granted political asylum by the Kyrgyz Republic;
- 2) the action serving a reason for the claim on extradition is acknowledged by the Kyrgyz Republic as a crime;
- 3) the verdict has already been issued or the proceeding of the case has been suspended in relation to the person for the same crime which has come into force;
- 4) according to the Kyrgyz Republic the criminal case cannot be initiated or the verdict cannot be implemented as a result of expiration of the limitation period or by other legal bases.

#### **Article 435. Custody for Extradition**

- (1) In receiving a properly formulated claim from the competent institution of a foreign state and if there are legal grounds for extradition of a person he may be detained, and he shall applied penalty in the form imprisonment in the procedure established in Article 110 of this Code.
- (2) The institution of a foreign state having sent a request the extradition with the proposal of time and place of extradition shall immediately be informed on custody of the person.
- (3) If the extradition does not happen within thirty days a detained person is to be released by the decision of the prosecutor. Repeated detention shall be allowed only after consideration of the new claim on extradition according to the first part of this article.

#### **Article 436. Transfer of Articles**

- (1) In extradition of the citizen to the institution of a foreign state articles which are instruments of the crime shall be transferred together with articles having tracks of the crime. These articles shall be transferred by request and in this case when the person cannot be extradited as a result of his death or for other reasons.
- (2) Articles specified in the first part of this article may be transferred temporarily if they are necessary for proceeding of another criminal case.
- (3) To provide legal rights to third parties articles specified in the first part of this article shall be transferred only if there is guarantees of the institution of a foreign state to return items upon the end of the case proceeding.

### **CHAPTER 49. TRANSFER OF A PERSON CONVICTED TO IMPRISONMENT, FOR SERVING SENTENCE IN THE STATE WHICH HE IS A CITIZEN OF**

#### **Article 437. Grounds for Transfer of the Person Convicted to Imprisonment, for Serving Sentence in the State Which He is a Citizen of**

The international agreement of the Kyrgyz Republic with relevant foreign states or written agreement on conditions of inter-action of the General Prosecutor of the Kyrgyz Republic with competent bodies and officials of a foreign state may be grounds for transfer of the person

convicted by the Kyrgyz court to imprisonment for serving sentence in the state which he is a citizen of, as well as for transfer of the citizen of the Kyrgyz Republic convicted by a foreign court to imprisonment, for serving sentence in the Kyrgyz Republic.

**Article 438. Conditions and Terms of Transfer of the Accused for Serving Sentence in the State Which he is a Citizen of**

- (1) Transfer of the person convicted in the Kyrgyz Republic for serving sentence in the state which he is a citizen of shall be allowed before serving the sentence in the form of imprisonment by petition of the convicted, his legal representative or close relatives, and also by request of the competent body of the relevant state with the consent of the convicted.
- (2) The transfer may be implemented only if the verdict has come into legal force by decision of the General Prosecutor of the Kyrgyz Republic who informs the court having issued the verdict on the implemented transfer.

**Article 439. Refuse to a Foreign State to Transfer the Person Convicted to Imprisonment for Serving Sentence**

In the following case it may refused to transfer the person convicted to imprisonment for serving sentence in the state which he a citizen of:

- (1) action for which the person has been convicted is not acknowledged as a crime according to the legislation of the state which the convicted person is a citizen of;
- (2) punishment cannot be fulfilled in a foreign state due to expiration of the limitation period or for other reason stipulated by the legislation of this state.
- (3) no guarantee of implementation of the verdict in part of the civil action has been received from the convicted person or a foreign state;
- (4) no agreement has been reached to transfer the convicted person on terms specified by the international agreement;
- (5) the convicted person has permanent residence in the Kyrgyz Republic.

**Article 440. Review of the Petition on Reception of Citizens of the Kyrgyz Republic for Serving Sentence**

- (1) A citizen of the Kyrgyz Republic convicted to imprisonment by the court of a foreign state, his legal representative or close relatives, as well as competent bodies of a foreign state, with the consent of the convicted person, may apply to the General Prosecutor of the Kyrgyz Republic with the petition on serving the sentence by the convicted person in the Kyrgyz Republic.
- (2) If the petition is satisfied the General Prosecutor of the Kyrgyz Republic shall make submission on implementation of the verdict of the foreign court to the Supreme Court of the Kyrgyz Republic.

**Article 441. Procedure of Consideration by the Court of Issues Related to Implementation of Verdict of the Foreign Court**

- (1) Submission of the General Prosecutor of the Kyrgyz Republic shall be considered by the judge in the court's session in absence of the convicted person in the procedure and terms established by this Code, for consideration of issues related to implementation of the verdict.
- (2) The Kyrgyz Republic Supreme Court's decision on implementation of the verdict of a foreign court shall specify the following:
  - 1) name of the court of a foreign state, time and place where the verdict is made;
  - 2) information on the last place of residence of the convicted person in the Kyrgyz Republic, place of work and occupation before conviction;
  - 3) qualification of the crime in commitment of which the citizen is recognized guilty, and on the basis of which criminal law he has been convicted;
  - 4) criminal law of the Kyrgyz Republic providing the responsibility for the crime committed by the convicted person;
  - 5) type and term of sentence (main and additional), the beginning and end of the term which the convicted person shall serve in the Kyrgyz Republic, type of the correctional facility, procedure for restitution of the damage according to action;
- (3) If according to law of the Kyrgyz Republic the limit term of imprisonment for such a crime is shorter than prescribed by the verdict the Supreme Court of the Kyrgyz Republic shall establish the maximum term of imprisonment for the committed action which is stipulated by law of the Kyrgyz Republic. If according to law of the Kyrgyz Republic imprisonment is not stipulated as punishment the Supreme Court of the Kyrgyz Republic shall establish punishment within the limits established by the criminal legislation of the Kyrgyz Republic for such a crime and which is mostly correspond to the verdict of a foreign state.
- (4) The decision of the court shall come into force from the moment of its issue and shall be sent to the General Prosecutor of the Kyrgyz Republic to ensure implementation.
- (5) In case of recall or change of the verdict of the court of a foreign state of application of the amnesty or pardon issued in a foreign state, to the person serving sentence in the Kyrgyz Republic issues on implementation of the re-considered verdict, as well application of amnesty or pardon shall be solved according to rules of this Code.

President  
The Kyrgyz Republic

A. Akaev

**Bishkek City  
Government House**

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