FIRST PART

BOOK I

SUBJECTS

TITLE I

THE COURT

CHAPTER I

JURISDICTION

Article 1

Criminal jurisdiction

1. Criminal jurisdiction shall be exercised in accordance with the rules set in this Code by the courts referred to in the judicial system laws.

Article 2

Cognisance of courts

1. Criminal courts shall settle any issue on which the decision depends, unless otherwise provided. The decision of criminal courts which incidentally settles a civil, administrative or criminal case shall have no binding effect in any other trial.

Article 3

Preliminary issues

1. If the decision depends upon the resolution of a dispute on either family status or citizenship, if the issue is serious and a civil action is already in progress, the court may suspend the trial until the judgment settling the case becomes final.
2. The suspension shall be directed by order, the latter being subject to appeal to the Court of Cassation. The Court shall decide in chambers.
3. The suspension of the trial shall not prevent urgent actions from being undertaken.
4. The final judgment issued by a civil court which settles a case on family status or citizenship shall be binding in criminal proceedings.

CHAPTER II

COMPETENCE

Section I

General provision

Article 4

Rules for determining competence

1. The court's competence shall be determined by considering the penalty imposed by the law for each completed or attempted offence. Continuing offences, recidivism and the circumstances in which the offence is committed shall not be considered, except for aggravating circumstances for which the law sets a type of penalty other than the ordinary one and those having special effect.

Section II

Subject-matter competence

Article 5

Competence of the Court of Assizes

1. The Court of Assizes is competent for:

a) crimes for which the law imposes a life sentence or the penalty of imprisonment for a maximum term of at least twenty-four years, except for the aggravated crimes of attempted murder, robbery, blackmail and national or foreign mafia-type associations, as well as the aggravated crimes provided for in the Decree of the President of the Italian Republic No 309 of 9 October 1990;

b) completed crimes provided for in Articles 579, 580 and 584 of the Criminal Code;

c) any intentional crime resulting in the death of one or more persons, with the exclusion of the cases provided for in Articles 586, 588 and 593 of the Criminal Code;

d) the crimes provided for in the laws implementing the XII Final Provision of the Constitution, Law No 962 of 9 of October 1967 and Title I of Book II of the Criminal Code, provided that such crimes are sentenced with a maximum term of at least ten years of imprisonment;

d-bis) the completed or attempted crimes referred to in Articles 416, paragraph 6, 600, 601 and 602 of the Criminal Code, as well as terrorist crimes, provided that such crimes are sentenced with a maximum term of at least ten years of imprisonment.

Article 6

Competence of the Tribunal

1. The Tribunal is competent for the offences which do not fall within the competence of the Court

of Assizes or the Justice of the Peace.

Article 7

(…)

Section III

Territorial competence

Article 8

General rules

1. Territorial competence shall be determined in relation to the place where the offence has been committed.
2. If the criminal act results in the death of one or more persons, the court with competence shall be that of the place where the action or omission has occurred.
3. In the case of a permanent offence, the court with competence shall be that of the place where the criminal act has begun, even if such act has resulted in the death of one or more persons.
4. In the case of an attempted crime, the court with competence shall be that of the place where the latest action aimed at committing the crime has taken place.

Article 9

Supplementary rules

1. If competence cannot be determined under Article 8, the court with competence shall be that of the last place where a part of the action or omission has occurred.
2. If the place mentioned in paragraph 1 is unknown, the court with competence shall subsequently be that of the habitual or temporary residence of the accused person or his address for service.
3. If competence cannot be determined accordingly, competence shall be of the court administering the law in the same location as that of the Public Prosecutor who first entered the *notitia criminis* in the register provided for in Article 335.

Article 10

Competence over offences committed abroad

1. If the offence is entirely committed abroad, competence shall be subsequently determined in relation to either the place where the accused has his habitual or temporary residence, his address for service or where he has been arrested or surrendered. If there are several accused persons, the court with competence shall be that having competence over most of them.

1 *-bis.* If the offence is committed against a citizen and the circumstances provided for in Articles 12 and 371, paragraph 2, letter *b),* do not apply, competence shall be of the Tribunal or Court of Assizes in Rome in those circumstances where competence cannot be determined as set forth in paragraph 1.

2. In any other circumstance, if competence cannot be determined as set forth in paragraphs 1 and 1 *-bis,* competence shall be of the court administering the law in the same location as that of the Public Prosecutor who first entered the *notitia criminis* in the register as provided for in Article 335.

3. If the offence is partially committed abroad, competence shall be determined under Articles 8 and 9.

Article 11

Competence over proceedings involving Public Prosecutors or judges

1. Proceedings which involve a Public Prosecutor or judge as a suspect, an accused, a victim or an injured person and which would fall within the competence of a judicial office located in the district of the Court of Appeal where the Public Prosecutor or judge works or was working when the criminal act was committed, shall be conducted by an equally competent court, by virtue of the subject matter, who is based in the chief town of the Court of Appeal district determined by law.

2. If the Public Prosecutor or judge took office in the district determined under paragraph 1 after commission of the criminal act, the court with competence shall be that which is based in the chief town of the Court of Appeal district determined under paragraph 1.

1. The proceedings joined to those in which a Public Prosecutor or judge is involved as a suspect, an accused, a victim or an injured person shall fall within the competence of the same court that is identified under paragraph 1.

Article 11-*bis*

Competence over proceedings involving Public Prosecutors of the National Anti-Mafia and Counter-terrorism Directorate

1. Proceedings which involve a Public Prosecutor of the National Anti-Mafia and Counter-*ter*rorism Directorate as a suspect, an accused, a victim or an injured person, shall fall within the competence of the court determined under Article 11.

Section IV

Competence by reason of joining of proceedings

Article 12

Cases of joining of proceedings

1. Proceedings are joined if:

a) the offence being prosecuted is committed by several persons acting jointly or in cooperation, or if

several persons acting independently cause the event;

b) a person is accused of several offences committed in either a single action or omission or several actions or omissions related to the same criminal intention;

c) the offences being prosecuted are committed to carry out or conceal the joined offences.

Article 13

Joining of proceedings within the competence of ordinary and special courts

1. If some of the joined proceedings fall within the competence of an ordinary court while others are the competence of the Constitutional Court, ' the latter shall be competent for all of the proceedings.

2. The proceedings for common and military offences shall be joined only when the former are more serious than the latter, according to the criteria provided for in Article 16, paragraph 3. In this case, the ordinary court shall be competent for all the offences.

Article 14

Limits to the joining of proceedings in case of offences committed by minors

1. Proceedings involving accused persons who were under age when the criminal act was committed and those involving accused persons of age shall not be joined.

2. There shall be no joining of proceedings for offences committed when the accused was under age and offences committed when he was of age.

Article 15

Subject-matter competence determined by reason of joining of proceedings

1. If some of the joined proceedings fall within the competence of the Court of Assizes while others are the competence of the Tribunal, the former shall be competent for all of the proceedings.

Article 16

Territorial competence determined by reason of joining of proceedings

1. Territorial competence over joined proceedings for which several courts are equally competent by virtue of the subject matter shall belong to the court that is competent for the most serious offence. In case of equally serious offences, the court with competence shall be the one that is competent for the first offence.

2. In the case provided for in Article 12, paragraph 1, letter *a),* if the actions or omissions are committed in different places and if the criminal act results in the death of a person, the court with competence shall be that of the place where death has occurred.

3. Crimes are considered to be more serious than misdemeanours. Among crimes or misdemeanours, the most serious offence is considered to be that which is punishable with the highest maximum penalty, or,

if the maximums are equal, the highest minimum penalty. If both custodial and financial penalties are envisaged for the offences, financial penalties shall be taken into consideration only if custodial penalties are equal.

CHAPTER III

UNIFICATION AND SEPARATION OF TRIALS

Article 17

Unification of trials

1. Trials pending at the same stage and instance before the same court may be unified, if their unification does not cause delays in the conclusion of the aforementioned trials, in the cases provided for in:

a) Article 12;

c) Article 371, paragraph 2, letter *b).*

1 *-bis.* If some of the trials are pending before a collegial Tribunal while others before a single-judge Tribunal, the unification shall be ordered before the former. The collegial Tribunal shall decide also in cases of subsequent separation of trials.

Article 18

Separation of trials

1. Unless the court believes that the unification of trials is absolutely necessary to ascertain the alleged offences, trials shall be separated if:

a) during the preliminary hearing, a decision can be reached promptly either against one or more accused persons or on one or more accusations, while for other accused persons or other accusations further information needs to be gathered under Article 422;

b) a suspension of proceedings involving one or more accused persons or one or more accusations is ordered;

c) one or more accused persons do not appear at the trial due to nullity of summons or its service, legal impediment or inculpable unawareness of the summons;

d) one or more lawyers of the accused persons do not appear at the trial due to lack of notice or legal impediment;

e) the trial evidentiary hearing concerning one or more accused persons or one or more accusations is concluded, while further actions which concern other accused persons or accusations and do not allow a decision to be promptly reached are to be carried out;

e-bis) one or more accused persons charged with the offences referred to in Article 407, paragraph 2, letter *a),* are to be released shortly due to the expiry of time limits and the lack of other grounds for

custody.

2. Without prejudice to the cases referred to in paragraph 1, separation may also be ordered, upon agreement by the parties, when the court considers it useful for a smooth development of proceedings.

Article 19

Decisions on unification and separation

1. Trials shall be unified and separated by order, also of the court's own motion, after hearing the parties.

CHAPTER IV

DECISIONS ON JURISDICTION AND COMPETENCE

Article 20

Lack of jurisdiction

1. Lack of jurisdiction shall be raised, also of the court's own motion, at any stage and instance of the proceedings.

2. If lack of jurisdiction is raised during preliminary investigations, the provisions of Article 22, paragraphs 1 and 2, shall apply. After conclusion of the preliminary investigations and at any stage and instance of the proceedings, the court shall issue a judgment and shall order, if applicable, that the case file be forwarded to the competent authority.

Article 21

Lack of competence

1. The lack of subject-matter competence shall be raised, also of the court's own motion, at any stage and instance of the proceedings after the initiation of criminal prosecution, without prejudice to the provisions of paragraph 3 and Article 23, paragraph 2.

2. The lack of territorial competence shall be raised or contested, under penalty of expiry, prior to the conclusion of the preliminary hearing or, if there is no preliminary hearing, within the time limits referred to in Article 491, paragraph 1. Within this time limit, the objection to the lack of competence rejected during the preliminary hearing shall be raised again.

3. The lack of competence resulting from joined proceedings shall be raised or contested, under penalty of expiry, within the time limits referred to in paragraph 2.

Article 22

Lack of competence declared by the Preliminary Investigation Judge

1. During preliminary investigations, if the Preliminary Investigation Judge acknowledges his own lack of competence for any reason whatsoever, he shall issue an order and direct that the case file be returned to the Public Prosecutor.

2. The effects of the order issued under paragraph 1 shall be limited to the requested decision.

3. After the conclusion of preliminary investigations, if the Preliminary Investigation Judge acknowledges his own lack of competence for any reason whatsoever, he shall declare his lack of competence by judgment and shall order that the case file be forwarded to the Public Prosecutor attached to the court with competence.

Article 23

Lack of competence declared during the first-instance trial

1. If, during the first-instance trial, the court holds that the case falls within the competence of a different court, it shall declare its own lack of competence for any reason whatsoever by judgment and shall order that the case file be forwarded to the court with competence.

2. If the offence falls within the cognisance of a court with a lower competence, the lack of competence shall be raised or contested, under penalty of expiry, by the deadline referred to in Article 491, paragraph 1. If the court acknowledges its lack of competence, it shall decide according to paragraph 1.

Article 24

Decisions of the appeal court on competence

1. The appeal court shall issue a judgment of annulment and order that the case file be forwarded to the competent first-instance court when it acknowledges that the first-instance court lacked either subject-matter competence in line with Article 23, paragraph 1, or competence by territory or joining of proceedings, provided that, in the latter cases, the lack of competence is contested under the provision of Article 21 and the objection is raised in the arguments for the appeal.

2. In all other cases, the appeal court shall decide on the merits of the case, except for a decision which cannot be appealed.

Article 25

Effects of the decisions of the Court of Cassation on jurisdiction and competence

1. The decision of the Court of Cassation on jurisdiction or competence shall be binding during proceedings, unless new facts emerge which require a different legal definition resulting in the change of jurisdiction or competence of a higher court.

Article 26

Evidence gathered by a court without competence

1. Failure to comply with the rules on competence shall not prevent already gathered evidence from being effective.

2. Statements made before a court lacking subject-matter competence, if repeatable, may be used

exclusively during the preliminary hearing and for the challenges under Articles 500 and 503.

Article 27

Precautionary measures ordered by a court without competence

1. Precautionary measures ordered by a court that-simultaneously or subsequently-declares not to have competence for any reason whatsoever shall cease to be effective if the court with competence does not decide according to Articles 292, 317 and 321 within twenty days of the issuing of the order directing to forward the case file.

CHAPTER V

CONFLICTS OF JURISDICTION AND COMPETENCE

Article 28

Cases of conflict

1. After the initiation of criminal prosecution, conflict occurs at any stage and instance of the proceedings if:

a) one or more ordinary courts and one or more special courts simultaneously take or refuse to take cognisance of the criminal act the same person has been charged with;

b) two or more ordinary courts simultaneously take or refuse to take cognisance of the criminal act the same person has been charged with.

2. The rules on conflicts shall also apply to cases similar to those referred to in paragraph 1. However, in the event of disagreement between the Preliminary Hearing Judge and the court administering the trial, the decision of the latter shall prevail.

3. During preliminary investigations, no positive conflict may be raised on the basis of territorial competence determined by reason of joining of proceedings.

Article 29

Termination of conflict

1. The conflicts provided for in Article 28 shall cease by the decision issued by one of the courts that declares, also of its own motion, its competence or lack thereof.

Article 30

Raising of conflicts

1. The court that raises a conflict shall issue an order by which it forwards a copy of the documents necessary to solve the conflict to the Court of Cassation. Such copy shall contain details on the parties and the lawyers.

2. Conflicts may be reported by either the Public Prosecutor attached to one of the courts involved in the conflict or the private parties. Such report shall be submitted to the Registry of one of the courts involved in the conflict, by written and reasoned statement containing also the necessary documentation. The court shall immediately forward the report and the documentation to the Court of Cassation, along with a copy of the documents necessary to solve the conflict, containing details on the parties and the lawyers as well as any other remark.
3. The order and the report referred to in paragraphs 1 and 2 shall not suspend any ongoing proceedings.

Article 31

Notification of the court involved in the conflict

1. The court that issued the order or received the report referred to in Article 30 shall immediately inform the court involved in the conflict.
2. The court involved in the conflict shall immediately forward a copy of the documents necessary to solve the conflict containing details on the parties and any possible remark to the Court of Cassation.

Article 32

Resolution of the conflict

1. The Court of Cassation shall decide on conflicts by means of a judgment delivered in chambers as provided for in Article 127. The Court shall gather the information, the documents related to the proceedings and any other documents deemed necessary.
2. The extract of the judgment shall be immediately forwarded to the courts in conflict and the Public Prosecutor attached to the same courts. The extract shall also be served on the private parties.
3. The provisions of Articles 25, 26 and 27 shall apply, but the time limit provided for in the latter Article shall start as of the notification given under paragraph 2.

CHAPTER VI

JUDICIAL CAPACITY OF JUDGES AND COMPOSITION OF THE COURT

Article 33

Judicial capacity of judges

1. The judicial capacity of judges and the number of judges necessary to constitute the bench are established by the judicial system laws.
2. Provisions on the assignment of judges to judicial offices and chambers, the composition of benches and the assignment of trials to specific departments, benches and courts, shall not regard the judicial capacity of judges.

3. Provisions on the assignment of criminal cases to collegial or single-judge Tribunals shall neither regard the judicial capacity of judges nor the number of judges necessary to constitute the judging body.

Article 33-*bis*

Assignments to the collegial Tribunal

1. The following offences-completed or attempted-shall be assigned to the collegial Tribunal:

a) crimes referred to in Article 407, paragraph 2, letter *a),* numbers 3), 4) and 5), unless they fall within the competence of the Court of Assizes;

b) crimes provided for in Chapter I, Title II, Book II of the Criminal Code, except for those referred to in Articles 329, 331, paragraph 1, 332, 334 and 335;

c) crimes provided for in the following Articles of the Criminal Code: Articles 416, 416-*bis,* 416-*ter,* 420, paragraph 3, 429, paragraph 2, 431, paragraph 2, 432, paragraph 3, 433, paragraph 3, 433-*bis*, paragraph 2, 440, 449, paragraph 2, 452, paragraph 1, number 2), 513-*bis,* 564, from 600-*bis* to 600-*sexies* for which the law sets the penalty of imprisonment for a maximum term of at least five years, 609-*bis,* 609-*quater* and 644;

d) offences provided for in Title XI of Book V of the Civil Code, as well as the provisions extending their application to subjects other than those referred to therein;

e) crimes provided for in Article 1136 of the Navigation Code;

f) crimes provided for in Articles 6 and 11 of Constitutional Law No 1 of 16 January 1989;

g) crimes provided for in Articles 216, 223, 228 and 234 of Royal Decree No 267 of 16 March 1942 on bankruptcy, as well as the provisions extending their application to subjects other than those referred to therein;

h) crimes provided for in Article 1 of Legislative Decree No 43 of 14 February 1948, ratified by Law No 561 of 17 April 1956 on military associations;

i) crimes provided for by Law No 645 of 20 June 1952, implementing the XII transitory and final provision of the Constitution;

i-bis) crimes provided for in Article 291 -*quater* of the Consolidated Text approved by Decree No 43 of the President of the Republic of 23 January 1973;

l) the crime provided for in Article 18 of Law No 194 of 22 May 1978 on abortion;

m) the crime provided for in Article 2 of Law No 17 of 25 January 1982 on secret associations;

n) the crime provided for in Article 29, paragraph 2, of Law No 646 of 13 September 1982 on preventive measures;

o) the crime provided for in Article 12-*quinques,* paragraph 1, of Decree-Law No 306 of 8 June 1992,

converted, with amendments, by Law No 356 of 7 August 1992 on fraudulent transfer of values;
p) crimes provided for in Article 6, paragraphs 3 and 4, of Decree-Law No 122 of 26 April 1993, converted, with amendments, by Law No 205 of 25 June 1993, on racial, ethnic and religious discrimination;
q) crimes provided for in Article 10 of Law No 496 of 18 November 1995 on the production and use of chemical weapons.
2. Crimes, even if attempted, punishable by imprisonment for a maximum term exceeding ten years shall also be assigned to collegial Tribunals, without prejudice to the provision of Article 33-*ter,* paragraph 1. The provisions of Article 4 shall be observed for the determination of the sentence.

Article 33-*ter*

Assignments to the single-judge Tribunal

1. Crimes provided for in Article 73 of the Consolidated Text approved by Decree No 309 of the President of the Republic of 9 October 1990 shall be assigned to the single-judge Tribunal, unless the aggravating circumstances referred to in Article 80 of the aforementioned Consolidated Text are charged against the accused.
2. The decision shall be issued by the single-judge Tribunal also in the remaining cases not provided for in Article 33-*bis* or other legal provisions.

Article 33-*quater*

Effects of the joining of proceedings on the composition of the Tribunal

1. If some of the joined proceedings fall under the cognisance of the collegial Tribunal while others under that of the single-judge Tribunal, the provisions related to the proceedings before the former, to whom all joined proceedings are assigned, shall apply.

CHAPTER VI-*BIS*

DECISIONS ON THE COMPOSITION OF THE TRIBUNAL

Article 33-*quinquies*

Failure to comply with the provisions on the collegial or single-judge Tribunal

1. Failure to comply with either the provisions on the assignment of offences to the cognisance of the Tribunal as a bench or a single judge, or the related procedural provisions, shall be raised or contested, under penalty of expiry, prior to the conclusion of the preliminary hearing. If there is no preliminary hearing, the time limit provided for in Article 491, paragraph 1, shall apply. Within this time limit the objection rejected during the preliminary hearing shall be raised again.

Article 33-*sexies*

Failure raised in the preliminary hearing

1. If the Preliminary Hearing Judge holds that the offence must be tried by direct summons for trial, he shall deliver, in the cases provided for in Article 550, an order to forward the case file to the Public Prosecutor who will issue the decree for direct summons for trial under Article 552.

2. The provisions referred to in Articles 424, paragraphs 2 and 3, 553 and 554 shall apply.

Article 33-*septies*

Failure raised in the first-instance trial

1. During the first-instance trial taking place after the preliminary hearing, if the court holds that the offence falls within the cognisance of a Tribunal with a different composition, it shall forward the case file by order to the court with competence allowing the latter to decide on the alleged offence.

2. With the exception of the cases provided for in paragraph 1, if the single-judge Tribunal holds that the offence falls within the cognisance of the collegial Tribunal, it shall issue an order directing that the case file be forwarded to the Public Prosecutor.

3. The provision referred to in Article 420-*ter,* paragraph 4, shall apply.

Article 33-*octies*

Failure raised by appeal courts or the Court of Cassation

1. Appeal courts or the Court of Cassation shall issue a judgment annulling the decision and shall order that the case file be forwarded to the Public Prosecutor attached to the first-instance court, if it holds that there has been a failure to comply with the provisions on the assignment of the offences to the cognisance of the Tribunal as a bench or a single judge, provided that such failure is raised promptly and the objection is raised again in the arguments for appellate remedies.

2. However, if appeal courts hold that the offence falls within the cognisance of the single-judge Tribunal, they shall deliver their decision on the merits of the case.

Article 33-*nonies*

Validity of gathered evidence

1. Failure to comply with the provisions on the collegial or single composition of the Tribunal shall not affect the validity of the acts of the proceedings nor shall it lead to the exclusion of evidence already gathered.

Chapter VII

INCOMPATIBILITY, ABSTENTION AND RECUSAL OF THE JUDGE

Article 34

Incompatibility resulting from actions performed in the proceedings ([2])

1. The judge who delivered or contributed to the delivery of a judgment in an instance of the proceedings shall not perform his functions of judge in the other instances, nor shall he participate in the referral trial after the annulment of the judgment or in the revision trial.

2. The judge who either delivered the final decision of the preliminary hearing, ordered the immediate trial, issued the criminal decree of conviction or decided on appellate remedies against the judgment of no grounds to proceed shall not participate in the trial.

([2]) The Constitutional Court has extended the cases of incompatibility by the following judgments: 496/1990, 401/1991, 502/1991, 124/1992, 186/1992, 399/1992, 439/1993, 453/1994, 455/1994, 432/1995, 131/1996, 155/1996, 371/1996, 311/1997, 346/1997, 290/1998, 241/1999, 224/2001, 400/2008, 183/2013.

2-*bis*. The judge who performed, during the same proceedings, the functions of Preliminary Investigation Judge shall not issue a criminal decree of conviction, nor shall he sit at the preliminary hearing. Also in the cases not provided for in paragraph 2, the same judge shall not participate in the trial.

2-*ter*. The provisions of paragraph 2-*bis* shall not apply to the judge who, during the same proceedings, issued one of the following measures:

a) healthcare permits provided for in Article 11 of Law No 354 of 26 July 1975;

b) decisions regarding permits for interviews with visitors, for telephone correspondence and control on correspondence provided for in Articles 18 and 18-*ter* of Law No 354 of 26 July 1975;

c) decisions regarding the permits provided for in Article 30 of Law No 354 of 26 July 1975;

d) the decision regarding the granting of new time limits according to Article 175;

e) decisions declaring absconding under the provision of Article 296.

2-*quater*. The provisions of paragraph 2-*bis* shall not apply to the judge who sits at the special evidentiary hearing or issues one of the decisions provided for in Title VII of Book V.

3. Whoever performed the functions of Public Prosecutor, carried out criminal police actions, rendered service as lawyer, proxy, administrator of a party, witness, expert or technical consultant, or submitted a

report, complaint, petition or request, or issued or contributed to issuing the authorisation to proceed, shall not perform the functions of judge in the same proceedings.

Article 35

Incompatibility on account of kinship, relationship or marriage

1. Judges who are related to each other by marriage, kinship or relationship up to the second degree shall not perform their functions, including separate or different ones, in the same proceedings.

Article 36

Abstention

1. The judge must reserve judgment if:

a) he has interests in the proceedings or if one of the private parties or lawyers is a debtor or creditor towards him or his spouse or his children;

b) he is the guardian, administrator, representative or employer of one of the private parties or the lawyer, representative or administrator of one of the said parties is next of kin of either him or his spouse;

c) he advised or expressed his opinion on the subject of the proceedings outside the performance of his judicial functions;

d) there is a serious enmity between him or one of his next of kin and one of the private parties;

e) any of his next of kin or of his spouse is the victim or the injured person of the offence or is a private party;

f) any of his next of kin or of his spouse performs or performed the functions of Public Prosecutor;

g) he finds himself in one of the cases of incompatibility referred to in Articles 34 and 35, as well as in judicial system laws;

h) there are other serious reasons of advantage for the judge.

2. The reasons of abstention referred to in paragraph 1, letter *b),* second hypothesis, and letter *e),* or deriving from incompatibility due to marriage or relationship, shall be valid also after the annulment, divorce or cessation of the civil effects of the marriage.

3. The statement of abstention shall be submitted to the President of the Tribunal or of the Courts who decides by decree without any formal procedure.

4. The President of the Court of Appeal shall decide on the statement of abstention of the President of the Tribunal; the President of the Court of Cassation shall decide on the statement of abstention of the President of the Court of Appeal.

Article 37

Recusal

1. The judge may be recused by the parties:

a) in the cases provided for in Article 36, paragraph 1, letters *a)*, *b), d)*, *e)*, *f)* and *g)*;

b) if, while performing his functions and prior to the delivery of the judgment, he improperly expressed his own view on the criminal acts being prosecuted.

2. The recused judge shall neither deliver nor contribute to the delivery of any judgment until an order declaring his recusal inadmissible or rejecting it is issued.

Article 38

Time limits and procedure of the statement confirming recusal

1. During the preliminary hearing, the statement of recusal may be submitted prior to complete ascertainment of court appearance of the parties; during the trial, before expiry of the time limit provided for in Article 491, paragraph 1; in all other cases, it shall be submitted before the judge carries out the action.

2. If the cause for recusal arises or becomes known after expiry of the time limits provided for in paragraph 1, the statement may be submitted within three days. If the cause arises or becomes known during the hearing, the statement of recusal shall be submitted, in any case, before conclusion of the hearing.

3. The statement containing reference to the reasons and evidence shall be submitted in writing and handed, together with the relevant documentary evidence, to the Registry of the court with competence to decide on the issue. A copy of the statement shall be filed with the Registry of the recused judge.

4. The statement, if not filed personally by the person concerned, may be filed through a lawyer or a proxy. The reasons of the recusal shall be detailed in the letter of attorney, under penalty of inadmissibility.

Article 39

Concurrence of abstention and recusal

1. The statement of recusal shall be considered not submitted if the judge, also subsequently, declares his intention to reserve judgment and abstention is accepted.

Article 40

Competence to decide on recusal

1. The recusal of a judge attached to a Tribunal, a Court of Assizes or an Assize Court of Appeal shall be decided by the Court of Appeal; the recusal of a judge of a Court of Appeal shall be decided by one of its chambers other than the one to which the recused judge belongs.

2. The recusal of a judge of the Court of Cassation shall be decided by a chamber of the Court other than

the one to which the recused judge belongs.
3. The recusal of the judges called upon to decide on the recusal shall not be allowed.

Article 41

Decision on the statement of recusal

1. If the statement of recusal is submitted by a person who is not entitled to do so or does not comply with the time limits and methods provided for in Article 38 or if the arguments adduced are manifestly groundless, the court shall promptly declare it inadmissible by issuing an order which can be appealed to the Court of Cassation. The Court of Cassation shall decide in chambers under Article 611.
2. With the exception of cases wherein the statement of recusal is inadmissible, the court may direct, by order, that the judge temporarily suspend any activity related to the proceedings or confine himself to the performance of urgent actions.
3. The court shall decide on the merits of the recusal according to Article 127, after gathering, if necessary, the relevant information.
4. The order issued under the provision of the previous paragraphs shall be forwarded to the recused judge and the Public Prosecutor and served on the private parties.

Article 42

Decisions in case of acceptance of the statement of abstention or recusal

1. If the statement of abstention or recusal is accepted, the judge shall not carry out any action in the proceedings.
2. The decision accepting the statement of abstention or recusal shall state whether and in which part of the actions previously carried out by the abstained or recused judge retain their effectiveness.

Article 43

Substitution of the abstained or recused judge

1. The judge who reserves judgment or is recused shall be replaced by a different judge from the same office, who shall be appointed according to the laws of the judicial system.
2. If the substitution provided for in paragraph 1 is impossible, the Tribunal or the Courts shall transfer the proceedings to a court with equal competence on the subject matter identified under Article 11.

Article 44

Penalties in case of inadmissibility or rejection of the statement of recusal

1. By an order declaring the statement of recusal inadmissible or rejecting it, the private party who submitted such statement may be sentenced to pay an amount ranging from EUR 258 to EUR 1, 549 to the Treasury of Fines, without prejudice to any civil or criminal action.

CHAPTER VIII

TRANSFER FOR TRIAL

Article 45

Cases of transfer for trial

1. At any stage and instance of the proceedings on the merits of the case, after the initiation of criminal prosecution, if serious local situations, which may hinder the progress of the trial and may not be otherwise eliminated, compromise either the free determination of the persons involved in the proceedings or public security or safety, or raise reasonable reasons of suspicion, the Court of Cassation, upon reasoned request of either the Prosecutor General attached to the Court of Appeal or the Public Prosecutor attached to the proceeding court or the accused, shall transfer the trial to a different court, appointed under Article 11.

Article 46

Request for trial transfer

1. The request shall be filed, together with the related documents, with the Court Registry and shall be served within seven days on the other parties by the petitioner.

2. The request of the accused shall be signed by him personally or by one of his proxies.

3. The court shall immediately forward the request with the enclosed documents and any possible remark to the Court of Cassation.

4. Failure to comply with the procedure and time limits provided for in paragraphs 1 and 2 shall result in the inadmissibility of the request.

Article 47

Effects of the request

1. After the request for trial transfer is submitted, the court may decide by order to suspend the trial until an order declaring the request inadmissible or rejecting it is issued. The Court of Cassation can still decide, by order, to suspend the trial.

2. The court must suspend the trial prior to the conclusion and the debate. The decree for committal to trial and the judgment shall not be issued after the court is informed by the Court of Cassation of the transfer of the trial to the Joint Chambers or a chamber other than that specified in Article 610, paragraph 1. The court shall not order the suspension if the request is not based on new elements compared with those of a previous request which has already been rejected or declared inadmissible.

3. The suspension of the trial shall have effect until the order rejecting the request or declaring it inadmissible is issued. Such suspension does not prevent urgent actions from being carried out.
4. Article 159 of the Criminal Code shall apply in case of suspension of trial. If the request is submitted by the accused, the time limits referred to in Article 303, paragraph 1, shall be suspended. The limitation period and the time limits of the precautionary detention shall resume as of the day in which the Court of Cassation rejects the request or declares it inadmissible or, if it is accepted, as of the day in which the trial before the appointed court reaches the stage in which it was at the moment of suspension. The provisions of Article 304 shall be observed, provided they are compatible.

Article 48

Decision

1. The Court of Cassation shall deliver its decision in chambers, under the provision of Article 127, after gathering, if necessary, the relevant information.
2. If the President of the Court of Cassation raises a cause of inadmissibility of the request, he shall order that the provision of Article 610, paragraph 1, be followed.
3. After the request for trial transfer to the Joint Chambers or to a chamber other than the one specified in Article 610, paragraph 1, is issued, it shall be immediately forwarded to the proceeding court.
4. The order accepting the request shall be forwarded without delay to the proceeding and the appointed court. The former shall immediately forward the case file to the latter and direct that the order of the Court of Cassation be forwarded, in the form of an extract, to the Public Prosecutor and served on the private parties.
5. Without prejudice to the provision of Article 190-*bis,* the court appointed by the Court of Cassation shall proceed by renewing the actions performed prior to the decision which accepted the request for trial transfer, if requested by one of the parties and the actions can be repeated. During the trial before the said court, the parties shall exercise the same rights and powers that they would have exercised before the previously competent court.
6. If the Court rejects the request of the private parties or declares it inadmissible, the parties, by means of the same order, may be sentenced to pay an amount ranging from EUR 1, 000 to EUR 5, 000 to the Treasury of Fines. This amount may be increased up to its double, taking into account the cause of inadmissibility of the request.
6-*bis.* The amounts specified in paragraph 6 shall be adjusted every two years in line with the variation on the consumer price index for blue and white-collar households that occurred in the two preceding years. This adjustment shall be made by means of a decree of the Ministry for Justice, in agreement with the

Ministry for the Economy and Finance, and the variation shall be evaluated by the National Institute for Statistics.

Article 49

New request for trial transfer

1. Even if the request is accepted, the Public Prosecutor or the accused may request a new decision to revoke the previous one or appoint a different court.
2. The order rejecting the request for trial transfer or declaring it inadmissible for being manifestly ill-founded does not prevent the request from being submitted again, provided that it is based on new elements.
3. The request for trial transfer that is not based on new elements compared to those already evaluated in an order rejecting a request submitted by a different accused person in the same proceedings or in a separate one or declaring it inadmissible shall also be inadmissible for being manifestly ill-founded.
4. The request declared inadmissible for arguments other than its manifestly ill-founded nature may still be submitted again.

TITLE II

PUBLIC PROSECUTOR

Article 50

Criminal prosecution

1. The Public Prosecutor shall proceed to criminal prosecution when the case must not be discontinued.
2. Offences shall be prosecuted of the Public Prosecutor's own motion if a complaint, request, petition or authorisation to proceed is not required.
3. Criminal prosecution may be suspended or interrupted only in the cases expressly provided for by law.

Article 51

Duties of the Public Prosecutor and the District Public Prosecutor of the Republic

1. The functions of the Public Prosecutor shall be performed by:

a) Prosecutors of the Republic attached to the Tribunal in preliminary investigations and first-instance proceedings;

b) Prosecutors General attached to the Court of Appeal or the Court of Cassation in remedy trials.

2. In cases of avocation, the functions provided for in paragraph 1, letter *a),* shall be carried out by the Prosecutor General attached to the Court of Appeal. In the cases of avocation provided for in Article 371-*bis,* such functions shall be carried out by the National Anti-Mafia and Counter-*ter*rorism Directorate.

3. The functions provided for in paragraph 1 shall be assigned to the Public Prosecutor attached to the court with competence under Chapter II of Title I.

3 -*bis*. The functions referred to in paragraph 1, letter *a),* shall be assigned to the Public Prosecutor attached to the Tribunal of the district chief town in which the court with competence sits in the following cases: proceedings for completed or attempted crimes referred to in Articles 416, paragraphs 6 and 7, 416, provided that the aim was to commit the crimes referred to in Articles 473 and 474, 600, 601, 602, 416-*bis,* 416-*ter* and 630 of the Criminal Code; proceedings for crimes committed either in the ways provided for in Article 416-*bis* or with the aim of abetting the activity of the associations referred to in the same Article; proceedings for crimes provided for in Article 74 of the Consolidated Text approved by Decree of the President of the Republic No 309 of 9 October 1990, in Article 291 -*quater* of the Consolidated Text approved by Decree of the President of the Republic No 43 of 23 January 1973, and in Article 260 of Legislative Decree No 152 of 3 April 2006.

3-*ter*. In the cases provided for in paragraphs 3-*bis,* 3 -*quater* and 3 -*quinquies,* if requested by the District Public Prosecutor, the Prosecutor General attached to the Court of Appeal may, on justified grounds, order that the functions of Public Prosecutor for the trial be carried out by a Public Prosecutor appointed by the Public Prosecutor of the Republic attached to the court with competence.

3 -*quater*. In cases of proceedings for completed or attempted terrorist crimes, the functions referred to in paragraph 1, letter *a),* shall be assigned to the Public Prosecutor attached to the Tribunal of the district chief town in which the court with competence sits.

3 -*quinquies*. The functions referred to in paragraph 1, letter *a),* of this Article shall be assigned to the Public Prosecutor attached to the Tribunal of the district chief town in which the court with competence sits in cases of proceedings for the completed or attempted crimes referred to in Articles 414-*bis*, 600-*bis,* 600-*ter,* 600-*quater,* 600-*quater.* 1, 600-*quinquies,* 609-*undecies,* 615-*ter,* 615-*quater,* 615-*quinquies,* 617-*bis,* 617-*ter,* 617-*quater,* 611 -*quinquies,* 617-*sexies,* 635-*bis,* 635-*ter,* 635-*quater,* 640-*ter* and 640-*quinquies* of the Criminal Code.

Article 52

Abstention

1. The Public Prosecutor shall be entitled to abstain when there are serious reasons of advantage.

2. In their respective functions, both the Public Prosecutor of the Republic attached to the Tribunal and the Prosecutor General shall decide on the statement of abstention.

3. The Prosecutor General attached to the Court of Appeal and the Prosecutor General attached to the Court of Cassation shall decide, respectively, on the statement of abstention of the Public Prosecutor of

the Republic attached to the Tribunal and of the Prosecutor General attached to the Court of Appeal. [1]
4. By means of a decision accepting the statement of abstention, the abstained Public Prosecutor shall be substituted by another Public Prosecutor of the same Office. Nevertheless, if the statement of abstention of the Public Prosecutor of the Republic attached to the Tribunal and of the Prosecutor General attached to the Court of Appeal is accepted, it is possible to appoint, by way of substitution, another Public Prosecutor belonging to an equally competent Office according to Article 11.

Article 53

Autonomy of the Public Prosecutor hearings. Cases of substitution

1. During hearings, the Public Prosecutor shall carry out his functions with complete autonomy.
2. The chief of the Office shall decide on the substitution of the Public Prosecutor in cases of serious impediment, important needs of service and in those cases provided for in Article 36, paragraph 1, letters *a), b), d)* and *e).* In all the other cases, the Public Prosecutor shall be replaced only with his own consent.
3. When the chief of the Office does not issue a decision on the substitution of the Public Prosecutor in the cases provided for in Article 36, paragraph 1, letters *a), b), d)* and *e),* the Prosecutor General attached to the Court of Appeal shall appoint for the hearing a Public Prosecutor belonging to his office.

Article 54

Negative contrasts among Public Prosecutors

1. If, during preliminary investigations, the Public Prosecutor holds that the offence falls within the competence of a court other than the one for which he performs his functions, he shall immediately forward the case file to the Public Prosecutor attached to the court with competence.
2. If the Public Prosecutor who has received the case file holds that it is the forwarding Office that has the competence, he shall inform the Prosecutor General attached to the Court of Appeal or, if he belongs to a different district, the Prosecutor General attached to the Court of Cassation. The Prosecutor General shall examine the documents, determine which Public Prosecutor is competent and inform the offices involved.
3. The preliminary investigation evidence gathered prior to the forwarding or appointment may be used in the cases and under the conditions provided for by law.
3-*bis.* The provisions of paragraphs 1 and 2 shall apply in any other case of negative contrast among Public Prosecutors.

Article 54-*bis*

Positive contrasts among Public Prosecutors

1. If the Public Prosecutor is informed that also a different Office is conducting preliminary

investigations against the same person and for the same alleged offence, he shall immediately inform the Public Prosecutor of that Office and request the forwarding of the case file under Article 54, paragraph 1.
2. If the Public Prosecutor who has received the request decides not to accept it, he shall inform the Prosecutor General attached to the Court of Appeal or, if he belongs to a different district, the Prosecutor General attached to the Court of Cassation. After gathering the relevant information, the Prosecutor General shall issue a reasoned decree and shall establish, according to the rules on the competence of the court, which Office of the Public Prosecutor must proceed and shall inform the Offices involved. The case file of the other Office shall be immediately forwarded to the appointed Public Prosecutor.
3. The contrast shall be considered solved if, prior to the appointment provided for in paragraph 2, one of the Offices of the Public Prosecutor forwards the case file under Article 54, paragraph 1.
4. The preliminary investigation evidence gathered by different Offices of the Public Prosecutor shall in any case be usable in the cases and under the conditions provided for by law.
5. The provisions of paragraphs 1, 2 and 3 shall apply in any other case of positive contrast among Public Prosecutors.

Article 54-*ter*

Contrasts among Public Prosecutors on organised crime

1. If the contrast provided for in Articles 54 and 54-*bis* involves one of the offences referred to in Article 51, paragraphs 3 -*bis* and 3-*quater,* and if the Prosecutor General attached to the Court of Cassation is in charge of taking the decision, the latter shall decide after hearing the National Anti-Mafia and Counter-*ter*rorism Prosecutor. If the decision is to be taken by the Prosecutor General attached to the Court of Appeal, he shall inform the National Anti-Mafia and Counter-*ter*rorism Prosecutor of the adopted decisions.

Article 54-*quater*

Request for forwarding the case file to a different Public Prosecutor

1. The suspect who is informed of the proceedings under Article 335 or 369 and the victim who is informed of the proceedings under Article 369, as well as their lawyers, may request that the case file be forwarded to the Public Prosecutor attached to the court with competence, if they believe that the case falls within the competence of a court other than the one for which the Public Prosecutor performs his functions. The reasons for the indication of a different court with competence shall be specified, under penalty of inadmissibility.
2. The request shall be filed with the Public Prosecutors Clerk's Office who shall appoint the court with competence.

3. The Public Prosecutor shall decide within ten days of the submission of the request and, should he accept it, the case file shall be forwarded to the Public Prosecutor attached to the court with competence and the petitioner shall be informed. Should this procedure not be followed, the petitioner may, within the following ten days, request the Prosecutor General attached to the Court of Appeal or the Prosecutor General of the Court of Cassation if the court deemed competent belongs to a different district, to establish which Public Prosecutor must proceed. After gathering the relevant information, the Prosecutor General shall determine the aforementioned Public Prosecutor within twenty days of the filing of the request, by reasoned decree, and shall inform the parties and the Public Prosecutor involved. Should the request involve one of the offences referred to in Article 51, paragraphs 3-*bis* and 3-*quater,* the Prosecutor General shall follow the provisions of Article 54-*ter*.

4. The request shall not be filed again, under penalty of inadmissibility, unless it is based on new and different reasons.

5. The preliminary investigation actions performed prior to the forwarding of the case file or the notification of the decree referred to in paragraph 3 shall be used in the cases and under the conditions provided for by law.

TITLE III

CRIMINAL POLICE

Article 55

Functions of the criminal police

1. The criminal police shall, even on its own initiative, receive *notitiae criminis*, prevent offences from producing further consequences, search for offenders, take any measures necessary to ensure sources of evidence and collect any other material which may be needed for the application of criminal law.

2. The criminal police shall carry out any investigation and activity ordered or delegated by the judicial authority.

3. The functions referred to in paragraph 1 and 2 shall be carried out by criminal police officials and officers.

Article 56

Criminal police units and departments

1. Criminal police functions shall be carried out under the supervision and direction of the judicial authority by:

a) criminal police units as established by law;

b) criminal police departments established at each Office of the Public Prosecutor of the Republic and

made up of personnel from criminal police units;

c) criminal police officials and officers belonging to other bodies required by law to carry out investigations after receiving a *notitia criminis.*

Article 57

Criminal police officials and officers

1. Without prejudice to the provisions of special laws, criminal police officials are:

a) managers, commissioners, inspectors, superintendents, and other persons belonging to the State police whom are recognised such status by the regulations on the administration of public safety;

b) higher-ranking and lower-ranking officials and non-commissioned officials of the Italian police forces of the *Carabinieri, Guardia di Finanza, Corpo Forestale dello Stato* and prison guards as well as other persons belonging to the aforementioned police forces who are recognised such status by the regulations of the respective administrations;

c) the mayors of the municipalities where there is no State police office or command of the *Carabinieri* or *Guardia di Finanza.*

2. Police officers are:

a) the personnel of the State police whom are recognised such statues by the regulations on the administration of public safety;

b) police officers of the *Carabinieri, Guardia di Finanza, Corpo Forestale dello Stato,* prison guards and, within the territory of the institution of affiliation, the province or municipality guards when on duty.

3. Persons to whom laws and regulations assign the functions set in Article 55 are also criminal police officials and officers within the limits of the unit to which they are assigned and according to their respective duties.

Article 58

Availability of the criminal police

1. Every Public Prosecutor of the Republic has a department at his disposal; the Prosecutor General attached to the Court of Appeal has all the departments established in its district at his disposal.

2. Criminal police activities for the courts of the district shall be carried out by the department established in the corresponding Office of the Public Prosecutor of the Republic.

3. The judicial authority avails itself directly of the personnel of the departments under paragraphs 1 and 2 and may also avail itself of any unit or other criminal police body.

Article 59

Subordination of the criminal police

1. Criminal police departments are directed by the Public Prosecutors running the offices in which they are established.
2. The official responsible for the criminal police unit reports to the Public Prosecutor of the Republic attached to the Tribunal where his criminal police unit is based.
3. Criminal police officials and officers must carry out the tasks assigned to them and related to the functions referred to in Article 55, paragraph 1. Department members shall not be detached from criminal police activities, unless this is required by the Public Prosecutor they report to according to the provisions of paragraph 1.

TITLE IV

ACCUSED PERSON

Article 60

Becoming an accused person

1. A suspect becomes an accused person when he is charged with an offence in a request for committal to trial, immediate trial, criminal decree of conviction, application of punishment under Article 447, paragraph 1, in the decree of direct summons for trial and in direct trial.
2. The person maintains the status of accused person at any subsequent stage and instance of the proceedings, until the judgment of no grounds to proceed is no longer subject to appellate remedies, the judgment of dismissal or conviction becomes final or the criminal decree of conviction becomes enforceable.
3. The person resumes the status of accused person in case of revocation of the judgment of no grounds to proceed and if a revision of the trial is ordered.

Article 61

Extension of the rights and safeguards of the accused person

1. The rights and safeguards of the accused person extend to the suspected person.
2. Any other provision concerning the accused extends to the suspect, unless otherwise provided.

Article 62

Prohibition on testimony on the accused person's statements

1. Any statement made during the proceedings by the accused or the suspect shall not constitute the subject of testimony.

2. The prohibition provided for in paragraph 1 extends to the statements made by the accused while receiving healthcare treatment to reduce his risk of committing sexual crimes against minors. These statements may in no case be admitted as evidence.

Article 63

Incriminating statements

1. If a person who is not accused or suspected makes statements before the judicial authority or the criminal police that raise suspicion of guilt against him, the proceeding authority shall interrupt the examination, warn him that, following such statements, investigations may be carried out on him, and advise him to appoint a lawyer. Such statements shall not be used against the person who has made them.
2. If the person should have been heard as an accused or a suspect from the beginning, his statements shall not be used.

Article 64

General rules for questioning

1. The suspected person, even if under precautionary detention or detained for any other reason, participates freely in the questioning, without prejudice to the measures necessary to prevent the risk of flight or violence.
2. Methods or techniques which can influence the freedom of self-determination or alter the ability to recall and evaluate the facts shall not be used, even with the consent of the person being questioned.
3. Prior to the questioning, the person must be warned that:

a) his statements can always be used against him;

b) without prejudice to the provisions of Article 66, paragraph 1, he has the right to silence, but the proceedings will in any case continue their course;

c) if he makes any statement on facts concerning the liability of others, he will become a witness in relation to those facts, except for the incompatibilities provided for in Article 197 and the safeguards under Article 197-*bis.*

3-*bis.* If the provisions of paragraph 3, letters *a)* and *b),* are not fulfilled, the statements made by the person questioned shall be excluded. If the person questioned is not warned according to paragraph 3, letter *c),* the statements that he may have made on the facts regarding the liability of others shall not be used against them, and he shall not become a witness in relation to those specific facts.

Article 65

Questioning on the merits of the case

1. The judicial authority shall clearly and precisely acquaint the suspected person with the offence he is

alleged to have committed, make the elements of evidence existing against him known to him and, unless this obstructs investigations, inform him of the sources of evidence.

2. The judicial authority shall then invite the suspected person to explain what he deems useful for his defence and ask him direct questions.

3. If the person refuses to answer, this shall be reported in the record. The record shall also mention, if applicable, any physical characteristics and possible distinguishing marks of the said person.

Article 66

Verification of the personal identity of the accused person

1. When the accused appears for the first time during the proceedings, the judicial authority shall request him to provide his personal details and any other information that may help identify him, warning him about the consequences he may face if he refuses to provide his personal data or declares a false identity.

2. The impossibility of establishing the exact personal details of the accused does not prevent the proceeding authority from carrying out any action if the physical identity of the person is certain.

3. Wrong general personal details attributed to the accused person shall be rectified as provided for in Article 130.

Article 66-*bis*

Verification of the proceedings against the accused person

1. At any stage and instance of the proceedings, if the suspect or the accused has been reported, even under a different name, to the judicial authority as the perpetrator of an offence committed prior to or after the offence being prosecuted, the competent judicial authority shall be informed for the purposes of the application of criminal law.

Article 67

Uncertainty as to the age of the accused person

1. At any stage and instance of the proceedings, if there are reasons to believe that the accused is under age, the judicial authority shall forward the case file to the Public Prosecutor of the Republic attached to the Juvenile Court.

Article 68

Mistaken physical identity of the accused person

1. In case of mistaken identity, at any stage and instance of the proceedings after the initiation of criminal prosecution, the court, after hearing the Public Prosecutor and the lawyer, shall deliver a judgment under Article 129.

Article 69

Death of the accused person

1. If the accused person dies, at any stage and instance of the proceedings after the initiation of criminal prosecution, the court, after hearing the Public Prosecutor and the lawyer, shall deliver a judgment under Article 129.

2. The judgment does not prevent prosecution for the same offence and against the same person if it is subsequently ascertained that the accused was mistakenly declared dead.

Article 70

Ascertainment of accused person's capacity

1. If a judgment of dismissal or no grounds to proceed must not be issued and there are reasons to believe that the accused person, due to mental disorder (...), is unable to participate consciously in the trial, the court may order an expert report, also of its own motion.

2. During the time necessary for producing an expert report, the court, upon request of the lawyer, shall gather the evidence that may lead to the dismissal of the accused person and, should the delay pose a danger, any other evidence requested by the parties.

3. If the need for taking action emerges during preliminary investigations, the court shall require an expert report upon request of a party as provided for the special evidentiary hearing. In the meantime, the time limits for preliminary investigations shall be suspended and the Public Prosecutor shall carry out only those actions that do not require the conscious participation of the suspect. Should the delay pose a danger, evidence may be gathered in the cases provided for in Article 392.

Article 71

Suspension of proceedings due to incapacity of the accused person

1. If, following the ascertainment provided for in Article 70, it appears that the mental state of the accused is such as to prevent his conscious participation in the proceedings and that his state is reversible, the court shall decide, by order, that the proceedings be suspended, provided it is not necessary to issue a judgment of dismissal or no grounds to proceed.

2. The court shall appoint, by an order of suspension, a special administrator for the accused, preferably designating a possible legal representative.

3. The Public Prosecutor, the accused and his lawyer as well as the special administrator appointed for the accused may appeal against the order to the Court of Cassation.

4. Suspension does not prevent the court from gathering evidence under the conditions and within the limits provided for in Article 70, paragraph 2. The court shall gather evidence also at the request of the

special administrator who, in any case, is entitled to be present at the actions regarding the accused person as well as the actions which the latter is entitled to be present at.

5. If suspension is ordered during preliminary investigations, the provisions of Article 70, paragraph 3, shall apply.

6. In case of suspension, the provision of Article 75, paragraph 3, shall not apply.

Article 72

Revocation of order of suspension

1. At the end of the sixth month after the issuing of the order to suspend proceedings, or even earlier if necessary, the court shall decide that the mental state of the accused be further ascertained by an expert. The court shall decide likewise at the end of each successive six-month period, in case the proceedings do not resume.

2. Suspension shall be revoked by order as soon as it appears that the mental state of the accused allows his conscious participation in the proceedings or that a judgment of dismissal or no grounds to proceed is to be the delivered for the accused.

Article 72-*bis*

Termination of proceedings due to irreversible incapacity of the accused

1. If, following the ascertainment provided for in Article 70, it appears that the mental state of the accused is such as to prevent his conscious participation in the proceedings and that his state is irreversible, the court shall revoke any order of suspension of proceedings and shall deliver a judgment of either no grounds to proceed or non prosecution, unless a security measure other than confiscation may be applied.

Article 73

Precautionary measures

1. Whenever the mental state of the accused appears to be such as to require psychiatric treatment, the court shall inform, by the fastest available means, the authority competent for the adoption of the measures set by the laws on the medical treatment of mental illnesses.

2. Should the delay pose a danger, the court shall also order of its own motion the temporary hospitalisation of the accused in a suitable facility of the hospital psychiatric service. The order shall in any case cease to be effective when the decision of the authority referred to in paragraph 1 is enforced.

1. If the precautionary detention of the accused person has been or is to be ordered, the court shall decide that the measure be enforced as provided for in Article 286.

2. During preliminary investigations, the Public Prosecutor shall decide that the information provided for

in paragraph 1 be supplied and, if the conditions are met, he shall request the court to order the temporary hospitalisation provided for in paragraph 2.

TITLE V

CIVIL PARTY, PERSON WITH CIVIL LIABILITY FOR DAMAGES AND PERSON WITH CIVIL LIABILITY FOR FINANCIAL PENALTIES

Article 74

Entitlement to civil action

1. Either the person injured by the offence or his heirs may bring a civil action before the criminal court for restitution and compensation for the damage referred to in Article 185 of the Criminal Code against the accused and the person with civil liability for damages.

Article 75

Relations between civil action and criminal prosecution

1. A civil action brought before the civil court may be transferred to criminal proceedings if, in the civil court, a judgment on the merits of the case has not been issued, even if the judgment has not become final. The exercise of this right shall entail the waiver of the acts of the civil trial; the criminal court shall also decide on the costs of civil proceedings.
2. The civil action shall be carried out in civil court if it is not transferred to criminal proceedings or if it was initiated when it was no longer possible to join the criminal proceedings as a civil party.
3. If the action is brought against the accused in a civil court after joining the criminal proceedings as a civil party or after a judgment of first instance is issued, civil proceedings shall be suspended until the delivery of a final criminal judgment, without prejudice to the exceptions provided for by law.

Article 76

Joining criminal proceedings as a civil party

1. Civil action is brought in criminal proceedings, also through a proxy, by joining the proceedings as a civil party.
2. The joining of proceedings as a civil party takes effect at any stage and instance of the proceedings after the initiation of criminal prosecution.

Article 77

Procedural capacity of the civil party

1. Persons who are not entitled to the free exercise of their rights shall not join the criminal proceedings as civil parties unless they are represented, authorised or assisted as prescribed for bringing a civil action.

2. If the person representing or assisting the civil party is not available and there are reasons of urgency or there is a conflict of interests between the injured person and the person representing him, the Public Prosecutor may require the court to appoint a special administrator.
The appointment may also be requested by the person who is to be represented or assisted or by his next of kin and, in case of conflict of interest, by his representative.
3. After gathering the relevant information and, if possible, hearing the persons concerned, the court shall issue a decree. The decree shall be forwarded to the Public Prosecutor who, if applicable, urges the issuing of decisions to provide normal representation or assistance to the incapable person.
4. In case of absolute urgency, civil action on behalf of the injured person, who is incapable due to mental illness or because he is under age, may be brought by the Public Prosecutor until the person entitled to represent or assist the civil party or the special administrator is appointed in line with the provisions of the aforementioned paragraphs.

Article 78

Formality for joining proceedings as a civil party

1. The statement for joining the proceedings as a civil party shall be filed with the Registry of the proceeding court or submitted during the hearing and must contain, under penalty of inadmissibility, the following:
a) the personal details of the individual or the name of the association or organisation who joins the proceedings as a civil party and the personal details of his legal representative;
b) the personal details of the accused person against whom the civil action is brought or the other personal indications that may be used to identify him;
c) the first and last name of the lawyer and reference to the letter of attorney;
d) the list of reasons justifying the request;
e) the signature of the lawyer.
2. If the statement is not submitted during the hearing, it shall be served by the civil party on the other parties and shall become effective for each of them as of the day of service.
3. If the power of attorney is not specified at the bottom or in the margins of the statement for joining the proceedings as a civil party and it is granted following the other procedures provided for in Article 100, paragraphs 1 and 2, it shall be filed with the Court Registry or submitted during the hearing along with the statement for joining the proceedings as a civil party.

Article 79

Time limit for joining proceedings as a civil party

1. The injured person may join the proceedings as a civil party for the preliminary hearing or afterwards, until the required actions provided for in Article 484 are carried out.

2. The time limit provided for in paragraph 1 is set under penalty of expiry.

3. If the injured person joins the proceedings as a civil party after the expiry of the time limit provided for in Article 468, paragraph 1, the civil party shall not avail himself of the right to submit lists of witnesses, experts or technical consultants.

Article 80

Request for exclusion of the civil party

1. The Public Prosecutor, the accused and the person with civil liability for damages may submit a reasoned request for the exclusion of the civil party.

2. If the injured person joins the proceedings as a civil party during the preliminary hearing, the request shall be submitted, under penalty of expiry, no later than the moment when the regular appearance of the parties before the court in the preliminary hearing or during the trial is verified.

3. If the injured person joins the proceedings as a civil party during the preliminary or introductory actions of the trial, the request shall be submitted orally under Article 491, paragraph 1.

4. The court shall decide on the request by order and without delay.

5. The exclusion of the civil party ordered during the preliminary hearing shall not prevent the injured person from joining the proceedings later until all the required actions provided for in Article 484 are carried out.

Article 81

Exclusion of the civil party of the court's own motion

1. In the stages of the proceedings prior to the opening of the first-instance trial, the court that ascertains that the injured person does not meet the requirements to join the proceedings as a civil party shall decide of its own motion on the person's exclusion, by issuing an order.

2. The court shall decide on the exclusion of the civil party according to paragraph 1 also if the request for exclusion is rejected during the preliminary hearing.

Article 82

Revocation of the joining of proceedings as a civil party

1. The joining of proceedings as a civil party may be revoked at any stage and instance of the proceedings

by either a statement provided personally by the party or one of his proxies during a hearing, or through a written document to be filed with the Court Registry and served on the other parties.
2. The joining of proceedings as a civil party is considered to be revoked if the civil party does not submit the conclusions as provided for in Article 523 or brings the action before the civil court.
3. When the joining of proceedings as a civil party is revoked according to paragraphs 1 and 2, the criminal court shall not decide on the costs and damages caused by the intervention of the civil party to the accused and the person with civil liability for damages. Any action thereon may be brought before the civil court.
4. Revocation shall not prevent action from being successively brought before a civil court.

Article 83

Summons of the person with civil liability for damages

1. The person with civil liability for damages caused by the accused may be summoned for criminal proceedings after the initiation of criminal prosecution upon request of the civil party and, in the case provided for in Article 77, paragraph 4, upon request of the Public Prosecutor. The accused may be summoned as the person with civil liability for damages caused by the co-accused persons in case of his dismissal or delivery of a judgment of no grounds to proceed.
2. The request is to be submitted no later than the start of the trial.
3. The proceeding court shall decide on the summons by decree. The decree shall contain the following:
a) the personal data or the name of the civil party, with the indication of the lawyer and the personal data of the person with civil liability for damages, if he is an individual, or the name of the association or organisation called upon to answer, as well as the personal data of his or its legal representative;
b) the list of the claims made against the person with civil liability for damages;
c) the invitation to join the proceedings in the ways provided for in Article 84;
d) the date and the signatures of the judge and his assistant.
4. A copy of the decree shall be served by the civil party on the person with civil liability for damages, the Public Prosecutor and the accused. In the case envisaged by Article 77, paragraph 4, the Public Prosecutor shall serve a copy of the decree on the person with civil liability for damages and the accused. The original document, along with the service report, shall be filed with the Registry of the proceeding court.
5. The summons of the person with civil liability for damages shall be null if, by virtue of omission or erroneous specification of any essential element, the person with civil liability for damages is not enabled to exercise his rights during the preliminary hearing or the trial. In case of nullity of the service the

summons shall be null.
6. The summons of the person with civil liability for damages shall cease to be effective if the joining of proceedings as a civil party is revoked or the exclusion of the civil party is ordered.

Article 84

Joining proceedings as a person with civil liability for damages

1. A person who is summoned as the person with civil liability for damages may join the proceedings at any stage and instance of the proceedings after the initiation of criminal prosecution, also through a proxy, by either filing a statement with the Registry of the proceeding court or submitting it during the hearing.
2. The statement must contain, under penalty of inadmissibility, the following:
a) the personal details of the individual or the name of the association or organisation joining the proceedings and the personal data of his or its legal representative;
b) the first and last name of the lawyer and reference to the letter of attorney;
c) the signature of the lawyer.
3. The letter of attorney issued according to Article 100, paragraph 1, shall be filed with the Court Registry or submitted during the hearing along with the statement for joining the proceedings as the person with civil liability for damages.
4. The joining of proceedings takes effect at any stage and instance of the proceedings.

Article 85

Voluntary intervention of the person with civil liability for damages

1. If a civil party joins the proceedings or the Public Prosecutor brings civil action under Article 77, paragraph 4, the person with civil liability for damages may intervene voluntarily in the proceedings, also through a proxy, during the preliminary hearing and, afterwards, until all the required actions provided for in Article 484 are carried out, by submitting a written statement under Article 84, paragraphs 1 and 2.
2. The time limit provided for in paragraph 1 is set under penalty of expiry. If the person with civil liability for damages intervenes after the expiry of the time limit provided for in Article 468, paragraph 1, he may not avail himself of the right to submit lists of witnesses, experts or technical consultants.
3. If the statement is not submitted during the hearing, it shall be served by the person with civil liability for damages on the other parties and take effect for each of them as of the day of service.
4. The intervention of the person with civil liability for damages shall cease to be effective if the joining of proceedings as a civil party is revoked or the exclusion of the civil party is ordered.

Article 86

Request for exclusion of the person with civil liability for damages

1. The request for the exclusion of the person with civil liability for damages may be submitted by the accused as well as by the civil party and the Public Prosecutor who have not required the summons of the person with civil liability for damages.

2. The request may be submitted also by the person with civil liability for damages who has not intervened voluntarily, even when the elements of evidence collected prior to the summons may impair his defence in relation to the provisions of Articles 651 and 654.

3. The request must be reasoned and shall be submitted, under penalty of expiry, no later than the moment when the regular appearance of the parties before the court in the preliminary hearing or during the trial is verified. The court shall decide by order without delay.

Article 87

Exclusion by the court of the person with civil liability for damages

1. In the stages of the proceedings prior to the opening of the first-instance trial, the court that ascertains that the requirements for the summons or intervention of the person with civil liability for damages are unmet, shall decide of its own motion on the persons exclusion, by issuing an order.

2. The court shall decide on the exclusion of the person with civil liability for damages according to paragraph 1 also if the request for exclusion is rejected during the preliminary hearing.

3. The exclusion shall be ordered without delay, also of the court's own motion, if the court accepts the request for summary trial.

Article 88

Effects of admission or exclusion of the civil party or the person with civil liability for damages

1. The admission of the civil party or the person with civil liability for damages shall not prevent subsequent decisions on the right to restitution and compensation of damages.

1. The exclusion of the civil party or the person with civil liability for damages shall not prevent the pursuit of an action in civil court for restitution and compensation of damages. However, if the person with civil liability for damages is excluded upon request of the civil party, the latter shall not bring the action before the civil court for the same act.

2. In case of exclusion of the civil party, the provisions of Article 75, paragraph 3, shall not apply.

Article 89

Summons of the person with civil liability for financial penalties

1. The person with civil liability for financial penalties shall be summoned for the preliminary hearing or trial upon request of the Public Prosecutor or the accused.
2. The provisions concerning the summons and the joining of proceedings as a person with civil liability for damages shall be observed, provided they are applicable. The provision of Article 87, paragraph 3, shall not apply.

TITLE VI

VICTIM

Article 90

Rights and powers of the victim

1. At any stage and instance of the proceedings, the victim may, in addition to exercising the rights expressly granted to him by the law, submit briefs and, except for trials before the Court of Cassation, require the inclusion of elements of evidence.
2. Child victims and victims who are declared totally or partially disabled by reason of mental illness shall exercise the rights granted to them through the subjects referred to in Articles 120 and 121 of the Criminal Code.
2-*bis*. In the event of uncertainty as to the victim's minor age, the court shall order, also of its own motion, an expert report. If, even after the expert report, such uncertainty remains, the victim's minor age is presumed so as to apply procedural provisions.
3. Should the victim die as a consequence of the offence, the rights provided for by law shall be exercised by his next of kin or by a person with whom the victim lived permanently or had a personal relationship.

Article 90-*bis*

Information to the victim

1. Upon the first contact with the proceeding authority, the victim shall be informed of the following in a language he understands:
a) the procedures for submitting a report or a complaint, the role he acquires during investigations and the trial, his right to be informed of the trial date and venue and of the offence he is accused of and, if he joined the proceedings as a civil party, the right to have the judgment served, even by extract;
b) the right to be informed of the proceedings and of the recording of any *notitia criminis* as provided for in Article 335, paragraphs 1, 2 and 3-*ter;*

c) the right to be informed of the request to discontinue proceedings;

d) the right to be assisted by a lawyer and to access legal aid at the expense of the State;

e) the methods for exercising the right to an interpreter and to the translation of the documents regarding the proceedings;

f) possible protection measures which may be ordered in his favour;

g) the rights he is lawfully entitled to in case he resides in a Member State of the European Union other than the State in which the offence was committed;

h) the procedures for raising any violation of his own rights;

i) the authorities to apply to for obtaining information on the proceedings;

l) the procedures for obtaining reimbursement of expenses related to his participation in the criminal proceedings;

m) the possibility to claim compensation for damages caused by the offence;

n) the possibility for the proceedings to be terminated, where possible, by withdrawal of complaint as provided for in Article 152 of the Criminal Code or by means of mediation;

o) the rights he is entitled to in proceedings where the accused applies for the suspension of the trial pending probation or in proceedings where a reason for exemption from punishment exists due to the triviality of the offence;

p) the healthcare facilities available on the territory, foster homes, centres for women who are victims of violence and shelter homes.

Article 90-*ter*

Notification of any escape and release

1. Without prejudice to Article 299, the victim in proceedings for violent crimes against the person shall be immediately notified by the criminal police of any decision taken to release the suspect or accused and of the termination of detention as a security measure. Similarly, the victim shall be immediately informed in the event of escape of either the convicted person or of the accused held in precautionary detention. The victim shall also be notified if the confined person voluntarily avoids detention as a security measure, unless there is a real risk of injury for the offender, also in the case provided for in Article 299.

Article 90-*quater*

Victims with specific protection needs

1. For the purpose of applying the provisions of this Code, the victim's needs for specific protection shall be presumed not only on the basis of his age and physical or psychological impairment, but also in relation to the type of offence, and the circumstances and particulars of the case under prosecution. The

victim’s needs for specific protection shall be assessed by taking into account whether the offence was committed with either violence or racial hatred, whether the offence qualifies as organised crime or national or international terrorism or trafficking in human beings, whether it was committed for the purposes of discrimination, and whether the victim depends on the offender either emotionally, psychologically or economically.

Article 91

Rights and powers of organisations and associations representing the interests affected by the offence

1. The non-profit organisations and associations which, prior to the commission of the criminal act, were given, by force of law, guardianship status over the interests affected by the offence, may exercise, at any stage and instance of the proceedings, the rights granted to victims.

Article 92

Consent of the victim

1. The organisations and associations representing the interests affected by the offence may exercise their rights and powers if the victim gives his consent.
2. The victim’s consent must result from a public document or an authenticated private document and shall not be provided to more than one organisation or association. Consent given to several organisations or associations shall have no effect.
3. Consent may be revoked at any moment according to paragraph 2.
4. The victim who revokes his consent shall not give it subsequently to either the same or a different organisation or association.

Article 93

Intervention of organisations or associations

1. To exercise the rights and powers provided for in Article 91, the organisation or association shall submit to the proceeding authority a document of intervention containing, under penalty of inadmissibility, the following:

a) the name of the organisation or association, the address of its headquarters, the documents conferring guardianship over the interests affected by the offence, and the personal data of the legal representative;
b) reference to the proceedings;
c) the first and last name of the lawyer and reference to the letter of attorney;
d) a summary statement of the reasons justifying the intervention;
e) the signature of the lawyer.

2. Along with the document of intervention, it is also necessary to submit the victim’s statement of

consent and the letter of attorney to the lawyer if the attorney status was conferred as provided for in Article 100, paragraph 1.

3. If the document of intervention is not submitted during the hearing, it must be served on the parties and it becomes effective as of the day of the latest service.

4. The intervention takes effect at any stage and instance of the proceedings.

Article 94

Time limit for intervention

1. Organisations and associations representing the interests affected by the offence may intervene in the proceedings until the required actions provided for in Article 484 are carried out.

Article 95

Decisions issued by the court

1. Within three days of the service under Article 93, paragraph 3, the parties may oppose, by means of a written statement, the intervention of an organisation or association. Opposition is served on the legal representative of the organisation or association, who may submit his remarks within the next five days.

2. If the intervention took place prior to the start of criminal prosecution, the Preliminary Investigation Judge shall decide on the opposition; if the intervention took place during the preliminary hearing, the opposition must be filed prior to the opening of the debate; if it took place during the trial, the opposition must be submitted under Article 491, paragraph 1.

3. The time limits provided for in paragraphs 1 and 2 are set under penalty of expiry. The court shall decide on the opposition by order and without delay.

4. At any stage and instance of the proceedings after the initiation of criminal prosecution, if the court ascertains that the requirements for exercising the rights and powers provided for in Article 91 are not met, it shall issue an order and establish, also of its own motion, the exclusion of the organisation or association.

TITLE VII

LAWYER

Article 96

Retained lawyer

1. The accused person is entitled to appoint no more than two retained lawyers.

2. The retained lawyer shall be appointed by a statement either given to the proceeding authority by the accused or his lawyer or forwarded by registered letter.

3. If the person who is temporarily detained, arrested or held under precautionary detention does not

appoint a retained lawyer, the latter may be appointed by his next of kin according to paragraph 2.

Article 97

Court-appointed lawyer

1. The accused person who has not appointed or no longer has a retained lawyer shall be assisted by a court-appointed lawyer.

2. The court-appointed lawyer chosen in line with paragraph 1 shall be appointed among the lawyers registered in the national list provided for in Article 29 of the provisions for the implementation of the Code of Criminal Procedure. The local Boards of the Bar Association of each Court of Appeal district shall draw lists, through a dedicated centralised office, of lawyers registered in their professional association or in the aforementioned national list. The lawyers may be appointed by the court upon request of the judicial authority or criminal police. The National Board of the Bar Association shall annually set the general criteria for the appointment of lawyers on the basis of their proximity to the place of the proceedings and their availability.

3. If the court, the Public Prosecutor and the criminal police must carry out an action requiring the assistance of a lawyer and the suspect or the accused does not have a lawyer, they shall inform the lawyer, whose name is notified by the office referred to in paragraph 2, of this particular action.

4. When the presence of the lawyer of the accused is required and the retained or court-appointed lawyer chosen according to paragraphs 2 and 3 have not been found or have not appeared or have left the defence, the court shall appoint an immediately available substitute lawyer to whom the provisions of Article 102 shall apply. Under the same circumstances, the Public Prosecutor and the criminal police shall request the office referred to in paragraph 2 to provide the name of another lawyer, except for urgent cases in which another lawyer who is immediately available is appointed by a reasoned decision specifying the reasons for urgency. During the trial only a lawyer in the list referred to in paragraph 2 may be appointed as a substitute lawyer.

5. The court-appointed lawyer is required to provide legal assistance and may be replaced only on justified grounds.

6. The court-appointed lawyer shall cease his functions if a retained lawyer is appointed.

Article 98

Legal aid for destitute persons

1. The accused, the victim, the injured person who intends to join the proceedings as a civil party and the person with civil liability for damages may apply for legal aid at the expense of the State according to the provisions of the law on legal aid for destitute persons.

Article 99

Extension of the rights of the accused person to the lawyer

1. The lawyer has the same rights and powers as those granted by law to the accused, unless they are personally reserved for the latter.
2. The accused person may, by express statement to the contrary, render any action previously carried out by the lawyer ineffective before the court issues any decision in relation to the said action.

Article 100

Lawyer of other private parties

1. The civil party, the person with civil liability for damages and the person with civil liability for financial penalties shall be assisted at trial by a lawyer who is provided with a special power of attorney conferred by the lawyer or another qualified person through a public document or an authenticated private document.
2. A special power of attorney may also be conferred by specifying it at the bottom or in the margins of the statement for joining proceedings as a civil party, in the decree of summons or in the statement for joining the proceedings or declaring intervention of the person with civil liability for damages and the person with civil liability for financial penalties. In such cases, the authenticity of the party's signature shall be certified by the lawyer.
3. A special power of attorney shall be presumed to be conferred only for a certain stage of the proceedings, unless otherwise provided in the document.
4. In the interest of the represented party, the lawyer may carry out actions and receive all the documentation regarding the proceedings which are not expressly reserved for the represented party by law. In no case is the lawyer entitled to take decisions on the lawsuit unless he expressly receives powers to do so.
5. For all the practical purposes concerning the trial, the address for service of the private parties referred to in paragraph 1 is intended to be chosen at the professional address of the lawyer.

Article 101

Lawyer of the victim

1. In order to exercise their rights and powers, victims may appoint a lawyer as provided for in Article 96, paragraph 2. When the *notitia criminis* is received, the Public Prosecutor and the criminal police shall inform the victim of the aforementioned right. The victim shall also be informed of his possibility to access legal aid under Article 76 of the Consolidated Text of provisions related to the costs of justice, referred to in the Decree of the President of the Italian Republic No 115 of 30 May 2002, as amended.

2. The provisions of Article 100 shall apply to the appointment of lawyers of organisations and associations intervening under Article 93.

Article 102

Substitute lawyer

1. The retained lawyer or the court-appointed lawyer may designate a substitute.

2. The substitute lawyer shall exercise the lawyer's rights and assume his duties.

Article 103

Safeguards of freedom of the lawyer

1. Inspections and searches in the lawyers' offices are allowed only:

a) if lawyers or other persons who permanently work in the same office are accused of having committed an offence, limited to the purposes of ascertaining evidence of the offence which they are charged with;

b) to detect traces or other material items concerning the offence or to search for things or persons specifically established.

2. Letters or documents concerning the subject of the defence, except if they constitute the *corpus delicti*, shall not be seized from either the offices of the lawyers and authorised private detectives or from the offices of technical consultants.

3. In preparing to carry out an inspection, a search or a seizure in the office of a lawyer, the judicial authority, under penalty of nullity, shall inform the Board of the Bar Association as to the place so that the President of the board or a board member delegated by him may be present during the activities. A copy of the decision shall be given to the latter if he intervenes and requires one.

4. The court or, during preliminary investigations, the Public Prosecutor, by reasoned decree of authorisation of the court, shall personally carry out the inspections, searches and seizures in the lawyers' offices.

5. Intercepting conversations and communications of lawyers, authorised private detectives responsible for the proceeding, technical consultants and their assistants, is not allowed, nor are such interceptions allowed between them and the persons they are assisting.

6. Seizure and any form of control of correspondence between the accused and his lawyer, if acknowledged by the prescribed indications, are forbidden, except if the judicial authority has reasonable grounds to believe that it involves the *corpus delicti.*

7. Without prejudice to paragraph 3 and Article 271, the results of inspections, searches, seizures, interceptions of conversations or communications carried out in violation of the above provisions shall not be used.

Article 104

Communication between the lawyer and the accused person under precautionary detention

1. The accused who is under precautionary detention has the right to consult with his lawyer as of the start of the enforcement of such measure.

2. A person who is arrested *in flagrante delicto* or placed under temporary detention under Article 384 has the right to consult with his lawyer immediately after he is arrested or temporarily detained.

3. During preliminary investigations for crimes referred to in Article 51, paragraphs 3 *-bis* and 3 *-quater,* when there are specific and exceptional reasons of caution, the court may, upon request of the Public Prosecutor, defer, by reasoned decree, the exercise of the right to consult with a lawyer for a period of time not exceeding five days.

4. In case the accused person is arrested or placed under temporary detention, the power established in paragraph 3 shall be exercised by the Public Prosecutor until the arrested or temporarily detained person is brought before the court.

4-*bis.* The accused who is either under arrest or under temporary or precautionary detention and does not know the Italian language is entitled to be assisted by an interpreter-free of charge-to be able to consult with his lawyer, in line with the previous paragraphs. The interpreter shall be appointed according to the provisions of Title IV, Book II.

Article 105

Withdrawal and refusal of defence

1. The council of the Bar Association shall be exclusively competent as regards disciplinary sanctions due to the withdrawal of defence or the refusal to serve as a court-appointed lawyer.

2. Disciplinary proceedings shall be autonomous with respect to the criminal proceedings during which defence has been withdrawn or refused.

3. If defence is withdrawn or refused by reason of violation of the rights of defence, provided the Board of the Bar Association considers them to be justified, the sanction shall not apply even if the court excludes the violation of the rights of defence.

4. The judicial authority shall refer to the Board of the Bar Association all the cases of withdrawal of defence, refusal of court-appointed defence, and violation of the duties of loyalty and probity by lawyers during the proceedings and the prohibition provided for in Article 106, paragraph 4-*bis.*

5. In any case, the withdrawal of defence of the private parties other than the accused, the victim, the organisations and associations referred to in Article 91 shall not prevent the proceedings from being immediately carried on and shall not interrupt the hearing.

Article 106

Incompatibility of defence of several accused persons in the same proceedings

1. Without prejudice to the provision of paragraph 4-*bis,* the defence of several accused persons may be provided by a common lawyer if the different positions are not mutually incompatible.

2. If the judicial authority finds a situation of incompatibility, it shall raise the issue and state its grounds, setting a time limit for removing the reasons of incompatibility.

3. If incompatibility is not removed, the court shall declare the incompatibility by issuing an order ruling upon the necessary substitutions under Article 97.

4. If incompatibility is found during preliminary investigations, the court, upon request of the Public Prosecutor or another private party and after hearing the interested parties, shall decide according to paragraph 3.

4-*bis.* The defence shall not be provided by the lawyer assisting several accused persons who have made statements regarding the liability of a different accused person involved in the same proceedings or in joined proceedings under Article 12 or related proceedings under Article 371, paragraph 2, letter *b).* The provisions of paragraphs 2, 3 and 4 shall apply if they are compatible.

Article 107

Refusal, waiver or revocation of lawyer

1. The lawyer who does not accept or waives the assignment shall immediately inform the proceeding authority and the person who has appointed him.

2. The refusal to accept the assignment takes effect as of the moment the proceeding authority is informed of it.

3. The waiver does not take effect until the party is assisted by a new retained or court-appointed lawyer and the time limit that may have been granted according to Article 108 expires.

4. The provision of paragraph 3 shall also apply in case of revocation.

Article 108

Time limit for defence preparation

1. In cases of waiver, revocation, incompatibility and withdrawal, the new lawyer of the accused person or the court-appointed lawyer who makes such request, is entitled to a suitable period of time, usually of at least seven days, to take cognisance of the case file and inquire into the criminal acts under prosecution.

2. The time limit referred to in paragraph 1 may be shorter if the accused or his lawyer gives his consent or if there are specific trial needs which may lead to the release of the accused or the expiry of the

limitation period of the offence. In such case, the time limit shall not be less than twenty-four hours. The court shall decide on the time limit to be granted by issuing an order.

BOOK II

ACTS OF THE PROCEEDINGS

TITLE I

GENERAL PROVISIONS

Article 109

Language of acts

1. The language of the acts of criminal proceedings is Italian.
2. Before the judicial authority with first-instance or appeal competence over a territory where a recognised linguistic minority is settled, the Italian citizen belonging to such minority shall be questioned or examined, upon his request, in his mother tongue and the related record shall also be drafted in that language. All the proceedings documents addressed to him produced after his request shall be translated into that language. These provisions are without prejudice to the other rights provided for in special laws and international conventions.
3. The provisions of this article shall be observed under penalty of nullity.

Article 110

Signing of documents

1. If a document is to be signed, it is sufficient that the person who must sign it to personally writes his name and surname at the bottom of the document, unless otherwise provided by law.
2. Signing by means of mechanic tools or signs which are different from regular handwriting shall not be valid.
3. If the person who must sign is unable to write, the public official to whom the written document is submitted or who receives the oral statement writes a note thereon at the bottom of the same document, after ascertaining the person's identity.

Article 111

Date of documents

1. If the date of a document is required by law, the day, month, year and place in which the document was drafted shall be indicated. The exact time is needed only if expressly required.
2. If the indication of the date of a document is required under penalty of nullity, such nullity shall exist only if the date cannot be established with certainty on the basis of the elements contained in either the document itself or other related documents.

Article 112

Replacement of missing originals with copies

1. Unless otherwise provided by law, if the original of a judgment or any other document of the proceedings which must be used is, for any reason, destroyed, lost or removed and it is impossible to retrieve it, its authentic copy is to be deemed to be the original and put in the place where the original should be.
2. To this end, the President of the Tribunal or of the Courts, also of his own motion, shall order by decree that the person holding the copy hand it over to the Court Registry, without prejudice to the right of the holder to obtain one more copy free of charge.

Article 113

Document reproduction

1. If the provisions of Article 112 cannot be applied, the court, also of its own motion, shall ascertain the content of the missing document and decide by order whether and how it should be reproduced.
2. If a draft of the missing document is available, the document shall be reproduced accordingly, if one of the judges who signed it acknowledges that the document corresponds to the draft.
3. If the provisions of paragraphs 1 and 2 cannot be applied, the court shall direct by order the renewal of the missing document, if necessary and possible, prescribing how to do so and indicating also any other document that is to be renewed.

Article 114

Prohibition on publication of documents and pictures

1. The publication through the press or any other means of communication of the documents covered by secret or their content, also partially or by summary, is not allowed.
2. The publication, in whole or in part, of the documents that are no longer covered by secret is not allowed until preliminary investigations are concluded or the preliminary hearing is terminated.
3. If the proceedings reach the trial stage, publication, in whole or in part, of the documents (...) of the investigative dossier is not allowed prior to the delivery of the appeal judgment. The publication of the documents used for challenges shall be always allowed.
4. The publication, in whole or in part, of the documents of a trial held in closed court in the cases provided for in Article 472, paragraphs 1 and 2, is not allowed. In such cases, after hearing the parties, the court may prohibit the publication, in whole or in part, also of the documents used for challenges. The prohibition on publication shall in any case cease after the expiry of the time limits set by law for the

disclosure of State archives, namely after ten years as of the issuing of the final judgment. The publication shall be authorised by the Ministry of Justice.

5. If the proceedings do not reach the trial stage, after hearing the parties, the court may prohibit the publication, in whole or in part, of the documents, if publishing them may either offend the accepted principles of morality, entail the disclosure of news on which the law prescribes secrecy in the State's interest or impair the privacy of witnesses or private parties. The provision of the last period of paragraph 4 shall apply.

6. The publication of personal data and pictures of witnesses, victims or injured persons who are under age is prohibited until they become of age. The Juvenile Court acting in the exclusive interest of the minor, or the minor who has turned sixteen may allow the publication of such material. The publication of elements that, even indirectly, may lead to the identification of such minors is also forbidden.

6-*bis.* The publication of pictures of a detained person taken while he was being handcuffed or subject to any other means of physical coercion is prohibited without the person's consent.

7. The publication of the content of documents that are not covered by secret shall be always allowed.

Article 115

Violation of the prohibition on publication

1. Without prejudice to the sanctions provided for by criminal law, the violation of the prohibition on publication provided for in Articles 114 and 329, paragraph 3, letter b*),* constitutes a disciplinary misconduct if committed by either State employees, other public authorities or persons whose profession requires a special State authorisation.

2. The Public Prosecutor shall inform the body with disciplinary powers of any violation of the prohibition on publication committed by the persons referred to in paragraph 1.

Article 116

Copies, extracts and certificates

1. During the proceedings and after their conclusion, copies, extracts or certificates of single documents may be obtained by whoever may be interested, at their own expenses.

2. The Public Prosecutor, the proceeding court at the time of submission of the request or, after the conclusion of the proceedings, the President of the bench or the judge who issued the decision to discontinue the case or delivered the judgment shall decide on the request.

3. The issuing shall take place without prejudice to the provision of Article 114 on the prohibition on publication.

3-*bis.* If the lawyer, also through his assistants, submits documents or documentary evidence to the

judicial authority, he is entitled to receive proof of the submission, which may also be provided in writing at the bottom of a copy.

Article 117

Request for copies of documents and information by the Public Prosecutor

1. Without prejudice to the provisions of Article 371, the Public Prosecutor may obtain from the judicial authority with competence copies of documents related to other criminal proceedings, as well as information on their content, if they are necessary to conduct his own investigations, also contrary to the prohibition set in Article 329. The judicial authority may forward the copies and information also on its own initiative.

2. The judicial authority shall decide without delay and may reject the request by reasoned decree.

2-*bis.* The National Anti-Mafia and Counter-*ter*rorism Prosecutor, in line with the functions referred to in Article 371-*bis,* shall have access to the register of the *notitiae criminis*, the register referred to in Article 81 of the Code of Anti-Mafia Laws and Preventive Measures set forth in Legislative Decree No 159 of 6 September 2011, as well as to any other register related to criminal proceedings and proceedings for the application of preventive measures. The National Anti-Mafia and Counter-*ter*rorism Prosecutor shall also have access to the shared electronic databases of the District Prosecution Units.

Article 118

Request for copies of documents or information by the Minister of Home Affairs

1. The Minister of Home Affairs may obtain from the judicial authority with competence, either directly or through a criminal police official or a member of the Anti-Mafia Investigative Agency, copies of criminal proceedings documents and written information on their content that are considered essential for the prevention of offences whereby the person must be caught *in flagrante delicto*, also contrary to the prohibition provided for in Article 329. The judicial authority may forward the copies and information also on its own initiative.

1 -*bis.* For the same purposes, the judicial authority may entitle the subjects referred to in paragraph 1 to have direct access to the register provided for in Article 335, even if it is electronic.

2. The judicial authority shall decide without delay and may reject the request by reasoned decree.

3. The copies and the information gathered under the provisions of paragraph 1 shall be covered by public service secret.

Article 118-*bis*

Request for copies of documents and information by the President of the Council of Ministers

1. The President of the Council of Ministers may request the judicial authority with competence to issue, directly or through the General Director of the Intelligence and Security Department, copies of criminal proceedings documents and written information on their content that are deemed essential to perform the activities related to the needs of the Intelligence System for the Security of the Republic, also contrary to the prohibition provided for in Article 329.

2. The provisions of Article 118, paragraphs 2 and 3, shall apply.

3. The judicial authority may also forward the copies and the information referred to in paragraph 1 even on its own initiative. For the same purposes, the judicial authority may entitle the officials delegated by the General Director of the Intelligence and Security Department to have direct access to the register of *notitiae criminis*, even if it is electronic.

Article 119

Participation of deaf mute or deaf-mute persons in the actions of the proceedings

1. If a deaf, mute or deaf-mute person wants or has to make statements, any questions, warnings and admonitions shall be submitted in writing to the deaf person who shall reply orally; any questions, warnings and admonitions shall be submitted orally to the mute person who shall reply in writing; any questions, warnings and admonitions shall be submitted in writing to the deaf-mute person, who shall reply in writing.

2. If the deaf, mute or deaf-mute person cannot read or write, the proceeding authority shall appoint one or more interpreters, preferably chosen among persons accustomed to dealing with such person.

Article 120

Witnesses to actions of the proceedings

1. The following persons shall not participate in the actions of the proceedings:

a) minors under the age of fourteen and persons clearly suffering from mental illness, in a state of evident drunkenness or intoxication from narcotic or psychotropic substances. The person is presumed to have capacity until it is proven otherwise;

b) persons subject to security measures involving detention or preventive measures.

Article 121

Briefs and requests by the parties

1. At any stage and instance of the proceedings the parties and the lawyers may submit briefs or written requests to the court by filing them with the Court Registry.
2. The court shall decide on the requests adequately formulated without delay and, in any case, within fifteen days, unless otherwise provided.

Article 122

Special power of attorney for specific actions

1. If the law allows an action to be issued through a proxy, the power of attorney must, under penalty of inadmissibility, be granted by either a public or an authenticated private document and it must include the object of the power of attorney and the facts it refers to, in addition to the indications expressly requested by law. If the power of attorney is issued to the lawyer through private document, the signature thereof may be certified by the lawyer himself. The power of attorney shall be enclosed in the case file.
2. In case of public administrations, it is sufficient that the power of attorney is signed by the head of the Office of the proceeding district and contain the official seal of the Office.
3. The ratification of actions issued in someone else's interest is only allowed with the special power of attorney necessary in the cases referred to by law.

Article 123

Statements and requests by detained or confined persons

1. The accused who is detained in or confined to an institution for the enforcement of security measures is entitled to apply for appellate remedies, provide statements or submit requests to the Director of the institution. These documents shall be entered into a dedicated register, immediately notified to the authority with competence and have the same effectiveness as if they were received directly from the judicial authority.
2. If the accused person is under arrest, home detention or held in a place of care, he is entitled to apply for appellate remedies, make statements or submit requests to a criminal police official who immediately forwards them to the authority with competence. Applications for appellate remedies, statements and requests shall have the same effectiveness as if they were received from the judicial authority.
3. The provisions of paragraph 1 shall apply to complaints, applications for appellate remedies, statements and requests submitted by either the other private parties or the victims.

Article 124

Requirement to observe procedural rules

1. Public Prosecutors, judges, registrars and other judicial assistants, as well as bailiffs, criminal police officials and officers are required to observe the rules established in this Code, even if failure to comply with them does not lead to nullity or other procedural sanctions.
2. The heads of Offices shall monitor compliance with rules, also for the purposes of disciplinary liability.

TITLE II

JUDICIAL ACTS AND DECISIONS

Article 125

Types of judicial decisions

1. The cases in which the court issues either a judgment, an order or a decree are established by law.
2. Judgments are delivered in the name of the Italian people.
3. Judgments and orders shall be reasoned, under penalty of nullity. Decrees shall be reasoned, under penalty of nullity, in the cases in which the grounds of the judgment are expressly required by law.
4. The court shall decide in closed session without the presence of the judicial assistant and the parties. The deliberation is secret.
5. In the case of collegial decisions, upon request of a member of the bench who dissented from the decision, a brief record containing the name of the dissenting judge, the issues related to the dissent and its succinct grounds, shall be written. The record, drafted by the youngest robed judge of the bench and signed by all of its members, shall be kept by the President of the bench in a sealed envelope in the Court Registry.
6. All the other decisions are adopted without observing any particular formality and, unless otherwise provided, even orally.

Article 126

Judicial assistance

1. For all the actions it is in charge of, the court shall be supported by an assistant appointed under the provisions of the judicial system, unless otherwise provided by law.

Article 127

Proceedings in chambers

1. If it is necessary to proceed in chambers, the court or the President of the bench shall set the date of the hearing and serve a notice on the parties and other persons concerned, as well as their lawyers. The notice

shall be notified or served at least ten days before the aforementioned date. If the accused person does not have a lawyer, the notice shall be sent to the court-appointed lawyer.

2. Briefs may be submitted to the Court Registry up to five days before the hearing.

3. The Public Prosecutor, the other addressees of the notice and the lawyers shall be heard if they appear in court. If the person concerned is detained in or confined to a place outside the district of the court and makes an explicit request to be heard, he must be heard before the day of the hearing by the Sentence Supervision Judge of that place.

4. The hearing shall be postponed in case of a legal impediment of the accused or convicted person who requires to be heard personally and is detained in or confined to a place where the court sits.

5. The provisions of paragraphs 1, 3 and 4 shall apply under penalty of nullity.

6. The hearing shall take place without the presence of the public.

7. The court shall decide by order and immediately notify it or serve it on the subjects referred to in paragraph 1, who may lodge an appeal with the Court of Cassation.

8. The appeal to the Court of Cassation does not suspend the enforcement of the order, unless the court that issued it decides otherwise by reasoned decree.

9. The inadmissibility of the introductory act to the proceedings shall be declared by the court in an order, which may be issued without any formalities, unless otherwise provided. The provisions of paragraphs 7 and 8 shall apply.

10. The record of the hearing shall be generally drafted in summary form under the provision of Article 140, paragraph 2.

Article 128

Filing of judicial decisions

1. Without prejudice to the provisions regarding decisions issued during the preliminary hearing and the trial, the originals of judicial decisions shall be filed with the Court Registry within five days of deliberation. The notice of filing of the appealable decision, containing the operative part of the judgment, shall be delivered to the Public Prosecutor and served on the subjects who are entitled by law to apply for appellate remedies.

Article 129

Requirement of immediate dismissal

1. At any stage and instance of the proceedings after the initiation of criminal prosecution, the court that acknowledges that either the criminal act did not occur or the accused did not commit it or the act does not constitute an offence or it is not deemed an offence by law or the offence is extinguished or a

requirement for prosecution is not met, shall declare so of its own motion by issuing a judgment.
2. The court shall deliver a judgment of either acquittal or no grounds to proceed with the prescribed formula if there is a cause of extinguishment of the offence but it is clearly proven that the criminal act did not occur or the accused did not commit it or the act does not constitute an offence or it is not deemed an offence by law.

Article 130

Rectification of clerical errors

1. The rectification of judgments, orders and decrees invalidated by errors or omissions which do not determine their nullity and whose elimination does not lead to a substantial modification of the decision, shall be ordered, also of the court's own motion, by the court that issued the decision. If appellate remedies are invoked against the decision and the application is not declared inadmissible, the correction shall be ordered by the court with competence over appellate remedies.
1 *-bis.* If, due to a denomination or calculation error, only the type, length or amount of the sentence must be rectified in the judgment of application of punishment upon request of the parties, the rectification shall be made by the court that delivered the judgment, also of its own motion. If an appeal is lodged against this judgment, the rectification shall be made by the Court of Cassation according to Article 619, paragraph 2.
2. The court shall decide in chambers under the provision of Article 127. The original document shall contain a notice of the order directing the rectification.

Article 131

Judicial coercive powers

1. While performing its functions, the court may require the intervention of the criminal police and, if necessary, national enforcement authorities, directing the implementation of all necessary measures to ensure a safe and orderly performance of the actions it is in charge of.

Article 132

Compulsory appearance of the accused person

1. The compulsory appearance shall be ordered, in the cases provided for by law, by reasoned decree with which the court directs, by force if necessary, that the accused person appear before it.
2. The person subject to compulsory appearance may not be held at the disposal of the court after conclusion of the envisaged action and any consequent actions requiring his presence. In any case the person may not be held for more than twenty-four hours.

Article 133

Compulsory appearance of other persons

1. If the witness, the expert, the person other than the accused who is being examined by the expert, the technical consultant, the interpreter or the person safekeeping seized objects, who are regularly summoned, fail to appear in the place, on the day and at the time set, without a legal impediment, the court may order their compulsory appearance as well as sentence them, by order, to pay an amount ranging from EUR 51 to EUR 516 and the costs arising from the failure to appear to the Treasury of Fines.

2. The provisions of Article 132 shall apply.

TITLE III

RECORDING OF ACTS

Article 134

Recording methods

1. Acts shall be reported in records.

2. Records shall be drafted, fully or in summary form, by means of either a stenotype machine, any other mechanical tool or, in case these tools are not available, handwritten notes.

3. If records are drafted in summary form, audio recordings shall also be made.

4. If the recording methods referred to in paragraphs 2 and 3 are considered insufficient, an audiovisual recording may be added, if absolutely essential. Audiovisual recordings of the statements made by a victim with specific protection needs may be made in any case, even when they are not absolutely essential.

Article 135

Drafting of records

1. Records shall be drafted by the judicial assistant.

2. If records are drafted by means of a stenotype machine or other mechanical tools, the court shall authorise the assistant who lacks the necessary competence to be supported by technical personnel, also not employed by the State administration.

Article 136

Content of records

1. Records shall contain the indication of the place, year, month, day and, if applicable, the time of beginning and end of the session, the personal data of the participants, the reasons, if known, of the absence of persons who were to be present, the description of the assistant's actions and observations and

the events taking place in his presence, as well as the statements received by him or another assisting public official.

2. For each statement, it shall be specified whether it was made spontaneously or in response to previous questions; in the latter case, the question shall also be recorded. The record shall also specify whether the statement was dictated by the declarant or whether he availed himself of the authorisation to consult written notes.

Article 137

Signing of records

1. Without prejudice to the provisions of Article 483, paragraph 1, after reading the record, the drafting officer, the judge and the participants shall sign it at the bottom of each sheet, even if the actions are not completed and are postponed to a different moment.

2. If any of the participants refuse or are unable to sign, such refusal or inability and the related reasons shall be mentioned in the record.

Article 138

Transcription of records drafted by means of a stenotype machine

1. Without prejudice to Article 483, paragraph 2, the characters of the stenotyped tapes shall be transcribed into standard characters within the next day of registration. The tapes shall be enclosed in the case file, together with the transcription.

2. If the person who printed the tapes cannot do so, the court shall order that the transcription be carried out by an eligible person, also someone not employed by the State administration.

Audio or audiovisual recording

1. Audio or audiovisual recording shall be performed by technical personnel, also not employed by the State administration, under the direction of the judicial assistant.

2. In case of audio recording, the record shall contain the indication of the beginning and end of the recordings.

3. If, for any reason, a part of the audio recording is faulty or is not clearly understandable, the record drafted in summary form shall serve as reference.

4. Recordings shall be transcribed by judicial technical personnel. The court may order that the task be assigned to an eligible person, also not employed by the administration of the State.

5. Upon consent of the parties, the court may order that no transcription be made.

6. The audio or audiovisual recordings, and any transcriptions, shall be enclosed in the case file.

Article 140

Recording methods in special cases

1. The court shall order the simultaneous drafting of the record in summary form if the actions to be recorded either have a simple content or are of limited importance or there is a temporary unavailability of reproduction tools or technical assistants.

2. If the record is drafted only in summary form, the court shall monitor that the core of the statements is faithful to the original and contains the description of the circumstances in which these statements were made, if they may be useful to assess their credibility.

Article 141

Oral statements by the parties

1. If the law does not require written statements, the parties may request or provide oral statements regarding the proceedings, personally or by a proxy. In such case, the judicial assistant shall draft the record and attend to the recording of the statements under the provisions of previous Articles. The special power of attorney, if applicable, shall be enclosed in the record.

2. A certificate or a copy of the statements made shall be issued to the party requesting it, at his own expenses.

Article 141-*bis*

Methods for documentation of the questioning of the detained person

1. Any questioning conducted outside the hearing of a person who is detained for any reason is to be documented fully, under penalty of exclusion, by means of audio or audiovisual recording. If recording tools or technical personnel are unavailable, reports by either experts or technical consultants shall be required. The questioning shall also be recorded in summary form. The transcription of the recording shall be ordered only upon request of the parties.

Article 142

Nullity of records

1. Without prejudice to specific legal provisions, records are null if there is absolute uncertainty as to the persons who participated or if they are not signed by the public official who drafted them.

TITLE IV

TRANSLATION AND INTERPRETING

Article 143

Right to an interpreter and to the translation of essential documents

1. The accused who does not know the Italian language is entitled to be assisted by an interpreter-free of

charge and regardless of the outcome of proceedings-to understand the accusations against him and follow the actions and hearings in which he participates. The accused is also entitled to be assisted by an interpreter-free of charge-to be able to confer with his lawyer prior to questioning or for the submission of a request or brief during proceedings.

2. In the aforementioned circumstances, the proceeding authority shall order the written translation of the notice of investigation, the notice of the right to defence, the decisions ordering personal precautionary measures, the notice of the conclusion of preliminary investigations, the decrees ordering the preliminary hearing and the decrees of summons for trial, the judgments and the criminal decrees of conviction. The translation of the mentioned documents must be provided within a suitable period of time so as to enable the defence to exercise its rights and powers.

3. The free-of-charge translation of any other document or part thereof which is deemed essential for the accused to understand the accusations against him may be ordered by the court, also upon request of a party, by means of a reasoned decision, appealable together with the judgment.

4. Knowledge of the Italian language shall be assessed by the judicial authority. Knowledge of the Italian language by Italian citizens shall be presumed unless proven otherwise.

5. An interpreter and translator shall be appointed also in the case where the court, the Public Prosecutor or criminal police officer knows the language or dialect to be interpreted.

6. The appointment of a translator for the services referred to in paragraphs 2 and 3 is provided for in Articles 144 and following of this Title. The provision of interpretation and translation services is mandatory.

Article 143-*bis*

Other cases for the appointment of interpreters and translators

1 . The proceeding authority shall appoint a translator for the translation of a document written in either a foreign language or a dialect that is not easily understandable or if the person who is willing to or has to make a statement does not know the Italian language. The statement may also be made in writing and, in such case, it shall be enclosed in the record together with the translation provided by the translator.

2. In addition to the cases provided for in paragraph 1 and Article 119, the proceeding authority shall, also of its own motion, appoint an interpreter in the cases where the victim to be interviewed does not know the Italian language or the aforementioned victim wants to attend the hearing and has required the assistance of an interpreter.

3. The assistance of an interpreter may be provided, if possible, also by means of telecommunication technologies, unless the physical presence of the interpreter is necessary for the victim to be able to

correctly exercise his rights or to thoroughly understand how proceedings are conducted.

4. The victim who does not know the Italian language is entitled to the translation, free of charge, of any document or part thereof which contains useful information for exercising his rights. The translation may be provided either orally or as a summary if the proceeding authority holds that no prejudice is thereby caused to the victim's rights.

Article 144

Incapacity and incompatibility of the interpreter

1. Under penalty of nullity, the following persons may not provide interpretation services:

a) minors, persons declared totally or partially disabled and a person who is mentally ill;

b) persons barred from public duties, even temporarily, or barred or suspended from performing a profession or an art;

c) persons who are subject to personal security or preventive measures;

d) persons who shall not be called as witnesses or are entitled to abstain from testifying or have been called as witnesses or experts or appointed as technical consultants in the same proceedings or in a joined one. However, in the case provided for in Article 119, the role of the interpreter may be taken over by the next of kin of the deaf, mute or deaf-mute person.

Article 145

Recusal and abstention of the interpreter

1. The interpreter may be disqualified for the reasons referred to in Article 144 by the parties and, in relation to the actions produced or ordered by the court, also by the Public Prosecutor.

2. If there are reasons to recuse the interpreter, even if they are not raised, or if there are serious reasons of advantage whereby the interpreter should abstain, the interpreter must declare them.

3. The statement of recusal or abstention may be submitted until the formalities related to the assignment of the job are completed and, in case of reasons arisen or known afterwards, before the interpreter provides his service.

4. The court shall decide by order on the statement of recusal or abstention.

Article 146

Assignment of the job to the interpreter

1. The proceeding authority shall ascertain the identity of the interpreter and ask him whether he is in any of the situations referred to in Articles 144 and 145.

2. The authority shall warn him about his obligation to perform the assigned tasks carefully and faithfully, for no purpose other than revealing the truth, and to maintain secrecy over all the actions

performed through his intervention or in his presence. The authority shall then require him to provide his service.

2-*bis.* Should the interpreter or translator reside in the district of a different Tribunal, the proceeding authority shall ask the Preliminary Investigation Judge of the place where the other Tribunal is located to perform the activities referred to in the previous paragraphs, if it does not deem appropriate to personally perform those activities.

Article 147

Time limit for written translations. Substitution of the translator

1. In cases of written documents requiring a long period of time for being translated, the proceeding authority shall assign the translator a time limit that may be postponed only once for a justified reason. The translator may be substituted if he does not submit the written translation by the set deadline.

2. After being summoned to provide a justification, the substituted translator may be sentenced by the court to pay an amount ranging from EUR 51 to EUR 516 to the Treasury of Fines.

TITLE V

SERVICE

Article 148

Authorities and methods of service

1. Documents shall be served by a bailiff or his representative, unless otherwise provided by law.

2. In the proceedings with detainees and in those before the Review Tribunal, the court may order that, in cases of urgency, service shall be carried out by the Prison Service Police of the place where the addressees are detained, under the rules set out in this Title.

2-*bis.* The judicial authority may order that service be carried out on or notices be delivered to lawyers by suitable technical tools. The Office sending the documents shall certify at the bottom of the document that the original text has been forwarded.

2-*ter.* (...)

3. Unless otherwise provided by law, documents shall be served in their full form, generally by delivering a copy to the addressee or, where this is not possible, to the persons referred to in this Title. If the document cannot be served on the addressee in person, the bailiff or the criminal police shall deliver a copy of the document to be served by enclosing it in a sealed envelope and writing the chronological service number on the envelope and this shall be noted in the report that is included at the bottom of both the original and the copy of the document. This procedure shall not apply to the document that must be served on the lawyer or the lawyer providing the address for service.

4. The delivery of a copy of the document to the person concerned by the Court Registry shall be equivalent to service. The public official in charge of service shall record confirmation and date of delivery on the original document.
5. The decisions that are read out to persons present in the courtroom and the oral notices given by the court in their presence shall replace service, provided that they are mentioned in the record.
5-*bis*. Notifications, notices and any other message or invitation handed in unsealed envelopes to a person other than their addressee shall contain information at its bare minimum.

Article 149

Urgent service by telephone and telegraph

1. In cases of urgency, the court may order, also upon request of a party, that persons different from the accused be informed or summoned by telephone by the Court Registry.
2. The telephone number that is called, the name, the functions or the duties performed by the person who receives the notification, his relationship with the addressee, the day and the time of the telephone call shall be recorded on the original notice or summons.
3. The notification shall be made by calling the telephone number of the places referred to in Article 157, paragraphs 1 and 2. The notification shall not take effect if it is not received by the addressee or the person who lives, even temporarily, with the addressee.
4. The telephone notification shall be equivalent to service taking effect as of the moment it is made, provided that it is immediately confirmed to the addressee by telegram.
5. If it is impossible to proceed according to the above paragraphs, documents shall be served by sending an extract by telegram.

Article 150

Special methods of service ordered by the court

1. In case of special circumstances, the court may order, also of its own motion, by reasoned decree to be included at the bottom of the document, that the document be served on a person other than the accused by technical tools which guarantee receipt of the document by the addressee.
2. The decree shall specify the procedures necessary for delivering the document to the addressee.

Article 151

Service requested by the Public Prosecutor

1. During preliminary investigations, the documents of the Public Prosecutor shall be served by a bailiff or the criminal police, only if the service concerns investigative actions that the criminal police are empowered to perform or decisions they are bound to enforce.

2. The delivery of a copy of the document to the person concerned by the Public Prosecutor's Clerk's Office shall be equivalent to service. The public official in charge of service shall record confirmation and date of delivery on the original document.
3. The decisions that are read out to persons present in the courtroom and the oral notices given by the Public Prosecutor in their presence shall replace service, provided that they are mentioned in the record.
4. (...)

Article 152

Service requested by private parties

1. Unless otherwise provided by law, service requested by private parties may be replaced with the delivery of a copy of the document by their lawyer by means of a registered letter with return receipt.

Article 153

Service on and notifications of the Public Prosecutor

1. Service on the Public Prosecutor shall be made, also directly by the parties or their lawyers, by delivering a copy of the document to the Public Prosecutors Clerk's Office. The public official in charge of receiving the document shall record the personal details of the person who effected the delivery and the date of delivery on the original and the copy of the document.
2. Documents and decisions issued by the court to the Public Prosecutor shall be notified by the Court Registry following the same procedure, unless the Public Prosecutor examines and signs the document. The public official in charge of receiving the document shall record confirmation and date of delivery on the original document.

Article 154

Service on the victim, the civil party, the person with civil liability for damages and the person with civil liability for financial penalties

1. Documents shall be served on the victim according to Article 157, paragraphs 1, 2, 3, 4 and 8. If the places referred to in the aforementioned paragraphs are unknown, service is effected by filing the document with the Court Registry. If the documents contain precise information on the victim's temporary or habitual residence abroad, the victim shall be required, by registered letter with return receipt, to state or choose his address for service in Italy. If no address for service is stated or chosen within twenty days of receipt of the registered letter, or the statement or choice is either insufficient or unsuitable, service shall be carried out by filing the document with the Court Registry.
2. The first summons to the person with civil liability for damages and the person with civil liability for financial penalties shall be served following the procedure for the first service on the accused person who

is not detained.
3. If public administration bodies, legal entities or organisations without legal personality are involved, documents shall be served as set for civil proceedings.
4. Service on the civil party, the person with civil liability for damages and the person with civil liability for financial penalties who joined the criminal trial shall be effected on their lawyers. Unless the person with civil liability for damages and the person with civil liability for financial penalties join the criminal proceedings, they must state or choose their address for service in the place of the proceedings and inform the Registry of the court with competence. If such statement or choice is lacking or is either insufficient or unsuitable, service is effected by filing the document with the Court Registry.

Article 155

Service on victims by public announcements

1. If documents cannot be served on victims through standard procedures, due to the high number of addressees or the impossibility of identifying some of them, the judicial authority may order, by a decree written at the bottom of the document to be served, that service is effected by public announcements. The decree shall specify, if applicable, the addressees who must be served upon following standard procedures as well as the suitable methods to be employed to inform other persons concerned.
2. In any case, a copy of the document shall be filed with the town hall of the place where the proceeding authority is located and an extract shall be published in the Official Journal of the Republic.
3. A document is considered served if the bailiff files a copy of the document, along with the report and the documents proving the service, with the Court Registry or the Clerk's Office of the proceeding authority.

Article 156

Service on the accused person under detention

1. Service on the accused person who is detained shall be effected in the place of detention by delivering a copy to the person concerned.
2. In case of refusal to accept a document, this shall be mentioned in the service report and the refused copy shall be passed on to the Director of the prison or his representative. The same procedure shall be followed if it is impossible to deliver the copy directly to the accused because he is absent for a justifiable reason. In that case, the Director of the prison shall immediately inform the person concerned of the service, by using the fastest available means.
3. Service on an accused person detained in a place other than a prison shall be effected according to the provisions of Article 157.

4. The above provisions shall also apply if the accused person is detained for a reason other than the one underlying the proceedings for which service is to be effected or if he is confined in prison.
5. In no case may service on the accused person who is detained or confined be performed according to Article 159.

Article 157

First service on the accused person not under detention

1. Without prejudice to the provisions of Articles 161 and 162, the first service to the accused who is not detained shall be effected by delivering a copy to the person concerned. If it is impossible to deliver the copy to the accused in person, service shall be effected at the place where the accused either lives or usually works, by delivering the document to be served to one of the persons who live with the accused even temporarily, or, in the absence of such a person, to the house warden or his representative.
2. If the places referred to in paragraph 1 are unknown, service shall be effected at the place where the accused has his temporary residence or stay by delivering the document to be served to one of the aforementioned persons.
3. The house warden or his representative shall sign the original of the document served and the bailiff shall inform the addressee that the document was served by registered letter with return receipt. Service shall take effect as of receipt of the registered letter.
4. The copy shall not be handed to a person under the age of fourteen or a person in a state of evident lack of mental capacity.
5. The judicial authority shall order to repeat service if the copy of the document was handed to the victim but it turns out or it seems likely that the accused was not actually informed of the document being served.
6. The document shall be delivered to the cohabitee, the house warden or his representative in a sealed envelope and the service report shall be made according to the provisions of Article 148, paragraph 3.
7. If the persons referred to in paragraph 1 are either absent or ineligible or refuse to accept the copy, the search for the accused shall be resumed, by returning to the places referred to in paragraphs 1 and 2.
8. If it still impossible to effect service, the document shall be filed with the town hall of the municipality where the accused lives or, if such place is unknown, of the municipality where he usually works. A notice of filing of the document shall be posted on the door of the place where the accused person lives or usually works. The bailiff shall also inform the accused that the document was filed by registered letter with return receipt. Service shall take effect as of receipt of the registered letter.
8-*bis*. If a retained lawyer is appointed according to the provisions of Article 96, further service shall be

effected by delivering the document to the lawyers. The lawyer may immediately inform the proceeding authority that he does not accept service. The provisions of Article 148, paragraph 2-*bis,* shall also apply to service.

Article 158

First service on the accused person on military duty

1. The first service on the accused person who is on active military duty, and whose status appears from the records, shall be effected by delivering the document to the accused in person at the place where he lives while on official duty. If delivery is impossible, the document shall be served at the Office of the commander who shall immediately inform the person concerned of the service, by using the fastest available means.

Article 159

Service on the accused person who cannot be found

1. If it is impossible to serve the document as provided for in Article 157, the judicial authority shall order a new search for the accused, particularly at his place of birth, his latest habitual or temporary residence, the place where he usually works and the central prison administration. If the accused is not found, the judicial authority shall issue a decree stating that the accused person cannot be found. After appointing a lawyer for the accused person who may not have one, the judicial authority shall order by the same decree that service be effected by delivering the copy of the document to the lawyer.
2. Service effected in this way shall be valid to all intents and purposes. The person who cannot be found shall be represented by his lawyer.

Article 160

Effectiveness of the decree stating that the accused cannot be found

1. The decree stating that the accused cannot be found, issued by either the court or the Public Prosecutor during preliminary investigations, shall cease to be effective as of the issuing of the decision terminating the preliminary hearing or, in case there is no preliminary hearing, as of the closure of preliminary investigations.
2. The decree stating that the accused cannot be found issued by the court for the purpose of serving documents introducing the preliminary hearing and the decree stating that the accused cannot be found issued by either the court or the Public Prosecutor for the purpose of serving the decision ordering the trial shall cease to be effective as of the issuing of the first-instance judgment.
3. The decree stating that the accused cannot be found issued by the second-instance court and the referral court shall cease to be effective as of delivery of the judgment.

4. Any decree stating that the accused cannot be found shall follow a new search at the places referred to in Article 159.

Article 161

Stated, chosen or set address for service

1. The court, the Public Prosecutor or the criminal police, in the first action performed in the presence of the suspect or the accused who is neither detained nor confined, shall require the latter to either provide one of the places referred to in Article 157, paragraph 1, or choose his address for service. The person shall be informed that, by virtue of him being a suspected or accused person, he is required to notify any changes to the address for service stated or chosen and, if such notification is lacking or the person refuses to state or choose his address for service, documents will be served by delivering them to his lawyer. The statement or choice of address for service or the refusal to state or choose address for service shall be recorded in the record.
2. Without prejudice to the case referred to in paragraph 1, the request to state or choose address for service shall be made together with the notice of investigation or the first document served by injunction of the judicial authority. The accused shall be informed that he must report any change to the address for service stated or chosen and that any succeeding documents shall be served at the place where the first document was served in case the statement or choice is either lacking, insufficient or unsuitable.
3. The accused person who is detained and must be released for a cause other than final dismissal and the accused who is to be discharged from an institution for the enforcement of security measures, during the release from prison or the discharge, must state or choose his address for service to the Director of the institution who records it. The Director shall inform him according to the provisions of paragraph 1, enter the statement or choice in the dedicated register, and immediately forward the record to the authority that ordered his release or discharge.
4. If it is impossible to serve documents at the address for service set under paragraph 2, service shall be effected by delivering the documents to the lawyer. The same procedure shall be followed if, in the cases referred to in paragraphs 1 and 3, the statement or choice of address for service are either lacking, insufficient or unsuitable. However, if the accused has been unable to notify any change to the stated or chosen address due to unforeseeable circumstances or *force majeure*, the provisions of Articles 157 and 159 shall apply.

Article 162

Notification of the stated or chosen address for service

1. The accused person shall notify the stated or chosen address for service and any change to it to the proceeding authority by means of either a statement recorded in the record or a telegram or registered letter with the accused person's signature authenticated by either a notary or an authorised person or his lawyer.
2. The statement may also be made at the Registry of the Tribunal in the place where the accused person is.
3. In the case provided for in paragraph 2, the record shall be immediately forwarded to the proceeding judicial authority. The same procedure shall be followed in all the cases where the notification is received by a judicial authority which, in the meantime, forwards the case file to another authority.
4. The service effected at the previously stated or chosen address for service shall remain valid until the proceeding judicial authority receives the record or the notification.
4-*bis*. Selection of the court-appointed lawyer's address as the address for service shall produce no effect if the proceeding authority does not receive the lawyer's consent together with the statement of address for service.

Article 163

Formalities for service at the stated or chosen address for service

1. For service effected at the stated or chosen address for service according to Articles 161 and 162, the provisions of Article 157 shall be observed, provided they are applicable.

Article 164

Duration of the stated or chosen address for service

1. The stated or chosen address for service shall be valid at any stage and instance of the proceedings, without prejudice to the provisions of Articles 156 and 613, paragraph 2.

Article 165

Service on the fugitive or escaped accused

1. Service on the fugitive or escaped accused shall be effected by delivering a copy of the documents to his lawyer.
2. If the accused does not have a lawyer, the judicial authority shall designate a court-appointed lawyer.
3. The fugitive or escaped accused shall be represented by his lawyer to all intents and purposes.

Article 166

Service on the accused person who is declared disabled or mentally ill

1. If the accused person is declared disabled, service is effected according to the above articles and also on his guardian; if the accused is in one of the situations covered by Article 71, paragraph 1, service is effected according to the above articles and on his special guardian.

Article 167

Service on other persons

1. Service on persons other than those referred to in the above articles shall be effected according to Article 157, paragraphs 1, 2, 3, 4 and 8, without prejudice to the cases of urgency provided for in Article 149.

Article 168

Service report

1. Without prejudice to the provisions of Article 157, paragraph 6, the bailiff in charge of service shall report, at the bottom of the original document and the served copy, either the requesting authority or private party, the searches that have been conducted, the personal details of the person to whom the copy has been delivered, his relationship with the addressee, the functions or duties performed by him, the place and date of delivery of the copy. The service report shall be signed by the bailiff.
2. In the event of contradiction between the written report on the delivered copy and the report included in the original, the statements contained in the served copy shall prevail for each person concerned.
3. Service shall take effect for each person concerned as of the date it is effected.

Article 169

Service on the accused person abroad

1. If the records contain precise information as to the place of temporary or habitual residence abroad of the person who is to be prosecuted, the court or the Public Prosecutor shall send him a registered letter with return receipt containing information about the proceeding authority, the legal definition of the offence and the date and place where it was committed, as well as a request to state or choose address for service in the Italian territory. If the address for service is neither stated nor chosen within thirty days of receipt of the registered letter or the statement or choice are neither sufficient nor suitable, service shall be effected by delivering the documents to his lawyer.
2. The same procedure shall be followed if it is proven that the person moved abroad after the decree stating that the accused cannot be found was issued according to the provisions of Article 159.
3. The request provided for in paragraph 1 shall be drafted in the language of the foreign accused person

if it is proven that he does not know the Italian language.

4. If the person who is to be prosecuted lives or is staying abroad, but the available information is insufficient to follow the procedure according to paragraph 1, the court or the Public Prosecutor, prior to the issuing of a decree stating that the accused cannot be found, shall order a search to be conducted also outside the Italian territory, within the limits allowed by international agreements.

5. The above provisions shall apply also if it is proven that the person is detained abroad.

Article 170

Service by mail

1. Documents may also be served through post offices in the ways established by relevant special laws.

2. Service shall be valid also if it is made through a post office other than the one to which the envelope was originally addressed.

3. If the post office returns the envelope because the addressee could not be found, the bailiff shall serve the documents following the standard procedures.

Article 171

Nullity of service

1. Service shall be null if:

a) the document is served in an incomplete manner, without prejudice to the cases in which the law allows service in the form of an extract;

b) there is absolute uncertainty as to either the requesting authority or the private party or the addressee;

c) the report on the served copy bears no signature of the person who effected the service;

d) the provisions as to the person to whom the copy is to be delivered are violated;

e) the notice is not given in the cases covered by article 161, paragraphs 1, 2 and 3, and service is effected by delivering the documents to the lawyer;

f) no document is affixed or no notification is given as required by Article 157, paragraph 8;

g) the original of the served document lacks the signature of the person referred to in Article 157, paragraph 3;

h) the procedure ordered by the court in the decree provided for in Article 150 is not fulfilled and the document does not reach the addressee.

TITLE VI

TIME LIMITS

Article 172

General rules

1. Procedural time limits shall be counted in hours, days, months or years.
2. Time limits shall be calculated according to the common calendar.
3. If the time limit counted in days expires on a public holiday, it shall be automatically extended to the following working day.
4. Unless otherwise provided by law, the starting hour or day of the time limit is not computed for the purpose of calculating the time limit; the last hour or the last day shall be computed.
5. If only the final moment is set, whole time units set for the time limit are computed.
6. The time limit to either provide statements, file documentary evidence or accomplish other actions at a judicial office shall be deemed expired at the time the office closes to the public according to its regulations.

Article 173

Peremptory time limits. Reduction of time limits

1. Time limits shall be considered as peremptory only in the cases provided for by law.
2. Time limits set by law as peremptory shall not be extended, unless otherwise provided by law.
3. The party in whose favour a time limit is set may request or agree to its reduction by a statement submitted to either the Court Registry or the Registry of the proceeding authority.

Article 174

Extension of time limits to appear at proceedings

1. If the habitual residence of the accused person as it is reported in the records or the address for service which he has stated or chosen according to Article 161, is outside the municipality where the proceeding judicial authority is located, the time limit to appear at proceedings shall be extended by the number of days necessary for the trip. The extension amounts to one day for every 500 kilometres if public means of transportation are available, and to one day every 100 kilometres in all the other cases. The same extension shall apply to the accused persons who are detained or confined outside the aforementioned municipality. In any case, the time-limit extension shall not exceed three days. For the accused person who habitually lives abroad, the extension of the time limit shall be set by the judicial authority, taking into account the distance and the available means of communication.
2. The same provisions shall apply if the time limit is set for the participation of any other person for

whom the proceeding authority issues an injunction or summons to appear.

Article 175

Granting new time limits

1. The Public Prosecutor, private parties and lawyers shall obtain a new peremptory time limit if they prove that they were unable to comply with the previous time limit due to unforeseeable circumstances or *force majeure.* The request for a new time limit shall be submitted, under penalty of expiry, within ten days of the day in which the event constituting the unforeseeable circumstances or *force majeure* ceases.
2. The accused who is convicted by a criminal decree and is not promptly informed of the decision may be granted, upon request, a new time limit to submit an opposition, unless he voluntarily waives his right to oppose the decision.

2-*bis.* The request referred to in paragraph 2 shall be submitted within the peremptory time limit of thirty days of the day in which the accused person was actually informed of the decision. In case of extradition from abroad, the time limit for submission of the request shall start as of the surrender of the convicted person.

3. New time limits shall not be granted more than once for each party at any stage of the proceedings.
4. The court proceeding at the time the request is submitted shall decide upon the request by order. Prior to criminal prosecution, the Preliminary Investigation Judge shall decide whether to grant a new time limit. If a judgment or decree of conviction is issued, the court that would have competence over appellate remedies or oppositions shall decide.
5. The order granting the new time limit for submission of an application for appellate remedies or opposition may be appealed only by a judgment deciding upon appellate remedies or oppositions.
6. An appeal with the Court of Cassation may be lodged against the order rejecting the request for a new time limit.
7. If the court approves the request for a new time limit for submission of an application for appellate remedies, it shall order, if applicable, the release of the accused person who is detained and take all the necessary steps to stop the effects of the expiry of the time limit.
8. If the new time limit is granted according to paragraph 2, the time that has lapsed between the service of either the judgment by default or the decree of conviction and the service on the party of the notice of filing of the order granting the new time limit shall not be taken into consideration to calculate the limitation period of the offence.

Article 176

Effects of granting new time limits

1. Upon request of a party and if it is possible, the court granting the new time limit shall decide upon the renewal of the actions which the party was entitled to take part in.
2. If a new time limit is granted by the Court of Cassation, the court with competence over the case shall decide upon the accomplishment of the actions whose renewal is ordered.

TITLE VII

NULLITY

Article 177

Express provision of nullity

1. Failure to comply with the provisions set for the acts of the proceedings is a cause of nullity only in the cases provided for by law.

Article 178

Nullity of a general nature

1. Under penalty of nullity, compliance with the provisions regarding the following is always mandatory:
a) the judicial capacity of judges as well as the number of judges necessary to constitute the bench as provided for by the laws of the judicial system;
b) the initiative of the Public Prosecutor in criminal prosecution and his participation in the proceedings;
c) the participation, assistance and representation of the accused person and other private parties as well as the summons for trial for the victim and the complainant.

Article 179

Absolute nullities

1. The nullities provided for in Article 178, paragraph 1, letter *a),* those concerning the initiative of the Public Prosecutor in criminal prosecution, and those deriving from either failure to summon the accused person or the absence of his lawyer in cases where his presence is compulsory, shall not be regularised and shall be raised of the court's own motion at any stage and instance of the proceedings.
2. Likewise, the nullities defined as being absolute by specific legal provisions shall not be regularised and shall be raised of the court's own motion at any stage and instance of the proceedings.

Article 180

Rules for other nullities of a general nature

1. Without prejudice to the provisions of Article 179, the nullities referred to in Article 178 shall be raised

also of the court's own motion, but shall neither be raised nor advanced after deliberation of the first-instance judgment or, if they emerge during the trial, after deliberation of the judgment of the next instance.

Article 181

Relative nullities

1. Nullities other than those provided for in Articles 178 and 179, paragraph 2, shall be raised upon objection by a party.
2. Objection to the nullities concerning preliminary investigation acts and those performed during the special evidentiary hearing and the nullities concerning the acts of the preliminary hearing must be raised prior to the issuing of the decision referred to in Article 424. If there is no preliminary hearing, objection to the nullities is to be raised within the time limit referred to in Article 491, paragraph 1.
3. Objection to the nullities concerning the decree for committal to trial or the acts prior to the trial are to be raised within the time limit provided for in Article 491, paragraph 1. Within that same time limit or by applying for appellate remedies against the judgment of no grounds to proceed, the nullities that are objected to according to the first period of paragraph 2, which are not declared by the court, shall be reintroduced.
4. Objection to the nullities emerged during the trial are to be raised by applying for appellate remedies against the related judgment.

Article 182

Raising nullities

1. Objection to the nullities provided for in Articles 180 and 181 shall not be raised by whoever has caused or helped cause them or by whoever is not interested in complying with the violated provision.
2. If the party is present, objection to the nullity of an act shall be raised before it becomes effective or, if this is not possible, immediately thereafter. In all the other cases, objection to nullity is to be raised within the time limits provided for in Articles 180 and 181, paragraphs 2, 3 and 4.
3. The time limits for raising or objecting to the nullities are peremptory.

Article 183

General regularisation of nullities

1. Unless otherwise provided, nullities shall be regularised if:

a) the party concerned expressly waives to raise them or accepts the effects of the act;

b) the party avails himself of the right granted by the act, even if such act is omitted or null.

Article 184

Regularisation of nullities in summons, notices and service

1. The nullity of either a summons or notice or of the relevant notifications and service shall be regularised if the party concerned appears or renounces to appear at the proceedings.

2. The party declaring that he appears at the proceedings only for the purpose of raising an irregularity is entitled to a period of time of at least five days to prepare the defence.

3. If the nullity concerns the summons to appear at trial, the time limit shall not be shorter than the one provided for in Article 429.

Article 185

Effects of the statement of nullity

1. The nullity of an act makes invalid the subsequent acts which depend on the act that is declared null.

2. The court declaring the nullity of an act shall order its renewal, if necessary and possible, charging the costs to the person who caused the nullity as a result of intentional misconduct or gross negligence.

3. The statement of nullity entails the return of the proceedings to the stage or instance in which the null act was performed, unless otherwise provided.

4. The provision of paragraph 3 shall not apply to nullities concerning evidence.

Article 186

Failure to comply with tax rules

1. If an act is subject to a tax by law, the failure to comply with tax provisions does not make the act inadmissible nor does it prevent its completion, without prejudice to the financial sanctions provided for by law.

BOOK III

EVIDENCE

TITLE I

GENERAL PROVISIONS

Article 187

Facts in issue

1. Facts concerning accusations, criminal liabilities and the determination of either the sentence or the security measure are facts in issue.

2. Facts on which the application of procedural rules depends are also facts in issue.

3. Facts concerning the civil liability resulting from an offence are also facts in issue if a civil party joins the criminal proceedings.

Article 188

Moral freedom of the person during evidence gathering

1. Methods or techniques which may influence the freedom of self-determination or alter the capacity to recall and evaluate facts shall not be used, not even with the consent of the person concerned.

Article 189

Evidence not regulated by law

1. If evidence not regulated by law is requested, the court may introduce it if it is deemed suitable to determine the facts and does not compromise the moral freedom of the person. After hearing the parties on the methods for gathering evidence, the court shall order the admission of evidence.

Article 190

Right to evidence

1. Evidence shall be admitted upon request of a party. The court shall decide without delay by issuing an order, excluding any evidence that is not allowed by law or manifestly superfluous or irrelevant.

2. The cases in which evidence shall be admitted of the court's own motion are set by law.

3. Decisions concerning the admission of evidence may be revoked after hearing the parties.

Article 190 *-bis*

Requirements of evidence in particular cases

1. In proceedings regarding one of the crimes referred to in Article 51, paragraph 3-*bis,* should a request be made for the examination of a witness or one of the persons referred to in Article 210 and should such persons have already provided statements during the special evidentiary hearing or at trial in the

cross-examination with the person against whom the same statements will be used or have provided statements whose records have been gathered under Article 238, the examination shall be admitted only if it concerns facts or circumstances other than those included in the previous statements or if it is requested by the court or a party by virtue of specific needs.

1-*bis.* The same provision shall apply when the case under prosecution regards one of the offences provided for in Articles 600-*bis,* paragraph 1, 600-*ter*, 600-*quater,* 600-*quinquies*, 609-*bis,* 609-*ter,* 609-*quater*, even if they concern pornographic material as referred to in Articles 600-*quater.* 1*,* 609-*quinquies* and 609-*octies* of the Criminal Code, if the requested examination concerns a witness under the age of 16 and, in any case, when the required examination of a witness concerns a victim with specific protection needs.

Article 191

Unlawfully gathered evidence

1. Evidence gathered in violation of the prohibitions set by law shall not be used.

2. The exclusion of evidence may be declared also of the court's own motion at any stage and instance of the proceedings.

Article 192

Evaluation of evidence

1. The court shall evaluate evidence specifying the results reached and the criteria adopted in the grounds of the judgment.

2. The existence of a fact cannot be inferred from circumstantial evidence unless such evidence is serious, precise and consistent.

3. The statements made by either the co-accused charged with the same offence or a person accused in joined proceedings according to Article 12 shall be corroborated by the other elements of evidence confirming their reliability.

4. The provision of paragraph 3 shall apply also to the statements made by a person accused of an offence that is joined to the one being prosecuted, in the case referred to in Article 371, paragraph 2, letter *b).*

Article 193

Limits of evidence set by civil laws

1. In criminal proceedings the limits of evidence set by civil laws are not observed, except for those regarding family status and citizenship.

TITLE II

MEANS OF EVIDENCE

CHAPTER I

TESTIMONY

Article 194

Object and limits of testimony

1. The witness shall be examined on the facts constituting the object of evidence. He shall not testify on the morality of the accused, unless such testimony concerns specific facts that may be suitable for qualifying his personality in connection with the offence and his social dangerousness.
2. The examination may be also extended to the relations of kinship or interests that exist between the witness and the parties or other witnesses and to circumstances that need to be ascertained to assess their reliability. The testimony on the facts that may be useful in defining the victim's personality shall be admitted only if the criminal act must be evaluated in connection with the victim's behaviour.
3. The witness shall be examined on specific facts. He shall not testify on public rumours nor give his personal opinions, unless they are an inseparable part of the testimony.

Article 195

Hearsay testimony

1. If a witness reports information on facts he has been told of by other persons, upon request of a party, the court shall order to summon these persons to testify.
2. The court may order, also of its own motion, the examination of the persons referred to in paragraph 1.
3. Failure to comply with the provisions of paragraph 1 results in the exclusion from proceedings of statements related to facts which the witness has been informed of by other persons, unless examination of these persons is impossible because they are dead, ill or un-traceable.
4. Criminal police officials and officers shall not testify on the content of witness statements they gathered under Articles 351 and 357, paragraph 2, letters *a)* and *b).* The provisions of paragraphs 1, 2 and 3 of this Article shall apply to the remaining cases.
5. The provisions of the previous paragraphs shall also apply if the witness is informed of the fact by means other than oral notification.
6. Witnesses shall not be examined on facts heard from the persons referred to in Articles 200 and 201 in relation to the circumstances provided for in the same Articles, unless the aforementioned persons have testified on the same facts or have disclosed them in some other way.
7. The testimony of persons who refuse or are not able to indicate the person or source that informed them

of the facts under examination shall not be used.

Article 196

Capacity to testify

1. Every person has the capacity to testify.
2. If the physical or mental suitability to testify needs to be assessed in order to evaluate the witness's statements, the court may order, also of its own motion, appropriate checks through the means allowed by law.
3. The outcome of checks that are ordered prior to a witness examination, under paragraph 2, shall not prevent the taking of testimony.

Article 197

Incompatibility with the role of witness

1. The following persons shall not testify:

a) persons co-accused of the same offence or accused in joined proceedings under Article 12, paragraph 1, letter *a),* unless a final judgment of dismissal, conviction or application of the punishment upon request of the parties under Article 444 has been delivered against them;

b) without prejudice to Article 64, paragraph 3, letter *c),* the persons accused in joined proceedings under Article 12, paragraph 1, letter *c),* or charged with a joined offence according to Article 371, paragraph 2, letter *b),* before a final judgment of dismissal, conviction or application of the punishment under Article 444 is delivered against them;

c) the person with civil liability for damages and the person with civil liability for financial penalties;

d) whoever, in the same proceedings, is or has been a single judge or a member of the bench, a Public Prosecutor or their assistants, the lawyer who has performed defence investigations and the persons who have drafted the records on the statements and the information gathered as evidence under Article 391 *-ter.*

Article 197 *-bis*

Persons accused or tried in joined proceedings or for a joined offence undertaking the duty of witnesses

1. The person accused either in joined proceedings under Article 12 or in a joined offence under Article 371, paragraph 2, letter *b)* may be heard as witness if a final judgment of dismissal, conviction or application of the punishment under Article 444 has been delivered against him.
2. The person accused either in joined proceedings provided for in Article 12, paragraph 1, letter *c)* or in a joined offence provided for in Article 371, paragraph 2, letter *b)* may be heard as witness also in the case provided for in Article 64, paragraph 3, letter *c).*

3. In the cases provided for in paragraphs 1 and 2, the witness shall be assisted by a lawyer. If the witness has no retained lawyer, he shall be assisted by a court-appointed lawyer.

4. In the case provided for in paragraph 1, the witness shall not be obliged to testify on facts related to the offence he was convicted of at trial if he had denied his own liability or had not made any statement during the proceedings. In the case provided for in paragraph 2, the witness shall not be obliged to testify on facts concerning his own liability in the offence he is being or has been prosecuted for.

5. The statements made by the subjects referred to in this Article shall not be used against the person who has made them in the proceedings against him, in the revision proceedings and in any civil or administrative trial related to the offence that has been prosecuted and ascertained in the aforementioned judgments.

6. The provision of Article 192, paragraph 3 shall apply to the statements made by the persons undertaking the duty of witnesses under the provision of this Article.

Article 198

Obligations of the witness

1. The witness is obliged to appear before the court, follow the judicial indications regarding the procedural needs and answer truthfully to the questions addressed to him.

2. The witness shall not be obliged to testify on facts which may unravel his own criminal liability.

Article 199

Right of abstention of next of kin

1. The next of kin of the accused shall not be obliged to testify, but they must in any case testify if they have submitted a report, complaint or petition or if they or one of their next of kin are the victims.

2. Under penalty of nullity, the court shall inform the aforementioned persons of their right to abstention and ask them if they intend to exercise such right.

3. The provisions of paragraphs 1 and 2 shall also apply to whoever is related to the accused by adoption ties. They shall also apply to the following persons, exclusively in relation to the facts that either occurred or were learned by the accused person during marriage or same-sex civil union:

a) the cohabitee of the accused person, even if not a spouse;

b) the spouse separated from the accused person;

c) the person against whom a judgment annulling, dissolving or ceasing the civil effects of the marriage or same-sex civil union contracted with the accused person has been delivered.

Article 200

Professional secret

1. The following persons shall not be obliged to testify on what they know on account of their function, service or profession, without prejudice to the cases in which they must report these facts to the judicial authority:

a) ministers of religious faiths whose charters do not contrast with the Italian legal system;

b) attorneys, authorised private investigators, technical consultants and notaries;

c) doctors and surgeons, pharmacists, obstetricians and any other person practicing a health profession;

d) persons practicing different functions or professions to whom the law recognises the right to abstain from testifying on account of their professional secret.

2. If the court is doubtful about the validity of the statement made by these persons in an attempt to be exempted from testifying, it shall order the necessary ascertainment. If the statement proves to be groundless, it shall order that the witness testify.

3. The provisions referred to in paragraphs 1 and 2 shall apply to professional journalists registered in their professional association, exclusively to the names of the persons from whom they obtain confidential information while practicing their profession. If the information is essential to prove that the offence being prosecuted has been committed and its truthfulness may be ascertained only by identifying the source of the information, the court shall order that the journalist specify its source.

Article 201

Public service secret

1. Public officials and employees, as well as persons in charge of a public service must abstain from testifying on the facts known on account of their function which must remain secret, with the exception of the cases in which they must report these facts to the judicial authority.

2. The provisions of Article 200, paragraphs 2 and 3 shall apply.

Article 202

State secret

1. Public officials and employees, as well as persons in charge of a public service must abstain from testifying on the facts covered by State secret.

2. If the witness declares that the information is covered by State secret, the judicial authority shall request confirmation to the President of the Council of Ministers, and shall suspend any activity aimed at gathering the information covered by such secret.

3. If the secret is confirmed and knowledge of the facts covered by State secret is essential for the

conclusion of the case, the court shall issue a judgment of non prosecution due to the existence of the State secret.

4. If the President of the Council of Ministers does not confirm the secret within thirty days of service of the request, the judicial authority shall gather the information and decide on the subsequent course of the proceedings.

5. The declaration of State secret, confirmed by means of a reasoned decision by the President of the Council of Ministers, shall prevent the judicial authority from gathering and using, also indirectly, the information covered by such secret.

6. The judicial authority shall not, however, be prevented from using items of evidence which are autonomous and independent from the documents, documentary evidence and material objects covered by the secret.

7. If a conflict of assignment is raised against the President of the Council of Ministers, in case the State secret does not apply, the President of the Council of Ministers shall not consider the same object as State secret. If the State secret applies, the judicial authority shall neither gather nor use, directly or indirectly, documents or documentary evidence covered by State secret.

8. In no case shall the State secret be raised to the Constitutional Court. The Court shall adopt the necessary guarantees for the secrecy of the proceedings.

Article 203

Informants of the criminal police and Security Services

1. The court shall not oblige criminal police officials and officers, or staff employed by intelligence services for military and democratic security, to disclose the names of their informants. If these are not examined as witnesses, the information they give shall neither be gathered nor used.

1-*bis.* The exclusion shall apply also at the pre-trial stage, if the informants are not questioned formally or informally.

Article 204

Exclusion of the secret

1. Facts, information or documentary evidence concerning offences aimed at the subversion of the constitutional system as well as the crimes provided for in Articles 285, 416-*bis,* 416-*ter* and 422 of the Criminal Code shall not be covered by the secret provided for in Articles 201, 202 and 203. If the secret is declared, the nature of the offence shall be defined by the court. The Preliminary Investigation Judge shall decide on the aforementioned issue upon request of a party prior to the criminal prosecution.

1-*bis.* Facts, information or documentary evidence concerning the conduct of intelligence and security

services personnel violating the rules of special justification set for intelligence and security services personnel shall not be the object of the secret provided for in Articles 201, 202 and 203. Such rules are deemed violated in the event of conducts for which no special justification exists, having the procedure set by law been performed.

1 *-ter.* State secret shall neither be declared nor confirmed only to ensure the secrecy of classified information or because of the classified nature of the documentary evidence, document or material object.

1 *-quater.* In no case shall the State secret be declared to the Constitutional Court which shall adopt the necessary safeguards to keep the proceedings secret.

1 *-quinquies.* When the President of the Council of Ministers holds that the State secret should not be confirmed, he shall order, acting as the national security authority, the declassification of the documents, documentary evidence, material objects and places, before they become available to the competent judicial authority.

2. The President of the Council of Ministers shall be informed about the decision rejecting the declaration of secrecy.

Article 205

Taking of testimony from the President of the Republic and the Great Officials of State

1. The testimony of the President of the Republic shall be taken in the location where he exercises the function of Head of State.

2. If the testimony from either one of the Presidents of the Chambers, the President of the Council of Ministers or the Constitutional Court shall be taken, they may request to be examined in the locations where they exercise their functions, to guarantee the continuity and regularity of their duties.

3. If, according to the court, the appearance of one of the persons referred to in paragraph 2 is essential to perform the identification or confrontation or for any other need whatsoever, the standard procedures shall be followed.

Article 206

Taking of testimony from diplomatic officials

1. If a diplomatic official or a person in charge of a diplomatic mission abroad during his stay outside the State territory must be examined, the request for the examination shall be forwarded, through the Ministry of Justice, to the consular authority of the place. In the cases provided for in Article 205, paragraph 3, the standard procedures shall be followed.

2. The testimonies of diplomatic officials from the Holy See accredited to the Italian State or from

diplomatic officials of a foreign State accredited to the Italian State or the Holy See shall be taken following international conventions and customs.

Article 207

Witnesses suspected of falsity or reticence. Renitent witnesses

1. If, during the examination, a witness makes statements that are contradictory, incomplete or contrasting with the gathered evidence, the President of the bench or the single judge shall point this out and, if necessary, shall remind the witness of the warning referred to in Article 497, paragraph 2. The same warning shall be given if a witness refuses to testify without prejudice to the cases expressly provided for by law. If the witness keeps refusing, the President or the single judge shall immediately forward the case file to the Public Prosecutor so that he may proceed according to the law.
2. By means of the decision which concludes the stage of the proceedings in which the witness has performed his duties, the court, if it identifies circumstantial evidence of the offence provided for in Article 372 of the Criminal Code, shall inform the Public Prosecutor, forwarding to him the relative case file.

CHAPTER II

EXAMINATION OF THE PARTIES

Article 208

Examination request

1. During the trial, the accused person, the civil party who is not examined as witness, the person with civil liability for damages and the person with civil liability for financial penalties shall be examined if they request or agree to be examined.

Article 209

Examination rules

1. The provisions of Articles 194, 198, paragraph 2 and 499 shall apply to the examination of the parties whereas the provisions of Article 195 shall apply to the examination of any party other than the accused person.
2. If a party refuses to answer a question, this shall be mentioned in the record.

Article 210

Examination of a person accused in joined proceedings

1. During the trial, the persons accused in joined proceedings under Article 12, paragraph 1, letter *a)*, against whom a prosecution is ongoing or has been conducted separately, and who shall not undertake

the duty of witness, shall be examined upon request of a party or, in the case referred to in Article 195, also of the court's own motion.

2. These persons are obliged to appear before the court that, if necessary, shall order their compulsory appearance. The rules on the summons of witnesses shall be observed.

3. The persons referred to in paragraph 1 shall be assisted by a lawyer who is entitled to participate in the examination. If the witness has no retained lawyer, he shall be assisted by a court-appointed lawyer.

4. Before the beginning of the examination, the court shall inform the persons referred to in paragraph 1 that, without prejudice to the provision of Article 66 paragraph 1, they have the right to silence.

5. The provisions of Articles 194, 195, 498 and 500 shall apply to the examination.

6. The provisions of the previous paragraphs shall also apply to the persons accused in joined proceedings under Article 12, paragraph 1, letter *c), or* in a joined offence under Article 371, paragraph 2, letter *b),* who have not made previous statements concerning the liability of the accused person. These persons shall be informed according to the provision of Article 64, paragraph 3, letter *c)* and, if they do not exercise their right to silence, they shall take the role of witnesses. In this case, the provisions referred to in paragraph 5 as well as those set by Articles 197-*bis* and 497 shall apply.

CHAPTER III

CONFRONTATIONS

Article 211

Preconditions for the confrontation

1. The confrontation shall be allowed exclusively among persons having been already examined or questioned when they are in disagreement over important facts and circumstances.

Article 212

Methods of confrontation

1. After reporting the previous statements to the subjects who will take part in the confrontation, the court shall ask them to confirm or modify the statements and, if necessary, challenge each other's statements.

2. The record shall contain the questions asked by the court, the statements made by the confronted persons and any other event occurred during the confrontation.

CHAPTER IV

FORMAL IDENTIFICATIONS

Article 213

Identification of persons. Preliminary actions

1. When it is necessary to identify a person, the court shall ask the person who will perform the

identification to describe the person and indicate all the details he is able to recall. The court shall also ask him whether he has been previously called to perform the identification, whether before or after the criminal act under prosecution he has seen, either directly or in a photo or otherwise, the person to be identified, whether the latter has been indicated or described to him, and whether there are any other circumstances that may affect the reliability of the identification procedure.

2. In the record mention shall be made to the fulfilments referred to in paragraph 1 as well as the statements made.

3. Failure to comply with the provisions referred to in paragraphs 1 and 2 shall result in the nullity of the identification.

Article 214

Procedure for formal identification

1. The person performing the identification shall be asked to leave the room and the court shall call in the room at least two persons that look as similar as possible, also in the clothing, to the person subject to identification. The court shall invite the latter to choose his position among the other participants, making sure that his appearance is as close as possible to what he looked like when he was seen by the person called to perform the identification. When the latter is brought back into the room, the court shall ask him whether or not he can identify any of the persons in the lineup and, in case of an affirmative answer, the court shall ask him to point out the identified person and specify whether he is completely certain of the identification.

1. If there are well-founded reasons to believe that the person called to perform the identification may be intimidated or influenced by the presence of the person subject to the identification, the court shall order that the procedure be performed in a way so that the latter is not able to see the former.

2. The record shall specify the methods employed in the identification procedure, under penalty of nullity. The court may order that the identification be recorded by photo, video or any other devices or procedures.

Article 215

Identification of material objects

1. When it is necessary to identify the *corpus delicti* or other material items related to the offence, the court shall proceed following the provisions of Article 213, provided they are applicable.

2. Having obtained, if possible, at least two objects similar to the one to be identified, the court shall ask the person called to perform the identification whether or not he can recognise any of them. In case of an affirmative answer, the court shall ask him to specify which object he has recognised and whether he is

completely certain of the identification.

3. The provisions of Article 214, paragraph 5, shall apply in this case.

Article 216

Other identification procedures

1. When ordering the identification of voices, sounds or any other element that may be the object of sensorial perception, the court shall follow the provisions of Article 213, provided they are applicable.

2. The provisions of Article 214, paragraph 3, shall apply in this case.

Article 217

Multiple identifications

1. If more than one person is called to identify the same person or the same object, the court shall proceed by separate actions, taking due care to prevent any communication between the person who has performed the identification and those who still have to perform it.

2. If the same person is required to identify more than one person or object, the court shall order that, in each action, the person or object to be identified be placed among different persons and objects.

3. The provisions of the previous Articles shall apply.

CHAPTER V

JUDICIAL SIMULATIONS

Article 218

Preconditions for judicial simulations

1. The judicial simulation shall be admitted when it is necessary to ascertain whether a fact has or could have occurred in a specific way.

2. The simulation consists in the reproduction, as exact as possible, of the situation in which the fact is said or believed to have occurred and in the re-enactment of the way in which the fact has taken place.

Article 219

Methods of judicial simulation

1. The order providing for a judicial simulation shall contain a brief description of its object and an indication of the day, time and place in which it shall be performed. By the same order or by a further decision, the court may appoint an expert to perform specific activities.

2. The court shall take the necessary decisions regarding the performance of such activities, including photographic or video recordings or other tools or procedures.

3. The court may take the decisions provided for in Article 471 also when the simulation is performed

outside the courtroom, in order to guarantee that the act is performed regularly.

4. Upon establishing the simulation procedure, the court, if applicable, shall take the necessary decisions to ensure that it does not offend the feelings or conscience of the persons involved nor does it endanger personal or public safety.

CHAPTER VI

EXPERT EVIDENCE

Article 220

Object of expert evidence

1. Expert evidence shall be admitted when it is necessary to perform investigations or gather data or evaluations requiring specific technical, scientific or artistic competences.

2. Without prejudice to the provisions concerning the enforcement of the sentence or security measures, expert evidence shall not be admitted to determine whether the accused is a habitual or professional offender or he has a tendency to commit offences or to establish the character or personality of the accused and, in general, his psychic qualities independent of pathological causes.

Article 221

Appointment of experts

1. The court shall appoint the expert by choosing him from those registered in the dedicated professional registers or among persons that are highly competent in the specific field. If the expert evidence is declared null, the court shall appoint, if possible, another expert to perform the new task.

2. The court shall assign the task of gathering expert evidence to more than one person if investigations and evaluations prove highly complex or if they require diversified knowledge in different fields.

3. The expert must perform his duty, except in the occurrence of one of the reasons for abstention provided for in Article 36.

Article 222

Incapacity and incompatibility of experts

1. Under penalty of nullity, the following persons shall not assume the role of experts:

a) minors, persons declared totally or partially disabled and mentally-ill persons;

b) persons barred from public office, also temporarily, or barred or suspended from performing a profession or an art;

c) persons who are subject to personal security or preventive measures;

d) persons who cannot be called as witnesses or have the right to abstain from testifying or have been called as witnesses or interpreters;

e) persons who have been appointed as technical consultants in the same proceedings or in a joined one.

Article 223

Abstention and disqualification of experts

1. Should there be a reason for abstention, the expert must declare it.
2. The expert shall be disqualified by the parties in the cases provided for in Article 36, except for the case provided for in paragraph 1, letter *h),* of the same Article.
3. The declaration of abstention or disqualification may be submitted prior to completion of all formalities connected with the job assignment and, in case of reasons that arose or were learned subsequently, prior to expression of the expert's opinion.
4. The court that ordered the expert evidence shall decide, by issuing an order, on the declaration of disqualification or abstention.
5. The rules on the disqualification of judges shall be observed, provided they are applicable.

Article 224

Judicial decisions

1. The court shall request, also of its own motion, expert evidence by issuing a reasoned order appointing the expert and containing a brief description of the object of investigation, as well as the day, time and place set for the expert's court appearance.
2. The court shall order the appearance of the expert and shall take the necessary decisions for the appearance of the persons to be examined by the expert. It shall take any other decision that may be deemed necessary to perform the expert's evaluation activities.

Article 224-*bis*

Judicial decisions on expert evidence requiring actions affecting personal freedom

1. In the prosecution of crimes that are either completed or attempted intentional crimes punishable by law with a life sentence or imprisonment for a maximum term exceeding three years, and of crimes provided for in Articles 589-*bis* and 590-*bis* of the Criminal Code, if the collection of expert evidence requires either actions affecting personal freedom, such as the sampling of hair or mucosa from the oral cavity of living persons to determine their DNA profile, or medical checks, and the person to be examined by the expert does not provide his consent, the court shall issue, also of its own motion, a reasoned order for such actions to be performed if they are deemed essential to prove the facts. The same applies to other cases expressly provided for by law.
2. In addition to the provision of Article 224, under penalty of nullity, the order referred to in paragraph 1 shall contain:

a) the personal details of the person who shall be examined as well as any other element useful to identify him;
b) the indication of the offence being prosecuted, with a brief description of the criminal act;
c) the specific indication of the sample or check to be performed as well as the reasons making it essential to prove the facts;
d) the notice of the person's right to be assisted by a lawyer or by a trusted person;
e) the warning that, in case of failure to appear which is not due to a legal impediment, an order of compulsory appearance may be issued against him, under paragraph 6;
f) the indication of the day, time and place set for the execution of the action and the methods of doing so.
3. The order referred to in paragraph 1 shall be served on the
person concerned, the accused person and his lawyer, as well as the victim, at least three days prior to the day in which expert evidence activities shall be performed.
4. In no case whatsoever shall expert activities be ordered if they either contrast with the prohibitions expressly set by law, or endanger the life, physical integrity or health of the person or the unborn child, or may cause serious sufferings, according to medical science.
5. Expert activities shall, in any case, be performed respecting the dignity and modesty of the person under examination. In any case, the least invasive techniques that produce identical results shall be preferred.
6. If the person called to participate in the examination for the purposes of paragraph 1 does not appear without producing the reasons for a legal impediment, the court may order that he be taken, also compulsorily, to the established place for his appearance on the set day and time. If the person appears but refuses to give his consent to the checks, the court shall order that they be performed compulsorily. The use of means of physical coercion shall be allowed exclusively for the time that is strictly necessary to take the sample or perform the check. The provisions of Article 132, paragraph 2, shall apply.
7. The act shall be null if the person from whom the sample is being taken and on whom the check is being performed is not assisted by the appointed lawyer.

Article 225

Appointment of technical consultants

1. Once expert evidence has been ordered, the Public Prosecutor and the private parties shall be entitled to appoint their own technical consultants whose number must not exceed, for each party, that of the experts.
2. The private parties, in the cases and conditions established by the law on the legal aid to destitute

persons, shall be entitled to be assisted by a technical consultant at the expense of the State.
3. Any person who may find himself in the conditions referred to in Article 222, paragraph 1, letters *a), b), c)* and *d*), shall not be appointed as technical consultant.

Article 226

Assignment of the job

1. The court shall ascertain the identity of the expert and ask him whether he is in any of the situations referred to in Articles 222 and 223. It shall also advise him about criminal law obligations and liabilities and shall invite him to render the following statement: “being aware of the moral and legal liability that I take while performing my duty, I hereby pledge to perform my service for no purpose other than revealing the truth and to keep the secret on all the expert activities”.
2. After hearing the expert, the technical consultants, the Public Prosecutor and the lawyers that are present, the court shall prepare the questions.

Article 227

Expert report

1. Upon conclusion of job assignment formalities, the expert shall immediately proceed to make the necessary ascertainment and answer the questions. His opinion shall be recorded.
2. Should the expert believe that he is unable to provide an immediate answer due to the complexity of the questions, he may request the court to grant an extension of time to respond.
3. Should the court decide not to grant any extension of time, it shall substitute the expert; alternatively, it shall set the date, without exceeding ninety days, by which the expert must answer the questions, and it shall order that the parties and technical consultants be informed.
4. Should particularly complex ascertainment be necessary, the time limit may be extended by the court more than once for a maximum period of thirty days, upon a reasoned request by the expert. In any case, the time limit for answering the questions shall not exceed six months, also if an extension has been granted.
5. Should it be essential to report the answers in writing, the expert may forward to the court a request for authorisation to submit a written report within the time limit set in paragraphs 3 and 4.

Article 228

Activities of experts

1. Experts shall perform the activities necessary to answer the questions. To this end, they may be authorised by the court to examine the documents, documentary evidence and material objects produced by the parties that, according to the law, must be added to the trial dossier.

2. Experts may also be authorised to be present at the examination of the parties and the gathering of evidence and may use their trusted assistants to perform material activities that do not require assessments or evaluations.
3. If, for the purposes of their job, experts request information to the accused person, the victim or other persons, the items of evidence gathered in this way shall be used exclusively for the purposes of the expert assessment.
4. If expert activities are performed without the presence of the court and questions arise as to the powers of the expert and the limits of his job, the decision shall be taken by the court, without causing a suspension of activities.

Article 229

Communications on expert activities

1. The expert shall indicate the day, time and place in which his activities will be performed and the court shall request their recording in the record.
2. Should the need to continue expert activities arise, the expert shall inform the parties present at the trial without any formalities.

Article 230

Activities of technical consultants

1. Technical consultants may be present at the assignment of the job to the expert and submit to the court any requests, observations or reservations, which shall be mentioned in the record.
2. They may participate in the expert activities, suggesting to the expert specific investigations and formulating observations and reservations, which shall be mentioned in the report.
3. If they are appointed after conclusion of the expert activities, technical consultants may personally examine the reports and request to the court the authorisation to examine the person, the material object and the place under expert evaluation.
4. The appointment of technical consultants and their activities shall not delay expert activities and other procedural activities.

Article 231

Substitution of experts

1. Experts may be substituted if they do not provide their opinion by the set time limit, if the request for time extension is not granted or if they carry out the assigned job with negligence.
2. After hearing the expert, the court shall substitute him by issuing an order, unless the delay or failure to perform the job is due to reasons beyond his control. A copy of the order shall be forwarded to the

professional association to which he belongs.

3. After being summoned to provide a justification, the substituted expert may be sentenced by the court to pay an amount ranging from EUR 154 to EUR 1, 549 to the Treasury of Fines.

4. The expert shall also be substituted when the request for abstention or disqualification is accepted.

5. The substituted expert shall immediately provide the court with the records and the results of the expert activities already conducted.

Article 232

Settlement of expert fees

1. The expert shall be paid by decree of the court that ordered the expert evidence, following the rules contained in special laws.

Article 233

Technical consultancy other than expert evidence

1. If no expert evidence is ordered, each party may appoint up to two technical consultants of their choice. These consultants may provide the court with their own opinion, also by submitting briefs in line with Article 121.

1 -*bis.* The court, upon request of the lawyer, may authorise the technical consultant of a private party to examine the material objects seized in the place where they are located, to intervene in the inspections or to examine the object of inspections in which the consultant has not taken part. The authorisation shall be ordered by the Public Prosecutor upon request of the lawyer prior to the criminal prosecution. The decree rejecting the lawyer's request may be challenged by the court that shall decide following the provisions of Article 127.

1-*ter.* The judicial authority shall establish the necessary measures to preserve the original condition of the material objects and places, as well as the respect of persons.

2. If expert evidence is ordered after appointment of the technical consultant, the appointed technical consultants shall be granted the rights and powers provided for in Article 230, without prejudice to the limit provided for in Article 225, paragraph 1.

3. The provision of Article 225, paragraph 3 shall apply.

CHAPTER VII

DOCUMENTARY EVIDENCE

Article 234

Documentary evidence

1. Written or other documentary evidence which present facts, persons or objects through photographs,

video recordings, audio recordings or any other means of representation may be gathered.
2. If the original documentary evidence which must be used is destroyed, lost or removed for any reason whatsoever and it is impossible to recover it, a copy of it may be gathered.
3. It is forbidden to gather documentary evidence which contains information on either public rumours concerning the criminal acts under prosecution or the morality, in general, of the parties, witnesses, technical consultants and experts.

Article 234-*bis*

Gathering of electronic documents and data

1. Electronic documents and data stored abroad may always be gathered. If such documents and data are not publicly available, they shall be gathered upon consent of their lawful owner.

Article 235

Documentary evidence constituting the corpus delicti

1. Documentary evidence constituting the *corpus delicti* must be gathered regardless of the person who has generated it or is in possession of it.

Article 236

Documentary evidence related to character evaluation

1. If the criminal act under prosecution is to be evaluated against the behaviour or moral qualities of the accused or the victim, criminal record certificates, documentation held at Public Social Services Offices and Sentence Supervision Offices as well as final judgments issued by any Italian court or recognised foreign judgments may be gathered for the purpose of evaluating the character of the accused or of the victim.
2. The judgments referred to in paragraph 1 and the criminal record certificates may also be gathered for the purpose of evaluating the credibility of a witness.

Article 237

Gathering of documentary evidence originating from the accused person

1. Any document originating from the accused, even if it is seized from others or produced by others, may be gathered, also of the court's own motion.

Article 238

Records of evidence from other proceedings

1. Records of evidence from another criminal proceeding may be gathered, if such evidence has been taken during the special evidentiary hearing or the trial.
2. Records of evidence taken in a civil trial for which a final judgment has been delivered may be

gathered.

2-*bis*. In the cases referred to in paragraphs 1 and 2, the records of statements may be used against the accused only if his lawyer has taken part in evidence gathering or if a final civil judgment has been rendered against him.

3. Records of unrepeatable actions may also be gathered. If repetition of the action has become impossible due to facts or circumstances that occurred subsequently, evidence may be gathered if said facts or circumstances were unforeseeable.

4. With the exception of the cases provided for in paragraphs 1, 2, 2-*bis* and 3, the records of statements may be used in the trial only against the accused person provided that he gives his consent; if no consent is given, such records may be used for the challenges provided for in Articles 500 and 503.

5. Without prejudice to Article 190-*bis,* the parties maintain the right to obtain, under Article 190, the examination of the persons whose statements have been taken as evidence under the provisions of paragraphs 1, 2, 2-*bis* and 4 of this Article.

Article 238-*bis*

Final judgments

1. Without prejudice to Article 236, final judgments may be gathered as evidence of the facts therein ascertained and shall be evaluated in compliance with Articles 187 and 192, paragraph 3.

Article 239

Verification of the origin of documentary evidence

1. If the origin of documentary evidence needs to be verified, such evidence is submitted for identification to the private parties or the witnesses.

Article 240

Anonymous documentary evidence and documents related to illegal interception

1. Documentary evidence containing anonymous statements shall neither be gathered nor used in any way whatsoever, unless they constitute the *corpus delicti* or originate in any way from the accused person.

2. The Public Prosecutor shall order the immediate classification and custody in a protected place of any documentary evidence, media and documents concerning data and contents of conversations or communications related to telephone and electronic traffic, which were originated or obtained illegally. The Public Prosecutor shall follow the same procedure for documentary evidence originated through the illegal collection of information. It is forbidden to copy the aforementioned evidence by any means whatsoever and at any stage of the proceedings and to use their content.

3. Within forty-eight hours of the gathering of documentary evidence, media and documents referred to in paragraph 2, the Public Prosecutor shall request the Preliminary Investigation Judge to order their destruction.
4. Within the following forty-eight hours, the Preliminary Investigation Judge shall set the hearing, to be held within ten days, under Article 127, and shall inform all the parties concerned, who may appoint a retained lawyer at least three days before the day of the hearing.
5. After hearing the parties who appeared in court, the Preliminary Investigation Judge shall read his decision during the hearing and, if he holds that the necessary preconditions referred to in paragraph 2 are met, he shall order the destruction of the documentary evidence, media and documents referred to in paragraph 2, which shall be carried out immediately after the hearing in the presence of the Public Prosecutor and the lawyers of the parties.
6. The destruction shall be reported in the dedicated record, which shall contain information on the illegal interception, holding or gathering of the documentary evidence, media and documents referred to in paragraph 2, as well as to the procedures or tools used and the persons concerned, without any reference whatsoever to the content of such evidence, media and documents.

Article 241

False documentary evidence

1. With the exception of the cases provided for in Article 537, if the court holds that the documentary evidence gathered for the proceedings is false, after the conclusion of the proceedings, it shall inform the Public Prosecutor by forwarding him a copy of such documentary evidence.

Article 242

Translation of documentary evidence. Transcription of audio recordings

1. If documentary evidence written in a language other than Italian is gathered, the court shall order its translation according to Article 143, provided this is necessary for it to be understood.
2. If an audio recording is gathered, the court, if necessary, shall order its transcription according to Article 268, paragraph 7.

Article 243

Issuance of copies

1. If the court orders the gathering of a document that is not to be kept secret, it may authorise the Court Registry, upon request of whoever may be interested, to issue an authenticated copy according to Article 116.

TITLE III

MEANS FOR OBTAINING EVIDENCE

CHAPTER I

INSPECTIONS

Article 244

Cases and methods of inspections

1. The inspection of persons, places and objects is ordered by reasoned decree if it is necessary to find traces and other material items of the offence.
2. If the offence does not leave any traces or material items or they disappear, are deleted or scattered, altered or removed, the judicial authority shall describe the current state and, if possible, verify the pre-existing state, also by trying to identify the manner, time and cause of any possible changes. The judicial authority may order that inspection be performed by means of descriptive and photographic tools and any other technical operation, also by means of computer or electronic tools, by adopting technical measures capable of guaranteeing the preservation of the original data and preventing their alteration.

Article 245

Body inspections

1. Before the start of a body inspection, the person concerned shall be informed about his right to be assisted by a trusted person, provided that the latter is promptly available and suitable according to Article 120.
2. Inspections shall be performed respecting the dignity and, as far as possible, the modesty of the person being inspected.
3. Inspections may also be performed by a doctor. In such cases, the judicial authority may abstain from being present during the inspection.

Article 246

Inspections of places or objects

1. The accused and any person who has current access to the place where the inspection is to be performed shall be given a copy of the decree ordering such measure, at the beginning of the inspection and provided they are present.
2. While inspecting a place, the judicial authority may order a person not to leave before completion of the inspection, specifying the reasons for doing so in the record, and may also order that the transgressor be coercively taken back to the place under inspection.

CHAPTER II

SEARCHES

Article 247

Cases and methods of searches

1. If there are reasonable grounds to believe that someone is concealing on his body the *corpus delicti* or material items related to the offence, a body search shall be ordered. If there are reasonable grounds to believe that such objects are located in a certain place or that the accused person or the escapee may be arrested there, a search of premises shall be ordered.

1 *-bis.* If there are reasonable grounds to believe that data, information, software or any other traces relating to the offence are stored in a computer or electronic system, even if it is protected by security measures, a search shall be ordered by adopting technical measures capable of guaranteeing the preservation of the original data and preventing their alteration.

2. Searches are ordered by reasoned decree.

3. The judicial authority may perform the search personally or order for it to be performed by criminal police officials delegated by the same decree.

Article 248

Request for delivery

1. If a specific object is sought through search, the judicial authority may require its delivery. If such objects are handed in, no search shall be performed, unless it is believed the search may be useful for completeness of the investigation.

2. In order to trace the objects to be seized or ascertain other circumstances useful for the investigation, the judicial authority or the criminal police officials delegated by the judicial authority may examine documents and correspondence as well as data, information and software in banks. In case of refusal, the judicial authority shall perform a search.

Article 249

Body searches

1. Before the start of a body search, the person concerned shall be given a copy of the decree, together with a notice informing him of his right to be assisted by a trusted person, provided
that the latter is promptly available and suitable according to Article 120.

2. Searches shall be performed respecting the dignity and, as far as possible, the modesty of the person being searched.

Article 250

Searches of premises

1. At the beginning of the search, the accused, if present, and any person who has current access to the premises to be searched shall be given a copy of the decree ordering the search with a notice informing them of their right to be represented or assisted by a trusted person, provided that the latter is promptly available and suitable according to Article 120.
2. If the persons referred to in paragraph 1 are not available, the copy of the decree shall be given to either a next of kin, a cohabitee or a collaborator or, in their absence, to the house warden or his representative.
3. During the search of the premises, the judicial authority may order, by reasoned decree, the search of the persons who are present or have arrived afterwards, if the authority believes that they may conceal the *corpus delicti* or material items related to the offence. It may also order, specifying the reasons for doing so in the record, a person not to leave before the search is completed. The transgressor shall be held or coercively taken back to the place being searched.

Article 251

Searches at domicile. Time limits

1. The search of a dwelling or adjacent premises shall not commence before the hours of seven in the morning and after the hours of eight at night.
2. However, in urgent cases, the judicial authority may order, in writing, that the search be performed outside the aforementioned time limits.

Article 252

Seizure during searches

1. Objects found during a search shall be subject to seizure, in compliance with the provisions of Articles 259 and 260.

CHAPTER III

SEIZURES

Article 253

Object and formalities of seizures

1. The judicial authority may order, by reasoned decree, the seizure of the *corpus delicti* and of material items related to the offence necessary for ascertaining the facts of the case.
2. The *corpus delicti* consists of anything on which or through which the offence has been committed as well as the things that constitute its product, its profit or its price.
3. The seizure shall be performed personally by the judicial authority or a criminal police official

delegated by the aforementioned decree.

4. A copy of the seizure decree shall be given to the person concerned, if present.

Article 254

Seizure of correspondence

1. In offices providing postal, telegraphic, electronic or telecommunication services, the seizure of letters, envelopes, parcels, valuables, telegrams, as well as other items of correspondence, even if forwarded electronically, is permitted if the judicial authority has justified grounds to believe that they were sent by or addressed to the accused, also under a different name or by means of a different person, or may somehow be related to the offence.

2. If the seizure is performed by a criminal police official, he must hand the seized correspondence to the judicial authority, without opening or altering them and without otherwise taking cognisance of their content.

3. Letters and other seized documents that are not seizable correspondence shall be immediately returned to the person entitled to have them and shall not be used.

Article 254-*bis*

Seizure of electronic data at the premises of providers of computer, electronic and telecommunication services

1. If the judicial authority orders the seizure of data held by providers of computer, electronic and telecommunication services, including traffic and location data, the authority may establish that, for reasons related to the standard provision of such services, they shall be gathered by copying them on a suitable medium following a procedure which ensures that the collected data are identical to the original ones and that they cannot be modified. In such a case, the service provider shall be in any case ordered to adequately preserve and protect the original data.

Article 255

Seizure in hanks

1. Documents, titles, securities, amounts of money deposited in current accounts and anything else held in banks, even if contained in safe deposit boxes, may be seized if the judicial authority has justified grounds to believe that they relate to the offence, even if they do not belong to the accused or are not registered in his name.

Article 256

Compulsory handing over of items and limitations

1. The persons referred to in Articles 200 and 201 must immediately hand to the requesting judicial

authority the documents and documentary evidence, even the original ones if ordered to do so, as well as data, information and software, also by copying them on a suitable medium, and anything else they possess by virtue of their function, job, service, profession or art, except if they declare in writing that they are covered by either State, public service or professional secret.

2. If the declaration involves a public service or professional secret, the judicial authority shall proceed with the necessary ascertainment if it has reasons to doubt the legitimacy of said declaration and it believes that it cannot proceed without gathering the documents, documentary evidence or objects referred to in paragraph 1. If the declaration is groundless, the judicial authority shall order its seizure.

3. When the declaration involves a State secret, the judicial authority shall inform the President of the Council of Ministers and request his confirmation. If the secret is confirmed and if the evidence is essential for the decision of the case, the court shall issue a judgment of non prosecution due to the existence of the State secret.

4. If no confirmation of the State secret is provided by the President of the Council of Ministers within sixty days of the service of the request, the judicial authority shall order the seizure.

5. The provision of Article 204 shall apply.

Article 256-*bis*

Gathering of documents, documentary evidence or other objects by the judicial authority at the premises of intelligence and security services

1. If the judicial authority must order the gathering of documents, documentary evidence or other objects at the premises of intelligence and security services, at the offices of the Security Intelligence Department or other offices with functions of intelligence and security for the Italian Republic, it shall detail as much as possible, in its exhibition injunction the documentary evidence, documents and objects requested.

2. The judicial authority shall examine directly at the aforementioned premises the documentary evidence, documents and objects and shall add to the case file those that are strictly necessary for the investigation. While performing such activity, the judicial authority may avail itself of the collaboration of criminal police officials.

3. If the judicial authority has reasonable grounds to believe that the exhibited documentary evidence, documents or objects are neither those requested nor are they complete, it shall inform the President of the Council of Ministers who shall either require the delivery of further documentary evidence, documents or objects or, if the necessary preconditions are met, shall confirm that no other documentary evidence, documents or objects exist.

4. If the original or a copy of any documentary evidence, document or object originated from a foreign intelligence body and forwarded under a non-disclosure agreement is to be gathered, its examination or immediate delivery shall be suspended and the documentary evidence, document or object shall be immediately forwarded to the President of the Council of Ministers so that he may take the necessary measures at the foreign authority premises for a resolution on the application of the State secret.
5. In the case provided for in paragraph 4, the President of the Council of Ministers shall either authorise the gathering of the documentary evidence, document or object, or challenge or confirm the State secret within sixty days of the forwarding.
6. If no response is provided by the President of the Council of Ministers within the time limit referred to in paragraph 5, the judicial authority shall add the documentary evidence, document or object to the case file.

Article 256-*ter*

Gathering of documents, documentary evidence or other objects for which the State secret is declared

1. If the original or a copy of any documentary evidence, document or object which are confirmed to be covered by State secret by the person in charge of the office where they are kept, their examination or immediate delivery shall be suspended; the documentary evidence, document or object shall be sealed in suitable containers and promptly forwarded to the President of the Council of Ministers.
2. In the case provided for in paragraph 1, the President of the Council of Ministers shall either authorise the gathering of the documentary evidence, document or object, or confirm the State secret within thirty days of the forwarding.
3. If no response is provided by the President of the Council of Ministers within the time limit referred to in paragraph 2, the judicial authority shall add the documentary evidence, document or object to the case file.

Article 257

Re-examination of the seizure decree

1. The accused, the person from whom objects have been seized and the person who would be entitled to their restitution may submit a request for the re-examination of the seizure decree, also on the merits of the case, in compliance with Article 324.
2. The request for the re-examination does not suspend the enforcement of the decision.

Article 258

Copies of seized documents

1. The judicial authority may direct that a copy of the seized documents and documentary evidence is

made, and the originals returned, or, if the latter are to be held under seizure, may authorise the Court Registry or the Public Prosecutor's Clerk's Office to issue, free of charge, an authenticated copy to the persons who held them legitimately.

2. Public officials may issue copies, extracts or certificates of documentary evidence that are returned to them by the judicial authority in their original form or as a copy, but they must specify on such copies, extracts or certificates that they are under seizure.

3. In all cases, the person or the office from whom the seizure has been made is entitled to obtain a copy of the record of the seizure.

4. If the seized documentary evidence is part of a volume or register from which it cannot be separated and the judicial authority does not believe that a copy should be extracted from it, the entire volume or register shall be held in the judicial repository. With the authorisation of the judicial authority, the appointed public official shall issue to the interested persons who make the request, copies, extracts or certificates of the parts of the volume or register that is not under seizure, mentioning the partial seizure on the copies, extracts and certificates.

Article 259

Custody of seized objects

1. The seized objects shall be placed in custody at the Court Registry or the Public Prosecutor's Clerk's Office. If this proves to be impossible or inappropriate, the judicial authority shall order that objects be placed in custody in a different place, establishing the method of such custody and appointing another custodian who is suitable according to Article 120.

2. Upon delivery, the custodian shall be informed of his obligation to preserve the objects and make them available whenever required by the judicial authority, and he shall also be informed of the sanctions set by criminal law in case the obligations concerning custody are violated. If the custody involves data, information or software, the custodian shall also be informed of his obligation to prevent them from being altered or accessed by third parties, unless in the latter case the judicial authority orders otherwise. The custodian may be charged a deposit. Mention shall be made in the record of the fact that delivery has been made, the custodian has been informed and the deposit has been charged. The deposit shall be paid, with separate record, at the Court Registry or the Public Prosecutor's Clerk's Office.

Article 260

Sealing of seized objects. Perishable objects. Destruction of seized objects

1. Seized objects shall be secured with the seal of the judicial office and the signature of the judicial authority and its assistant or, depending on the nature of such objects, by any other means, also electronic

or computerised, that suitably complies with the requirement imposed for the purposes of justice.

2. The judicial authority shall order that a copy of the documentary evidence be made and that photographs or other reproductions be taken of the seized objects that may change or are difficult to keep in custody. It shall add them to the case file and order that the original documents be kept in custody at the Court Registry or the Public Prosecutor's Clerk's Office, applying the provisions of Article 259 if dealing with objects. When data, information or software are seized, they shall be copied on suitable media by following a procedure ensuring that such copies are identical to the original and cannot be altered. In such cases, the originals may be kept in custody also in places other than the Court Registry or the Public Prosecutor's Clerk's Office.

3. If the objects can deteriorate, the judicial authority shall order their sale or destruction, according to the case.

3-*bis.* The judicial authority, also upon request of the control body, shall destroy the goods which may in no case be produced, owned, held or sold, if such goods are difficult to be kept in custody or when their custody is particularly expensive or dangerous for public security, health or hygiene or if, even after the ascertainment performed under Article 360, it is evident that the aforementioned prohibitions have been violated. The judicial authority shall order that one or more samples be taken in compliance with the formalities referred to in Article 364 and the remaining goods be destroyed.

3-*ter.* In case of seizure in proceedings against persons unknown, after three months from the day of the seizure, the criminal police may destroy the seized counterfeit goods, after informing the judicial authority. The aforementioned goods may be destroyed 15 days after the judicial authority has been informed, unless otherwise decided by the authority. The right to keep samples to be used for judicial purposes shall be preserved.

Article 261

Removal and re-affixation of seals

1. If seals need to be removed, the judicial authority shall first check their identity and integrity with the help of their assistant. Upon completion of the action that required the removal of the seals, the seized objects are sealed again by the assistant in the presence of the judicial authority. The judicial authority and their assistant shall write the date and their signature next to the seal.

Article 262

Duration of seizure and restitution of seized objects

1. The objects that are not to be kept under seizure for evidentiary purposes shall be returned to the person entitled to them, even prior to delivery of the judgment. If applicable, the judicial authority shall order

that the returned objects be made available whenever required and may levy a deposit for that purpose.
2. In the case covered by paragraph 1, no restitution shall be ordered if the court, upon request of the Public Prosecutor or the civil party, orders that the objects belonging to the accused or the person with civil liability for damages be kept under seizure as a security for the credits referred to in Article 316.
3. There shall be no restitution and objects shall be kept under seizure for preventive purposes if the court decides in compliance with Article 321.
3-*bis*. After five years from the date of the final judgment, any seized amounts of money shall be transferred to the State if they are not to be confiscated and if no one has requested their restitution claiming an entitlement to them.
4. After the delivery of the final judgment, the seized objects shall be returned to the person entitled to them, except if confiscation is ordered.

Article 263

Procedure for the restitution of seized objects

1. The restitution of seized objects shall be directed by the court by order if there is no doubt as to their ownership.
2. If the objects have been seized from a third party, restitution shall not be ordered in favour of others without the third party being heard in chambers as provided for in Article 127.
3. In case of controversy over the ownership of seized objects, the court shall transfer its resolution to the civil court of the place with competence in the first instance, while keeping such objects under seizure.
4. During preliminary investigations, the restitution of seized objects shall be ordered by the Public Prosecutor by reasoned decree.
5. The interested persons may lodge an opposition against the decree of the Public Prosecutor ordering the restitution or rejecting the related request and the court shall decide on such opposition according to Article 127.
6. After the delivery of the final judgment, the sentence enforcement court shall decide on the restitution of seized objects.

Article 264

(...)

Article 265

(...)

CHAPTER IV
INTERCEPTION OF CONVERSATIONS OR COMMUNICATIONS

Article 266

Limits on admissibility

1. Telephone conversations or communications and other forms of telecommunication may be intercepted in proceedings related to the following offences:

a) intentional crimes punishable with the penalty of either a life sentence or imprisonment for a maximum term exceeding five years, established according to Article 4;

b) crimes against the public administration punishable with the penalty of imprisonment for a maximum term of at least five years, established according to Article 4;

c) crimes concerning narcotic or psychotropic substances;

d) crimes concerning weapons and explosive substances;

e) smuggling crimes;

f) offences of insult, threat, usury, illegal financial activity, inside dealing, market manipulation, harassment or disturbance of persons by telephone;

f-bis) crimes referred to in Article 600-*ter*, paragraph 3, of the Criminal Code, even if related to the pornographic material referred to in Article 600-*quater*. 1 of the same Code, as well as in Article 609-*undecies*;

f-ter) crimes referred to in Articles 444, 473, 474, 515, 516 and 517 -*quater* of the Criminal Code;

f-quater) the crime provided for in Article 612-*bis* of the Criminal Code.

2. In the said cases, the interception of face-to-face conversations is allowed. However, if communications to be intercepted occur in the places referred to in Article 614 of the Criminal Code, they may be intercepted only if there are justified reasons to believe that a criminal activity is occurring there.

Article 266-*bis*

Interception of computer or electronic communications

1. In proceedings related to the offences referred to in Article 266, as well as to the offences committed by using computer or electronic technologies, the interception of communication flows within computer or electronic systems or among different systems is allowed.

Article 267

Preconditions and types of decisions

1. The Public Prosecutor shall require the Preliminary Investigation Judge to issue an authorisation for ordering the activities referred to in Article 266. The authorisation shall be given by reasoned decree if there is serious suspicion that an offence has been committed and the interception is absolutely necessary to continue the investigation.

1 -*bis.* In the evaluation of the aforementioned serious suspicion that an offence has been committed, Article 203 shall apply.

2. In cases of urgency, if there are justified reasons to believe that any delay can seriously hamper the investigation, the Public Prosecutor shall order the interception by reasoned decree, which shall be forwarded immediately and, in any case, within twenty-four hours, to the Preliminary Investigation Judge referred to in paragraph 1. Within forty-eight hours of the delivery of the decision, the Judge shall decide on its validation by reasoned decree. If the decree of the Public Prosecutor is not validated within such time limit, the interception shall not be continued and its results shall not be used.

3. The decree of the Public Prosecutor ordering the interception shall detail its methods and duration. Such duration shall not exceed fifteen days, but the Preliminary Investigation Judge may extend it by reasoned decree for further periods of fifteen days, provided the preconditions referred to in paragraph 1 are still met.

4. The Public Prosecutor shall perform the activities personally or through a criminal police official.

5. The decrees which order, authorise, validate or extend interceptions and, for each interception, the details as to their start and end, shall be entered chronologically in a dedicated confidential register kept at the Office of the Public Prosecutor.

Article 268

Procedure for interceptions

1. Intercepted communications shall be recorded and a record of related activities shall be drafted.

2. The content of the intercepted communications shall be transcribed, even summarily, in the record.

3. The activities may be performed exclusively by means of the systems installed in the Office of the Public Prosecutor. However, if such systems are insufficient or unsuitable and there are exceptional reasons of urgency, the Public Prosecutor may order, by reasoned decision, that such activities be performed using public service systems or systems employed by the criminal police.

3 -*bis.* If computer or electronic communications are to be intercepted, the Public Prosecutor may order that the interception activities be performed also using private systems.

4. Records and recordings shall be immediately forwarded to the Public Prosecutor. Within five days of completion of the activities, they shall be filed with the Public Prosecutor's Clerk's Office, together with the decrees that have ordered, authorised, validated or extended the interception, and they shall be kept there for the period of time set by the Public Prosecutor, unless the court recognises the need for an extension.
5. Should such filing hamper investigations, the court shall authorise the Public Prosecutor to delay the filing, not beyond the closure of preliminary investigations.
6. The lawyers of the parties shall be immediately informed that, within the time limit set in paragraphs 4 and 5, they are entitled to examine the documents and listen to the recordings or to take cognisance of the computer or electronic communication flows. After such deadline, the court shall order the admission of the conversations or the computer or electronic communication flows selected by the parties, which do not appear to be manifestly irrelevant, and it shall order the elimination, also of its own motion, of the recordings and records which are not to be used. The Public Prosecutor and the lawyers have the right to participate in such elimination and shall be informed of this at least twenty-four hours in advance.
7. The court shall order the full transcription of the recordings or the printing, in an understandable format, of the information to be gathered which is contained in computer or electronic communication flows, in accordance with the forms, methods and guarantees set for carrying out expert evaluations. The transcriptions or printouts shall be added to the trial dossier.
8. The lawyers may obtain a copy of the transcriptions and have the recording transferred onto a magnetic tape. In case of interception of computer or electronic communication flows, the lawyers may require either a copy of the intercepted flows to be made on a suitable medium or a copy of the printout provided for in paragraph 7.

Article 269

Preservation of documentation

1. Records and recordings shall be kept in their full form at the Office of the Public Prosecutor who ordered the interception.
2. Without prejudice to Article 271, paragraph 3, the recordings shall be kept until delivery of the final judgment. However, if the documentation is not necessary for the proceedings, the interested persons may request its destruction to the court that authorised or validated the interception, in order to maintain confidentiality. The court shall decide in chambers in line with Article 127.
3. In the cases in which destruction of documents is provided for, it shall be performed under the court's supervision. The destruction shall be reported in a record.

Article 270

Use in other proceedings

1. The results of interceptions shall not be used in proceedings other than those for which they have been ordered, unless they are essential for ascertaining crimes for which arrest *in flagrante delicto* is obligatory.

2. In the event of usage for the purposes outlined in paragraph 1, the records and recordings of interceptions shall be filed with the authority with competence over the other proceedings. The provisions of Article 268, paragraphs 6, 7 and 8, shall apply.

3. The Public Prosecutor and the lawyers of the parties shall also have the right to examine the records and recordings previously filed during the proceedings in which the interceptions have been authorised.

Article 270-*bis*

Communications among members of the Security Intelligence Department and security intelligence services

1. Should the judicial authority gather, through interceptions, communications among members of the Security Intelligence
Department or of security intelligence services, it shall order that documentary evidence, media and documents related to such communications immediately be made secret and placed in custody in a protected place.

2. Upon conclusion of the interceptions, the judicial authority shall forward to the President of the Council of Ministers a copy of the documentation containing the information which it intends to use at the trial, in order to verify whether any of such information is covered by State secret.

3. Prior to the reply of the President of the Council of Ministers, the information forwarded to him may be used only in the event of either danger of suppression of evidence or danger of flight or if it is necessary to intervene to prevent or interrupt the commission of a crime that is punishable with the penalty of imprisonment for a maximum term of at least four years. This applies without prejudice to the legal provisions on special justification that is envisaged for the activities performed by security and intelligence personnel.

4. If the President of the Council of Ministers does not declare that the interception is covered by State secret within sixty days of the service of the request, the judicial authority shall gather the information and decide on the subsequent course of the proceedings.

5. The declaration on the State secret shall prevent the judicial authority from using the information covered by such secret.

6. The judicial authority shall in no case be prevented from using elements of evidence which are autonomous and independent from the information covered by the State secret.
7. If a conflict of assignment is raised against the President of the Council of Ministers, in case the State secret does not apply, the President of the Council of Ministers shall not consider the same object as State secret. If the State secret applies, the judicial authority shall not admit nor use, directly or indirectly, documents or documentary evidence covered by State secret.
8. In no case shall the State secret be declared at the Constitutional Court. The Court shall adopt the necessary guarantees for the secrecy of the proceedings.

Prohibitions on use

1. The results of interceptions shall not be used if the latter have been performed in cases other than those provided for by law or if the provisions of Articles 267 and 268, paragraphs 1 and 3, have not been complied with.
2. Interceptions related to conversations or communications of the persons referred to in Article 200, paragraph 1, shall not be used, if they relate to facts known on account of their function, service or profession, unless the said persons have testified on these same facts or have disclosed them in some other way.
3. At any stage and instance of the proceedings, the court shall order the destruction of the documentation on interceptions outlined in paragraphs 1 and 2, unless it constitutes the *corpus delicti.*

BOOK IV

PRECAUTIONARY MEASURES

TITLE I

PERSONAL PRECAUTIONARY MEASURES

CHAPTER I

GENERAL PROVISIONS

Article 272

Limitations to personal freedom

1. Personal freedom may be limited through precautionary measures only according to the provisions of the present Title.

Article 273

General conditions of applicability of precautionary measures

1. No one may be subjected to precautionary measures unless there are serious indications of guilt.

1 -*bis.* Upon assessing any serious indications of guilt, the provisions of Articles 192, paragraphs 3 and 4, 195, paragraph 7, 203 and 271, paragraph 1, shall apply.

2. No measure may be applied if it proven that the criminal act was committed for either a justified reason or a reason for exemption from punishment or if there is a reason for extinguishment of the offence or the penalty which is likely to be imposed.

Article 274

Grounds for precautionary measures

1. Precautionary measures shall be ordered:

a) if specific and mandatory needs arise for the investigation of the criminal acts under prosecution, due to situations of real and current danger which could jeopardise the gathering or the authenticity of evidence, based on factual circumstances expressly mentioned in the decision, under penalty of nullity that may be raised also of the court's own motion. The refusal of the suspected or accused person to make any statement or his failure to admit the charges cannot be considered situations of real and current danger;

b) if the accused has fled or there is a real and immediate risk of flight, provided that a sentence of more than two years of imprisonment may be imposed. Situations of real and immediate risk shall not be inferred solely from the seriousness of the offence under prosecution;

c) if there is real and immediate danger of the suspect or accused committing serious armed or violent crimes against individuals or the constitutional system, or perpetrating organised crimes or crimes

similar to the one under prosecution, due to the manners or circumstances in which the offence was committed and due to the personality of the suspect or accused deduced from his behaviour, concrete actions or criminal record. If the danger concerns the commission of crimes similar to the one under prosecution, precautionary detention measures shall be ordered only for crimes sentenced with a maximum term of four years of imprisonment or, in case of precautionary detention in prison, for crimes punishable with the penalty of imprisonment for a minimum term of five years, as well as for the crime of illegal financing of political parties referred to in Article 7 of Law No 195 of 2 May 1974, as amended. Situations of real and immediate risk, also concerning the personality of the accused, shall not be inferred solely from the seriousness of the offence under prosecution.

Article 275

Selection criteria for precautionary measures

1. When ordering precautionary measures, the court shall consider the suitability of each measure in relation to the nature and seriousness of the grounds for imposing such measures in the case under prosecution.

1 -*bis*. Upon delivery of a judgment of conviction, the grounds for precautionary measures shall be examined, also considering the outcome of proceedings, the modalities of perpetration of the criminal act and any other issues arising thereof, which may lead to one of the risks referred to in Article 274, paragraph 1, letters *b)* and *c),* emerging after delivery of the judgment.

2. Each measure shall be proportionate to both the seriousness of the alleged offence and the sentence that has been or shall be imposed.

2-*bis*. Neither precautionary detention in prison nor house arrest shall be applied if a suspended sentence may be granted upon delivery of the judgment. Without prejudice to the provisions of paragraph 3 and to Articles 276, paragraph 1-*ter*, and 280, paragraph 3, the measure of precautionary detention in prison shall not be applied if the sentence imposed as a result of the trial may not exceed three years of imprisonment. This provision shall not be applied in proceedings for crimes referred to in Articles 423-*bis,* 572, 612-*bis* and 624-*bis* of the Criminal Code, and in Article 4-*bis* of Law No 354 of 26 July 1975, as amended. In addition, this provision shall not be applied in cases where, having any other measure been deemed inadequate, house arrest may not be ordered because it may not be enforced due to unavailability of any of the residences referred to in Article 284, paragraph 1, of this Code.

2-*ter*. In cases of appeal conviction, personal precautionary measures shall always be ordered, simultaneously to the judgment, if, at the end of the examination performed in compliance with paragraph 1 -*bis,* there are grounds for imposing the precautionary measures provided for in Article 274

and the conviction concerns one of the crimes provided for in Article 380, paragraph 1, and this crime is committed by a person who was convicted in the previous five years for crimes of the same nature.

3. Precautionary detention in prison shall be ordered only when other coercive or disqualifying measures, even if applied jointly, are inadequate. If there are serious indications of guilt with regard to the crimes provided for in Articles 270, 270-*bis* and 416-*bis* of the
Criminal Code, precautionary detention in prison shall be applied, unless elements are gathered which demonstrate the lack of grounds for imposing precautionary measures. Without prejudice to the provisions of the second phrase of this paragraph, precautionary detention in prison shall be applied in case of serious indications of guilt for crimes provided for in Article 51, paragraphs 3 *-bis* and 3 *-quater,* of this Code, as well as those provided for in Articles 575, 600-*bis,* paragraph 1, 600-*ter* (paragraph 4 exclude*d)*, 600-*quinquies* and, if no mitigating circumstances apply, 609-*bis,* 609-*quater* and 609-*octies* of the Criminal Code, unless elements are gathered which demonstrate the lack of grounds for imposing precautionary measures, or, in the case under prosecution, less strict measures may be applied in relation to the grounds for precautionary measures.

3-*bis.* Upon ordering precautionary detention in prison, the court shall specify the reasons for deeming inadequate the measure of house arrest and the related monitoring methods referred to in Article 275-*bis,* paragraph 1.

4. Precautionary detention in prison shall not be ordered nor maintained, unless there are exceptional grounds for imposing precautionary measures, if the accused is either a pregnant woman or a mother of children aged six or less who live with her or a father, should the mother have died or is absolutely unable to look after her children. If the accused is over seventy years of age, precautionary detention in prison shall not be ordered, unless there are exceptional grounds for imposing precautionary measures.

4-*bis.* Precautionary detention in prison shall not be ordered nor maintained if the accused suffers from either overt AIDS or severe immunodeficiency, ascertained in line with Article 286-*bis,* paragraph 2, or from any other particularly severe disease which makes his health conditions incompatible with detention or which hampers adequate treatment in case of detention in prison.

4-*ter.* In the case provided for in paragraph 4-*bis,* if there are exceptional grounds for imposing precautionary measures and precautionary detention in suitable prison healthcare facilities is not possible without detriment to the health of the accused or the detained persons, the court may order that the person be place on house arrest in a centre for healthcare, assistance or reception. If the accused suffers from overt AIDS or severe immunodeficiency, house arrest may be ordered either in hospital or university departments of infectious diseases, any other departments primarily involved in the care of AIDS cases

according to regional plans, in a collective residence or in sheltered accommodation according to the provisions of Article 1, paragraph 2, of Law No 135 of 5 June 1990.

4-*quater*. The court may in any case order precautionary detention in prison if the person is accused of the offence or is subject to another precautionary measure for one of the crimes provided for in Article 380, in relation to offences committed after the application of the measures ordered according to the provisions of paragraphs 4-*bis* and 4-*ter*. In this case the court shall order that the accused be transferred to an institute equipped with a suitable department for the necessary care and assistance.

4-*quinquies*. Precautionary detention in prison shall in no case be ordered or maintained if the disease has reached such an advanced stage that it no longer responds to the available treatment, according to the certifications of the prison healthcare service or external institute.

Article 275-*bis*

Specific monitoring methods

1. Upon ordering house arrest, also in lieu of precautionary detention in prison, the court may prescribe, unless it deems them unnecessary, monitoring procedures through electronic means or other technical devices, after verifying their availability with the criminal police, and if deemed necessary in relation to the nature and seriousness of the grounds for imposing such measures in the case under prosecution. By means of the same decision, the court shall impose the application of precautionary detention in prison if the accused refuses to consent to the use of the aforementioned means and devices.
2. The accused may either accept the monitoring means and devices referred to in paragraph 1 or may refuse to give his consent to their application, by means of a specific statement rendered before the official or officer in charge of enforcing the order directing the measure. The statement shall be forwarded to the court that delivered the order as well as to the Public Prosecutor, together with the record provided for in Article 293, paragraph 1.
3. The accused who accepts the application of the means and devices referred to in paragraph 1 must facilitate the installation procedures and observe the other obligations that have been imposed on him.

Article 276

Decisions in case of violation of imposed obligations

1. In cases of violation of the obligations regarding a precautionary measure, the court may order the substitution or the combination with a different, stricter measure, considering the seriousness, reasons and circumstances of the violation. If the violation concerns an obligation regarding a disqualifying measure, the court may order the substitution or association with a coercive measure.

1 -*bis*. If the accused is in one of the conditions referred to in Article 275, paragraph 4-*bis,* and a measure

other than precautionary detention in prison has been ordered against him, the court may also order precautionary detention in prison in case of violation of the obligations regarding the different precautionary measure. In this case the court shall order that the accused be transferred to an institute equipped with a suitable department for the necessary care and assistance.

1 *-ter.* Notwithstanding paragraph 1, in case of breach of house-arrest obligations not to leave one's own dwelling or any other place of abode, the court shall revoke the measure and replace it with precautionary detention in prison, unless the alleged offence is trivial.

Article 277

Safeguards of the rights of the person subject to precautionary measures

1. Precautionary measures shall be enforced by applying methods which must safeguard the rights of the persons subject to them, taking into account the grounds for imposing precautionary measures in the case under prosecution.

Article 278

Determination of the sentence for the application of measures

1. For the purposes of application of measures, the penalty imposed by law for each completed or attempted offence shall be considered. Continued offences, recidivism and the circumstances of the offence shall not be considered, except for the aggravating circumstance provided for in number 5) of Article 61 of the Criminal Code and the extenuating circumstance provided for in number 4) of Article 62 of the Criminal Code, as well as the circumstances for which the law imposes a type of penalty other than the standard one set for the offence and those having special effects.

Article 279

Court with competence

1. The application and revocation of the measures, as well as their methods of enforcement shall be ordered by the proceeding court. Prior to criminal prosecution, the Preliminary Investigation Judge shall decide on the same issue.

CHAPTER II

COERCIVE MEASURES

Article 280

Conditions of applicability of coercive measures

1. Without prejudice to the provisions of paragraphs 2 and 3 of this Article and Article 391, the measures referred to in this chapter shall be applied only when the case being prosecuted regards crimes for which the law imposes a life sentence or the penalty of imprisonment exceeding a maximum term of three years.

2. Precautionary detention in prison shall be ordered only for completed or attempted crimes for which the law imposes the penalty of imprisonment for a maximum term of at least five years and for the crime of illegal financing of political parties referred to in Article 7 of Law No 195 of 2 May 1974, as amended.
3. The provision referred to in paragraph 2 shall not be applied against persons who have violated the obligations regarding a specific precautionary measure.

Article 281

Prohibition to leave the country

1. By means of the decision ordering the prohibition to leave the country, the court shall order that the accused not leave the Italian territory without the authorisation of the proceeding court.
2. The court shall give the necessary directions to guarantee the enforcement of the decision, also to avoid the use of the passport and other identity documents valid for expatriation.

Article 282

Obligation to appear before the criminal police

1. By means of the decision ordering the obligation to appear before the criminal police, the court shall order that the accused appear before a specific criminal police office.
2. The court shall set the days and hours in which the accused must appear, taking into consideration his employment and place of abode.

Article 282-*bis*

Injunction to stay away from the family home

1. By means of the decision ordering the injunction to stay away, the court shall order the accused to leave the family home immediately or not to return therein, and not to enter without the authorisation of the proceeding court. Should authorisation be granted, it may allow specific types of visit.
2. If it is necessary to guarantee the safety of the victim or his next of kin, the court may also order the accused to stay away from the places regularly attended by the victim, particularly the workplace, the home of his parents or next of kin, unless attending those places is necessary for working reasons. In such case, the court shall order the related modalities of attendance and impose any restrictions.
3. Upon request of the Public Prosecutor, the court may also order the periodic payment of a cheque in favour of the cohabitees who, due to the ordered precautionary measure, remain without adequate financial resources. The court shall determine the amount of the cheque considering the circumstances and income of the liable person and shall set the payment modalities and deadlines. If necessary, the court may order that the cheque be paid directly to the beneficiary by the employer of the liable person, deducting the amount from his pay. The payment order shall have the effect of an enforceable decision.

4. The decisions referred to in paragraphs 2 and 3 may also be taken after the decision referred to in paragraph 1 has been issued, provided that it has not been revoked or lost effectiveness. Even if they are taken afterwards, they shall lose their effectiveness if the decision referred to in paragraph 1 is revoked or loses effectiveness. The decision referred to in paragraph 3 shall also cease to be effective if it is in favour of the spouse or children and the order provided for in Article 708 of the Code of Civil Procedure or any other decision of the civil court on the economic and property relations between the spouses or the maintenance of children are issued.
5. The decision referred to in paragraph 3 may be modified if the conditions of the liable person or the beneficiary change and shall be revoked if cohabitation is restored.
6. The measure may also be ordered independently of the penalty limits provided for in Article 280, also by means of the control procedures provided for in Article 275-*bis,* if prosecution involves any of the crimes provided for in Articles 570, 571, 582, exclusively as regards the cases subject to prosecution of the Public Prosecutor's motion or aggravated cases, 600, 600*bis,* 600-*ter,* 600-*quater,* 600-*septies.* 1, 600-*septies.* 2*,* 601, 602, 609-*bis,* 609-*ter,* 609-*quater,* 609-*quinquies,* 609-*octies* and 612, paragraph 2, of the Criminal Code, committed against the next of kin or the cohabitee.

Article 282-*ter*

Injunction to stay away from the places attended by the victim

1. By means of the injunction to stay away, the court shall order the accused not to approach the places regularly attended by the victim or to keep a specific distance from those places or from the victim.
2. Should further protection needs arise, the court may order the accused not to approach specific places that are regularly attended by either the victim's next of kin or persons with whom he cohabits or maintains an affective relationship or to keep a specific distance from those places and persons.
3. The court may also prohibit that the accused communicate, by any means, with the persons referred to in paragraphs 1 and 2.
4. If attending the places referred to in paragraphs 1 and 2 is necessary for reasons of work or residence, the court shall order the related modalities of attendance and impose any restrictions.

Article 282-*quater*

Obligations to inform

1. The decisions referred to in Articles 282-*bis* and 282-*ter* shall be communicated to the competent public security authority in order to adopt the necessary decisions with regards to weapons and munitions. They shall also be communicated to the victim and the territorial social assistance services. When the accused accepts to participate in a violence prevention programme organised by territorial

social assistance services, the person in charge of the programme shall inform the Public Prosecutor and the court to allow the assessment provided for in Article 299, paragraph 2.

1 *-bis.* In compliance with paragraph 1**,** the victim shall also be informed of his right to require a European protection order.

Article 283

Prohibition and obligation of abode

1. By means of the decision ordering the prohibition of abode in a specific place, the court shall order the accused not to reside in a specific place or not to enter therein without the authorisation of the proceeding court.

2. By means of the decision ordering the obligation of abode, the court shall order the accused not to leave, without the authorisation of the proceeding court, either the territory of the town of habitual abode or, in order to guarantee a more effective control or if the town of habitual abode has no police station, the territory of a hamlet of the aforementioned town, the territory of a neighbouring town or a hamlet of the latter. If, due to the individual's personality or the environmental conditions, remaining in such places is not appropriate in relation to the grounds for imposing precautionary measures provided for by Article 274, the obligation of abode may be ordered in the territory of a different town or hamlet, preferably in its Province and, in any case, within the Region where the town of habitual abode is located.

3. When ordering the obligation of abode, the court shall indicate the police authority before which the accused must appear without delay and declare the place of his dwelling. The court may order the accused to inform the police authority of the hours and places where he can be found daily for the necessary controls, with the obligation to inform the authority in advance of any possible changes to the aforementioned places and hours.

4. By means of a separate decision, the court may also order the accused not to leave his dwelling during specific hours of the day, without compromising standard working needs.

5. Upon setting the territorial limits of the obligations, the court shall consider, as far as possible, the needs of accommodation, work and assistance of the accused. If the accused is a drug-or alcohol-addicted who is currently undergoing a therapeutic recovery programme within an authorised structure, the court shall set the necessary controls in order to ascertain that the recovery programme carries on.

6. The decisions issued by the court shall be in any case communicated to the competent police authority that monitors their fulfillment and report any infractions whatsoever to the Public Prosecutor.

Article 284

House arrest

1. By means of the decision ordering house arrest, the court shall order the accused not to leave his own dwelling, any other place of abode, any public healthcare or assistance centre, or, if present, any protected family home.

1 -*bis*. The court shall set the place of the house arrest so as to ensure in any case the victim's priority protection needs.

2. If necessary, the court shall order restrictions or prohibitions to the right of the accused to communicate with persons other than those who cohabite with or assist him.

3. If the accused cannot provide for his own essential needs in his daily life in a different way or if he is absolutely destitute, the court may authorise him to leave the place of arrest during the day for the time strictly necessary to meet such needs or carry out a working activity.

4. The Public Prosecutor and the criminal police, also on their own initiative, may monitor at any time the compliance with the obligations imposed on the accused.

5. The accused under house arrest shall be considered as being in a state of precautionary detention.

5-*bis*. Whoever may have been convicted of a tax-evasion offence in the five years prior to the commission of the criminal act under prosecution shall in no case be granted house arrest, unless the court, on the basis of specific elements, deems the alleged offence trivial or holds that this measure is appropriate in relation to the grounds for precautionary measures. For this purpose, the court shall gather the related information as soon as possible.

Article 285

Precautionary detention in prison

1. By means of the decision ordering precautionary detention in prison, the court shall order that criminal police officials and officers capture the accused and immediately take him to a prison where he is at the disposal of the judicial authority.

2. Prior to the transfer to prison, the person under precautionary detention shall not be subjected to restrictions on his freedom, except for the time and in the modalities that are strictly necessary for his transfer.

3. To determine the penalty to be imposed, the precautionary detention that has been served shall be calculated following the provisions of Article 657, also in the cases of precautionary detention served abroad resulting from a request of extradition or renewed proceedings according to the provisions of Article 11 of the Criminal Code.

Article 285-*bis*

Precautionary detention in a specific institute granting lighter custody for detained mothers

1. In the cases provided for in Article 275, paragraph 4, if the person to be held in precautionary detention is either a pregnant woman or a mother of children aged six or less or a father, whenever the mother has died or is absolutely unable to look after her children, the court shall order the detention in a specific institute granting lighter custody for detained mothers, if the exceptional grounds for imposing precautionary measures allow to do so.

Article 286

Precautionary detention in a healthcare centre

1. If the person to be subjected to precautionary detention is in a state of mental illness that hinders or reduces significantly his mental capacity, the court may order, in lieu of precautionary detention in prison, his temporary hospitalisation in a suitable hospital department of psychiatry, adopting the necessary measures to prevent the risk of flight. Hospitalisation shall be terminated if the accused is no longer mentally ill.

2. The provisions of Article 285, paragraphs 2 and 3, shall apply.

Article 286-*bis*

Prohibition of precautionary detention

1. (…)

2. The cases of overt AIDS or severe immunodeficiency shall be decided upon by means of a decree of the Ministry of Health, to be adopted in agreement with the Ministry of Justice. The decree shall also establish the diagnostic and medical forensic procedures to be followed for their ascertainment.

3. If diagnostic tests are to be performed to ascertain the existence of the health conditions referred to in Article 275, paragraph 4-*bis*, or the person who suffers from such conditions requires therapeutic care and neither diagnosis nor therapy may be provided in prison, the court may order temporary hospitalisation in a suitable national health service facility for the necessary length of time, adopting, if needed, the appropriate decisions to avoid the risk of flight. When the need for hospitalisation ceases, the court shall follow the provision of Article 275.

CHAPTER III

DISQUALIFYING MEASURES

Article 287

Conditions of applicability of disqualifying measures

1. Without prejudice to special provisions, the measures provided for in this Chapter shall only be applied

if the prosecution involves crimes for which the law imposes a life sentence or the penalty of imprisonment for a maximum term exceeding three years.

Article 288

Suspension of parental liability

1. By means of the decision ordering the suspension of parental liability, the court shall temporarily deprive, in whole or in part, the accused of the powers related to such authority.
2. If the prosecution concerns a crime against sexual freedom, or one of the crimes provided for in Articles 530 and 571 of the Criminal Code, committed against the next of kin, the measure may also be ordered independently of the penalty limits provided for in Article 287, paragraph 1.

Article 289

Suspension from public duty or service

1. By means of the decision ordering the suspension from public duty or service, the court shall temporarily disqualify, in whole or in part, the accused from carrying out those activities.
2. In the event of prosecution of a crime against the public administration, suspension may be ordered against the public official or the public service officer, also independently of the penalty limits provided for in Article 287, paragraph 1. During preliminary investigations, before deciding upon the Public Prosecutor's request of suspension from public duty or service, the Preliminary Investigation Judge shall question the suspected person, following the methods referred to in Articles 64 and 65. If the Judge orders the suspension from public duty or service instead of a coercive measure requested by the Public Prosecutor, the questioning shall take place within the time limits referred to in Article 294, paragraph 1-*bis.*
3. The measure shall not be applied to elective offices conferred through direct popular investiture.

Article 290

Temporary prohibition to exercise specific professional or entrepreneurial activities

1. By means of the decision ordering the prohibition to exercise specific managerial professions, activities or duties by both legal persons and companies, the court shall temporarily disqualify the accused, in whole or in part, from carrying out those activities.
2. If the prosecution concerns a crime against public safety or the economy, industry or trade, or one of the crimes referred to in the criminal provisions regarding companies and consortia or in Articles 353, 355, 373, 380 and 381 of the Criminal Code, the measure may also be ordered independently of the penalty limits provided for in Article 287, paragraph 1.

CHAPTER IV

FORM AND ENFORCEMENT OF DECISIONS

Article 291

Precautionary procedure

1. The measures shall be ordered upon request of the Public Prosecutor who shall submit to the court with competence the elements underlying the request, as well as all the elements in favour of the accused and the possible deductions and the already filed briefs of the lawyer.

1 *-bis.* (...)

2. In the event of the court acknowledging its own incompetence for any reason whatsoever, if the conditions to do so exist and there is urgency to adopt a precautionary measure under Article 274, the court shall order the requested measure by means of the same decision with which it declares its own incompetence. The provisions of Article 27 shall apply in any case.

2-*bis.* In case of necessity or urgency, the Public Prosecutor may request to the court, in the victim's interest, the application of the temporary pecuniary measures referred to in Article 282-*bis.* The decision shall lose its effectiveness if the precautionary measure is subsequently revoked.

Article 292

Judicial order

1. The court shall issue an order detailing its decision on the request made by the Public Prosecutor for the application of a precautionary measure.

2. The order directing the precautionary measure shall contain, under penalty of nullity that may be declared also of the court's own motion:

a) the personal details of the accused or any other element suitable to identify him;

b) a brief description of the criminal act with the indication of the allegedly violated rules of law;

c) an outline and independent evaluation of specific grounds for precautionary measures and serious indications of guilt justifying the ordered measure, indication of the underlying facts and the reasons for their relevance, considering the time that has elapsed since commission of the offence;

c-bis) an outline and independent evaluation of reasons for considering irrelevant the elements provided by the defence and, in case of application of precautionary detention in prison, outline and independent evaluation of practical and specific reasons for which other measures cannot be adopted in relation to the grounds for precautionary measures referred to in Article 274;

d) the setting of the expiry date of the measure, in relation to the investigations that are to be conducted whenever they are ordered to guarantee the precautionary need referred to in letter *a)* of paragraph 1 of

Article 274;

e) the date and the signature of the judge.

2-*bis*. The order shall also contain the signature of the judicial assistant, the seal of the office and, if possible, the indication of the place in which the accused is presumed to be.

2 -*ter*. The order shall be null if it does not contain the evaluation of the elements against and in favour of the accused, referred to in Article 358, as well as in Article 327-*bis*.

3. If the court that has issued the decision or the person against whom the measure has been applied are unknown, criminal police officials and officers shall not enforce the decision or the measure.

Article 293

Enforcement requirements

1. Without prejudice to Article 156, the official or officer in charge of enforcing the order of precautionary detention shall provide the accused person with a copy of the decision along with a clear and precise written notice. If the accused does not know the Italian language, the notice shall be translated into a language he understands. The notice shall contain the following information:

a) his right to appoint a retained lawyer and to access legal aid at the expense of the State according to the provisions of the law;

b) his right to obtain information on the accusations raised;

c) his right to an interpreter and to the translation of essential documents;

d) his right to silence;

e) his right to access documents on which the decision is based;

f) his right to inform consular authorities and his relatives;

g) his right to access emergency medical assistance;

h) his right to be brought before the judicial authority within five days of enforcement of precautionary detention in prison or within ten days if a different precautionary measure is applied;

i) his right to appear before a court for questioning, to appeal the order directing the precautionary measure and to request its substitution or revocation.

1 -*bis*. If the written notice referred to in paragraph 1 is not promptly available in a language that the accused understands, the information is provided orally, without prejudice to the obligation to provide the accused with the aforementioned written notice without delay.

1-*ter*. The official or officer in charge of enforcing the order shall immediately inform the retained lawyer or the lawyer appointed by the court in accordance with Article 97 and shall draft a record of all the activities carried out, including the delivery of the written notice referred to in paragraph 1 or the

information provided orally in accordance with paragraph 1 *-bis.* The record shall be immediately forwarded to the court who has issued the order and to the Public Prosecutor.

2. The order directing measures other than precautionary detention shall be served on the accused.

3. The orders provided for in paragraphs 1 and 2, after their service or enforcement, shall be filed in the Registry of the court that has issued them together with the request of the Public Prosecutor and the enclosed documents. A notice of the filing shall be served on the lawyer.

4. A copy of the order directing a disqualifying measure shall be forwarded to the authority that may have competence over the disqualification by other legal means.

Article 294

Questioning of the person subject to a personal precautionary measure

1. In the stages of the proceedings prior to the opening of the trial, the court that has decided on the application of the precautionary measure shall question the person under precautionary detention in prison immediately and in any case by the fifth day after the enforcement of detention, if it has not done so during the hearing which confirmed the arrest or temporary detention of the crime suspect, except for the case in which he cannot be questioned in any way whatsoever.

1 *-bis.* If the person is subject to a different precautionary measure, either coercive or disqualifying, the questioning shall take place no later than ten days after enforcement of the decision or its service. The court shall verify, also of its own motion, that the accused person under precautionary detention in prison or house arrest has received the notice referred to in Article 293, paragraph 1, or has been informed according to paragraph 1 *-bis* of the same Article, and shall give or complete the written notice or the oral information, if necessary.

1-*ter.* The questioning of the person subject to precautionary detention shall take place within forty-eight hours if the Public Prosecutor specifies it in the precautionary detention request.

2. In cases of unavoidable impediment, the court shall acknowledge it by reasoned decree and the time limit for the questioning shall be calculated from the day when the court receives the notification that the impediment has ceased or, in any case, ascertains that the person is available again.

3. By means of the questioning, the court shall evaluate if there are still the conditions of applicability and the grounds for precautionary measures provided for in Articles 273, 274 and 275. If the conditions are met, in accordance with Article 299, it shall revoke or substitute the ordered measure.

4. For the purposes of paragraph 3, the questioning shall be conducted by the court following the methods referred to in Articles 64 and 65. The Public Prosecutor and the lawyer who must participate shall be immediately informed that the questioning will be carried out.

4-*bis.* If the precautionary measure has been ordered by the Court of Assizes or by the Tribunal, the questioning shall be conducted by the President of the bench or by a member of the bench appointed by him.
5. If the questioning is to be taken in the district of a different Tribunal, the single judge or the President of the bench shall request the Preliminary Investigation Judge of that location to carry out the questioning, if they believe that they should not personally conduct the questioning.
6. The questioning by the Public Prosecutor of the person subject to precautionary detention shall not precede the questioning by the court.

Article 295

Record of unsuccessful searches

1. If the person against whom the measure is ordered cannot be traced and the methods provided for in Article 293 cannot be employed, the official or officer shall draft a record in any case, expressly indicating the investigations that have been carried out, and shall promptly forward them to the court that issued the order.
2. If the court holds that the searches are exhaustive, it shall declare, in the cases provided for in Article 296, the absconding state.
3. In order to facilitate the searches for the fugitive, the court or the Public Prosecutor, within the restrictions and methods provided for in Articles 266 and 267, may order interceptions of telephone conversations or other forms of telecommunication. The provisions of Articles 268, 269 and 270 shall apply, if possible.
3 -*bis.* Without prejudice to the provisions of paragraph 3 of this Article and paragraph 5 of Article 103, the court or the Public Prosecutor may order the interceptions of face-to-face conversations if this facilitates the searches for a fugitive with relation to one of the crimes provided for by Article 51, paragraph 3-*bis,* as well as Article 407, paragraph 2, letter *a)* No 4.
3-*ter.* During the trials before the Court of Assizes, for the purposes of the provisions of paragraphs 3 and 3-*bis,* the decision shall be taken by the President of the Court of Assizes.

Article 296

Absconding

1. A fugitive is someone who deliberately avoids precautionary detention, house arrest, prohibition to leave the country, the obligation of abode or any other injunction directing imprisonment.
2. By means of the decision declaring absconding, the court shall designate a court-appointed lawyer for the fugitive who does not have a retained lawyer and direct to file with the Court Registry a copy of the

order imposing the measure that has remained unenforced. A notice of the filing shall be served on the lawyer.

3. The effects resulting from absconding shall apply only in the criminal proceedings in which absconding has been declared.

4. The status of fugitive shall persist until either the decision that gave rise to it has been revoked under Article 299, or it has lost effectiveness, or the offence or the penalty for which the decision was issued have extinguished.

5. For all legal purposes, the fugitive is considered an escaped person.

Article 297

Calculation of the time limits of measures

1. The effects of precautionary detention shall start as of the moment in which the accused has been captured, arrested or placed under temporary detention.

2. The effects of the other measures shall start as of the moment in which the order directing them is served following the provision of Article 293.

3. If more than one order imposing the same measure is issued against an accused person for the same criminal act, although differently circumstantiated and qualified, or for other criminal acts committed prior to the issuing of the first order which are joined according to Article 12, paragraph 1, letters b*)* and *c),* solely for acts perpetrated to commit the other ones, the time limits shall start as of the day in which the first order has been enforced or served and shall be proportional to the most serious accusation. This provision shall not apply to orders for facts which are not deducible from the documents prior to the request for committal to trial issued for the alleged offence with which a connection exists in line with this paragraph.

4. The calculation of time limits for precautionary detention shall take into account the days in which hearings have been held and those in which the judgment in the first-instance trial or in the appellate remedy has been delivered, only for the purposes of determining the overall length of detention according to Article 303, paragraph 4.

5. If the accused is detained for a different offence or confined as a security measure, the effects of the measure shall start as of the day in which the order directing it is served, provided it is compatible with detention or confinement. Otherwise, they shall start as of the cessation of the latter. For the exclusive purposes of calculating the maximum time limits, precautionary detention shall be considered compatible with the status of detention related to the enforcement of the sentence or confinement as security measure.

Article 298

Suspension of measures

1. The enforcement of an injunction directing the imprisonment of an accused person against whom a personal precautionary measure has been applied for a different offence shall suspend enforcement of the latter, unless the effects of the newly ordered measure are compatible with the sentence imposed.

2. The suspension shall not take place if the sentence is imposed as an alternative to detention.

CHAPTER V

EXPIRATION OF PRECAUTIONARY MEASURES

Article 299

Revocation and substitution of measures

1. Coercive and disqualifying measures shall be immediately revoked if, also due to subsequent facts, the conditions of applicability provided for in Article 273 or the provisions concerning individual measures are not met or there are none of the grounds for precautionary measures provided for in Article 274.

2. Without prejudice to Article 275, paragraph 3, if the seriousness of the grounds for precautionary measures has diminished or the adopted measure is no longer proportional to the seriousness of the alleged offence or the penalty which is likely to be imposed, the court shall either replace the measure with a less strict one or order its application with less strict methods.

2-*bis.* Social assistance services and the victim's lawyer or, in his absence, the victim himself shall be immediately informed by criminal police of the decisions referred to in paragraphs 1 and 2 on the measures provided for in Articles 282-*bis,* 282-*ter,* 283, 284, 285 and 286, applied in the proceedings for crimes committed with violence against the victim.

3. The Public Prosecutor and the accused shall request the court to revoke or substitute the measures; the court shall decide on the revocation or substitution by order within five days of the filing of the request. The request for revocation or substitution of the measures provided for in Articles 282-*bis,* 282-*ter,* 283, 284, 285 and 286, applied in the proceedings referred to in paragraph 2-*bis* of this Article, that has not been submitted during the questioning of the person subject to a personal precautionary measure, must be simultaneously served by the party submitting the request and, under penalty of inadmissibility, on the victim's lawyer or, in his absence, the victim himself, unless in the latter case the victim has declared or chosen an address for service. Within two days of the service, the lawyer and the victim may submit briefs under Article 121. After the expiry of such time limit, the court shall decide on the issue. The court shall decide also of its own motion when it questions a person who is in precautionary detention or it is required to decide on the extension of the time limit for preliminary investigations or to hold a special

evidentiary hearing or it holds the preliminary hearing or the trial.
3 -*bis*. Prior to the decision on the revocation or substitution of coercive and disqualifying measures, the court, of its own motion or upon request of the accused, must hear the Public Prosecutor. If the Public Prosecutor does not express his opinion within the following two days, the court shall decide.
3-*ter*. After assessing the reasons given for the revocation or substitution of the measures and before deciding, the court may question the suspected person. If the request for revocation or substitution is based on new reasons or reasons different from those already evaluated, the court must question the accused who requested to be questioned.
4. Without prejudice to the provisions of Article 276, if the grounds for precautionary measures aggravate, the court, upon request of the Public Prosecutor, shall either replace the applied measure with a stricter one or order its application with stricter methods or jointly with another coercive or disqualifying measure.
4-*bis*. After the closure of preliminary investigations, if the accused requests either the revocation or substitution of the measure with a less strict one or the application of the measure with less strict methods, the court shall inform the Public Prosecutor if the request is not submitted during a hearing; during the following two days, the Public Prosecutor shall submit his own requests. The request for revocation or substitution of the measures provided for in Articles 282-*bis,* 282-*ter*, 283, 284, 285 and 286, applied in the proceedings referred to in paragraph 2-*bis* of this Article, must be simultaneously served by the party submitting the request and, under penalty of inadmissibility, on the victim's lawyer or, in his absence, the victim himself, unless in the latter case the victim has declared or chosen an address for service.
4-*ter*. At any stage and instance of the proceedings, if the court is unable to decide based on the available elements of evidence, it shall order, also of its own motion and without any formalities, the assessment of the health conditions and other conditions or personal qualities of the accused. Such assessment shall be carried out as soon as possible and, in any case, within fifteen days of the day in which the court receives the request. If the request for the revocation or substitution of the measure of precautionary detention in prison is based on the health conditions provided for in Article 275, paragraph 4-*bis,* the court that does not consider it appropriate to accept the request based on the available elements of evidence shall order immediately, and in no case later than the time limit set in paragraph 3, the necessary medical examinations, after appointing an expert under Article 220 and following. The court shall follow the same procedure if such health conditions are confirmed by the prison healthcare service or are made known to the court in a different way. The expert shall consider the opinion of the prison doctor and

provide his opinion within five days or, in urgent cases, within two days of the examination. During the period between the decision ordering medical examinations and the expiry of the time limit for such examinations, the time limit provided for in paragraph 3 is suspended.

4-*quater.* The provisions referred to in Article 286-*bis,* paragraph 3, shall apply.

Article 300

Expiration of measures due to the issuing of specific judgments

1. The measures ordered in relation to an alleged offence immediately cease to be effective if a decision to discontinue the case or a judgment of either no grounds to proceed or dismissal is issued for that offence and against the same person.

2. If the accused is in precautionary detention and the security measure of hospitalisation in a judicial psychiatric hospital is applied through the judgment of either dismissal or no grounds to proceed, the court shall decide according to Article 312.

3. If, at any instance of the proceedings, a judgment of conviction is issued, the measures cease to be effective in case the imposed sentence is declared to have lapsed or to be conditionally suspended.

4. Precautionary detention also ceases to be effective when a judgment of conviction is issued, even if it is subject to appellate remedy, if the duration of the detention already served is not less than the length or amount of the imposed penalty.

5. If the accused is dismissed or a judgment of no grounds to proceed is delivered against him and he is subsequently convicted of the same offence, coercive measures may be ordered against him in case there are grounds for imposing precautionary measures as set forth in Article 274, paragraph 1, letters *b)* or *c).*

Article 301

Expiration of measures ordered for evidentiary purposes

1. The precautionary measures ordered for evidentiary purposes provided for in Article 274, paragraph 1, letter *a),* immediately cease to be effective if their renewal is not ordered upon the expiry of the time limit provided for in Article 292, paragraph 2, letter *d).*

2. The court shall direct their renewal by order, upon request of the Public Prosecutor, also more than once, within the time limits provided for in Articles 305 and 308.

2-*bis.* Without prejudice to the provisions of Article 292, paragraph 2, letter *d),* the duration of the precautionary detention in prison ordered to carry out the investigations provided for in Article 274, paragraph 1, letter *a),* shall not exceed thirty days if the criminal acts being prosecuted are not provided for in Article 407, paragraph 2, letter *a),* numbers from 1) to 6), and their ascertainment does not require either particularly complex investigations because they do not involve numerous interrelated facts or a

high number of suspects or victims or investigations to be conducted abroad.

2-*ter.* At the request of the Public Prosecutor prior to expiry, the court shall direct the extension of the duration of precautionary detention in prison, up to two times and within the total time limit of ninety days, by issuing an order, after evaluating the reasons that have not allowed the completion of the investigations for whose purposes the measure had been ordered and after questioning the accused.

Article 302

Expiration of detention due to failure to question the person in precautionary detention ([3])

1. The precautionary detention immediately ceases to be effective if the court does not question the detained person within the time limit provided for in Article 294. After release, the court may order that the measure be adopted again, upon request of the Public Prosecutor and following a questioning, provided that, after the evaluation of the results of the questioning, the conditions referred to in Articles 273, 274 and 275 are still met. The same procedure shall be followed if the person does not appear for the questioning without any justified reason. The provisions of Article 294, paragraphs 3, 4, and 5, shall be observed.

([3]) Constitutional Court judgment No 95/2001 has extended the rule to coercive and disqualifying precautionary measures.

Article 303

Maximum duration of precautionary detention

1. Precautionary detention ceases to be effective if:

a) as of its enforcement, the following time limits have lapsed without the delivery of either a decision of committal to trial or a court order directing summary trial under Article 438 or a judgment for the application of the sentence upon request of the parties:

1) three months, if the crime being prosecuted is punishable by law with the penalty of imprisonment not exceeding a maximum term of six years;

2) six months, if the crime being prosecuted is punishable by law with the penalty of imprisonment exceeding a maximum term of six years, without prejudice to the provisions of number 3);

3) one year, if the crime being prosecuted is punishable by law with a life sentence or the penalty of imprisonment for a maximum term of at least twenty years or if it is one of the crimes referred to in Article 407, paragraph 2, letter *a),* provided that for such crime the law imposes the penalty of imprisonment exceeding a maximum term of six years;

a) as of the issuing of the decision of committal to trial or the subsequent enforcement of detention, the following time limits have lapsed without the delivery of a judgment of conviction in the first instance:

1) six months, if the crime being prosecuted is punishable by law with the penalty of imprisonment not exceeding a maximum term of six years;
2) one year, if the crime being prosecuted is punishable by law with the penalty of imprisonment not exceeding a maximum term of twenty years, without prejudice to the provisions of number 1);
3) one year and six months, if the crime being prosecuted is punishable by law with a life sentence or the penalty of imprisonment exceeding a maximum term of twenty years;
3-*bis)* if crimes referred to in Article 407, paragraph 2, letter *a),* are being prosecuted, the time limits under number 1), 2) and 3) are increased by a maximum of six months. Such time limit is added to the time limit of the previous stage if the latter is not completely depleted or to the time limits referred to in letter *d)* for the part that may remain. In the latter case, the time limits referred to in letter *d)* are proportionally reduced;
b-bis) as of the issuing of the order by which the court directs summary trial or the subsequent enforcement of detention, the following time limits have lapsed without the delivery of a judgment of conviction under Article 442:
1) three months, if the crime being prosecuted is punishable by law with the penalty of imprisonment not exceeding a maximum term of six years;
2) six months, if the crime being prosecuted is punishable by law with a life sentence not exceeding a maximum term of twenty years, without prejudice to the provisions of number 1);
3) nine months, if the crime being prosecuted is punishable by law with a life sentence or the penalty of imprisonment exceeding a maximum term of twenty years;
c) as of the issuing of the judgment of conviction in the first instance or the subsequent enforcement of detention, the following time limits have lapsed without the delivery of a judgment of conviction at the appeal instance;
1) nine months, if the accused has been convicted and a penalty of imprisonment not exceeding three years has been imposed;
2) one year, if the accused has been convicted and a penalty of imprisonment not exceeding ten years has been imposed;
3) one year and six months, if the accused has been convicted and a penalty of life imprisonment or imprisonment exceeding ten years has been imposed;
d) as of the issuing of the judgment of conviction at the appeal instance or the subsequent enforcement of detention, the same time limits provided for in letter *c)* have lapsed without the delivery of a final judgment of conviction, without prejudice to the cases provided for in letter *b),* number 3-*bis).*

Nevertheless, if the accused has been convicted in the first instance or an appellate remedy has been submitted only by the Public Prosecutor, only the provision of paragraph 4 shall apply.
2. If, after the Court of Cassation annuls and commits to trial or for any other reason, the proceedings are regressed to a previous stage or instance of trial or if the case is committed to a different court, as of the date of the decision ordering the referral or committal or the subsequent enforcement of precautionary detention, the time limits provided for in paragraph 1 start again in relation to each stage and instance of the proceedings.
3. If the accused in precautionary detention escapes, the time limits provided for in paragraph 1 start again in relation to each stage and instance of the proceedings as of the moment when precautionary detention resumes.
4. The overall duration of precautionary detention, considering also the extensions provided for in Article 305, shall not exceed the following time limits:
a) two years, if the crime being prosecuted is punishable by law with the penalty of imprisonment not exceeding a maximum term of six years;
b) four years, if the crime being prosecuted is punishable by law with the penalty of imprisonment not exceeding a maximum term of twenty years, without prejudice to the provisions of letter *a);*
c) six years, if the crime being prosecuted is punishable by law with a life sentence or the penalty of imprisonment exceeding a maximum term of twenty years.

Article 304

Suspension of time limits for the maximum duration of precautionary detention

1. The time limits provided for in Article 303 shall be suspended, by an order appealable according to Article 310, in the following cases:
a) at the trial stage, during the time when the trial is suspended or postponed because the accused or his lawyer is absent due to an impediment or upon request of the accused or his lawyer, provided that the suspension or postponement were not ordered for gathering evidence or after a time limit was granted to the defence;
b) at the trial stage, during the time when the trial is suspended or postponed because one or more lawyers have not appeared, have been dismissed or have not taken part in it, leaving one or more accused persons unassisted;
c) at the trial stage, while the time limits provided for in Article 544, paragraphs 2 and 3 are pending.
c-bis) in the summary trial, during the time when the hearing is suspended or postponed because of one of the reasons referred to in letters *a)* and *b)* and while the time limits provided for in Article 544,

paragraphs 2 and 3, are pending.
2. The time limits provided for in Article 303 may also be suspended when any of the offences referred to in Article 407, paragraph 2, letter *a),* are being prosecuted, in the case of particularly complex trials or summary trial, during the time when hearings are held or the judgment is being deliberated in the trial of first instance or in the appellate remedy.
3. In the cases provided for in paragraph 2, the suspension shall be ordered by the court, upon request of the Public Prosecutor, by an order appealable according to Article 310.
4. The time limits provided for in Article 303, paragraph 1, letter *a),* shall be suspended by an order appealable according to Article 310, if the preliminary hearing is suspended or postponed for any of the reasons referred to in paragraph 1, letters *a)* and *b),* of this Article.
5. The provisions of letters *a)* and *b)* of paragraph 1, even if referring to the summary trial provided for in paragraph 4, shall not be applied to the co-accused persons to whom the cases of suspension do not refer and who request to be prosecuted in separate trials.
6. The duration of precautionary detention shall not, in any case, exceed twice the maximum time limits set in Article 303, paragraphs 1, 2 and 3, without considering the further time limit set in Article 303, paragraph 1, letter *b),* number 3-*bis),* and the time limits increased by half set in Article 303, paragraph 4, or, if more convenient, two thirds of the maximum temporary penalty that can be imposed for the alleged offence or the offence ascertained in the judgment. For this purpose, life sentence shall be considered equivalent to the maximum temporary penalty.
7. The calculation of the time limits referred to in paragraph 6 shall not take into account the suspension periods referred to in paragraph 1, letter *b),* except for the time limit concerning the overall duration of the precautionary detention.

Article 305

Extension of precautionary detention

1. At any stage and instance of the proceedings on the merits of the case, when an expert report on the psychical state of the accused is ordered, the time limits for precautionary detention shall be extended for the period of time allocated for completing the expert report. The extension shall be directed by the court through an order, upon request of the Public Prosecutor, after hearing the lawyer. The order is subject to appeal to the Court of Cassation as set forth in Article 311.
2. During preliminary investigations, the Public Prosecutor may also request the extension of the time limits for precautionary detention that are due to expire, if such extension is essential because there are serious grounds for imposing precautionary measures and particularly complex investigative actions are

necessary or new investigations have been ordered according to Article 415-*bis,* paragraph 4. After hearing the Public Prosecutor and the lawyer, the court shall decide on the extension by issuing an order that is appealable according to Article 310. The extension may be renewed only once. The time limits provided for in Article 303, paragraph 1, can in no case be exceeded by more than half.

Article 306

Decisions subsequent to the expiration of measures

1. In the cases where precautionary detention ceases to be effective according to the rules of this Title, the court shall issue an order directing the immediate release of the person subjected to such measure.
2. In the cases where other precautionary measures cease to be effective, the court shall issue an order adopting the decisions necessary for the immediate cessation of those measures.

Article 307

Decisions in case of release due to time-limit expiry

1. If an accused person is released because time limits have expired, the court shall order other precautionary measures, only if the reasons for which precautionary detention was ordered are still valid.

1 -*bis.* If one of the offences referred to in Article 407, paragraph 2, letter *a),* is being prosecuted, the court shall order the precautionary measures covered by Articles 281, 282 and 283, also cumulatively.

2. If precautionary detention is necessary according to Article 275, it shall be restored:

a) if the accused has intentionally violated the obligations concerning a precautionary measure ordered according to paragraph 1, provided that there are the grounds for imposing precautionary measures as set forth in Article 274 in relation to the nature of such violation;

b) when or after the judgment of conviction of the first or second instance is issued, if the precautionary need provided for in Article 274, paragraph 1, letter *b),* occurs.

3. When precautionary detention is restored, the time limits set for the actual stage of the proceedings become effective again but the detention already served shall also be considered when calculating the time limit provided for in Article 303, paragraph 4.
4. Criminal police officials and officers may place under temporary detention the accused who violates the obligations of a precautionary measure ordered according to paragraph 1 or in the case referred to in paragraph 2, letter *b),* and is about to flee. The Public Prosecutor of the Republic of the Tribunal of the place where the person has been placed under temporary detention shall be informed of such detention without delay and, in any case, within twenty-four hours. The provisions on the temporary detention of a person suspected of having committed a crime shall be applied, provided they are compatible. Through the confirmation decision, the Preliminary Investigation Judge shall direct the measure of precautionary

detention by order and shall forward the case file to the court with competence, if the Public Prosecutor requests such measure and if the conditions are met.
5. The measure ordered according to paragraph 4 ceases to be effective if, within twenty days of the order, the court with competence does not decide in line with paragraph 2, letter *a).*

Article 308

Time limits for the maximum duration of measures other than precautionary detention

1. Coercive measures other than precautionary detention cease to be effective if a period of time that is double the time limits provided for in Article 303 has elapsed since the start of their enforcement.
2. Disqualifying measures are valid for no more than twelve months and are no longer effective once the time limit set by the court in the order has elapsed. However, if the measures were imposed for evidentiary purposes, the court may order their renewal with the time limits provided for in the first phrase of this paragraph.
3. The expiration of measures shall not prevent the exercise of the powers attributed by law to the criminal court or other authorities for the application of accessory penalties or other disqualifying measures.

CHAPTER VI

APPELLATE REMEDIES

Article 309

Re-examination of orders directing a coercive measure

1. Within ten days of the enforcement or service of the decision, the accused may submit a request for the re-examination, even on the merit, of the order directing a coercive measure, unless the order was issued after an appeal by the Public Prosecutor.
2. For a fugitive accused person, the time limit starts as of the date when the decision is served according to Article 165. Nevertheless, if the measure is enforced thereafter, the time limit starts as of the moment when the accused proves that he did not have timely knowledge of the decision.
3. The lawyer of the accused may submit a request for the re-examination of the decision within ten days of service of the notice informing of the filing of the order directing the measure.
3-*bis*. The time limits provided for in paragraphs 1, 2 and 3 do not include the days of the ordered postponement of the interview, according to Article 104, paragraph 3.
4. The request for re-examination of the decision is submitted to the Registry of the Tribunal referred to in paragraph 7. The forms provided for in Articles 582 and 583 shall be observed.
5. The President of the collegial Tribunal shall ensure that the proceeding judicial authority is

immediately informed; within the next day and in no case later than the fifth day, the authority shall forward to the Tribunal the documents submitted according to Article 291, paragraph 1, and any other element of evidence discovered in favour of the suspected person.

6. The arguments for appeal may be attached to the request for re-examination of the decision and the accused person may request to appear personally at the re-examination hearing. The person who submitted the request is also entitled to list new arguments before the Tribunal requiring that they be recorded prior to the beginning of the debate.

7. The decision on the request for re-examination shall be taken by the Tribunal, sitting as a collegial court, of the place where the Court of Appeal is based or the detached chamber of the Court of Appeal in whose district the court that issued the order has its seat.

8. The proceedings before the Tribunal shall be held in chambers as set forth in Article 127. The date set for the hearing shall be communicated, at least three days prior to such date, to the Public Prosecutor of the Tribunal referred to in paragraph 7 and, if different, to the Public Prosecutor who requested the application of the measure. Notice of the date shall also be served on the accused and his lawyer within the same time limit. Until the day of the hearing, the documents shall remain filed with the Court Registry and the lawyer shall be entitled to examine and copy them.

8-*bis*. The Public Prosecutor who requested the application of the measure may take part in the hearing in lieu of the Public Prosecutor of the Tribunal referred to in paragraph 7. The accused person who submitted a request according to paragraph 6 is entitled to appear personally at the re-examination hearing.

9. Within ten days of receipt of the documents, the Tribunal shall annul, revise or confirm the order subject to re-examination, if the request is not to be declared inadmissible, also deciding on the basis of the reasons given by the parties during the hearing. The Tribunal may annul the appealed decision or revise it in a way that is favourable for the accused also on grounds other than those listed or it may confirm it for reasons other than those referred to in the grounds of the decision. The Tribunal shall annul the appealed decision if the grounds thereof are missing or the decision contains no independent evaluation of the grounds for imposing precautionary measures, indications of guilt and elements provided by the defence as set forth in Article 292.

9-*bis*. Upon personal request of the accused made within two days of service of the notice, the Tribunal shall postpone the date of the hearing of a minimum of five days and a maximum of ten days, provided that there are reasonable grounds for doing so. In such case, the time limit for deciding and filing the order is postponed accordingly.

10. If the documents are not forwarded within the time limits provided for in paragraph 5 or if the decision on the request for re-examination is not taken or the order of the Tribunal is not filed with the Court Registry within the set time limits, the order imposing the coercive measure ceases to be effective and shall not be renewed, unless there are exceptional grounds for precautionary measures that must be explicitly specified. The order of the Tribunal shall be filed with the Court Registry within thirty days of the decision, except for the cases in which the drafting of its grounds is particularly complex due to the number of persons arrested or the seriousness of accusations. In such cases, the Tribunal may set an extended time limit for filing the order, which in any case must not exceed the forty-fifth day after the decision.

Article 310

Appeal

1. With the exception of the cases set forth in Article 309, paragraph 1, the Public Prosecutor, the accused and his lawyer may lodge an appeal against orders of personal precautionary measures by listing the arguments for the appeal.
2. The provisions of Article 309, paragraphs 1, 2, 3, 4 and 7, shall be observed. Notice of the appeal shall be immediately given to the proceeding judicial authority which, within the next day, shall forward to the Tribunal the appealed order and any documents in relation thereto. The proceedings before the Tribunal shall be held in chambers in compliance with Article 127. Until the day of the hearing, the documents shall remain at the Court Registry and the lawyer shall be entitled to examine and copy them. The Tribunal shall decide by order within twenty days of receipt of the documents and the order shall be filed with the Court Registry within thirty days of the decision, except for the cases in which the drafting of the grounds for appeal is particularly complex due to the number of persons arrested or the seriousness of accusations. In such cases, the Tribunal may set an extended time limit for filing the order which shall be indicated in the operative part of the order and must in no case exceed the forty-fifth day after the decision.
3. The enforcement of the decision by which the Tribunal orders a precautionary measure, thus accepting the appeal by the Public Prosecutor, shall be suspended until the decision becomes final.

Article 311

Appeal to the Court of Cassation

1. The Public Prosecutor who requested the application of the precautionary measure, the accused and his lawyer may lodge an appeal with the Court of Cassation against decisions issued according to Articles 309 and 310 within ten days of service or communication of the notice of filing of the decision. The

appeal to the Court of Cassation may be lodged also by the Public Prosecutor at the Tribunal referred to in Article 309, paragraph 7.

2. Within the time limits provided for in Article 309, paragraphs 1, 2 and 3, the accused and his lawyer may directly lodge an appeal with the Court of Cassation against orders directing a coercive measure if a law has been violated. The lodging of an appeal with the Court of Cassation makes a request for re-examination inadmissible.

3. The appeal to the Court of Cassation shall be lodged with the Court Registry who issued the decision or, in the case covered by paragraph 2, the Registry of the court that issued the order. The court shall ensure that the proceeding judicial authority is immediately informed; within the next day, the authority shall forward the case file to the Court of Cassation.

4. In the cases provided for paragraphs 1 and 2, the arguments must be listed in the application for appeal to the Court of Cassation, although the appellant has the right to list new reasons before the Court of Cassation prior to the beginning of the debate.

5. The Court of Cassation shall decide within thirty days of receipt of the documents in compliance with the forms provided for in Article 127.

5-*bis*. If an order directing or confirming a coercive measure according to Article 309, paragraph 9, is annulled with referral upon appeal of the accused, the court shall decide within ten days of receipt of the documents and the order shall be filed with the Court Registry within thirty days of the decision. If the decision is not taken or the order is not filed with the Court Registry within the prescribed time limits, the order imposing the coercive measure ceases to be effective, unless its enforcement is suspended in accordance with Article 310, paragraph 3, and may not be renewed, unless there are exceptional grounds for precautionary measures that must be explicitly specified.

CHAPTER VII

PROVISIONAL APPLICATION OF SECURITY MEASURES

Article 312

Conditions of applicability

1. In the cases provided for by law, the provisional application of security measures shall be ordered by the court, upon request of the Public Prosecutor, at any stage or instance of the proceedings, if there are serious indications for suspecting that an offence has been committed and the conditions provided for in Article 273, paragraph 2, are not met.

Article 313

Procedure

1. The court shall decide on the application of a security measure by order, according to Article 292, after ascertaining the danger posed to society by the accused. If it is not possible to question the suspected person prior to the issuing of the decision, the provision of Article 294 shall apply.

2. Without prejudice to the provisions of Article 299, paragraph 1, for the purposes of Article 206, paragraph 2, of the Criminal Code, the court shall order a new assessment of the danger posed to society by the accused within the time limits referred to in Article 72.

3. For the purposes of appellate remedies, the measure provided for in Article 312 is considered equal to precautionary detention. The rules on compensation for unfair detention shall apply.

CHAPTER VIII

COMPENSATION FOR UNFAIR DETENTION

Article 314

Prerequisites for and methods of decisions([4])

1. Whoever is dismissed by a final judgment because the criminal act did not occur, or they did not commit it or the act does not constitute an offence or it is not deemed an offence by law, is entitled to equitable compensation for the precautionary detention they served, if they did not cause or contributed to cause it intentionally or by gross negligence.

2. The person who was dismissed for any cause whatsoever or the convict who served precautionary detention during the proceedings is entitled to the same right, if it is ascertained, by final decision, that the decision ordering the measure was issued or maintained although the conditions of applicability provided for in Articles 273 and 280 were not met.

3. The provisions of paragraphs 1 and 2 shall apply, under the same conditions, in favour of the persons against whom a decision to discontinue the case or a judgment of no grounds to proceed is issued.

4. The right to compensation is excluded for that part of precautionary detention which is calculated for the purpose of determining the extent of a penalty or for the period in which the limitations arising from the application of detention were suffered also on the basis of a different reason.

5. If the judgment or decision to discontinue the case state that the act is not deemed an offence by law because the relevant criminal rule was abrogated, the right to compensation is also excluded for that part of precautionary detention which was served prior to the abrogation of such rule.

([4]) Constitutional Court judgments No 310/1996 and 109/1999 have extended the right to fair compensation also to the cases of mistaken enforcement injunction, arrest *in flagrante delicto* or

temporary detention of a person suspected of a crime, within the same limits set for precautionary detention.

Article 315

Procedure for compensation

1. The application for compensation must be submitted, under penalty of inadmissibility, within two years of the day in which the judgment of dismissal or conviction becomes final, the judgment of no grounds to proceed becomes unappealable or the decision to discontinue the case is served on the person against whom it was issued according to Article 314, paragraph 3.
2. The amount of compensation should in no case exceed EUR 516, 456. 90.
3. The rules on compensation for miscarriage of justice shall apply, provided they are compatible.

TITLE II

PRECAUTIONARY MEASURES ON PROPERTY

CHAPTER I

CONSERVATIVE SEIZURE

Article 316

Prerequisites and effects of decisions

1. If there are reasonable grounds to believe that the securities for the payment of a financial penalty, costs of proceedings and any other sum owed to the Treasury of the State are lacking or will be dispersed, the Public Prosecutor, at any stage and instance of the proceedings, after the initiation of criminal prosecution, shall request the conservative seizure of the accused person's movable or immovable property or the sums or objects owed to him, within the limits set by law for their distress.
2. If there are reasonable grounds to believe that the securities for civil obligations deriving from the offence are lacking or will be dispersed, the civil party may request the conservative seizure of the property of the accused or of the person with civil liability for damages as provided for in paragraph 1.
3. The seizure ordered upon the request of the Public Prosecutor shall also be in favour of the civil party.
4. After the seizure is ordered, the credits referred to in paragraphs 1 and 2 shall be considered preferential compared to any other previous non-preferential credit and to later credits, except for, in any case, the preferential credits established as a security for the payment of taxes.

Article 317

Form of decisions. Competence

1. The decision ordering the conservative seizure upon request of the Public Prosecutor or the civil party shall be issued by order by the proceeding court.

2. If a judgment of conviction, dismissal or no grounds to proceed is issued, which may be subject to appellate remedy, the seizure shall be ordered before the case file are forwarded to the appellate remedy court by the court that issued the judgment and, subsequently, by the court that must decide on the appellate remedy. After the decision of committal to trial is issued and before the case file are forwarded to the court with competence, the Preliminary Investigation Judge shall decide on the application of precautionary measures on property.
3. The seizure shall be carried out by the bailiff as set forth in the Code of Civil Procedure for conservative seizures on movable or immovable property.
4. The effects of the seizure cease when the judgment of dismissal or no grounds to proceed is no longer subject to appellate remedy. The Public Prosecutor is responsible for the cancellation of the transcription of the seizure of immovable property. If the Public Prosecutor does not cancel the transcription, the person concerned may raise an objection to enforcement.

Article 318

Re-examination of the conservative seizure order

1. Whoever has an interest may submit a request for the re-examination of the conservative seizure order, even on the merits of the case, according to Article 324.
2. The request for re-examination shall not suspend the enforcement of the decision.

Article 319

Offer of collateral

1. If the accused or the person with civil liability for damages offers suitable collateral to guarantee the credits referred to in Article 316, the court shall order, by issuing a decree, that no conservative seizure be carried out and shall establish the methods for providing the collateral.
2. If the offer is submitted along with the request for re-examination, the court shall revoke the conservative seizure if it believes that the collateral is proportional to the value of the seized objects.
3. The court shall also revoke the seizure if the accused or the person with civil liability for damages offers suitable collateral, at any stage and instance of the proceedings on the merits of the case, after the initiation of criminal prosecution and with the exception of cases heard by the Court of Cassation.

Article 320

Enforcement on seized property

1. The conservative seizure shall be converted into distress when the judgment of conviction imposing the payment of a financial penalty becomes final or when the judgment condemning the accused and the person with civil liability for damages to compensation for damages in favour of the civil party becomes

enforceable. This conversion shall not extinguish the preferential credits provided for in Article 316, paragraph 4.

2. Except for the action that may be carried out to obtain the payment of the due sums through standard forms, compulsory enforcement on seized property shall be carried out following the provisions of the Code of Civil Procedure. With the amount obtained from the sale of the seized property and the sums deposited as collateral and not transferred to the Treasury of fines, it is necessary to pay, in this order, the sums due to the civil party as compensation for damages and trial costs, financial penalties, costs of proceedings and any other sum owed to the Treasury of the State.

CHAPTER II

PREVENTIVE SEIZURE

Article 321

Subject of preventive seizure

1. Should the free availability of material items related to the offence aggravate or extend the consequences of the offence or facilitate the commission of other offences, upon request of the Public Prosecutor, the court competent to rule on the merits of the case shall order the seizure of such evidence by reasoned decree. Prior to criminal prosecution, the Preliminary Investigation Judge shall decide on the seizure.

2. The court may also order the seizure of those objects for which confiscation is allowed.

2-*bis*. During the criminal proceedings concerning the crimes provided for in Chapter I, Title II, Book II of the Criminal Code, the court shall order the seizure of goods for which confiscation is allowed.

3. The seizure shall be immediately revoked upon request of the Public Prosecutor or the person concerned if, also due to subsequent facts, the conditions of applicability provided for in paragraph 1 are not met. During preliminary investigations, the Public Prosecutor shall decide on the revocation by reasoned decree; the decree shall be served on whoever is entitled to apply for an appellate remedy. When the person concerned requests the revocation of the appeal, if the Public Prosecutor believes the request shall be partly rejected, he shall forward it to the court and submit to it specific requests and the reasons on which he bases his evaluations. The request shall be forwarded within the next day following the filing with the Clerk's Office of the Public Prosecutor.

3-*bis*. During preliminary investigations, if it is impossible to wait for the judicial decision on seizure due to an urgent situation, the seizure shall be ordered by reasoned decree by the Public Prosecutor. In the same cases, before the Public Prosecutor intervenes, the seizure shall be carried out by criminal police officials who, in the following forty-eight hours, shall forward the record to the Public Prosecutor of the

place where the seizure has been carried out. If the Public Prosecutor orders the restitution of the seized objects, he shall request the court to confirm the action and issue the decree provided for in paragraph 1 within forty-eight hours of the seizure, if it has been ordered by the same Public Prosecutor, or as of the receipt of the record, if the seizure has been carried out on the initiative of criminal police.
3-*ter.* The seizure ceases to be effective if the time limits provided for in paragraph 3-*bis* are not observed or the court does not issue the confirmation order within ten days of receipt of the request. A copy of the order shall be immediately served on the person whose objects have been seized.

Article 322

Re-examination of the preventive seizure decree

1. The accused and his lawyer, the person whose objects have been seized and the person who would be entitled to their restitution may submit a request for re-examination, also on the merits of the case, of the seizure decree, according to the provisions of Article 324.
2. The request for re-examination shall not suspend the enforcement of the decision.

Article 322-*bis*

Appeal

1. In cases other than those provided for in Article 322, the Public Prosecutor, the accused and his lawyer, the person whose objects have been seized and the person who would be entitled to their restitution may lodge an appeal against the orders on preventive seizure and against the decree of revocation of the seizure issued by the Public Prosecutor.
1 -*bis.* The decision on the appeal shall be taken by the Tribunal, sitting as a collegial court, of the chief town of the province in which the office which issued the decision is located.
2. The appeal shall not suspend the enforcement of the decision. The provisions of Article 310 shall apply, provided that they are compatible.

Article 323

Loss of effectiveness of preventive seizure

1. By the judgment of dismissal or no grounds to proceed, even if it may still be subject to appellate remedy, the court shall order that the seized objects be returned to the person entitled to them, unless it must order their confiscation according to Article 240 of the Criminal Code. The decision is immediately enforceable.
2. If there are several copies of the seized object and such object is of interest for evidentiary purposes, the court, even after the judgment of dismissal or no grounds to proceed was appealed by the Public Prosecutor, shall order that only one item be seized and direct that the other copies be returned.

3. If a judgment of conviction is issued, the effects of the seizure continue if the confiscation of the seized objects has been ordered.
4. The restitution is not ordered if the court, upon request of the Public Prosecutor or the civil party, directs that seizure be maintained on the objects belonging to the accused or the person with civil liability for damages to guarantee the credits referred to in Article 316.

CHAPTER III

APPELLATE REMEDIES

Article 324

Re-examination procedure

1. The request for re-examination shall be submitted to the Registry of the Tribunal referred to in paragraph 5, within ten days of the date of enforcement of the decision ordering the seizure or as of a different date when the person concerned was informed of the fact that his objects had been seized.
2. The request shall be submitted as set forth in Article 582. If the request is submitted by the accused who is neither detained nor confined, if he has not yet declared or chosen an address for service or the procedure under Article 161, paragraph 2, has not been followed, he shall specify the address for service where he wishes to receive the notice provided for in paragraph 6. If such specification is lacking, the notice shall be served by delivering it to the lawyer. If the request is submitted by a different person and such person has not specified his address for service, the notice shall be served by filing it with the Court Registry.
3. The Court Registry shall immediately inform the proceeding judicial authority which, within the next day, shall forward to the Tribunal the documents on which the decision subject of re-examination is based.
4. The arguments for appeal may be attached to the request for reexamination. The person who submitted the request is also entitled to list new reasons before the Tribunal requiring that they be recorded prior to the start of the debate.
5. The decision on the request for re-examination shall be taken by the Tribunal, sitting as a collegial court, of the chief town of the province in which the office which issued the decision is located within ten days of receipt of the documents.
6. The proceedings before the Tribunal shall be held in chambers as set forth in Article 127. The date set for the hearing shall be communicated to the Public Prosecutor and served on the lawyer or whoever has submitted the request at least three days prior to such date. Until the day of the hearing, the documents shall remain filed with the Court Registry.

7. The provisions of Article 309, paragraphs 9, 9-*bis* and 10, shall be observed. The decision on the seizure may be revoked in part and may not be ordered in the cases referred to in Article 240, paragraph 2, of the Criminal Code.

8. If ownership is contested, the re-examination Tribunal shall defer the decision on the dispute to the civil court while withholding the seized objects.

Article 325

Appeal to the Court of Cassation

1. The Public Prosecutor, the accused and his lawyer, the person whose objects have been seized and the person who would be entitled to their restitution may lodge an appeal to the Court of Cassation against the orders issued according to Articles 322-*bis* and 324 if the law has been violated.

2. Within the time limit provided for in Article 324, paragraph 1, an appeal to the Court of Cassation may be lodged directly against the seizure decree issued by the court. The lodging of the appeal to the Court of Cassation makes the request for re-examination inadmissible.

3. The provisions of Article 311, paragraphs 3, 4 and 5 shall apply.

4. The appeal to the Court of Cassation shall not suspend the enforcement of the order.

SECOND PART

BOOK V

PRELIMINARY INVESTIGATIONS AND

PRELIMINARY HEARING

TITLE I

GENERAL PROVISIONS

Article 326

Purposes of preliminary investigations

1. The Public Prosecutor and the criminal police, within their respective responsibilities, shall conduct the investigations necessary for the decision on criminal prosecution.

Article 327

Management of preliminary investigations

1. The Public Prosecutor shall manage investigations and the criminal police shall be at his direct disposal. Even after notifying the *notitia criminis* to the Public Prosecutor, the criminal police shall continue to carry out activities on its own initiative as set forth in the following Articles.

Article 327-*bis*

Investigative activities conducted by the lawyer

1. Upon receiving the professional assignment, confirmed in writing, the lawyer has the right to conduct investigations with the aim of searching and finding elements of evidence in favour of his client, in the forms and for the purposes established in Title *VI-bis* of this Book.

2. The right referred to in paragraph 1 may be assigned for the exercise of the right of defence, at any stage and instance of the proceedings, in criminal enforcement and for promoting a revision trial.

3. The activities provided for in paragraph 1 may be carried out, as assigned by the lawyer, by his substitute, authorised private investigators and, if specific skills are required, by technical consultants.

Article 328

Preliminary Investigation Judge

1. In the cases provided for by law, decisions on the requests of the Public Prosecutor, the private parties and the victim shall be taken by the Preliminary Investigation Judge.

1 -*bis.* When crimes referred to in Article 51, paragraphs 3-*bis* and 3-*quater,* are being prosecuted, the functions of the Preliminary Investigation Judge shall be carried out, without prejudice to specific legal provisions, by a judge of the Tribunal of the chief town of the district where the court with competence is located.

1-*ter*. (...)

1 -*quater*. When crimes referred to in Article 51, paragraph 3-*quinquies,* are being prosecuted, the functions of the Preliminary Investigation Judge and the functions of the Preliminary Hearing Judge shall be carried out, without prejudice to specific legal provisions, by a judge of the Tribunal of the chief town of the district where the court with competence is located.

Article 329

Obligation of secrecy

1. Investigative acts carried out by the Public Prosecutor and the criminal police are covered by secrecy until the accused is entitled to have knowledge of them and, in any case, not beyond the closing of preliminary investigations.
2. If it is necessary for on-going investigations to continue, notwithstanding the provisions of Article 114, the Public Prosecutor may allow the publication of individual documents or parts thereof by reasoned decree. In such case, the published documents shall be filed with the Clerk's Office of the Public Prosecutor.
3. Even when the documents are no longer covered by secrecy according to paragraph 1, the Public Prosecutor may, if necessary for investigations to continue, decide by reasoned decree on the following:

a) the obligation of secrecy for individual documents, if the accused agrees or if knowledge of such document may obstruct investigations concerning other persons;

b) the prohibition on publishing the content of individual documents or specific information concerning certain activities.

TITLE II

NOTITIA CRIMINIS

Article 330

Acquisition of notitiae criminis

1. The Public Prosecutor and criminal police shall acquire *notitiae criminis* on their own initiative and receive *notitiae criminis* that are submitted or forwarded according to the following Articles.

Article 331

Report by public officials and persons in charge of a public service

1. Without prejudice to the provisions of Article 347, public officials and persons in charge of a public service who receive information about an offence subject to prosecution of the Public Prosecutor's motion, while carrying out or because of their functions or their service, must report it in writing, even if the alleged perpetrator of the offence is not identified.

2. The report shall be submitted or forwarded without delay to the Public Prosecutor or a criminal police official.
3. If several persons are to report the same offence, they may also draft and sign one single document.
4. If, during civil or administrative proceedings, an act emerges which may constitute an offence subject to prosecution of the Public Prosecutor's motion, the proceeding authority shall draft and forward the report to the Public Prosecutor without delay.

Article 332

Content of the report

1. The report shall contain the description of the essential elements of the alleged offence, the specification of the day when the *notitia criminis* was acquired as well as the sources of evidence which are already known. Whenever possible, the report shall also contain the personal data, the address for service and anything else that may help identify the alleged perpetrator, the victim and whoever may be able to provide information relevant for the reconstruction of the events.

Article 333

Report by private parties

1. Whoever has knowledge of an offence subject to prosecution of the Public Prosecutor's motion may submit a report. The law establishes the cases in which reporting an offence is mandatory.
2. The report shall be submitted orally or in writing, personally or by means of a proxy, to the Public Prosecutor or a criminal police official. If the report is submitted in writing, it shall be signed by its author or his proxy.
3. No use shall be made of anonymous reports, except as provided for in Article 240.

Article 334

Medical report

1. Whoever is to draft a medical report must send it within forty-eight hours or immediately, if any delay may pose a danger, to the Public Prosecutor or any criminal police official of the place where the service or assistance has been provided or, in their absence, to the closest criminal police official.
2. The medical report shall contain the name of the person to whom assistance has been provided and, if possible, his personal data, the place where he currently is and any other element suitable to identify him as well as the place, the time and the other circumstances of the intervention. The medical report shall also provide the information necessary to establish the circumstances of the criminal act, the means used to commit it and the effects it has caused or can cause.
3. If several persons have provided their assistance in the same situation, all of them must make a medical

report, and they may draft and sign a single document.

Article 334-*bis*

Exclusion of the obligation to report during defence investigative activities

1. The lawyer and the other persons referred to in Article 391-*bis* are not obliged to make a report, not even on offences they were acquainted with during the investigative activities they were conducting.

Article 335

Register of notitiae criminis

1. The Public Prosecutor shall enter immediately, in the dedicated register retained in his office, any *notitia criminis* he receives or acquires on his own initiative as well as, simultaneously or as of the moment it is known, the name of the alleged perpetrator of the offence.
2. If, during preliminary investigations, the legal definition of the criminal act changes or such act turns out to be differently circumstantiated, the Public Prosecutor shall update the entries provided for in paragraph 1 without recording any new *notitia criminis.*
3. With the exception of the crimes referred to in Article 407, paragraph 2, letter *a.),* the alleged perpetrator of the offence, the victim and the lawyers, upon their own request, shall be informed of the entering of *notitiae criminis* according to paragraphs 1 and 2.

3-*bis.* If there are specific needs concerning the investigative activity, while deciding on the request, the Public Prosecutor may order, by reasoned decree, secrecy over the entering of *notitiae criminis* for a non-renewable period of up to three months.

3-*ter*. Without prejudice to the secrecy of investigations, the victim may request information on the state of proceedings to the proceeding authority, six months after the date of submission of the report or complaint.

TITLE III

REQUIREMENTS FOR PROSECUTION

Article 336

Complaint

1. A complaint shall be submitted by means of a statement in which the complainant requests the prosecution of an act deemed an offence by law. Such statement may be submitted personally or by means of a proxy.

Article 337

Formality of complaint

1. The statement of complaint shall be submitted, as set forth in Article 333, paragraph 2, to either the

authorities to whom a report may be submitted or a consular officer abroad. If it bears an authenticated signature, the statement may also be delivered by an appointed person or sent by mail in a registered envelope.

2. If the statement of complaint is submitted orally, the record in which it is reported shall be signed by the complainant or his proxy.

3. The statement of complaint submitted by the legal representative of a legal entity, an organisation or an association must contain the specification of the source granting him the power of representation.

4. The authority receiving the complaint shall certify the date and place of submission of the complaint, check the identity of the person submitting it and forward the case file to the Office of the Public Prosecutor.

Article 338

Special complaint administrator

1. In the case provided for in Article 121 of the Criminal Code, the time limit for submitting a complaint starts as of the day the decision about the appointment of a special administrator is served on the special administrator.

2. The special administrator shall be appointed by the Preliminary Investigation Judge of the place where the victim is located, by reasoned decree and upon request of the Public Prosecutor.

3. The appointment may also be initiated by organisations aimed at providing care, education, custody or assistance to minors.

4. The special administrator shall be entitled to join the criminal proceedings as a civil party in the interest of the victim.

5. If the need for the appointment of a special administrator arises after the complaint has been submitted, the decision shall be taken by the Preliminary Investigation Judge or the proceeding court.

Article 339

Waiver of complaint

1. A complaint shall be expressly waived in person or through a proxy, by issuing a signed statement to the person concerned or one of his representatives. The statement may also be made orally to a criminal police official or a notary who, after checking the identity of the person making the waiver, shall draw up a record. The latter shall have no effect if it is not signed by the person making the statement.

2. A waiver subject to terms or conditions shall have no effect.

3. Along with this statement it is also possible to waive a civil action for restitution and compensation for damages.

Article 340

Withdrawal of complaint

1. Withdrawal of a complaint shall be made and accepted personally or by means of a proxy with a statement delivered to the proceeding authority or a criminal police official who must immediately forward it to the aforementioned authority.

2. The statement of withdrawal and the statement of acceptance shall be made in the same forms provided for the express waiver of complaint.

3. The special administrator provided for in Article 155, paragraph 4, of the Criminal Code shall be appointed according to Article 338.

4. The costs of proceedings are borne by the person against whom the complaint has been submitted, unless otherwise agreed in the document of withdrawal.

Article 341

Petition for criminal proceedings

1. The petition for criminal proceedings shall be submitted by the victim in the forms provided for the submission of a complaint.

Article 342

Request for prosecution

1. The request for prosecution shall be submitted to the Public Prosecutor through a document signed by the authority with competence.

Article 343

Authorisation to proceed

1. If the authorisation to proceed is required, the Public Prosecutor shall make a request according to Article 344.

2. Until the authorisation is granted, it is forbidden to order temporary detention or personal precautionary measures against the person for whom the authorisation is to be issued, and to subject such person to a body or home search, body inspection, formal identification, informal identification, line-up and interception of conversations or communications. The person concerned may be questioned only if he requests to be questioned.

3. The activities provided for in paragraph 2 are allowed, also before the authorisation is requested, when the person is caught while committing any of the crimes referred to in Article 380, paragraphs 1 and 2. However, if the authorisation to proceed or the authorisation to carry out specific activities is required by any provision of the Constitution or constitutional laws, such provision shall be applied together with the

provisions of Articles 344, 345 and 346, provided they are compatible with the former.
4. The results of the acts carried out in violation of the provisions of paragraphs 2 and 3 shall not be used.
5. The authorisation to proceed shall not be revoked after it has been granted.

Article 344

Request for authorisation to proceed

1. The Public Prosecutor shall request the authorisation before proceeding to direct trial, before requesting either immediate trial, committal to trial or a criminal decree of conviction or before issuing the decree of summons for trial. The request must in any case be submitted within thirty days of entering in the register of *notitiae cri-minis* the name of the person for whom the authorisation is necessary.
2. If the person for whom the authorisation is necessary has been arrested *in flagrante delicto*, the Public Prosecutor shall request the authorisation to proceed immediately and, in any case, prior to the confirmation hearing.
3. The court shall suspend the proceedings and the Public Prosecutor shall request without delay the authorisation to proceed if the need for it arose after a direct trial had been initiated or after the requests provided for in the first part of paragraph 1 had been submitted. Should any delay pose a danger, the court shall gather the evidence requested by the parties.
4. When several persons are prosecuted, but the authorisation is necessary only for some of them and such authorisation takes long to be granted, the accused persons for whom the authorisation is not necessary may be prosecuted separately.

Article 345

Lack of a requirement for prosecution. Possibility to restart prosecution

1. The decision to discontinue the case and the judgment of dismissal or no grounds to proceed, even if no longer subject to appellate remedy, which confirm the lack of a complaint, petition, request or authorisation to proceed, shall not prevent the prosecution of the same criminal act and the same person if a complaint, petition or request is submitted thereafter or if an authorisation to proceed is granted or if the personal requirement making the authorisation necessary no longer exists.
2. The same provision shall apply when the court ascertains the lack of a requirement for prosecution other than those referred to in paragraph 1 and when, after a judgment of either no grounds to proceed or non prosecution is issued according to Article 72-*bis,* the incapacity of the accused no longer exists or the accused was declared incapable by mistake.

Article 346

Activities carried out in the absence of a requirement for prosecution

1. Without prejudice to the provisions of Article 343, in the absence of a requirement for prosecution, which may still arise subsequently, the preliminary investigation activities which are necessary to secure the sources of evidence may be carried out and, should any delay pose a danger, the evidence provided for in Article 392 may be gathered.

TITLE IV

ACTIVITIES UPON INITIATIVE OF CRIMINAL POLICE

Article 347

Obligation to forward a notitia criminis

1. After receiving a *notitia criminis*, the criminal police shall inform, in writing and without delay, the Public Prosecutor of the essential elements of the alleged offence and of the other elements hitherto collected, specifying the sources of evidence and the activities already carried out. The criminal police shall forward the relevant documentation to the Public Prosecutor.

2. If possible, the criminal police shall also provide the Public Prosecutor with the personal data, the address for service and anything else that may help identify the suspected person, the victim and whoever may be able to provide information relevant for the reconstruction of the events.

2-*bis*. If activities requiring the assistance of the suspect's lawyer have been carried out, the *notitia criminis* shall be forwarded no later than forty-eight hours after performance of the activity, without prejudice to legal provisions on special time limits.

3. If the *notitia criminis* involves any of the crimes referred to in Article 407, paragraph 2, letter *a.),* numbers 1)-6), and, in any case, there are reasons of urgency, the *notitia criminis* shall be notified immediately, also orally. The oral communication must be followed without delay by a written notification containing the information and documentation provided for in paragraphs 1 and 2.

4. In the notification, the criminal police shall specify the day and time of acquisition of the *notitia criminis.*

Article 348

Securing sources of evidence

1. Even after the *notitia criminis* has been notified, the criminal police shall continue to perform the functions referred to in Article 55 by collecting, in particular, any element which may be useful for the reconstruction of the criminal act and for the informal identification of the offender.

2. For the purpose referred to in paragraph 1, the criminal police shall, among others:

a) search for objects and traces related to the offence, as well as preserve them and the condition of the scene;
b) search for persons who may be able to provide information relevant for the reconstruction of the events;
c) carry out the acts referred to in the following Articles.
3. After the intervention of the Public Prosecutor, the criminal police shall carry out the activities specifically delegated to them under Article 370 and follow the instructions received by the Public Prosecutor. The criminal police shall also perform, on their own initiative and after promptly informing the Public Prosecutor, any other investigative activity that may be necessary to ascertain the offences or because new elements have emerged subsequently and they shall secure the new sources of evidence.
4. When the criminal police perform activities or operations that require specific technical skills, on their own initiative or after being delegated by the Public Prosecutor, they may avail themselves of suitable persons who shall not refuse to provide their services.

Article 349

Identity check of the suspect and other persons

1. The criminal police shall check the identity of the suspect and the persons who may be able to provide information relevant for the reconstruction of the events.
2. If necessary, the identity of the suspected person may be checked also by taking his fingerprints, taking photographs and making anthropometric measurements as well as other checks.
2-*bis.* If the checks referred to in paragraph 2 require the taking of a hair or saliva sample, the criminal police shall take the aforementioned samples in respect of the personal dignity of the person concerned, even though he does not provide his consent, after receiving either a written authorisation or an oral authorisation confirmed in writing by the Public Prosecutor.
3. When the criminal police perform the identity check, they require the suspected person to declare or chose his address for service under Article 161. The criminal police shall also observe the provisions of Article 66.
4. If any of the persons referred to in paragraph 1 refuse to be identified or provide personal data or identification documents for which there are sufficient reasons to believe they are false, the criminal police shall escort them to their offices and keep them there solely for the time needed to check their identity and, in any case, for no longer than twelve hours or, after informing the Public Prosecutor even orally, no longer than twenty-four hours if the identity checks are particularly complex or the assistance of the consular authority or an interpreter is required and, in such cases, the person concerned has the

right to inform a relative or a cohabitee.

5. The Public Prosecutor shall be immediately informed of the escorting to police office and the time when it occurred. If the Public Prosecutor holds that the conditions provided for in paragraph 4 are not met, he shall order such person to be released.

6. The Public Prosecutor shall also be informed of the release and the time when it occurred.

Article 350

Investigative questioning of the suspect

1. Criminal police officials shall collect, as provided for in Article 64, summary information useful for investigative purposes from the suspect who has not been placed under arrest or temporary detention according to Article 384 and in the cases referred to in Article 384-*bis.*

2. Prior to the investigative questioning, the criminal police shall require the suspect to appoint a retained lawyer and, if he does not do so, the police shall follow the provisions of Article 97, paragraph 3.

3. Investigative questioning shall be performed with the necessary assistance of the lawyer who shall be promptly informed by the criminal police. The lawyer must be present during investigative questioning.

4. If the lawyer has not been found or he did not appear, the criminal police shall require the Public Prosecutor to take a decision according to Article 97, paragraph 4.

5. At the scene or immediately after the offence has occurred, criminal police officials may, even in the absence of the lawyer, gather information and details from the suspect, which may be useful for the immediate continuation of investigations, even if the suspect was arrested *in flagrante delicto* or placed under temporary detention according to Article 384.

6. No record or use shall be made of any information or detail gathered in the absence of the lawyer at the scene or immediately after the offence has occurred according to paragraph 5.

7. The criminal police may also receive spontaneous statements from the suspected person, but their use is not allowed at trial, except for the provisions of Article 503, paragraph 3.

Article 351

Other types of investigative questioning

1. The criminal police shall gather summary information from persons who may be able to provide information useful for investigative purposes. The provisions of Article 362, paragraph 1, second and third period, shall apply.

1 -*bis.* Information from a person accused in joined proceedings or from a person accused of an offence related to the offence being prosecuted in the case provided for in Article 371, paragraph 2, letter *b),* shall be gathered by a criminal police official. If the aforementioned accused person does not have a lawyer, he

is informed that he shall be assisted by a court-appointed lawyer, but that he may also appoint a retained lawyer. The lawyer must be informed promptly and has the right to be present during the investigative questioning.

1 -*ter*. In the event of prosecution of any of the crimes provided for in Articles 572, 600, 600-*bis,* 600-600-*ter*, 600-*quater,* 600-*quater.* 1, 600-*quinquies,* 601, 602, 609-*bis,* 609-*quater,* 609-*quinquies*, 609-*octies,* 609-*undecies* and 612-*bis* of the Criminal Code, the criminal police who must gather summary information from minors shall avail themselves of the help of an expert in child psychology or psychiatry appointed by the Public Prosecutor. The criminal police shall follow the same procedure when they must gather summary information from a victim with specific protection needs, irrespective of his age. The criminal police shall in any case ensure that the victim with specific protection needs, when asked to provide summary information, does not have any contact with the suspect and is not summoned to provide such information more than once, unless this is absolutely necessary for the investigations.

Article 352

Searches

1. In the event of a person being caught *in flagrante delicto* or in case of escape, criminal police officials shall search the person's body or premises if they have reasonable grounds to believe that the person hides objects or traces related to the offence on his body that can be deleted or lost or that such objects or traces are in a certain place or that the suspected person or the escapee is in such place.

1 -*bis.* In the event of *flagrante delicto* or in the cases referred to in paragraph 2 when the prerequisites and the other conditions therein provided are met, if criminal police officials have reasonable grounds to believe that data, information, software or traces anyhow related to the offence which may be deleted or lost are hidden in IT and electronic systems, they shall search them, even if they are protected by security measures. In these cases, criminal police officials shall adopt technical measures aimed at guaranteeing the preservation of original data and preventing their alteration.

2. If an order directing precautionary detention or an injunction directing the imprisonment of a person accused or convicted of any of the crimes provided for in Article 380 are to be enforced or a person suspected of having committed a crime is to be placed under temporary detention, criminal police officials may also search the person's body or premises if the prerequisites referred to in paragraph 1 are met and there are specific reasons of urgency that do not allow a decree ordering the search to be promptly issued.

3. A home search may be carried out even beyond the time limits provided for in Article 251 if the delay could jeopardise the outcome of the search.

4. The criminal police shall forward, without delay and, in any case, no later than forty-eight hours, the record of the activities that were carried out to the Public Prosecutor of the place where the search was carried out. If the prerequisites are met, the Public Prosecutor shall confirm the search within the following forty-eight hours.

Article 353

Gathering of parcels or mail

1. If it is necessary to gather sealed or otherwise closed parcels, the criminal police official shall forward them still sealed or closed to the Public Prosecutor for a possible seizure.
2. If the criminal police official has reasonable grounds to believe that the parcels contain information that is useful for searching and securing sources of evidence that may be lost because of the delay, he shall inform, by the fastest possible means, the Public Prosecutor who may authorise their immediate opening.
3. If this involves letters, envelopes, parcels, valuables, telegrams or other items of correspondence, even in electronic format or if sent via electronic means, for which seizure is allowed under Article 254, in cases of urgency, criminal police officials shall order the person in charge of the postal, telegraphic, electronic or telecommunication service to suspend their forwarding. If the Public Prosecutor does not order their seizure within forty-eight hours of the issuing of the criminal police order, the items of correspondence shall be forwarded.

Article 354

Urgent checks of the scene, objects and persons. Seizure

1. Criminal police officials and officers shall ensure that traces and material items related to the offence are preserved and that the conditions of the scene and objects thereof are not changed prior to the intervention of the Public Prosecutor.
2. If there is a danger that the objects, traces and the scene referred to in paragraph 1 may be altered, lost or anyhow modified and if the Public Prosecutor is not able to intervene promptly or has still to undertake the management of the investigations, criminal police officials shall carry out the necessary ascertainment and checks on the conditions of the scene and objects thereof. In relation to data, information, software and IT or electronic systems, criminal police officials shall also adopt the technical measures or establish the obligations necessary to ensure their preservation and prevent them from being altered or accessed and, if possible, take care that they are copied on appropriate media, following a procedure that ensures that the copies are identical to the original and that they cannot be modified. If appropriate, criminal police officials shall seize the *corpus delicti* and the objects related to it.

3. If the prerequisites provided for in paragraph 2 are met, criminal police officials shall carry out the necessary ascertainment and checks other than body inspections.

Article 355

Confirmation of seizure and its re-examination

1. In case the criminal police have carried out a seizure, they shall specify the reason for such action in the dedicated record and deliver a copy to the person whose objects have been seized. The record shall be forwarded, without delay and, in any case, within forty-eight hours, to the Public Prosecutor of the place where the objects have been seized.
2. In the following forty-eight hours, the Public Prosecutor shall either confirm the seizure by reasoned decree if the prerequisites are met or order that the seized objects be returned. A copy of the confirmation decree shall be immediately served on the person whose objects have been seized.
3. Within ten days of service of the decree or of the date of acknowledgement of the seizure on the person concerned, the suspected person and his lawyer, the person whose objects have been seized and the person who would be entitled to have them returned may submit a request for the re-examination of the seizure against the confirmation decree, even on the merits of the case, according to Article 324.
4. The request for re-examination shall not suspend the enforcement of the decision.

Article 356

Assistance by the lawyer

1. The suspect's lawyer may be present, without having the right to be informed in advance, during the actions provided for in Articles 352 and 354, as well as at the immediate opening of the envelope, as authorised by the Public Prosecutor under Article 353, paragraph 2.

Article 357

Records of criminal police activities

1. The criminal police shall note down, according to the methods considered suitable for investigative purposes and even summarily, all the activities that they have carried out, including those aimed at identifying the sources of evidence.
2. Without prejudice to the provisions regarding specific activities, the criminal police shall record the following acts:

a) reports, complaints and petitions submitted orally;

b) summary information provided and spontaneous statements made by the suspected person;

c) information gathered under Article 351;

d) searches and seizures;

e) ascertainment and operations provided for in Articles 349, 353 and 354;
f) documents which describe facts and situations which may have occurred before the Public Prosecutor gave the instructions for conducting investigations.
3. The record shall be drawn up by criminal police officials or officers in the forms and with the methods provided for in Article 373.
4. The records of the criminal police activity shall be made available to the Public Prosecutor.
5. Reports, petitions and complaints submitted in writing, medical reports, the *corpus delicti* and material items related to the offence shall also be made available to the Public Prosecutor.

TITLE V

ACTIVITIES OF THE PUBLIC PROSECUTOR

Article 358

Investigative activities of the Public Prosecutor

1. The Public Prosecutor shall carry out any activity necessary for the purposes referred to in Article 326 and shall also investigate facts and circumstances in favour of the suspected person.

Article 359

Technical consultants of the Public Prosecutor

1. When the Public Prosecutor performs ascertainment, identity checks, descriptive and photographic operations and any other technical operation which require specific skills, he may appoint consultants who shall not refuse to provide their service.
2. The Public Prosecutor may authorise the consultant to be present during individual investigative activities.

Article 359-*bis*

Forced collection of biological samples from living persons

1. Without prejudice to the provision of Article 349, paragraph 2-*bis*, when the activities referred to in Article 224-*bis* are to be carried out and the person concerned has not given his consent, the Public Prosecutor shall request the authorisation to the Preliminary Investigation Judge. The Preliminary Investigation Judge shall authorise such activities if the conditions provided for in the same Article are met.
2. In cases of urgency, if there are reasonable grounds to believe that the delay may seriously or irrecoverably compromise investigations, the Public Prosecutor shall order that the activities be carried out by issuing a reasoned decree containing the same elements provided for by Article 224-*bis,* paragraph 2. He shall also order either the compulsory appearance of the person to be subjected to such operations if

he is absent without pleading a legal impediment, or the compulsory performance of the operations if the person appears but refuses to undergo them. Within the following forty-eight hours, the Public Prosecutor shall require the Preliminary Investigation Judge to confirm the decree and the possible decision on the compulsory appearance. The Judge shall decide on the confirmation as soon as possible and, in any case, within the following forty-eight hours, and shall inform the Public Prosecutor and the lawyer immediately thereafter.

3. In the cases referred to in paragraphs 1 and 2, the provisions of Articles 132, paragraph 2, and 224-*bis,* paragraphs 2, 4 and 5, shall apply under penalty of both nullity of the activities and exclusion of information gathered through such activities. The provisions of Article 191, paragraph 2, shall apply.

3-*bis.* In the cases referred to in Articles 589-*bis* and 590-*bis* of the Criminal Code, if the driver refuses to take the alcohol or drug test and there are reasonable grounds to believe that the delay may seriously or irrecoverably compromise investigations, the decree referred to in paragraph 2 and the further decisions prescribed therein may, in cases of urgency, be adopted orally and subsequently confirmed in writing. Criminal police officials shall take the person concerned to the nearest hospital for the necessary tests or collection of samples and shall compulsorily perform these operations if the person refuses to undergo them. The lawyer of the person concerned shall be promptly informed of the decree and the operations to be performed. The lawyer is entitled to be present during the operations, provided that his presence does not interfere with them. The provisions of Article 365, paragraphs 1 and 2, shall be observed. Within the following forty-eight hours, the Public Prosecutor shall require the Preliminary Investigation Judge to confirm the decree and possible further decisions. The Preliminary Investigation Judge shall decide as soon as possible and, in any case, within the following forty-eight hours, and shall inform the Public Prosecutor and the lawyer immediately thereafter. Operations must always be carried out in compliance with the conditions provided for in Article 224-*bis,* paragraphs 4 and 5.

Article 360

Non-repeatable technical ascertainment

1. If the ascertainment provided for in Article 359 involves persons, objects or places which are subject to change, the Public Prosecutor shall inform, without delay, the suspect, the victim and the lawyers of the day, time and place set for the assignment of the non-repeatable technical ascertainment and of the right to appoint technical consultants.

2. The provisions of Article 364, paragraph 2, shall apply.

3. The lawyers as well as the possibly appointed technical consultants have the right to be present during the assignment of the non-repeatable technical ascertainment, participate in the ascertainment and make

their own observations and reservations.

4. If, prior to the assignment of the ascertainment, the suspected person requests a special evidentiary hearing, the Public Prosecutor shall order that no ascertainment be carried out. However, such ascertainment shall be performed in case a delay may compromise their result.

4-*his.* The reservation specified in paragraph 4 shall cease to be effective and may not be made again if the request for a special evidentiary hearing is not submitted within ten days of the making of the reservation.

5. Without prejudice to the case in which the reservation requesting a special evidentiary hearing is ineffective in accordance with paragraph 4-*bis,* if the Public Prosecutor orders that ascertainment be carried out, in spite of the explicit reservation made by the suspect and even if the conditions referred to in the last part of paragraph 4 are not met, the results of the ascertainment shall not be used during the trial.

Article 361

Informal identification of persons and objects

1. The Public Prosecutor shall require the informal identification of persons, objects or anything else that may be sensorially perceived, only if necessary to continue investigations.

2. The persons, objects and any other item or their photograph shall be shown to the person who must carry out the informal identification.

3. If there are reasonable grounds to believe that the person called to carry out the informal identification could be anyhow intimidated or influenced by the presence of the suspected person, the Public Prosecutor shall adopt the precautions provided for in Article 214, paragraph 2.

Article 362

Gathering information

1. The Public Prosecutor shall gather summary information from persons who may be able to provide information that is useful for investigative purposes. Information about the questions asked and the answers given shall not be asked to the persons already heard by the lawyer or by his substitute. The provisions of Articles 197, 197-*bis,* 198, 199, 200, 201, 202 and 203 shall apply.

1 -*bis.* In the event of prosecution of any of the crimes referred to in Article 351, paragraph 1 -*ter,* the Public Prosecutor who must gather information from minors shall avail himself of the help of an expert in child psychology or psychiatry. The same expert help shall be employed when summary information must be gathered from a victim with specific protection needs, irrespective of his age. The Public Prosecutor shall in any case make sure that the victim with specific protection needs, when asked to

provide summary information, does not have any contact with the suspect and is not summoned to provide such information more than once, unless this is absolutely necessary for the investigations.

Article 363

Questioning of a person accused in joined proceedings

1. Persons accused in joined proceedings under Article 12 shall be questioned by the Public Prosecutor on the criminal acts being prosecuted as set forth in Article 210, paragraphs 2, 3, 4 and 6.
2. The provision in paragraph 1 shall apply also to persons accused of an offence related to the offence under prosecution, in the case referred to in Article 371, paragraph 2, letter *b).*

Article 364

Appointment and assistance of the lawyer

1. If the Public Prosecutor must carry out a questioning, inspection, informal identification or line-up in which the suspect must participate, the Public Prosecutor shall require the suspect to appear according to Article 375.
2. The suspected person who does not have a lawyer shall also be informed that he shall be assisted by a court-appointed lawyer, but that he may also appoint a retained lawyer.
3. The court-appointed lawyer or the retained lawyer appointed by the suspect shall be informed, at least twenty-four hours in advance, of the activities that are to be performed as specified in paragraph 1 and of the inspections which do not require the suspect's presence.
4. In any case, the lawyer has the right to be present during the activities referred to in paragraphs 1 and 3, without prejudice to the provisions of Article 245.
5. In cases of absolute urgency, if there are reasonable grounds to believe that the delay may compromise the search for or the securing of the sources of evidence, the Public Prosecutor may carry out a questioning, inspection, informal identification or line-up even prior to the set time limit, after informing the lawyer without delay and, in any case, promptly. The notice may be omitted if the Public Prosecutor performs an inspection and there are reasonable grounds to believe that the traces or other material items of the offence may be altered. The right of the lawyer to intervene shall be preserved in any case.
6. When the Public Prosecutor acts according to the methods provided for in paragraph 5, he must specify, under penalty of nullity, the grounds for the derogation and the methods of giving notice.
7. It is forbidden for anyone participating in the activities to show signs of approval or disapproval. If the lawyer is present while the actions are carried out, he may submit to the Public Prosecutor requests, observations and reservations, which shall be included in the record.

Article 365

Actions during which the lawyer has the right to be present without notice

1. If the Public Prosecutor performs searches or seizures, he shall ask the suspect, when the latter is present, whether he is assisted by a retained lawyer and, if he does not have one, the Public Prosecutor shall appoint a court-appointed lawyer according to Article 97, paragraph 3.

2. The lawyer shall be entitled to be present while the action is carried out, without prejudice to the provision of Article 249.

3. The provisions of Article 364, paragraph 7, shall apply.

Article 366

Filing of actions during which the lawyer has the right to be present

1. With the exception of specific provisions, records of the actions carried out by the Public Prosecutor and the criminal police during which the lawyer has the right to be present shall be filed with the Clerk's Office of the Public Prosecutor within three days of completion of the action, and the lawyer shall be entitled to examine and copy them within the following five days. If the lawyer is not informed that the action has been completed, the notice of filing shall be immediately served on him and the time limit shall start as of receipt of service. The lawyer shall be entitled to examine the seized objects in the place where they are kept and, if they involve documents, he may copy them.

2. For serious reasons, the Public Prosecutor may order, by reasoned decree, that the filing of the documents referred to in paragraph 1 and the exercise of the right mentioned in the third sentence of the same paragraph be delayed for no longer than thirty days, without prejudice to any other activity of the lawyer. The suspect and his lawyer may submit an opposition against the Public Prosecutors decree to the court that shall decide on the opposition according to Article 127.

Article 367

Briefs and requests from the lawyers

1. During preliminary investigations, lawyers shall be entitled to submit briefs and written requests to the Public Prosecutor.

Article 368

Judicial decisions on the request for seizure

1. If, during preliminary investigations, the Public Prosecutor believes that the seizure requested by the person concerned must not be carried out, he shall forward the request, along with his opinion, to the Preliminary Investigation Judge.

Article 369

Notice of investigation

1. Only when the Public Prosecutor must carry out an activity in which the lawyer has the right to be present, shall he send a notice of investigation to the suspect and the victim by mail, in a sealed registered envelope with return receipt. The notice of investigation shall contain the legal provisions which have allegedly been violated as well as the date and place in which the criminal act was committed along with a request to exercise the right of appointing a retained lawyer.

1 *-bis.* The Public Prosecutor shall also inform the suspect and the victim of their right to being informed as set forth in Article 335, paragraph 3.

2. If he believes it to be necessary or when the post office returns the envelope because the addressee could not be found, the Public Prosecutor may order that the notice of investigation be served according to Article 151.

Article 369-*bis*

Notice to the suspect about his right of defence

1. During the first activity in which the lawyer has the right to be present and, in any case, prior to sending the summons to appear for questioning according to the conjunction of Articles 375, paragraph 3, and 416, or no later than the service of the notice on the conclusion of preliminary investigations according to Article 415-*bis,* the Public Prosecutor, under penalty of nullity of subsequent acts, shall serve on the suspected person the notification on the designation of a court-appointed lawyer.

2. The notification referred to in paragraph 1 shall contain:

a) the information that technical defence in criminal proceedings is mandatory, along with the specification of the rights assigned by law to the suspected person;

b) the name of the court-appointed lawyer, his address and his telephone number;

c) the specification of the right to appoint a retained lawyer, along with the notice that, if the suspect does not have a retained lawyer, he shall be assisted by the court-appointed lawyer;

d) the specification of the obligation to remunerate the court-appointed lawyer, unless the conditions for accessing the benefit referred to in letter *e)* are met, along with the warning that, in case the lawyer is not paid, mandatory enforcement shall be imposed;

d-bis) the information that the suspect has the right to an interpreter and to the translation of essential documents;

e) the specification of the conditions for accessing legal aid at the expense of the State.

Article 370

Direct actions and delegated actions

1. The Public Prosecutor shall conduct personally any investigative activity. He may avail himself of the criminal police for carrying out investigative activities and specifically delegated actions, including questionings and line-ups in which the suspect at liberty takes part with the necessary assistance of his lawyer.

2. While acting according to paragraph 1, the criminal police shall observe the provisions of Articles 364, 365 and 373.

3. For individual actions to be carried out in the district of a different Tribunal, if the Public Prosecutor does not intend to proceed personally, he may delegate the Public Prosecutor attached to such Tribunal, according to the respective subject-matter competence.

4. In cases of urgency or for any other serious reason, the Public Prosecutor delegated according to paragraph 3 shall be entitled to proceed, on his own initiative, to carry out actions which, after completing those for which he has been specifically delegated, appear necessary for investigative purposes.

Article 371

Relations between different offices of the Public Prosecutor

1. Different offices of the Public Prosecutor that are involved in joined investigations shall coordinate their work to ensure the smooth running, economy and effectiveness of investigations. For this purpose, they shall exchange documents and information and communicate to each other the instructions received respectively by the criminal police. They may also carry out specific actions jointly.

2. Investigations conducted by different offices of the Public Prosecutor shall be considered joined:

a) if the proceedings are joined according to Article 12;

b) if some of the offences involved were committed during the commission of other offences or to achieve or secure to the perpetrator the profit, cost, product of the offence or impunity or were committed by several persons causing reciprocal damage, or if a piece of evidence of an offence or of one of its circumstances affects the evidence of a different offence or a different circumstance;

c) if the evidence of several offences comes from the same source, even if only partly.

3. Without prejudice to the provisions of Article 12, joined investigations do not affect competence.

Article 371-*bis*

Coordination activities of the National Anti-Mafia and Counter-terrorism Prosecutor

1. The National Anti-Mafia and Counter-*ter*rorism Prosecutor shall exercise his functions in relation to

proceedings for crimes referred to in Article 51, paragraphs 3-*bis* and 3 -*quater,* and for the application of mafia and terrorism prevention measures. With regard to proceedings for crimes referred to in Article 51, paragraph 3-*bis,* he shall be supported by the Anti-Mafia Investigative Agency and the central and inter-provincial police units and shall provide instructions on their involvement and role in investigations. Also with regard to proceedings for crimes referred to in Article 51, paragraph 3 -*quater,* he shall be supported by the central and inter-provincial police units and shall provide instructions on their involvement and role in investigations.

2. The National Anti-Mafia and Counter-*ter*rorism Prosecutor shall exercise powers of initiative on District Public Prosecutors for the effective coordination of investigative activities, ensuring that the various criminal police units are adequately employed and investigations are prompt and thorough.

3. The National Anti-Mafia and Counter-*ter*rorism Prosecutor shall exercise the functions assigned to him by law and shall, in particular:

a) ensure, in agreement with the District Public Prosecutors concerned, that investigations are conducted jointly and may involve the Public Prosecutors of the National Anti-Mafia and Counter-*ter*rorism Directorate for this purpose;

b) manage Prosecutors' flexibility and mobility to provide specific and contingent support in investigations or proceedings by assigning temporary tasks to the Public Prosecutors of the National Anti-Mafia and Counter-*ter*rorism Directorate and the District Prosecution Units;

c) gather and process information and data concerning organised crime and the crimes of terrorism, even international, for the purpose of coordinating investigations and prosecuting offences;

3-*bis*. (…)

f) provide specific instructions to District Public Prosecutors for the prevention and resolution of disagreements on the methods for coordinating investigative activities;

g) pool together the District Public Prosecutors involved to resolve any disagreements which have arisen-despite the specific instructions given-and have either hindered the coordination of activities or have rendered it ineffective;

h) order, by a reasoned decree objectionable before the Prosecutor General of the Court of Cassation, the advocation of preliminary investigations on any of the crimes referred to in Article 51, paragraphs 3 -*bis* and 3 -*quater,* if the meetings called to promote or implement the coordination of activities have been unproductive and coordination of the activities has not been possible due to:

1) continuing and unjustified inactivity in investigative activities;

2) unjustified and repeated violation of the duties provided for in Article 371 for the coordination of

investigations.

4. The National Anti-Mafia and Counter-*ter*rorism Prosecutor shall advocate preliminary investigations after gathering the necessary information onsite, either personally or through a specifically appointed Public Prosecutor of the National Anti-Mafia and Counter-*ter*rorism Directorate. With the exception of specific cases, the National Anti-Mafia and Counter-*ter*rorism Prosecutor or the Public Prosecutor appointed by him shall not delegate other Offices of the Public Prosecutor to conduct investigative activities.

Article 372

Advocation of investigations

1. After gathering the necessary information, the Prosecutor General attached to the Court of Appeal shall order, by reasoned decree, the advocation of preliminary investigations if:

a) the designated Public Prosecutor cannot be promptly substituted in case of abstention or incompatibility;

b) the chief of the Office of the Public Prosecutor has not promptly substituted the Public Prosecutor designated for conducting investigations in the cases provided for in Article 36, paragraph 1, letters *a), b , d)* and *e).*

1-*bis.* After gathering the necessary information, the Prosecutor General attached to the Court of Appeal shall also order, by reasoned decree, the advocation of preliminary investigations concerning the crimes provided for in Articles 270-*bis,* 280, 285, 286, 289-*bis,* 305, 306, 416 in the cases when the arrest *in flagrante delicto* is mandatory, and Article 422 of the Criminal Code when joined investigations are being conducted, but coordination of the investigations provided for in Article 371, paragraph 1, is ineffective and the coordination meetings ordered or promoted by the Prosecutor General, also in agreement with other Prosecutors General concerned, have not produced positive results.

Article 373

Recording of acts

1. Without prejudice to the provisions concerning specific documents, the following acts shall be recorded:

a) reports, complaints and petitions for proceedings submitted orally;

b) questionings and line-ups involving the suspect;

c) inspections, searches and seizures;

d) summary information gathered according to Article 362;

d-bis) questionings carried out according to Article 363;

e) technical ascertainment carried out according to Article 360.

2. The record shall be drawn up according to the methods provided for in Title III of Book II.

3. Preliminary investigation activities other than those provided for in paragraph 1 shall be recorded in summary form or, if the activities have a simple content or are of limited relevance, in the form of notes that shall include the information that is considered necessary.

4. The activities shall be recorded either while they are being carried out or immediately afterwards if the simultaneous drawing up of a record is hindered by insuperable circumstances, which must be specifically detailed.

5. The document containing the *notitia criminis* and the records of investigations shall be kept in a dedicated dossier at the Office of the Public Prosecutor together with the documents forwarded by the criminal police according to Article 357.

6. The record and the notes shall be drafted by the criminal police official or the Public Prosecutor's assistant. The provision of Article 142 shall apply.

Article 374

Spontaneous appearance before the Public Prosecutor

1. Anyone knowing that an investigation is being conducted against them shall be entitled to appear before the Public Prosecutor and make statements.

2. If the person appearing spontaneously is charged with the criminal act under prosecution and is allowed to explain his exculpations, such activity shall correspond to a questioning for all legal intents and purposes. In such case, the provisions of Articles 64, 65 and 364 shall apply.

3. The spontaneous appearance shall not interfere with the application of precautionary measures.

Article 375

Summons to appear before the Public Prosecutor

1. The Public Prosecutor shall require the suspect to appear if he must carry out actions requiring the suspect's presence.

2. The summons to appear shall contain the following:

a) the personal data or any other personal information that may help identify the suspect;

b) the day, time and place of the appearance, as well as the authority before which the person must appear;

c) the type of action for which the summons is issued;

d) the warning that the Public Prosecutor may order, according to Article 132, the person to compulsorily appear if he is absent without pleading a legal impediment.

3. When the person is summoned for being questioned, the summons shall also contain a summary description of the criminal act as it results from the investigations hitherto conducted. The summons may also contain, for the purposes of the provision of Article 453, paragraph 1, a list of the elements and sources of evidence and the notice that a request of immediate trial may be submitted.
4. The summons to appear shall be served at least three days prior to the day set for the appearance, unless the Public Prosecutor, for reasons of urgency, considers it necessary to shorten the time limit, provided that sufficient time for appearing is allowed.

Article 376

Compulsory appearance for questioning or line-up

1. When it is necessary to carry out a questioning or a line-up, the Public Prosecutor shall order the compulsory appearance after receiving an authorisation by the court.

Article 377

Summons of possible witnesses

1. The Public Prosecutor may issue a summons decree if he must carry out actions requiring the presence of the victim and the persons who may be able to provide information relevant for investigative purposes.
2. The decree shall contain the following:
a) the personal data of the person concerned;
b) the day, time and place of the appearance, as well as the authority before which the person must appear;
c) the warning that the Public Prosecutor may order, according to Article 133, the person to compulsorily appear if he is absent without pleading a legal impediment.
3. The Public Prosecutor shall follow the same procedure for summoning a technical consultant, an interpreter and the custodian of seized objects.

Article 378

Coercive powers of the Public Prosecutor

1. While carrying out his functions, the Public Prosecutor shall have the powers referred to in Article 131.

TITLE VI

ARREST *IN FLAGRANTE DELICTO* AND TEMPORARY DETENTION

Article 379

Determination of the sentence

1. For the purpose of applying the provisions of this Title, the sentence shall be determined according to

Article 278.

Article 380

Mandatory arrest in flagrante delicto

1. Criminal police officials and officers shall arrest anyone caught while perpetrating an intentional crime, either committed or attempted, for which the law imposes a life sentence or the penalty of imprisonment for a minimum term of at least five years and a maximum term of at least twenty years.

2. In addition to the cases provided for in paragraph 1, criminal police officials and officers shall arrest anyone caught while perpetrating any of the following intentional crimes, either committed or attempted:

a) crimes against the State provided for in Title I, Book II, of the Criminal Code for which the penalty of imprisonment for a minimum term of at least five years or a maximum term of at least ten years is imposed;

a-bis) crime of violence or threat towards a political, administrative or judicial body, or towards one of its members, provided for in Article 338 of the Criminal Code

b) crimes of devastation and looting provided for in Article 419 of the Criminal Code;

c) crimes against public safety provided for in Tide VI, Book II, of the Criminal Code for which the penalty of imprisonment of a minimum term of at least three years or a maximum term of at least ten years;

d) crimes of slavery provided for in Article 600, crimes of child prostitution provided for in Article 600-*bis,* paragraph 1, crimes of child pornography provided for in Article 600-*ter,* paragraph 1 and 2, even if related to the pornographic material referred to in Article 600-*quater.* 1, and crimes of tourist initiatives aimed at exploiting child pornography provided for in Article 600-*quinquies* of the Criminal Code;

d. 1*)* crimes of illegal labour intermediation and labour exploitation provided for in Article 603-*bis,* paragraph 1, of the Criminal Code;

d-bis) crimes of sexual abuse provided for in Article 609-*bis,* except for the case provided for in paragraph 3, and crimes of group sexual abuse provided for in Article 609-*octies* of the Criminal Code;

d-ter) crimes of sexual activities with a minor provided for in Article 609-*quater,* paragraph 1 and 2, of the Criminal Code;

e) crimes of theft, if the aggravated circumstance provided for in Article 4 of Law No 533 of 8 August 1977 or any of the aggravating circumstances provided for in Article 625, paragraph 1, numbers 2), first assumption, 3) and 5), of the Criminal Code occur, unless, in the latter cases, the mitigating circumstance referred to in Article 62, paragraph 1, number 4) of the Criminal Code occurs;

e-bis) crimes of theft provided for in Article 624-*bis* of the Criminal Code, unless the mitigating circumstance referred to in Article 62, paragraph 1, number 4), of the Criminal Code occurs;

f) crimes of robbery provided for in Article 628 of the Criminal Code and crimes of blackmail provided for in Article 629 of the Criminal Code;

f-bis) crimes of receiving, in case of aggravating circumstances under Article 648, paragraph 1, second period, of the Criminal Code;

g) crimes concerning the illegal manufacturing, selling, cession, possession and carrying in a public place or a place open to the public or introduction into the State of weapons of war or war-like weapons or parts thereof and explosives, illegal weapons as well as ordinary fire arms, except for those provided for in Article 2, paragraph 3, of Law No 110 of 18 April 1975;

h) crimes concerning narcotic drugs or psychotropic substances punishable under Article 73 of the Consolidated Text approved by Decree No 309 of the President of the Republic of 9 October 1990, except for the crimes provided for in paragraph 5 of the same Article;

i) crimes committed for purposes of terrorism or subversion of the constitutional order for which the law imposes the penalty of imprisonment for a minimum term of at least four years or a maximum term of at least ten years;

l) crimes of promotion, constitution, management and organisation of secret associations provided for in Article 1 of Law No 17 of 25 January 1982, of military associations provided for in Article 1 of Law No 561 of 17 April 1956, of associations, movements or groups provided for in Articles 1 and 2 of Law No 645 of 20 June 1952;

l-bis) crimes of participation, promotion, management and organisation of mafia-type associations provided for in Article 416-*bis* of the Criminal Code;

1-*ter)* crimes of domestic abuse against relatives and cohabitees as well as persecution provided for in Articles 572 and 612-*bis* of the Criminal Code;

m) crimes of promotion, management, constitution and organisation of criminal associations provided for in Article 416, paragraphs 1 and 3, of the Criminal Code, if the association is aimed at committing several of the crimes provided for in paragraph 1 or letters *a), b), c),*

d) , f), g) and *i)* of this paragraph;

m-bis) crimes concerning the manufacture, possession or use of a fake identity document as set forth in Article 497-*bis* of the Criminal Code;

m-ter) crimes concerning the promotion, management, organisation, financing of transport of human beings or the actual transport thereof for the purpose of their illegal entry into the Italian territory, as set

forth in Article 12, paragraphs 1 and 3, of the Consolidated Text of the provisions concerning immigration and the status of aliens referred to in Legislative Decree No 286 of 25 July 1998, as amended.

m-quater) the crime of involuntary road traffic homicide as set out in Article 589-*bis*, paragraphs 2 and 3, of the Criminal Code.

3. If the crime is subject to prosecution on the basis of a complaint, the arrest *in flagrante delicto* shall be enforced if the complaint is submitted, even by an oral statement made to the criminal police or officer present at the scene. If the entitled person withdraws the complaint, the arrested person shall be immediately released.

Article 381

Discretionary arrest in flagrante delicto

1. Criminal police officials and officers shall be entitled to arrest whoever is caught while perpetrating an intentional crime, either committed or attempted, for which the law imposes the penalty of imprisonment for a maximum term exceeding three years or a non-intentional crime for which the law imposes the penalty of imprisonment for a maximum term of at least five years.

2. Criminal police officials and officers shall also be entitled to arrest anyone caught while committing one of the following crimes:

a) embezzlement by taking advantage of somebody else’s error provided for in Article 316 of the Criminal Code;

b) corruption for an activity contrary to official duties provided for in Articles 319, paragraph 4, and 321 of the Criminal Code;

c) violence or threats towards a public official provided for in Article 336, paragraph 2, of the Criminal Code;

d) commerce and administration of tainted medications or noxious foodstuff provided for in Articles 443 and 444 of the Criminal Code;

e) corruption of minors provided for in Article 530 of the Criminal Code;

f) personal injury provided for in Article 582 of the Criminal Code;

f-bis) housebreaking provided for in Article 614, paragraph 1
and 2, of the Criminal Code;

g) theft provided for in Article 624 of the Criminal Code;

h) aggravated damages under Article 635, paragraph 2, of the Criminal Code;

i) fraud provided for in Article 640 of the Criminal Code;

l) misappropriation provided for in Article 646 of the Criminal Code;

l-bis) offer, cession or possession of pornographic material provided for in Articles 600-*ter,* paragraph 4, and 600-*quater* of the Criminal

Code, even if related to the pornographic material referred to in Article 600-*quater.* 1 of the same Code;

m) alteration of weapons and manufacture of non-approved explosives provided for in Articles 3 and 24, paragraph 1, of Law No 110 of 18 April 1975.

m-bis (...)

m-ter) false statement or statement made to a public official on one's own or someone else's identity or personal details, provided for in Article 495 of the Criminal Code;

m-quater) fraudulent alterations to impede the identification or the ascertainment of personal details provided for in Article 495-*ter* of the Criminal Code;

m-quinquies) serious or very serious involuntary road traffic injuries provided for in Article 590-*bis,* paragraphs 2, 3, 4 and 5, of the Criminal Code.

3. If the crime is subject to prosecution on the basis of a complaint, the arrest *in flagrante delicto* may be enforced if the complaint is submitted, even by an oral statement made to the criminal police official or officer present at the scene. If the entitled person withdraws the complaint, the arrested person shall be immediately released.

4. In the cases envisaged in this Article, the arrest *in flagrante delicto* shall be enforced only if it is justified by the seriousness of the criminal act or by the person's dangerousness inferred from his personality or the circumstances of the act.

4-*bis.* The person required to provide information by the criminal police or the Public Prosecutor shall not be arrested for offences concerning the content of such information or the refusal to provide it.

Article 382

Flagrante delicto *status*

1. A person is considered to be in a status of *in flagrante delicto* if he is caught in the act of committing an offence or, immediately after the offence, he is chased by the criminal police, the victim or anyone else, or if he is caught with objects or traces from which it appears that he has committed the offence immediately before.

2. In the case of a perpetual offence, the *flagrante delicto* status shall last until the offence is considered perpetual.

Article 383

Right to arrest by private persons

1. In the cases provided for in Article 380, any person shall be authorised to arrest a perpetrator *in flagrante delicto* while he is committing a crime subject to prosecution of the Public Prosecutor's motion.
2. The person who has arrested the perpetrator must deliver the arrested person and the objects constituting the *corpus delicti* to the criminal police who shall draw up a record of delivery and issue a copy to him.

Article 384

Temporary detention of person suspected of a crime

1. In addition to the cases of *flagrante delicto,* if there are specific reasons to believe that the suspect may flee, also in relation to the impossibility of identifying the suspect, the Public Prosecutor shall order that the person be placed under temporary detention if he is seriously suspected of having committed a crime which is punishable with a life sentence or the penalty of imprisonment for a minimum term of at least two years and a maximum term exceeding six years or a crime concerning weapons of war and explosives or a crime committed for purposes of terrorism, even international, or subversion of democratic order.
2. In the cases provided for in paragraph 1 and before the Public Prosecutor undertakes the management of investigations, criminal police officials and officers shall place under temporary detention the perpetrator on their own initiative.
3. The criminal police shall also place under temporary detention the perpetrator on its own initiative if the suspect is subsequently identified or specific elements arise, such as the possession of false documents giving rise to reasonable grounds to believe the suspect is about to flee and, due to the urgency of the situation, it is not possible to wait for the Public Prosecutor's decision.

Article 384-*bis*

Urgent injunction to stay away from the family home

1. After receiving an authorisation by the Public Prosecutor, either in writing or orally and confirmed in writing or electronically, criminal police officials and officers are entitled to issue the urgent injunction to stay away from the family home and the places habitually attended by the victim, against anyone caught while committing any of the crimes provided for in Article 282-*bis,* paragraph 6, if there are well-founded reasons to believe that such crimes may be repeated and may pose a serious risk for the victim's life or psychophysical integrity. The criminal police shall fulfil, without delay, the obligations of

information provided for in Article 11 of Decree-Law No 11 of 23 February 2009, converted, with amendments, by Law No 38 of 23 April 2009, as amended.

2. The provisions of Articles 385 and following of this Title shall apply, provided they are compatible. The provisions referred to in Article 381, paragraph 3, shall be observed. The oral statement of a complaint shall be mentioned in the record of the activities related to the injunction to stay away.

Article 385

Prohibition of arrest or temporary detention under specific circumstances

1. The arrest or temporary detention are not allowed when, considering the circumstances of the criminal act, it appears that it has been committed while discharging one's own duty or exercising a legitimate right or if a reason for exemption from punishment exists.

Article 386

Duties of the criminal police in case of arrest or temporary detention

1. The criminal police officials and officers who have arrested or placed under temporary detention the perpetrator or to whom the arrested person has been surrendered, shall immediately inform the Public Prosecutor of the place where the perpetrator has been arrested or placed under temporary detention. They shall provide the arrested or temporarily detained person with a written notice, drafted clearly and precisely. If the arrested or temporarily detained person does not know the Italian language, the notice shall be translated into a language he understands. The notice shall contain the following information:

a) his right to appoint a retained lawyer and to access legal aid at the expense of the State according to the provisions of the law;

b) his right to obtain information on the accusations raised;

c) his right to an interpreter and to the translation of essential documents;

d) his right to silence;

e) his right to access documents on which the arrest or temporary detention is based;

f) his right to inform consular authorities and his relatives;

g) his right to access emergency medical assistance;

h) his right to be brought before the judicial authority for the confirmation of the arrest or temporary detention within ninety-eight hours of the arrest or start of temporary detention;

i) his right to appear before a court for questioning, and to request the appeal to the Court of Cassation against the order deciding on whether arrest or temporary detention shall be confirmed or not.

1 *-bis.* If the written notice referred to in paragraph 1 is not promptly available in a language that the arrested or temporarily detained person understands, the information is provided orally, without preju-

dice to the obligation to provide the arrested or temporarily detained person with the aforementioned written notice without delay.

1. Criminal police officials and officers shall immediately inform of the arrest or temporary detention the appointed retained lawyer, if any, or the court-appointed lawyer designated by the Public Prosecutor under article 97.

2. If the case envisaged in Article 389, paragraph 2, does not occur, criminal police officials and officers shall place the arrested or temporarily detained person at the disposal of the Public Prosecutor as soon as possible and, in any case, within twenty-four hours of the arrest or start of temporary detention. Within the same time limit they shall forward the relevant record, also electronically, unless the Public Prosecutor authorises a longer time limit. The record shall contain the possible appointment of a retained lawyer, the specification of the day, time and place in which the person was arrested or placed under temporary detention and a list of the reasons thereof, as well as the specification that the arrested or temporarily detained person was provided with the written notice or orally informed according to paragraph 1 *-bis.*

3. Criminal police officials and officers shall place the arrested or temporarily detained person at the disposal of the Public Prosecutor by taking him to the district prison of the place where he was arrested or placed under temporary detention, without prejudice to the provision of Article 558.

4. The Public Prosecutor may order that the arrested or temporarily detained person be kept in custody in one of the places referred to in Article 284, paragraph 1, or, if the investigations may be seriously compromised, in a different district or borough building.

5. Criminal police officials and officers shall forward the record referred to in Article 386, paragraph 3, also to the Public Prosecutor who has ordered it if he is different from the one referred to in paragraph 1.

6. The arrest or temporary detention shall become ineffective if the time limits provided for in paragraph 3 are not observed.

Article 387

Notice of arrest or temporary detention to family members

1. With the consent of the arrested or temporarily detained person, the criminal police must inform without delay the person’s family members of his arrest or temporary detention.

Article 388

Questioning of the arrested or temporarily detained person

1. The Public Prosecutor may question the arrested or temporarily detained person after promptly informing the retained lawyer or, in his absence, the court-appointed lawyer.

2. During the questioning, complying with the forms provided for in Article 64, the Public Prosecutor shall inform the arrested or temporarily detained person of the criminal act under prosecution and the reasons underlying the decision on his arrest or temporary detention and shall also notify him of the elements he is charged with and their sources, unless this compromises investigations.

Article 389

Cases of immediate release of the arrested or temporarily detained person

1. If it clearly appears that the person has been arrested or placed under temporary detention due to a mistaken identity or in cases not provided for by law or if the arrest or temporary detention has become ineffective according to Articles 386, paragraph 7, and 390, paragraph 3, the Public Prosecutor shall order, by reasoned decree, the immediate release of the arrested or temporarily detained person.

2. The release shall also be ordered prior to the intervention of the Public Prosecutor by the criminal police official who shall immediately inform the Public Prosecutor of the location where the person was arrested or placed under temporary detention.

Article 390

Request for the confirmation of arrest or temporary detention

1. Within forty-eight hours of the arrest or start of temporary detention, if the Public Prosecutor does not have to order the immediate release of the arrested or temporarily detained person, he shall request confirmation of the arrest or temporary detention to the Preliminary Investigation Judge of the location where the person was arrested or placed under temporary detention.

2. The Preliminary Investigation Judge shall set the confirmation hearing as soon as possible and, in any case, within the following forty-eight hours, and shall inform without delay the Public Prosecutor and the lawyer.

3. The arrest or temporary detention shall become ineffective if the Public Prosecutor does not comply with the provisions of paragraph 1.

3-*bis.* If the Public Prosecutor decides not to appear, he shall forward the requests regarding personal freedom along with the elements on which they are based to the Preliminary Investigation Judge for the confirmation hearing.

Article 391

Confirmation hearings

1. Confirmation hearings are held in closed session with the necessary participation of the lawyer of the arrested or temporarily detained person.

2. If the retained or court-appointed lawyer cannot be reached or has not appeared, the Preliminary

Investigation Judge shall decide on the designation of a substitute according to Article 97, paragraph 4. The Judge shall verify, also of his own motion, that the arrested or temporarily detained person has received the notice referred to in Article 386, paragraph 1, or has been informed according to paragraph 1 *-bis* of the same Article, and shall give or complete the written notice or the oral information, if necessary.

3. If the Public Prosecutor appears, he shall provide the grounds for the arrest or temporary detention and illustrate the requests regarding personal freedom. The Preliminary Investigation Judge shall then question the arrested or temporarily detained person, unless the latter has been unable or has refused to appear; he shall in any case hear the lawyer of the arrested or temporarily detained person.

4. If the person has been arrested or placed under temporary detention legitimately and the time limits provided for in Articles 386, paragraph 3, and 390, paragraph 1, have been fulfilled, the Preliminary Investigation Judge shall confirm the arrest or temporary detention by order. The Public Prosecutor and the arrested or temporarily detained person may lodge an appeal with the Court of Cassation against the confirmation order.

5. If the conditions of applicability provided for in Article 273 and any of the grounds for precautionary measures provided for in Article 274 apply, the Preliminary Investigation Judge shall order the application of one of the coercive measures under Article 291. When a person has been arrested for any of the crimes referred to in Article 381, paragraph 2, or for any of the crimes for which arrest is allowed also in cases other than those of *flagrante delicto,* the application of the measure shall be ordered also outside the sentence limits provided for in Articles 274, paragraph 1, letter *c),* and 280.

6. If the Preliminary Investigation Judge does not apply a precautionary measure according to paragraph 5, he shall direct, by order, the immediate release of the arrested or temporarily detained person.

7. If the orders provided for in the previous paragraphs are not delivered during a hearing, they shall be notified to or served on anyone entitled to apply for an appellate remedy. The orders delivered during a hearing shall be notified to the Public Prosecutor and served on the arrested or temporarily detained person, if they have not appeared. The time limits for submitting an application for appellate remedy shall start as of the reading of the decision during the hearing or as of its notification or service. The arrest or temporary detention shall cease to be effective if the confirmation order is not delivered or filed within forty-eight hours of the moment the arrested or temporarily detained person was placed at the disposal of the Preliminary Investigation Judge.

TITLE VI-*BIS*

DEFENCE INVESTIGATIONS

Article 391 *-bis*

Interview, taking of statements and information by the lawyer

1. Without prejudice to the incompatibilities referred to in Article 197, paragraph 1, letters *c)* and *d),* in order to gather information the lawyer, his substitute, the authorised private investigators or the technical consultants may have a consultation with whoever is able to provide information relevant for the reconstruction of the facts. In such case, the gathering of information takes place by means of an undocumented interview.

2. The lawyer or his substitute may also request that the persons referred to in paragraph 1 make a written statement or provide information to be documented as set forth in Article 391 *-ter.*

3. In any case, the lawyer, his substitute, the authorised private investigators or the technical consultants shall inform the persons referred to in paragraph 1 about:

a) their role and purpose of the interview;

b) their intention of simply having a consultation, receiving statements or gathering information specifying, in the latter case, the documentation procedure;

c) their obligation to declare whether they are under investigation or accused in the same proceedings, in joint proceedings or for a joined offence;

d) their right to silence or not to render any statements;

e) the prohibition to reveal the questions that the criminal police or the Public Prosecutor might ask and the answers given;

f) the criminal liabilities resulting from false statements.

4. Information about the questions asked or the answers given shall not be requested to the persons who have already been heard by the criminal police or by the Public Prosecutor.

5. To interview, obtain statements or gather information from a suspected or accused person in the same proceedings, in joint proceedings or for a joined offence, the lawyer of such person shall be informed at least twenty-four hours in advance and must participate in the interview. If the person does not have a lawyer, the court, upon request of the lawyer conducting investigations, shall order the designation of a court-appointed lawyer under Article 97.

5-*bis.* In the proceedings for the crimes referred to in Article 351, paragraph 1 *-ter,* the lawyer shall avail himself of the help of a child psychology or psychiatry expert appointed by the Public Prosecutor.

6. The statements obtained and the information gathered in breach of one of the provisions referred to in

the previous paragraphs shall not be used. The violation of these provisions constitutes a disciplinary misconduct which shall be notified to the body with disciplinary powers by the proceeding court.
7. To interview, obtain statements or gather information from a detained person, the lawyer shall have a specific authorisation issued by the proceeding court that is prosecuting the detained, after hearing his lawyer and the Public Prosecutor. Prior to criminal prosecution, such authorisation shall be issued by the Preliminary Investigation Judge. During the enforcement of the penalty, the Sentence Supervision Judge shall decide on the authorisation.
8. The suspect, the victim and the other private parties must not participate in the gathering of information.
9. The lawyer or his substitute shall interrupt the gathering of information from the person who is neither accused nor suspected, if such person makes statements revealing indications of guilt against himself. The previous statements shall not be used against the person who made them.
10. When the person who is able to provide information relevant for the reconstruction of the facts has exercised the right referred to in letter *d)* of paragraph 3, the Public Prosecutor, upon request of the lawyer, shall set the examination of such person within seven days of the request. This provision shall not be applied against suspected or accused persons in the same proceedings and suspected or accused persons in different proceedings in the cases provided for in Article 210. The examination shall take place before the lawyer who is the first person to ask questions. The provisions of Article 362 shall also apply with reference to the information requested by the lawyer.
11. As an alternative to the examination referred to in paragraph 10, the lawyer shall be entitled to request to proceed to the gathering of testimony or to the examination of the person who exercised the right referred to in letter *d)* of paragraph 3, also in cases other than those provided for in Article 392, paragraph 1 by means of special evidentiary hearing.

Article 391-*ter*

Records of statements and information

1. The statement referred to in paragraph 2 of Article 391 *-bis,* undersigned by the declarant, shall be authenticated by the lawyer or his substitute who shall draft a report containing:
a) the date of receipt of the statement;
b) his own personal data and those of the person who has made the statement;
c) the certification that the warnings provided for in paragraph 3 of Article 391 *-bis* have been issued;
d) the facts object of the statement.
2. The statement shall be enclosed to the aforementioned report.

3. The information referred to in paragraph 2 of Article 391 *-bis* shall be documented by the lawyer or his substitute who may avail themselves of the collaboration of trusted persons for the drafting of the record. If applicable, the provisions contained in Title III of Book II shall be observed.

Article 391 *-quater*

Request for documentation to the public administration

1. The lawyer may request documents belonging to the public administration and copy them at his own expense if these are necessary to the defence investigations.
2. The request shall be addressed to the administration which has produced the document or permanently holds it.
3. If the public administration rejects the request, the provisions of Articles 367 and 368 shall apply.

Article 391*-quinquies*

Power of secrecy of the Public Prosecutor

1. If there are specific needs regarding the investigations, the Public Prosecutor may, by means of a reasoned decree, prohibit that the persons who have been interviewed disclose the facts and circumstances of the investigation to their knowledge. The prohibition shall not exceed two months.
2. The Public Prosecutor, while informing the persons who have made the statements of the prohibition referred to in paragraph 1, shall warn them about the criminal liabilities resulting from the unlawful disclosure of information.

Article 391*-sexies*

Access to places and records

1. When accessing a site to examine the state of the places and objects by means of audiovisual, photographic, planimetric, graphic or technical tools, the lawyer, his substitute and the assistants referred to in Article 391 *-bis* may draft a record containing:
a) the date and place of the access;
b) their own personal data and those of the participants;
c) the description of the state of places and objects;
d) the indication of the ascertainment that might be carried out by means of audiovisual, photographic, planimetric, graphic or technical tools which are an integral part of the document attached thereto. The record shall be undersigned by the participants.

Article 391*-septies*

Access to private places or places not open to the public

1. If it is necessary to access private places or places which are not open to the public and there is no

consent by the persons in charge of them, upon request of the lawyer, the court shall authorise the access, by means of a reasoned decree specifying the exact procedure to be followed.

1. In the case referred to in paragraph 1, the person who is present shall be informed about his right of being assisted by a trusted person, provided that such person is immediately available and suitable under Article 120.

2. Access to a dwelling and its appurtenances shall not be allowed unless it is necessary to verify traces or other material items concerning the offence.

Article 391-*octies*

Dossier of the lawyer

1. During preliminary investigations and the preliminary hearing, the lawyer may directly submit the elements of evidence in favour of his own client to the court that has to take a decision with the intervention of the private party.

2. During preliminary investigations the lawyer who is informed of criminal proceedings may submit the defence elements referred to in paragraph 1 directly to the court, so that it can take them into consideration should he have to take a decision that does not require the intervention of the client.

3. The documentation referred to in paragraphs 1 and 2, in its original version or a copy if the lawyer requests that the original documentation be returned, shall be inserted in the lawyer's dossier which is drafted and kept at the office of the Preliminary Investigation Judge. The Public Prosecutor may examine and copy the documents prior to the issuing of the decision upon request of the other parties or with their intervention. After the conclusion of preliminary investigations, the dossier of the lawyer shall be included in the dossier referred to in Article 433.

4. The lawyer may, in any case, submit to the Public Prosecutor the elements of evidence in favour of his own client.

Article 391-*decies*

Preventive investigation

1. The investigations provided for in Article 327-*bis,* with the exclusion of the actions requiring an authorisation or the intervention of a judicial authority, shall also be carried out by the lawyer who has received a specific mandate in case of criminal proceedings.

2. The mandate shall be issued bearing an authenticated signature and contain the appointment of the lawyer, as well as the indication of the alleged offences to which it refers.

Article 391 *-decies*

Use of results of defence investigations

1. The parties may use the statements included in the lawyer's dossier under the provisions of Articles 500, 512 and 513.

2. Except for the cases in which Article 234 may be applied, the records submitted during the preliminary investigations or preliminary hearing and regarding the unrepeatable actions performed upon accessing the places under examination shall be included in the dossier provided for in Article 431.

3. In case of non-repeatable technical ascertainment, the lawyer shall inform, without delay, the Public Prosecutor so as to exercise the rights provided for in Article 360. In the other cases of unrepeatable actions referred to in paragraph 2, the Public Prosecutor has the right to participate in them, personally or by means of a proxy to the criminal police.

4. The record of the ascertainment carried out under paragraph 3 and, if the Public Prosecutor has exercised the right to participate in them, the records of actions carried out under paragraph 2 shall be included in the lawyer's dossier and the investigative dossier. The provision referred to in Article 431, paragraph 1, letter *c),* shall apply.

TITLE VII

SPECIAL EVIDENTIARY HEARING

Article 392

Cases

1. During preliminary investigations ([5]), the Public Prosecutor and the suspect may request that the court proceed by means of special evidentiary hearing to:

a) the taking of a person's testimony, if there are reasonable grounds to believe that the same person will not be able to be examined during the trial due to illness or any other serious impediment;

b) the taking of testimony when, due to real and specific elements, there are reasonable grounds to believe that the person will be exposed to violence, threat, offer or promise of money or any other benefit so as to avoid that he testifies or gives a false testimony;

c) the examination of the suspect on facts regarding someone else's liability;

d) the examination of the persons referred to in Article 210;

e) the confrontation of persons who, in a different special evidentiary hearing or before the Public Prosecutor, have made contrasting statements, if one of the circumstances provided for in letters *a)* and *b)* occurs;

f) an expert report or a judicial simulation, if evidence concerns a person, an object or a place subject to unavoidable modification;

g) formal identification, if specific needs of urgency make it impossible to postpone such action to the trial stage.

1 *-bis.* In the proceedings for the crimes referred to in Articles 572, 600, 600-*bis,* 600-*ter* and 600-*quater,* also concerning the pornographic material referred to in Articles 600-*quater.* 1*,* 600-*quinquies*, 601, 602, 609-*bis,* 609-*quater,* 609-*quinquies,* 609-*octies,* 609-*undecies* and 612-*bis* of the Criminal Code, either the Public Prosecutor, also upon request of the victim, or the suspect may request the testimony of either any underage person or the victim that is of age by means of a special evidentiary hearing, also in cases other than those provided for in paragraph 1. The victim's testimony by means of a special evidentiary hearing may be requested by the Public Prosecutor, also upon request of the victim, or by the suspect whenever the victim needs specific protection.

2. The Public Prosecutor and the suspect may also request an expert report that, if ordered during the trial, may result in the suspension of the trial for more than sixty days or may require checks or sampling on a living person provided for in Article 224-*bis.*

([5]) Constitutional Court judgment No 77/1994 has extended the rule to the preliminary hearing.

Article 393

Request

1. The request shall be submitted within the time limits set for the conclusion of preliminary investigations and, in any case, within an adequate time for evidence gathering prior to the expiry of the same time limits and shall contain:

a) the evidence to be gathered, the facts in issue and the reasons of its importance for the trial decision;

b) the persons being prosecuted for the facts in issue;

c) the circumstances that, under Article 392, prevent the deferral of evidence to the trial stage.

2. The request submitted by the Public Prosecutor shall also indicate the lawyers of the persons concerned under paragraph 1, letter *b),* the victim and his lawyer.

2-*bis.* By means of the request for the special evidentiary hearing referred to in Article 392, paragraph 1-*bis,* the Public Prosecutor shall file all the documents related to the performed investigative actions.

3. The provisions of paragraphs 1 and 2 shall be observed under penalty of inadmissibility.

4. The Public Prosecutor and the suspect may request an extension of the time limit for preliminary investigations in order to carry out the special evidentiary hearing. The court shall decide on the extension by reasoned decree, granting the extension for the time strictly necessary to gather evidence,

when the request for the special evidentiary hearing could not have been submitted beforehand. The same procedure shall be followed by the court if the time limit for preliminary investigations expires while the special evidentiary hearing is being carried out. The Prosecutor General attached to the Court of Appeal shall, in any case, be informed about the decision.

Article 394

Request by the victim

1. The victim may require that the Public Prosecutor request a special evidentiary hearing.
2. If the Public Prosecutor does not grant the request, he shall issue a reasoned decree and serve it on the victim.

Article 395

Submission and service of the request

1. The request for special evidentiary hearing shall be filed with the Registry of the Preliminary Investigation Judge, together with any possible objects or documentary evidence, and shall be served by the person who submitted it, according to the case, on the Public Prosecutor and the persons referred to in Article 393, paragraph 1, letter *b).* Proof of service shall be filed with the Court Registry.

Article 396

Arguments

1. Within two days of the service of the request, the Public Prosecutor or the suspect may present their arguments on the admissibility and reasonableness of the request, file objects, produce documentary evidence and indicate other facts in issue as well as other persons concerned under Article 393, paragraph 1, letter *b).*
2. A copy of the arguments adduced shall be delivered by the suspect to the Clerk's Office of the Public Prosecutor who, without delay, shall inform the court about the indications necessary for the notices. The suspect is allowed to examine and copy the arguments presented by others.

Article 397

Postponement of the special evidentiary hearing

1. The Public Prosecutor may request that the court defer the special evidentiary hearing requested by the suspect if it may compromise one or more preliminary investigative actions. The postponement shall not be allowed if it may compromise the gathering of evidence.
2. The request for postponement shall be submitted under penalty of inadmissibility to the Court Registry within the time limit provided for in Article 396, paragraph 1, and shall contain:
a) the preliminary investigative action or actions that may be compromised by the special evidentiary

hearing as well as the reasons for such prejudice;

b) the time limit of the requested postponement.

3. If the court does not reject the request for special evidentiary hearing nor does it declare it inadmissible, it shall decide on such request within two days, by issuing an order, through which it shall grant, reject or declare inadmissible the request for postponement. The order of inadmissibility or rejection shall be immediately notified to the Public Prosecutor.

4. While granting the request for postponement, the court shall set the special evidentiary hearing which shall not exceed the time limit strictly necessary to carry out the preliminary investigative action or actions referred to in paragraph 2, letter *a).* The order shall be immediately notified to the Public Prosecutor and served in the form of an extract on the persons referred to in Article 393, paragraph 1, letter *b).* The request for postponement and the order shall be filed at the hearing.

Article 398

Decisions on the request for special evidentiary hearing

1. Within two days of the filing of the proof of service and, in any case, no later than the expiry of the time limit provided for in Article 396, paragraph 1, the court shall issue an order by which it grants, rejects or declares inadmissible the request for special evidentiary hearing. The order of inadmissibility or rejection shall be immediately notified to the Public Prosecutor and served on the persons concerned.

2. By means of the order granting the request, the court shall set:

a) the object of evidence within the limits of the request and arguments;

b) the persons involved in the gathering of evidence identified on the basis of the request and arguments;

c) the date of the hearing. No more than ten days may lapse between the decision and the date of the hearing.

3. The court shall order that the day, time and place of the special evidentiary hearing be served on the suspect, the victim and the lawyers at least two days prior to the scheduled date. It shall also inform them that they may examine and copy the statements already made by the person who is to be examined two days prior to the hearing. The notice shall be notified within the same time limit to the Public Prosecutor.

3 *-bis.* The suspect and the lawyers of the parties shall be entitled to obtain a copy of the documents filed under Article 393, paragraph 2-*bis.*

4. If more than one special evidentiary hearing is needed, these shall be assigned to the same hearing, provided that they do not cause any delay.

5. In case of urgency and if the special evidentiary hearing cannot take place in the district of the court

with competence, the latter may appoint the Preliminary Investigation Judge of the place where evidence must be taken.

5-*bis.* In case of investigations regarding offences provided for in Articles 572, 600, 600-*bis,* 600-*ter,* also concerning the pornographic material referred to in Articles 600-*quater.* 1, 600-*quinquies,* 601, 602, 609-*bis,* 609-*ter,* 609-*quater,* 609-*octies,* 609-*undecies* and 612-*bis* of the Criminal Code, if there are minors involved in the gathering of evidence, the court shall set the place, time and specific procedures for the special evidentiary hearing by means of the order referred to in paragraph 2, if this is necessary and advisable for the safeguard of said persons. To this purpose, the hearing may also be conducted in a place other than the court building and the court may use either specialised assistance facilities or, if these are not available, the dwelling of the person involved in the gathering of evidence. The witnesses' statements shall be integrally documented by means of audio or audiovisual recording. If there is no availability of recording tools or technical staff, the expert report or the technical consultancy shall be adopted. The questioning shall be recorded in summary form. The transcripts of the recording shall be ordered only upon request of the parties.

5-*ter.* Upon request of a party, the court shall apply the provisions of paragraph 5-*bis* when whoever may be interested in the gathering of evidence is of age and has specific protection needs and such needs may be inferred also from the type of offence under prosecution.

5-*quater.* Without prejudice to the provisions of paragraph 5-*ter,* when a victim with specific protection needs is to be examined, the provisions of Article 498, paragraph 4-*quater,* shall apply.

Article 399

Compulsory appearance of the suspect

1. If the presence of the suspect at the special evidentiary hearing is necessary to gather evidence but he is absent without pleading a legal impediment, the court shall order his compulsory appearance.

Article 400

Decisions for urgent cases

1. When, in order to safeguard evidence gathering, it is essential to urgently proceed to the special evidentiary hearing, the court shall order, by reasoned decree, that the time limits provided for in the previous Articles be reduced to the necessary extent.

Article 401

Hearings

1. Hearings take place in chambers with the necessary participation of the Public Prosecutor and the lawyer of the suspected person. The lawyer of the victim is also entitled to participate.

2. If the lawyer of the suspected person does not appear, the court shall appoint a different lawyer under the provision of Article 97, paragraph 4.

3. The suspect and the victim shall be entitled to attend the special evidentiary hearing when a witness or a different person must be examined. In the other cases they may attend after receiving the court's authorisation.

4. It is forbidden to deal with or deliver new decisions on questions pertaining to the admissibility and reasonableness of the request.

5. Evidence shall be gathered following the procedure set for the trial. The victim's lawyer may request that the court ask questions to the persons under examination.

6. Without prejudice to the provision of Article 402, it is forbidden to extend the gathering of evidence to facts concerning persons other than those whose lawyers participate in the special evidentiary hearing. It is in any case forbidden to record statements regarding these subjects.

7. If evidence gathering is not concluded in the same hearing, the court shall order the adjournment to the following workday, unless a longer period is necessary to carry out evidentiary activities.

8. The record, the objects and the documentary evidence gathered during the special evidentiary hearing shall be forwarded to the Public Prosecutor. The lawyers are entitled to examine and copy them.

Article 402

Extension of the special evidentiary hearing

1. If the Public Prosecutor or the suspect's lawyer request that the evidence cover also the facts and statements provided for in Article 401, paragraph 6, the court, if requirements are met, shall order the necessary services according to Article 398, paragraph 3, adjourning the hearing for the period of time that is strictly necessary and, in any case, for no more than three days. The request shall not be granted if the adjournment compromises evidence gathering.

Article 403

Use at trial of evidence gathered during special evidentiary hearing

1. During the trial, evidence gathered during a special evidentiary hearing shall be used exclusively against accused persons whose lawyers have participated in evidence gathering.

1 *-bis.* Evidence referred to in paragraph 1 shall not be used against the accused against whom indications of guilt have been found only after the special evidentiary hearing, if the lawyer has not participated in evidence gathering, unless the indications of guilt have emerged after evidence gathering has become impossible.

Article 404

Effectiveness of the special evidentiary hearing against the civil party

1. The judgment delivered on the basis of a piece of evidence gathered during a special evidentiary hearing in which the injured person was not enabled to participate shall not produce the effects provided for in Article 652, unless it has been accepted by the injured person himself, also tacitly.

TITLE VIII

CONCLUSION OF PRELIMINARY INVESTIGATIONS

Article 405

Commencement of criminal prosecution. Procedures and time limits

1. When the case must not be discontinued, the Public Prosecutor shall prosecute by bringing accusations against the suspect, in the cases provided for in Titles II, III, IV and V of Book VI or in a request for committal to trial.

1-*bis*. (…)

2. Without prejudice to the provision of Article 415-*bis,* the Public Prosecutor shall request committal to trial within six months of the date of entering the name of the suspect in the register of the *notitiae criminis.* The time limit shall be of one year if the crime being prosecuted is one of those referred to in Article 407, paragraph 2, letter *a).*

3. If a complaint, petition or request for criminal proceedings is necessary, the time limit shall start as of the moment in which the Public Prosecutor is informed about these requests.

4. If an authorisation to proceed is necessary, the running time limit shall be suspended as of submission of the request until the Public Prosecutor receives the authorisation.

Article 406

Extension of the time limit

1. Prior to the expiry of the time limit, the Public Prosecutor may request that the court, for a justified cause, extend the time limit provided for in Article 405. The request shall contain the indication of the *notitia criminis* as well as the list of grounds justifying it.

2. Further extensions may be requested by the Public Prosecutor if the investigations are particularly complex or if it is impossible to conclude them within the extended time limit.

2-*his.* Each extension may be authorised by the court for a maximum period of six months.

2-*ter.* If the offences under prosecution are those referred to in Articles 572, 589, paragraph 2, 589-*bis,* 590, paragraph 3, 590-*bis* and 612-*bis* of the Criminal Code, the extension referred to in paragraph 1 may be granted once only.

3. The request for extension shall be served by the court on the suspect and the victim who, in the *notitia criminis* or after its submission, expressed his intention to be informed, along with the notice of the right to submit briefs within five days of the service. The court shall decide on the request for extension within ten days of the expiry of the time limit set for the submission of briefs.

4. The court shall authorise the extension of the time limit by means of an order issued in chambers without the intervention of the Public Prosecutor and the lawyers.

5. If the court holds that, on the basis of the available elements of evidence, the extension must not be granted, it shall set, in chambers, the date of the hearing within the time limit provided for in paragraph 3, second period, and serve it on the Public Prosecutor, the suspect and, in the case provided for in paragraph 3, the victim. The proceedings shall be held as set forth in Article 127.

5-*bis.* The provisions of paragraphs 3, 4 and 5 shall not apply if the crime under prosecution is one of those referred to in Article 51, paragraph 3-*bis,* and Article 407, paragraph 2, letter *a),* numbers 4) and 7-*bis).* In such cases, the court shall decide by means of an order within ten days of submission of the request and shall inform the Public Prosecutor thereof.

6. If the court holds that the request should be granted, it shall authorise, by means of an order, the Public Prosecutor to continue investigations.

7. By means of the order rejecting the request for extension, if the time limit of the preliminary investigations has expired, the court shall set a time limit not exceeding ten days for the Public Prosecutor to submit his requests under Article 405.

8. The investigative actions carried out after submission of the request for extension and before the decision of the court is notified may in any case be used, provided that, in case of a negative decision, they are not carried out after the expiry of the time limit originally scheduled for the investigations.

Article 407

Maximum time limits of preliminary investigations

1. Without prejudice to the provision of Article 393, paragraph 4, the length of preliminary investigations shall in no case exceed eighteen months.

2. The maximum length shall be two years if preliminary investigations concern:

a) the following crimes:

1) crimes referred to in Articles 285, 286, 416-*bis* and 422 of the Criminal Code, 291 -*ter,* limited to the aggravating circumstances provided for in letters *a), d)* and *e)* of paragraph 2, and 291 -*quater,* paragraph 4, of the Consolidated Text approved by Decree No 43 of the President of the Republic of 9 October 1973;

2) completed or attempted crimes referred to in Articles 575, 628, paragraph 3, 629, paragraph 2, and 630 of the Criminal Code;
3) crimes committed making use of the conditions provided for in Article 416-*bis* of the Criminal Code, or crimes aimed at facilitating the activity of the associations provided for in the same Article;
4) crimes committed for purposes of terrorism or subversion of the constitutional system which are punishable by law with the penalty of imprisonment for a minimum term of at least five years or maximum term of ten years, as well as crimes referred to in Articles 270, paragraph 2, and 306, paragraph 2 of the Criminal Code;
5) crimes concerning the illegal manufacturing, selling, cession, possession and carrying in a public place or a place open to the public or introduction into the State of weapons of war or war-like weapons or parts thereof and explosives, illegal weapons as well as ordinary fire arms, except for those provided for in Article 2, paragraph 3, of Law No 110 of 18 April 1975;
6) crimes referred to in Articles 73, limited to the aggravating circumstances provided for in Article 80, paragraph 2, and 74 of the Consolidated Text of the laws on narcotic or psychotropic substances, prevention, treatment and rehabilitation of the related states of drug addiction approved by Decree No 309 of the President of the Republic of 9 October 1990, as amended;
7) the crime referred to in Article 416 of the Criminal Code in the cases requiring mandatory arrest *in flagrante delicto.*
7-*bis)* crimes provided for in Articles 600, 600-*bis*, paragraph 1, 600-*ter*, paragraphs 1 and 2, 601, 602, 609-*bis* in the aggravated circumstances provided for in Articles 609-*ter,* 609-*quater*, 609-*octies* of the Criminal Code, as well as the crimes provided for in Article 12, paragraph 3, of the Consolidated Text referred to in Legislative Decree No 286 of 25 July 1998, as amended.
b) notitiae criminis which make the investigations particularly complex due to multiple interrelated facts or the high number of suspects or victims;
c) investigations requiring the completion of actions abroad;
d) proceedings in which it is essential to maintain the connection among several offices of the Public Prosecutor under Article 371.
3. Without prejudice to the provision of Article 415-*bis*, if the Public Prosecutor has neither prosecuted nor requested that the case be discontinued within the time limit set by law or extended by the court, the investigative actions carried out after the expiry of the time limit shall not be used.
3 -*bis*. In any case, the Public Prosecutor must prosecute offences or request proceedings to be discontinued within three months of the expiry of the maximum duration of investigations and, in any

case, of the expiry of the time limits specified in Article 415-*bis*. In the case provided for in paragraph 2, letter *b),* of this Article, upon request submitted by the Public Prosecutor within the set time limit, the Prosecutor General attached to the Court of Appeal may extend, by reasoned decree, the time limit for a maximum period of three months, and shall inform the Public Prosecutor of the Republic thereof. The time limit specified in the first sentence of this paragraph is of fifteen months for the offences referred to in paragraph 2, letter *a),* numbers 1), 3) and 4), of this Article. If the Public Prosecutor does not decide on either criminal prosecution or discontinuance within the time limit set in this paragraph, he shall immediately inform the Prosecutor General attached to the Court of Appeal.

Article 408

Request to discontinue the case for groundlessness of the notitia criminis

1. Within the time limits provided for in the previous Articles, if the *notitia criminis* is groundless, the Public Prosecutor shall submit the request to discontinue the case to the Preliminary Investigation Judge. The dossier containing the *notitiae criminis*, the records of the investigations that have been carried out and the records of the actions carried out before the Preliminary Investigation Judge shall be forwarded along with the request.

2. The notice of the request shall be served by the Public Prosecutor on the victim who, in the *notitia criminis* or after its submission, has expressed his intention to be informed if the case is discontinued.

3. The notice shall mention that, within twenty days, the victim may examine the documents and raise oppositions to the continuation of preliminary investigations, by means of a reasoned request.

3-*bis*. For crimes committed with violence against the person and for the offence referred to in Article 624-*bis* of the Criminal Code, the notice of the request to discontinue the case shall in any case be served by the Public Prosecutor on the victim and the time limit referred to in paragraph 3 shall be increased to thirty days.

Article 409

Article 409

Judicial decisions on the request to discontinue the case

1. Except for the cases in which the opposition referred to in Article 410 has been submitted, if the Preliminary Investigation Judge grants the request to discontinue the case, he shall issue a reasoned decree and return the case file to the Public Prosecutor. The decision ordering that the case be discontinued shall be served on the suspect if, during preliminary investigations, he has been subjected to precautionary detention.

2. If the Preliminary Investigation Judge rejects the request, he shall set the date of the hearing in

chambers within three months and inform the Public Prosecutor, the suspect and the victim thereof. The proceedings shall take place as set forth in Article 127. The documents shall be filed with the Court Registry up to the day of the hearing and the lawyer shall be entitled to copy them.
3. The Preliminary Investigation Judge shall also inform the Prosecutor General attached to the Court of Appeal about the setting of the hearing.
4. After the hearing, if the Preliminary Investigation Judge holds that additional investigations are required, he shall issue an order to the Public Prosecutor, setting the essential time limit for their completion. Differently, he shall decide on the requests to either prosecute or discontinue the case within three months.
5. With the exception of the case provided for in paragraph 4, if the Preliminary Investigation Judge rejects the request to discontinue the case, he shall direct, by order, that the Public Prosecutor brings the accusations against the suspect within ten days. Within two days of the indication of the accusations, the Preliminary Investigation Judge shall set the preliminary hearing by decree. If applicable, the provisions of Articles 418 and 419 shall be observed.

Article 410

Opposition to the request to discontinue the case

1. By opposing the request to discontinue the case, the victim requests that preliminary investigations be continued, indicating, under penalty of inadmissibility, the purpose of further investigation and the related elements of evidence.
2. If the opposition is declared inadmissible and the *notitia criminis* groundless, the Preliminary Investigation Judge shall order that the case be discontinued by means of a reasoned decree and shall return the case file to the Public Prosecutor.
3. With the exception of the cases provided for in paragraph 2, the Preliminary Investigation Judge shall decide on the opposition according to Article 409, paragraphs 2, 3, 4 and 5, but, should there be more than one victim, the notice for the hearing shall be served on the opponent only.

Article 410-*bis*

Nullity of the decision to discontinue the case

1. The decree that discontinues the case shall be null if it is issued either when the notice referred to in Article 408, paragraphs 2 and 3-*bis,* and Article 411, paragraph 1 -*bis* is not made or prior to the expiry of the time limit set in Article 408, paragraphs 3 and 3-*bis,* without an opposition being submitted. The decree that discontinues the case shall also be null if, after an opposition is submitted, the Preliminary Investigation Judge does not decide on its admissibility or declares the opposition to be inadmissible,

except for the cases in which the victim does not comply with Article 410, paragraph 1.
2. The order that discontinues the case shall be null only in the cases provided for in Article 127, paragraph 5.
3. In the cases of nullity provided for in paragraphs 1 and 2, the person concerned may, within fifteen days of the day he is informed of the decision, object through a petition to the single-judge Tribunal. The latter shall decide by unappealable order, without the parties concerned having the right to intervene, after informing them, at least ten days in advance, of the hearing set for the delivery of the decision. The parties may submit briefs no later than five days prior to the hearing.
4. If the petition is well-founded, the single-judge Tribunal shall annul the relevant decision and direct that the case file be returned to the Preliminary Investigation Judge who issued the decision. Conversely, it shall either confirm the decision or declare the petition inadmissible, and sentence the private party who made the petition to the payment of proceeding costs and, in case of inadmissibility, also to the payment of an amount to the Treasury of Fines within the limits set in Article 616, paragraph 1.

Article 411

Other instances for discontinuing the case

1. The provisions of Articles 408, 409, 410 and 410-*bis* shall also apply if a requirement for prosecution is missing, if the suspect is not punishable according to Article 131 -*bis* of the Criminal Code due to the triviality of the offence, if the offence has lapsed or the act is not deemed an offence by law.
1 -*bis*. If a request to discontinue the case is made due to the triviality of the offence, the Public Prosecutor must inform the suspect and the victim, specifying that, within a time limit of ten days, they may examine the documents and raise an opposition outlining the reasons for disagreement with the request, under penalty of inadmissibility. If the opposition is declared inadmissible, the Preliminary Investigation Judge shall apply Article 409, paragraph 2, and, after hearing the parties, if he grants the request, he shall decide by order. If no opposition is raised or the opposition is declared inadmissible, the Preliminary Investigation Judge shall decide without any formalities and, if he grants the request for discontinuing the case, he shall issue a reasoned decree. If the Judge does not grant the request, he shall return the case file to the Public Prosecutor and, if necessary, he shall follow Article 409, paragraphs 4 and 5.

Article 412

Advocation of preliminary investigations due to failure to prosecute

1. The Prosecutor General attached to the Court of Appeal shall order, by reasoned decree, the advocation of preliminary investigations if the Public Prosecutor does not prosecute or request that the

case be discontinued within the time limit set in Article 407, paragraph 3 *-bis.* The Prosecutor General shall conduct the essential preliminary investigations and submit his requests within thirty days of the decree of advocation.

2. The Prosecutor General may also order the advocation following the notice provided for in Article 409, paragraph 3.

Article 413

Request by the suspect or victim

1. The suspect or the victim may request the Prosecutor General to order advocation under the provision of Article 412, paragraph 1.

2. After advocation has been ordered, the Prosecutor General shall conduct the essential preliminary investigations and submit his requests within thirty days of the request submitted under paragraph 1.

Article 414

Re-opening of investigations

1. After the decision to discontinue the case is issued under the previous Articles, the Preliminary Investigation Judge shall authorise, by reasoned decree, the re-opening of investigations upon request of the Public Prosecutor due to the need to conduct new investigations.

2. When the re-opening of investigations is authorised, the Public Prosecutor shall enter again the *notitia criminis* in the register provided for in Article 335.

Article 415

Offence committed by unknown persons

1. If the perpetrator of an offence is unknown, within six months of the date of registration of the *notitia criminis*, the Public Prosecutor shall submit to the Preliminary Investigation Judge the request to either discontinue the case or continue investigations.

2. If the Preliminary Investigation Judge grants either the request to discontinue the case or the authorisation to continue investigations, he shall issue a reasoned decree and return the case file to the Public Prosecutor. If he holds that the author of the offence is a person who has already been identified, he shall order that his name be entered in the register of the *notitiae criminis.*

2-*bis.* The time limit set in Article 405, paragraph 2, shall start as of the decision of the Preliminary Investigation Judge.

3. If applicable, the other provisions referred to in the present Title shall be observed.

4. In the case referred to in Article 107-*bis* regarding the implementation, co-ordination and transitional provisions of this Code, the request to discontinue the case and the decree of the Preliminary

Investigation Judge granting the request shall be issued cumulatively with reference to the lists forwarded to the police authorities, indicating the possible reports that the Public Prosecutor or the Preliminary Investigation Judge are planning to exclude from the request or the decree, respectively.

Article 415-*bis*

Notice to the suspect on the conclusion of preliminary investigations

1. Prior to the expiry of the time limit provided for in paragraph 2 of Article 405, also if extended, when the case must not be discontinued under Articles 408 and 411, the Public Prosecutor shall serve the notice on the conclusion of preliminary investigations on the suspect and his lawyer. When any of the offences referred to in Articles 572 and 612-*bis* of the Criminal Code are prosecuted, the same notice shall be served on the victim's lawyer or, in his absence, the victim himself.
2. The notice shall contain a brief description of the criminal act under prosecution, the rules of law allegedly violated, the date and place of the act, along with the notice that the record of the completed investigations is filed with the Clerk's Office of the Public Prosecutor and the suspect and his lawyer shall be entitled to examine it and copy it.
3. The notice shall also specify that, within twenty days, the suspect is entitled to submit briefs, produce documentary evidence, file the results of the defence investigations, request that the Public Prosecutor conduct investigative actions. He is also entitled to appear to either make statements or request to be questioned. If the suspect requests to be questioned, the Public Prosecutor shall question him.
4. If the Public Prosecutor, after the requests submitted by the suspect, orders new investigations, these must be completed within thirty days of the request submission. The time limit may be extended by the Preliminary Investigation Judge, upon request of the Public Prosecutor, only once and for no longer than sixty days.
5. The statements made by the suspect person, his questioning and the new investigative actions of the Public Prosecutor, provided for in paragraphs 3 and 4, may be used if completed within the time limit set in paragraph 4, even if the time limit set by law or extended by the Preliminary Investigation Judge for prosecution or the request to discontinue the case has expired.

TITLE IX

PRELIMINARY HEARING

Article 416

Submission of the request by the Public Prosecutor

1. The request for committal to trial shall be filed by the Public Prosecutor with the Court Registry. It shall be considered null if it is not preceded by the notice provided for in Article 415-*bis* and the

summons to appear for questioning according to Article 375, paragraph 3, if the suspect has requested the questioning within the time limit referred to in Article 415-*bis*, paragraph 3.

2. The request shall be forwarded with the dossier containing the *notitia criminis*, the records of the completed investigations and the records of the actions that have been carried out before the Preliminary Investigation Judge. The *corpus delicti* and material items related to the offence shall be enclosed in the dossier, if they are not to be kept elsewhere.

2-*bis.* If the offence under prosecution is the one referred to in Article 589, paragraph 2, of the Criminal Code, the Public Prosecutor's request for committal to trial shall be filed within thirty days of the conclusion of preliminary investigations.

Article 417

Formal requirement of the request for committal to trial

1. The request for committal to trial shall contain:

a) the personal details of the accused or other personal features that may identify him, as well as the personal details of the victim if he can be identified;

b) the clear and precise description of the criminal act, the aggravating circumstances and those that may result in the application of security measures, indicating the relevant Articles of law;

c) the indication of the gathered sources of evidence;

d) the request to the Preliminary Hearing Judge to issue the decree for committal to trial;

e) the date and signatures.

Article 418

Setting the hearing

1. Within five days of the filing of the request, the Preliminary Hearing Judge shall set, in chambers and by issuing a decree, the time and place of the hearing, following the provision of Article 97 if the accused does not have a retained lawyer.

2. No more than thirty days shall lapse between the request and the date of the hearing.

Article 419

Introductory actions

1. The Preliminary Hearing Judge shall serve the notice of the day, time and place of the hearing on the accused and the victim whose identity and address for service are specified in the case file, along with the request for committal to trial submitted by the Public Prosecutor and the warning that, if the accused does not appear, the provisions of Articles 420-*bis*, 420-*ter,* 420-*quater* and 420-*quinquies* shall be applied.

2. The notice shall be also notified to the Public Prosecutor and served on the accused person's lawyer, informing him of the accused person's right to examine the documents and objects forwarded under Article 416, paragraph 2, and to submit briefs and produce documentary evidence.
3. The notice shall also require the forwarding of the results of the investigations that might have been completed after the request for committal to trial.
4. The notices shall be served and notified at least ten days prior to the date of the hearing. Within the same time limit the summons of the person with civil liability for damages and the person with civil liability for financial penalties shall be served.
5. The accused may waive the preliminary hearing and request the immediate trial through a statement submitted personally or by a proxy to the Court Registry, at least three days prior to the date of the hearing. The waiver shall be served on the Public Prosecutor and the victim of the offence by the accused.
6. In the case provided for in paragraph 5, the Preliminary Hearing Judge shall issue a decree ordering immediate trial.
7. The provisions of paragraphs 1 and 4 shall apply under penalty of nullity.

Article 420

Joining of the parties

1. The hearing shall take place in chambers with the necessary participation of the Public Prosecutor and the accused person's lawyer.
2. The Preliminary Hearing Judge shall verify the regular joining of the parties, ordering the renewal of the notices, summons, notifications and services declared null.
3. If the accused person's lawyer is not present, the Preliminary Hearing Judge shall decide on the designation of the lawyer following the provision of Article 97, paragraph 4.
4. A record of the preliminary hearing shall be usually drafted in summary form under the provision of Article 140, paragraph 2. The Preliminary Hearing Judge, upon request of one of the parties, shall order the audio or audiovisual recording or the drafting of the record by means of a stenotype machine.

Article 420-*bis*

Proceedings in the absence of the accused

1. If the accused, free or detained, is not present at the hearing and, even if unable to appear, has expressly waived his right to be present, the Preliminary Hearing Judge shall proceed in his absence.
2. Without prejudice to the provisions of Article 420-*ter*, the Preliminary Hearing Judge shall also proceed in the absence of the accused if the latter has already declared or chosen an address for service during the proceedings or has been arrested or placed under temporary detention or has been ordered a

precautionary measure or has appointed a retained lawyer. The Judge shall also proceed when the accused is not present at the hearing but has been served the notice of the hearing personally or it is in any case certain that the accused is aware of the proceedings or has voluntarily avoided to be informed about either the proceedings or the documents thereof.

3. In the cases provided for in paragraph 1 and 2, the accused shall be represented by his lawyer. The accused who, after his appearance, leaves the hearing room or, after appearing at a hearing, is not present at the following hearings, shall also be considered present and represented by his lawyer.

4. The order to hold proceedings in the absence of the accused shall be revoked, also of the Preliminary Hearing Judge's own motion, should the accused appear in court before delivery of the decision. If the accused provides evidence to prove that his absence was due to his inculpable unawareness of the proceedings, the Judge shall adjourn the hearing and the accused may require the gathering of documents and documentary evidence according to Article 421, paragraph 3. During the first-instance trial, the accused is entitled to submit a request for evidence according to Article 493. Without prejudice to the validity of the acts duly conducted hitherto, the accused may also require the renewal of the evidence already gathered. The same procedure shall be followed if the accused proves that his absence was related to an absolute impossibility to appear due to unforeseeable circumstances, force majeure or another legal impediment, and that the proof of such impediment was produced with delay without him being liable for this.

5. The Preliminary Hearing Judge shall also revoke the order and follow the procedure referred to in Article 420-*quater* if it emerges that the trial should have been suspended according to the provisions of such Article because the accused was absent.

Article 420-*ter*

Impediment of the accused or lawyer to appear

1. If the accused, also detained, does not appear at the hearing and his absence is due to an absolute impossibility to appear due to unforeseeable circumstances, *force majeure* or legal impediment, the Preliminary Hearing Judge, by means of an order, also of his own motion, shall adjourn the hearing and order the renewal of the notice to the accused, under Article 419, paragraph 1.

2. The Preliminary Hearing Judge shall follow the same procedure referred to in paragraph 1 when it is likely that the absence of the accused is related to an absolute impossibility to appear due to unforeseeable circumstances or *force majeure.* Such likelihood shall be freely evaluated by the Judge and shall not be debated later nor shall it be the basis for a further appellate remedy.

3. If the accused, also detained, does not appear at the following hearings and the conditions provided for

in paragraph 1 are met, the Preliminary Hearing Judge shall adjourn the hearing, also of his own motion, and set by order the date of the new hearing, ordering the service on the accused.

1. In any case, the reading of the order setting the new hearing shall substitute the summons and the notices for those who are or must be present.

2. If the accused person's lawyer is absent, the Preliminary Hearing Judge shall decide following the provision of paragraph 1 when the absence is due to an absolute impossibility to appear due to a legal impediment, provided that this is immediately notified. Such provision shall not apply if the accused is assisted by two lawyers and the impediment involves one of these lawyers or if the lawyer who cannot attend has appointed a substitute or the accused requests to proceed without the presence of his lawyer.

Article 420-*quater*

Suspension of trial due to absence of the accused

1. With the exception of the cases set out in Articles 420-*bis* and 420-*ter* and the cases of nullity of the service, if the accused is not present, the Preliminary Hearing Judge shall adjourn the hearing and order the notice to be served personally on the accused by the criminal police.

2. When it is impossible to serve the notice according to paragraph 1 and unless a judgment must be delivered in line with Article 129, the Preliminary Hearing Judge shall direct by order suspension of the trial against the accused who failed to appear. The provision of Article 18, paragraph 1, letter *b),* shall apply. The provision of Article 75, paragraph 3, shall not apply.

3. During suspension of trial, the Preliminary Hearing Judge shall, upon request of a party, gather non-deferrable evidence following the procedure established for the trial.

Article 420-*quinquies*

New searches for the accused and revocation of suspension of trial

1. At the end of the first year of the issuing of the order referred to in Article 420-*quater,* paragraph 2, or, even before then if deemed necessary, the Preliminary Hearing Judge shall order new searches for the accused, in order to serve the notice upon him. The Judge shall decide likewise at the end of each successive year, in case the proceedings do not resume.

2. The Preliminary Hearing Judge shall revoke the order of suspension of trial:

a) if the accused is found after the searches referred to in paragraph 1;

b) if in the meantime the accused has appointed a retained lawyer;

c) in any other case where it is certain that the accused is aware of the proceedings against him;

d) if a judgment must be delivered in line with Article 129.

3. The Preliminary Hearing Judge shall set the date for the new hearing in the order of suspension of trial,

and the notice thereof shall be served, as ordered by the Judge, upon the accused and his lawyer, the other private parties and the victim, and shall be forwarded to the Public Prosecutor.

4. During the hearing referred to in paragraph 3, the accused may submit a request according to Articles 438 and 444.

Article 421

Debate

1. After ascertaining whether the parties have lawfully joined the criminal proceedings, the Preliminary Hearing Judge shall declare the debate open.

2. The Public Prosecutor shall briefly describe the results of the preliminary investigations and the elements of evidence that justify the request for committal to trial. The accused may provide spontaneous statements or request to be questioned, which shall occur in line with the provisions of Articles 64 and 65. Upon request of a party, the Preliminary Hearing Judge shall order that the questioning be conducted as provided for in Articles 498 and 499. Thereafter, the following persons shall speak in the following order: the lawyer of the civil party, the lawyer of the person with civil liability for damages, the lawyer of the person with civil liability for financial penalties and the lawyer of the accused who shall state their defence. The Public Prosecutor and the lawyer may reply only once.

3. The Public Prosecutor and the lawyers shall make and describe their respective conclusions using the documents contained in the dossier forwarded following the provision of Article 416, paragraph 2, as well as the documents and documentary evidence admitted by the Preliminary Hearing Judge prior to the beginning of the debate.

4. If the Preliminary Hearing Judge holds it is in a position to decide on the basis of the available elements of evidence, he shall declare the debate closed.

Article 421 *-bis*

Order to integrate investigations

1. When the Preliminary Hearing Judge does not follow the provision of paragraph 4 of Article 421, if the preliminary investigations are incomplete, he shall indicate the further investigations to be conducted and set the date of the new preliminary hearing. The Prosecutor General attached to the Court of Appeal shall be informed about the decision.

2. The Prosecutor General attached to the Court of Appeal may order by reasoned decree the advocation of the investigations following the notification provided for in paragraph 1. If applicable, the provision of Article 412, paragraph 1, shall apply.

Article 422

Supplementary evidentiary activities by the Preliminary Hearing Judge

1. When the Preliminary Hearing Judge does not follow the provision of paragraph 4 of Article 421 or Article 421 *-bis,* he may order, also of his own motion, the gathering of evidence considered to be decisive for the purposes of the judgment of no grounds to proceed.

2. If it impossible to immediately gather the evidence, the Preliminary Hearing Judge shall set the date of the new hearing and order the summons of the witnesses, experts, technical consultants and the persons referred to in Article 210 whose examination or questioning have been admitted.

3. The examination and questioning of the persons referred to in paragraph 2 shall be conducted by the Preliminary Hearing Judge. The Public Prosecutor and the lawyers may ask questions, through the Judge, following the order provided for in Article 421, paragraph

2. Thereafter, the Public Prosecutor and the lawyers shall make and describe their respective conclusions.

4. In any case, the accused may require to be questioned, which shall take place in line with the provisions of Articles 64 and 65. Upon request of a party, the Preliminary Hearing Judge shall order that the questioning be conducted following the procedure provided for in Articles 498 and 499.

Article 423

Changes to the accusation

1. If, during the hearing, it emerges that the criminal act differs from the description provided thereof in the accusation or it is a joined offence under Article 12, paragraph 1, letter *b),* or an aggravating circumstance emerges, the Public Prosecutor shall modify the accusation and bring it against the accused who is present. If the accused is not present, the modified accusation shall be brought against the lawyer who represents the accused.

2. If a new criminal act against the accused emerges, which is not listed in the request for committal to trial and is subject to prosecution of the Public Prosecutor's motion, the Preliminary Hearing Judge shall authorise its notification if the Public Prosecutor requests so and the accused gives his consent.

Article 424

Decisions of the Preliminary Hearing Judge

1. Immediately after the debate has been declared closed, the Preliminary Hearing Judge shall deliver either a judgment of no grounds to proceed or a decree for committal to trial.

2. The Preliminary Hearing Judge shall immediately read the decision. The reading shall correspond to the service on the parties who are present.

1. The decision shall be immediately filed with the Court Registry. The parties shall be entitled to obtain

a copy.
2. If it is impossible to proceed to the immediate drafting of the grounds of the judgment of no grounds to proceed, the Preliminary Hearing Judge shall draft such grounds within the thirtieth day of the day of its delivery.

Article 425

Judgment of no grounds to proceed

1. Should there be a cause which extinguishes the offence or which should have prevented commencement or continuation of the criminal prosecution, or the act is not deemed an offence by law, or the act did not occur or the accused did not commit it, or the act does not constitute an offence or the person is not punishable for any reason whatsoever, the Preliminary Hearing Judge shall deliver a judgment of no grounds to proceed, indicating the cause in the operative part of the judgment.
2. For the purposes of the delivery of the judgment referred to in paragraph 1, the Preliminary Hearing Judge shall consider the mitigating circumstances. The provisions of Article 69 of the Criminal Code shall apply.
3. The Preliminary Hearing Judge shall deliver the judgment of no grounds to proceed even when evidence is insufficient, contradictory or in any case not suitable to sustain the prosecution before the trial court.
4. The Preliminary Hearing Judge must not deliver the judgment of no grounds to proceed if he holds that the dismissal should result in the application of a security measure other than confiscation.
5. The provisions of Article 537 shall apply.

Article 426

Requirements of the judgment

1. The judgment shall contain:
a) the heading ‘in the name of the Italian people’ and the indication of the authority delivering it;
b) the personal details of the accused or other personal features that may identify him, as well as the personal details of the other private parties;
c) the accusation;
d) a brief description of the *de jure* and *de facto* grounds upon which the decision lies;
e) the operative part of the judgment with the indication of the Articles of law applied;
f) the date and signature of the Preliminary Hearing Judge.
2. If the Judge cannot sign the judgment, it is the President of the Tribunal who shall sign it, provided that the cause of the substitution is explicitly mentioned.

3. In addition to the case provided for in Article 125, paragraph 3, the judgment shall be considered null either if its operative part lacks one of the essential elements or they are incomplete or if the Preliminary Hearing Judge does not sign it.

Article 427

Condemnation of the complainant to costs and damage

1. If the criminal act under prosecution requires the victim to submit a complaint, following delivery of the judgment of no grounds to proceed, because the act did not occur or the accused did not commit it, the Preliminary Hearing Judge shall sentence the complainant to the payment of the costs of proceedings advanced by the State.

2. In the cases provided for in paragraph 1, if requested, the Preliminary Hearing Judge shall also sentence the complainant to refund the costs incurred by the accused and, if the complainant joined the proceedings as a civil party, also those incurred by the person with civil liability for damages who has been summoned or has participated in the proceedings. If there are reasonable grounds, the costs may be compensated in whole or in part.

3. In the case of gross negligence, the Preliminary Hearing Judge may sentence the complainant to compensate the damages to the accused and the person with civil liability for damages who requested so.

4. The complainant, the accused and the person with civil liability for damages may, under Article 428, apply for an appellate remedy against the section of the judgment of no grounds to proceed which rules on the costs and damages.

5. The provision of Article 340, paragraph 4, shall apply if the offence becomes extinguished due to withdrawal of the complaint.

Article 428

Appellate remedies against the judgment of no grounds to proceed

1. The following persons may lodge an appeal against the judgment of no grounds to proceed:

a) the Public Prosecutor of the Republic and the Prosecutor General;

b) the accused unless the judgment has declared that the criminal act did not occur or the accused did not commit it.

2. The victim may lodge an appeal only in the cases of nullity provided for in Article 419, paragraph 7.

3. The decision on appellate remedies shall be taken by the Court of Appeal in chambers, following the provision of Article 127. When the appeal is lodged by the Public Prosecutor, if the Court does not confirm the judgment, it shall issue either a decree for committal to trial and prepare the trial dossier according to Articles 429 and 431, or a judgment of no grounds to proceed with a less favourable formula

for the accused. When the appeal is lodged by the accused, if the Court does not confirm the judgment, it shall issue a judgment of no grounds to proceed with a more favourable formula for the accused.

3-*bis.* An appeal to the Court of Cassation against the judgment of no grounds to proceed delivered at the appeal stage may be lodged by the accused and the Prosecutor General only on the grounds specified in Article 606, paragraph 1, letters *a), b)* and *c).*

3-*ter.* The decision on appellate remedies shall be taken by the Court of Cassation in chambers, following the provision of Article 611.

Article 429

Decree for committal to trial

1. The decree for committal to trial shall contain:

a) the personal details of the accused or other personal features that may identify him, as well as the personal details of other private parties, with the indication of their lawyers;

b) the indication of the victim, if identified;

c) the clear and precise description of the criminal act, the aggravating circumstances and those that may result in the application of security measures, indicating the relevant Articles of law;

d) a summary indication of the elements of evidence and the facts to which they refer;

e) the operative part, with the indication of the court with competence over the trial;

f) the indication of the place, day and time of the appearance, with the warning that if he does not appear he shall be prosecuted *in absentia*;

g) the date and signature of both the Preliminary Hearing Judge and his assistant.

2. The decree shall be considered null if the accused is not identified in a certain way or if one of the requirements provided for in paragraph 1, letters *c)* and *f),* are missing or insufficient.

3. Between the date of the decree and the date set for the trial, a time limit of at least twenty days shall be observed.

3-*bis.* If the offences under prosecution are those referred to in Articles 589, paragraph 2, and 589-*bis* of the Criminal Code, the time limit referred to in paragraph 3 shall not exceed sixty days.

4. The decree shall be served on the accused who was absent by default, as well as on the accused and the victim who are not present during the reading of the decision referred to in paragraph 1 of Article 424, at least twenty days prior to the date set for the trial.

Article 430

Complementary investigative activities by the Public Prosecutor and the lawyer

1. Immediately after the issuing of the decree for committal to trial, the Public Prosecutor and the lawyer

may, for the purposes of their own requests to the trial court, conduct complementary investigative activities, with the exception of the actions requiring the mandatory participation of the accused or his lawyer.

2. The records of the activities referred to in paragraph 1 shall be immediately filed with the Clerk's Office of the Public Prosecutor and the parties shall be entitled to examine it and copy it.

Article 430-*bis*

Prohibition to gather information

1. The Public Prosecutor, the criminal police and the lawyer are not allowed to gather information from the person either admitted under Article 507 or indicated in the request for special evidentiary hearing or under Article 422, paragraph 2, or in the list provided for in Article 468 and submitted to the other parties involved in the proceedings. Information taken in violation of such prohibition shall be excluded.

2. The prohibition referred to in paragraph 1 shall cease after the taking of testimony and in the cases where the testimony is not admitted nor taken at all.

Article 431

Trial dossier

1. Immediately after the decree for committal to trial has been issued, the Preliminary Hearing Judge shall proceed to the production of the trial dossier after hearing the parties. If one of the parties requests a new hearing for the production of the trial dossier, the Judge shall set it within fifteen days. The trial dossier shall contain:

a) the documents related to the admissibility of criminal prosecution or civil action;

b) the records of unrepeatable actions conducted by the criminal police;

c) the records of unrepeatable actions conducted by the Public Prosecutor and the lawyer;

d) documentary evidence gathered abroad, by means of an international letter rogatory, and the records of unrepeatable actions carried out through the same procedure;

e) the records of the evidence gathered during the special evidentiary hearing;

j) the records of the evidence, other than those provided for in letter *d),* gathered abroad after an international letter rogatory to which the lawyers were allowed to assist and exercise their rights under Italian law;

g) the general certificate of the criminal record and the other documentary evidence referred in Article 236;

h) the *corpus delicti* and material items related to the offence, if they do not have to be kept elsewhere.

2. The parties may agree to gather in the trial dossier documents contained in the investigative dossier, as

well as the records of defence investigative activities.

Article 432

Forwarding and custody of the trial dossier

1. The decree for committal to trial shall be forwarded without delay, together with the dossier referred to in Article 431 and with the decision, if any, that ordered the ongoing precautionary measures, to the Registry of the court with competence over the trial.

Article 433

Investigative dossier

1. The documents other than those referred to in Article 431 shall be forwarded to the Public Prosecutor with the documents gathered during the preliminary hearing, together with the record of the hearing.
2. The lawyers shall be entitled to examine and copy, in the Clerk's Office of the Public Prosecutor, the documents collected in the dossier produced under the provision of paragraph 1.
3. The investigative dossier and the lawyer's dossier shall also contain the records of the activity provided for in Article 430 if such activity has been used by the parties to submit requests to the trial court and the latter has granted them.

TITLE X

REVOCATION OF THE JUDGMENT OF NO GROUNDS TO PROCEED

Article 434

Cases of revocation

1. If, after delivery of a judgment of no grounds to proceed, new sources of evidence arise or are discovered that, either alone or in addition to the evidence already gathered, may determine the request for committal to trial, the Preliminary Investigation Judge, upon request of the Public Prosecutor, shall order the revocation of the judgment.

Article 435

Request for revocation

1. In the request for revocation the Public Prosecutor shall indicate the new sources of evidence, specify if these have already been gathered or they are still to be gathered and he shall request the committal to trial in the former case and the re-opening of the investigations in the latter.
2. By means of the request, the documents related to the new sources of evidence are forwarded to the Court Registry.
3. If the Preliminary Investigation Judge holds that the request is admissible, he shall appoint a lawyer for

the accused person who does not have a retained one, set the date of the hearing in chambers and order that the Public Prosecutor, the accused, the lawyer and the victim be informed about that. The proceedings shall take place as set forth in Article 127.

Article 436

Decisions of the Preliminary Investigation Judge

1. The Preliminary Investigation Judge shall decide on the request for revocation by means of an order.
2. If the Preliminary Investigation Judge revokes the judgment of no grounds to proceed and the Public Prosecutor has already requested committal to trial, the Judge shall set the preliminary hearing, informing the parties concerned who are present and serving a notice on the other parties; otherwise, he shall order the re-opening of the investigations.
3. By means of the order directing the re-opening of the investigations, the Preliminary Investigation Judge shall set a time limit of a maximum of six months that cannot be postponed to carry out investigations.
4. Within such deadline, the Public Prosecutor shall forward the request for committal to trial to the Court Registry if, on the basis of the new investigative actions, he is not in a position to request that the case be discontinued.

Article 437

Appeal to the Court of Cassation

1. Against the order rejecting the request for revocation or declaring it inadmissible the Public Prosecutor may lodge an appeal with the Court of Cassation exclusively for the arguments referred to in Article 606, paragraph 1, letters *b), d)* and *e).*

BOOK VI

SPECIAL PROCEEDINGS

TITLE I

SUMMARY TRIAL

Article 438

Prerequisites for summary trial

1. The accused may request that the decision on the accusation be taken at the preliminary hearing based on the available elements of evidence, without prejudice to the provisions of paragraph 5 of this Article and Article 441, paragraph 5.

2. The request may be submitted, orally or in writing, until conclusions are formulated according to Articles 421 and 422.

3. The accused shall express his intention, either personally or through a proxy, and his signature shall be authenticated as set forth in Article 583, paragraph 3.

4. The court shall decide on the request by means of an order directing a summary trial. When the accused requests a summary trial immediately after the filing of the outcome of defence investigations, the court shall decide only after the expiry of the maximum time limit of sixty days which may be requested by the Public Prosecutor for conducting further investigations exclusively in relation to the arguments put forward by the defence. In this case, the accused may revoke his request.

5. Without prejudice to the possible use, as evidence, of the documents referred to in Article 442, paragraph 1-*bis,* the accused may subordinate the request to supplementary evidence necessary for the decision. The court shall order a summary trial if the requested supplementary evidence is necessary for the decision to be taken and is compatible with the purposes of economy of the proceedings, considering the usable elements of evidence already gathered. In such case, the Public Prosecutor may require the admission of rebuttal evidence. Article 423 may anyway be applied.

5-*bis.* The request referred to in paragraph 1 or the request for application of punishment according to Article 444 may be submitted together with the request put forward according to paragraph 5 and shall be taken into account provided that the latter is rejected.

6. In case of rejection according to paragraph 5, the request may be submitted again until the expiry of the time limit set in paragraph 2.

6-*bis.* The request for summary trial submitted during the preliminary hearing shall redress any nullity other than absolute nullities and prevent any form of exclusion of evidence from being raised, unless they derive from the violation of a ban on evidence gathering. The request shall also preclude any issue

regarding the territorial competence of the court.

Article 439

(...)

Article 440

(...)

Article 441

Summary trial procedure

1. In a summary trial, the provisions provided for the preliminary hearing shall be observed, if applicable, except for the provisions of Articles 422 and 423.

2. The joining of proceedings by the civil party after learning that an order directing a summary trial has been issued corresponds to the acceptance of the summary trial.

3. The summary trial shall be held in closed sessions; the court shall order that the trial be held in open court if requested by all the accused persons.

4. If the civil party refuses the summary trial, the provision of Article 75, paragraph 3, shall not be applied.

5. If the court believes it is unable to decide based on the available elements of evidence, it shall gather, also of its own motion, the elements necessary for the decision to be taken. In such case, Article 423 shall be applied, if necessary.

6. The gathering of evidence referred to in paragraph 5 of this Article and Article 438, paragraph 5, shall be carried out as provided for in Article 422, paragraphs 2, 3 and 4.

Article 441-*bis*

Judicial decisions after new accusations are brought in a summary trial

1. If, in the cases regulated by Articles 438, paragraph 5, and 441, paragraph 5, the Public Prosecutor brings the accusations provided for in Article 423, paragraph 1, against the accused, the latter may request the proceedings to continue ordinarily.

2. The accused shall express his intention as set forth in Article 438, paragraph 3.

3. Upon request of the accused or his lawyer, the court shall set a time limit of no more than ten days for either submitting the request provided for in paragraphs 1 and 2 or supplementing the defence, and suspend the trial for the set time.

4. If the accused requests that the proceedings continue ordinarily, the court shall revoke the order by which a summary trial has been directed and shall set the preliminary hearing or its possible continuation. The actions carried out according to Articles 438, paragraph 5, and 441, paragraph 5, are equally

effective as the actions carried out according to Article 422. The request for summary trial shall not be submitted more than once. The provisions of Article 303, paragraph 2, shall be applied.

5. If the summary trial continues, the accused may require the admission of new pieces of evidence related to the accusations referred to in Article 423, also beyond the limits provided for in Article 438, paragraph 5, and the Public Prosecutor may require the admission of rebuttal evidence.

Article 442

Decision

1. At the end of the debate, the court shall decide according to Article 529 and following.

1 *-bis.* For the purposes of the decision, the court shall use all the documents included in the dossier referred to in Article 416, paragraph 2, the documentation referred to in Article 419, paragraph 3, and the evidence gathered during the hearing.

2. In case of conviction, the sentence imposed by the court, all circumstances considered, shall be reduced by a half if the judgment concerns a misdemeanour and by a third in case of a crime. A life sentence shall be substituted by the penalty of imprisonment for thirty years. In cases of concurrent offences and continued offences, a life sentence with daytime solitary confinement shall be substituted by a life sentence.

3. The judgment shall be served on the accused who has not appeared before the court.

4. The provision of Article 426, paragraph 2, shall be applied.

Article 443

Limits to the appeal

1. The accused and the Public Prosecutor shall not lodge an appeal against judgments of dismissal ([1]).

2. (…)

3. The Public Prosecutor shall not lodge an appeal against judgments of conviction, unless the judgment modifies the legal definition of the offence.

4. The appeal trial shall be held as set forth in Article 599.

([1]) Constitutional Court judgment No 320/2007 has granted the right to appeal against judgments of dismissal issued after a summary trial to the Public Prosecutor.

TITLE II

APPLICATION OF PUNISHMENT UPON REQUEST OF THE PARTIES

Article 444

Application of punishment upon request

1. The accused and the Public Prosecutor may agree to request the court to impose a penalty, specifying its type and length or amount. Such penalty may be either a substitute or a financial penalty reduced by a maximum of a third, or a sentence of imprisonment when, considered the circumstances and after its reduction by a maximum of a third, it does not exceed five years of imprisonment or five years of imprisonment combined with a financial penalty.

1 *-bis.* Paragraph 1 shall not be applied to the proceedings for the crimes referred to in Article 51, paragraphs 3-*bis* and 3 *-quater,* the proceedings for the crimes referred to in Articles 600-*bis*, 600-*ter,* paragraph 1, 2, 3 and 5, 600-*quater,* paragraph 2, 600-*quater.* 1 concerning the criminal conduct of producing and selling pornographic material, 600-*quinquies,* and 609-*bis,* 609-*ter,* 609-*quater* and 609-*octies* of the Criminal Code, as well as the proceedings against whoever has been declared to be either a habitual offender, a professional offender, a person with a tendency to commit offences or a repeated offender according to Article 99, fourth paragraph, of the Criminal Code, if the sentence exceeds two years of imprisonment or two years of imprisonment combined with a financial penalty.

1 *-ter.* In the event of prosecution of any of the crimes provided for in Articles 314, 317, 318, 319, 319-*ter,* 319-*quater* and 322-*bis* of the Criminal Code, the admissibility of the request referred to in paragraph 1 is subject to the full restitution of either the price of the offence or any profit made thereof.

2. If the party who has not submitted the request agrees with the request and delivery of the judgment of dismissal is not required in line with Article 129, the court shall order the application of the punishment by issuing a judgment, stating, in its operative part, that the parties have submitted the request. The judgment on the application of the punishment shall be delivered only if, on the basis of the available elements of evidence, the court believes the legal definition of the criminal act, the application and comparison of the circumstances adduced by the parties are correct and the requested punishment is adequate. If a civil party has joined the criminal proceedings, the court shall not decide on his request for compensation; the accused shall in any case be ordered to pay the costs incurred by the civil party, unless there are valid grounds for full or partial setoff. The provision of Article 75, paragraph 3, shall not be applied.

3. Upon submission of the request, the party may subordinate the effectiveness of the request to the

granting of a suspended sentence. In this case, the court may reject the request if it believes the suspended sentence cannot be granted.

Article 445

Effects of the application of punishment upon request

1. If the imposed sentence does not exceed two years of imprisonment or two years of imprisonment combined with a financial penalty, the judgment provided for in Article 444, paragraph 2, shall neither entail the costs of proceedings nor the application of ancillary penalties and security measures, except for confiscation in the cases provided for in Article 240 of the Criminal Code.

1 *-bis.* Without prejudice to the provision of Article 653, the judgment provided for in Article 444, paragraph 2, shall not be effective in civil or administrative trials, even if it is delivered after the trial is closed. Unless otherwise provided by law, the judgment shall be considered equal to a judgment of conviction.

2. If the imposed punishment does not exceed two years of imprisonment or two years of imprisonment combined with a financial penalty, the offence shall be extinguished if, within five years if the judgment concerns a crime, or two years if the judgment concerns a misdemeanour, the accused does not commit a crime or a misdemeanour of the same kind. In this case, any criminal effect shall be extinguished and, if a financial penalty or a substitute penalty is imposed, its application shall in no case prevent that a suspended sentence is subsequently granted.

Article 444

Request for the application of the sentence and consent

1. The parties may submit the request provided for in Article 444, paragraph 1, prior to submission of the conclusions referred to in Articles 421, paragraph 3, and 422, paragraph 3, and prior to the opening of the first-instance trial in direct-trial proceedings. If the decree of immediate trial has been served, the request shall be submitted within the time limit and as set forth in Article 458, paragraph 1.

2. During the hearing, the request and the consent shall be submitted orally; in the other cases they shall be submitted in writing.

3. The accused shall express his intention, personally or through a proxy, and his signature shall be authenticated as set forth in Article 583, paragraph 3.

4. The consent to the request may be given within the time limits provided for in paragraph 1, even if it was previously withheld.

5. If the court believes it is necessary to verify whether the request has been submitted or the consent has been given voluntarily, it shall order the accused appear before it.

6. If the Public Prosecutor disagrees, he shall state the reasons for his disagreement.

Article 447

Request for the application of the sentence during preliminary investigations

1. During preliminary investigations, if a joined request or a request with the written consent of the other party is submitted, the Preliminary Investigation Judge shall set, by a decree written at the bottom of the request, the hearing for the decision to be issued, and set, if necessary, a time limit within which the person submitting the request shall serve the notice on the other party. The investigative dossier shall be filed with the Court Registry at least three days prior to the hearing.

2. During the hearing, if the Public Prosecutor and the lawyer appear, they shall be heard.

3. If the request is submitted by one of the parties, the Preliminary Investigation Judge shall set by decree a time limit for the other party to express his consent or dissent and shall order that the request and the decree be served by the person submitting the request. Prior to the expiry of the time limit, the request shall neither be revoked nor modified and, in case the other party gives his consent, the procedure referred to in paragraph 1 shall be followed.

Article 448

Judicial decisions

1. During the hearing provided for in Article 447, the preliminary hearing, the direct trial and the immediate trial, if acceptance conditions are met for the request provided for in Article 444, paragraph 1, the court shall immediately deliver the judgment. If the Public Prosecutor dissents or the Preliminary Investigation Judge rejects the request, prior to the opening of the first instance trial, the accused may submit again his request and the court shall immediately deliver the judgment, if it considers the request to be well-founded. The request shall not be further submitted to another court. The court shall follow the same procedure after closure of the first instance trial or in the remedy trial if it believes the Public Prosecutor's dissent or rejection of the request are unjustified.

2. In case of dissent, the Public Prosecutor may lodge an appeal; in other cases the judgment cannot be appealed.

2-*bis.* The Public Prosecutor and the accused may lodge an appeal against the judgment with the Court of Cassation exclusively for reasons that concern the expressed will of the accused, the lack of correlation between the request and the judgment, the erroneous legal definition of the criminal act and the unlawfulness of either the sentence or the security measure.

3. If the judgment is delivered during the remedy trial, the court shall decide on the civil action according to Article 578.

TITLE III

DIRECT TRIAL

Article 449

Cases and methods of direct trial

1. When a person is arrested *in flagrante delicto*, the Public Prosecutor, if he deems prosecution necessary, may directly take the arrested accused person before the trial court for confirmation of the arrest and the simultaneous trial, within forty-eight hours of the arrest. The provisions of Article 391 shall be applied to the confirmation proceedings, provided they are compatible.
2. If the arrest is not confirmed, the court shall return the case file to the Public Prosecutor. The court shall in any case hold a direct trial if the accused and the Public Prosecutor give their consent.
3. If the arrest is confirmed, a trial is immediately held.
4. After confirmation of the arrest *in flagrante delicto*, the Public Prosecutor shall proceed with a direct trial by taking the accused to a hearing within thirty days of the arrest, unless this seriously interferes with investigations.
5. The Public Prosecutor shall also proceed with a direct trial against the person who has confessed an offence during questioning, unless this seriously interferes with investigations. The accused person at liberty shall be summoned to appear at a hearing within thirty days of the entering of the offence in the register of *notitiae criminis*. The accused held in precautionary detention for the criminal act under prosecution shall be taken to the hearing within the same time limit. When an urgent injunction to stay away from the family home has been issued under Article 384-*bis* against someone, the criminal police may summon him, upon instruction of the Public Prosecutor, for direct trial and the simultaneous confirmation of the arrest within the following forty-eight hours, unless such action seriously compromises investigations. In such case the criminal police may issue a summons for the confirmation hearing set by the Public Prosecutor within the same time limit.
6. If the offence which is to be prosecuted by direct trial is found to be connected to other offences which cannot be prosecuted by direct trial due to a lack of the necessary conditions to opt for this form of proceeding, the other offences and accused persons shall be prosecuted separately, unless this seriously interferes with investigations. If proceedings are to be joined, ordinary proceedings shall in any case prevail.

Article 450

Start of direct trial

1. When the Public Prosecutor proceeds with a direct trial, he shall directly take the accused person

arrested *in flagrante delicto* or in precautionary detention to the hearing.

2. If the accused is at liberty, the Public Prosecutor shall summon him to appear at the hearing for direct trial. The time limit for appearing shall be of at least three days.

3. The summons shall contain the requirements provided for in Article 429, paragraph 1, letters *a), b), c)* and *f),* the court with competence over the trial as well as the date and the Public Prosecutors signature. The provision of Article 429, paragraph 2, shall also be applied.

4. The decree, along with the dossier provided for in Article 431, assembled by the Public Prosecutor, shall be forwarded to the Registry of the court with competence over the trial.

5. The notice of the date set for the trial shall be served without delay on the lawyer by the Public Prosecutor.

6. The lawyer shall be entitled to examine and copy the documentation concerning the investigations held at the Public Prosecutor's Clerk's Office.

Article 451

Holding of direct trial

1. During a direct trial the provisions of Articles 470 and following shall be observed.

2. The victim and the witnesses may be summoned also orally by a bailiff or a criminal police officer.

3. The Public Prosecutor, the accused and the civil party may take witnesses to the trial without summoning them. With the exception of the case provided for in Article 450, paragraph 2, the Public Prosecutor shall bring the accusation against the accused present at trial.

4. The President of the bench shall inform the accused of his right to request either summary trial or the application of the sentence according to Article 444.

5. The accused shall also be informed of his right to request a time limit not exceeding ten days, for preparing his defence. When the accused avails himself of this right, the trial shall be suspended until the hearing that will be held immediately after the expiry of the said time limit.

Article 452

Transformation of proceedings

1. If prosecution by direct trial is conducted for cases other than those provided for in Article 449, the court shall direct, by order, that the case file be returned to the Public Prosecutor.

2. If the accused requests summary trial, before the trial is declared open, the court shall direct, by order, that the trial continue by summary trial. The provisions of Articles 438, paragraphs 3 and 5, 441, 441-*bis,* 442 and 443, shall be observed, if applicable; the provisions of Article 438, paragraph 6-*bis,* shall also apply; in the case referred to in Article 441-*bis*, paragraph 4, the court shall revoke the order directing a

summary trial and set the hearing for a direct trial.

TITLE IV

IMMEDIATE TRIAL

Article 453

Cases and methods of immediate trial

1. In the event of clear and strong evidence, the Public Prosecutor may request the immediate trial, if it does not seriously compromise investigations. The Public Prosecutor shall request immediate trial if the suspected person has been questioned on the facts underlying clear and strong evidence or if he failed to appear after he had been summoned following the provision of Article 375, paragraph 3, second period, except for the cases of legal impediment or if the person cannot be found.

1 *-bis*. The Public Prosecutor shall request the immediate trial, even after expiry of the time limits referred to in Article 454, paragraph 1, and, in any case, within one hundred eighty days of enforcement of the measure, for the offence for which the suspected person is held in precautionary detention, unless the request seriously compromises investigations.

1 *-ter*. The request referred to in paragraph 1 *-bis* shall be submitted after conclusion of the proceedings provided for in Article 309 or after expiry of the time limits for the submission of the request for re-examination.

2. If the offence which is to be prosecuted by immediate trial is found to be connected to other offences which cannot be prosecuted by immediate trial due to a lack of the necessary conditions to opt for this form of proceeding, the other offences and accused persons shall be prosecuted separately, unless such action seriously compromises investigations. If proceedings are to be joined, ordinary proceedings shall in any case prevail.

3. The accused may request the immediate trial under the provision of Article 419, paragraph 5.

Article 454

Submission of the request by the Public Prosecutor

1. Within ninety days of the entering of the *notitia criminis* in the register provided for in Article 335, the Public Prosecutor shall forward the request for immediate trial to the Registry of the Preliminary Investigation Judge.

2. The request shall be forwarded together with the dossier containing the *notitia criminis*, the documentation related to the investigations that have been conducted and the records of the actions carried out before the Preliminary Investigation Judge. The *corpus delicti* and other material items related to the offence shall be enclosed in the dossier, unless they must be kept elsewhere.

Article 455

Decision on the request for immediate trial

1. The Preliminary Investigation Judge, within five days, shall issue a decree by which he shall either order the immediate trial or reject the request, ordering to forward the case file to the Public Prosecutor.

1 *-bis*. In the cases provided for in Article 453, paragraph 1 *-bis,* the Preliminary Investigation Judge shall reject the request if the order directing precautionary detention has been revoked or annulled because the serious indications of guilt are found to be groundless.

Article 456

Decree ordering immediate trial

1. The provisions of Article 429, paragraphs 1 and 2, shall also apply to the decree ordering immediate trial.

2. The decree shall also contain the notice that the accused may request a summary trial or the application of the sentence under the provision of Article 444.

3. The decree shall be forwarded to the Public Prosecutor and served on the accused and the victim at least thirty days prior to the date set for the trial.

4. The request of the Public Prosecutor shall be served, together with the decree, on the accused and the victim.

5. The notice of the date set for the trial shall be served on the accused person's lawyer within the time limit provided for in paragraph

Article 457

Forwarding of case file

1. After the expiry of the time limits provided for in Article 458, paragraph 1, the decree ordering immediate trial shall be forwarded, together with the dossier provided for in Article 431, to the court with competence over the trial.

2. The documents that are not gathered in the dossier provided for in paragraph 1 shall be returned to the Public Prosecutor. The provision of Article 433, paragraph 2, shall apply.

Article 458

Request for summary trial

1. The accused, under penalty of expiry, may request a summary trial by filing his request with the Registry of the Preliminary Investigation Judge, together with proof of service of the request on the Public Prosecutor, within fifteen days of the service of the decree ordering immediate trial. The provisions of Article 438, paragraph 6-*bis,* shall apply. By the same request the accused may object to the

territorial incompetence of the Preliminary Investigation Judge.
2. The Preliminary Investigation Judge shall set, by decree, the date of the hearing in chambers and inform thereof the Public Prosecutor, the accused, his lawyer and the victim at least five days in advance. If the Judge acknowledges his own lack of competence he shall declare it in a judgment and direct that the case file be returned to the Public Prosecutor attached to the court with competence. If applicable, the provisions of Articles 438, paragraphs 3 and 5, 441, 441 *-bis,* 442 and 443 shall be observed. In the case provided for in Article 441 *-bis,* paragraph 4, the Judge, after revoking the order directing summary trial, shall set the hearing for immediate trial.
3. The provisions of this Article shall not apply if the immediate trial has been requested by the accused under the provision of Article 419, paragraph 5.

TITLE V

PROCEEDINGS BY DECREE

Article 459

Cases of proceedings by decree

1. In proceedings involving offences that are subject to prosecution of the Public Prosecutor's motion and offences subject to prosecution on the basis of a complaint, if such complaint has been submitted correctly and the complainant has not expressed his intention to oppose it, the Public Prosecutor may submit a reasoned request for issuing a criminal decree of conviction to the Preliminary Investigation Judge, if he holds that only a financial penalty should be applied, also if it is imposed to replace a sentence of imprisonment. The request, specifying the length or amount of the penalty, must be submitted within six months of the date of registration of the suspect's name in the register of the *notitiae criminis* and after forwarding the dossier.
1 *-bis.* If a financial penalty is imposed to replace a sentence of imprisonment, the Preliminary Investigation Judge shall determine its value by calculating the daily amount that may be imposed on the accused and multiply it by the number of days of imprisonment. Upon determining the above-mentioned amount, the Judge shall take into account the overall financial situation of the accused and of his family. The daily amount shall not be lower than a financial penalty of EUR 75 per day of imprisonment and shall not be three times higher than such amount. Article 133-*ter* of the Criminal Code shall apply to the financial penalty imposed to replace a sentence of imprisonment.
2. The Public Prosecutor may request the application of a penalty reduced by maximum half of the minimum amount prescribed.
3. If the Preliminary Investigation Judge does not grant the request, he shall return the case file to the

Public Prosecutor, provided that he does not have to issue a judgment of dismissal in compliance with Article 129.

4. The complainant shall be informed about the criminal decree.

5. The proceedings by decree shall not be allowed if a personal security measure needs to be applied.

Article 460

Requirements of the decree of conviction

1. The decree of conviction shall contain:

a) the personal details of the accused or other personal features that may identify him, as well as, if necessary, the personal details of the person with civil liability for financial penalties;

b) the description of the criminal act, the circumstances and provisions of law that have been violated;

c) a brief description of the *de jure* and *de facto* grounds upon which the decision relies, including, if applicable, the reasons for the reduction of the penalty below the minimum amount prescribed;

d) the operative part of the decree;

e) the notice that the accused and the person with civil liability for financial penalties may oppose it within fifteen days of the service of the decree and that the accused may request, by means of the opposition, immediate trial, summary trial or the application of the penalty under Article 444;

f) the notice to the accused and the person with civil liability for financial penalties that, if they do not oppose the decree, it shall become enforceable;

g) the notice that the accused and the person with civil liability for financial penalties are entitled to appoint a lawyer;

h) the date and signature of the Preliminary Investigation Judge and his assistant.

2. By means of the decree of conviction, the Judge shall apply the penalty in the amount requested by the Public Prosecutor indicating, if applicable, the quantity of the reduction of the penalty below the minimum amount prescribed. He shall order that the objects that have been seized be either confiscated, in the cases provided for in Article 240, paragraph 2, of the Criminal Code, or returned. He shall grant a suspended sentence. In the cases provided for in Articles 196 and 197 of the Criminal Code, the Judge shall also declare the liability of the person with civil liability for financial penalties.

3. A copy of the decree shall be forwarded to the Public Prosecutor and served, together with the injunction of payment, on the convicted person, on his court-appointed or retained lawyer and on the person with civil liability for financial penalties.

4. If the service cannot be carried out because the accused cannot be found, the Preliminary Investigation Judge shall revoke the criminal decree of conviction and return the case file to the Public Prosecutor.

5. The criminal decree of conviction shall not entail the conviction to pay the costs of proceedings, nor the application of accessory penalties. Even if it becomes enforceable, it has no effectiveness in civil or administrative trials. The offence shall be extinguished if, within five years if the decree concerns a crime, or two years if the decree concerns a misdemeanour, the accused does not commit a crime or a misdemeanour of the same kind. In this case, any criminal effect shall be extinguished and the conviction shall in no case prevent that a suspended sentence is subsequently granted.

Article 461

Opposition

1. Within fifteen days of service of the decree, the accused and the person with civil liability for financial penalties, personally or by means of an appointed lawyer, may lodge an opposition through a statement to be submitted to the Registry of the Preliminary Investigation Judge who has issued the decree or the Registry of the Tribunal or the justice of the peace of the place where the opponent is.
2. The application for opposition shall contain, under penalty of inadmissibility, the details of the decree of conviction, its date and the name of the Judge who issued it. In the statement, the opponent may appoint a retained lawyer, if he did not do so earlier.
3. By means of the application for opposition, the accused may request the Preliminary Investigation Judge who issued the decree of conviction to direct either the immediate trial, the summary trial or the application of the penalty under Article 444.
4. The opposition shall be inadmissible, in addition to the cases referred to in paragraph 2, if it has been lodged outside the time limit or by a person who is not entitled to do so.
5. If the opposition is not lodged or if it is declared inadmissible, the Preliminary Investigation Judge who has issued the decree of conviction shall order its enforcement.
6. The opponent may lodge an appeal with the Court of Cassation against the order of inadmissibility.

Article 462

Granting new time limits to lodge oppositions

1. The accused and the person with civil liability for financial penalties shall be granted new time limits to lodge an opposition under Article 175.

Article 463

Opposition lodged only by some interested persons

1. The enforcement of the decree of conviction delivered against more than one person accused of the same offence shall remain suspended against those who have not lodged an opposition until the trial following the opposition lodged by other co-accused persons is not concluded by means of an irrevocable

decision.

2. If the opposition is lodged by the accused alone or by the person with civil liability for financial penalties alone, its effects shall also extend to the party who has not lodged the opposition.

Article 464

Trial following opposition

1. If the opponent has requested an immediate trial, the Preliminary Investigation Judge shall issue a decree under Article 456, paragraphs 1, 3 and 5. If the opponent has requested a summary trial, the Preliminary Investigation Judge shall set the hearing by decree, informing the Public Prosecutor, the lawyer and the victim at least five days in advance. If applicable, the provisions of Articles 438, paragraphs 3 and 5, 441, 441-*bis,* 442 and 443 shall be observed; the provisions of Article 438, paragraph 6-*bis,* shall also apply. In the case provided for in Article 441-*bis*, paragraph 4, the Preliminary Investigation Judge, after revoking the order directing summary trial, shall set the hearing for the trial following the opposition. If the opponent has requested the application of the punishment under Article 444, the Judge shall set, by decree, the time limit by which the Public Prosecutor must express his approval, ordering that the request and the decree be served on the Public Prosecutor by the opponent. If the Public Prosecutor does not give his approval within the scheduled time limit or if the accused has not submitted any request in the application for opposition the Judge shall issue a decree of immediate trial.

2. The Preliminary Investigation Judge shall decide on the request prior to issuing the decisions referred to in paragraph 1, if the request for immediate payment extinguishing prosecution has been submitted simultaneously with the opposition.

3. In the trial following the opposition, the accused is neither entitled to request a summary trial or the application of the penalty upon request nor is he entitled to submit the request for immediate payment extinguishing prosecution. In any case, the court shall revoke the criminal decree of conviction.

4. The court may in any case apply a penalty which is different and more serious than that established in the decree of conviction and revoke the benefits that have already been granted.

5. By means of the judgment dismissing the accused because either the criminal act did not occur, or it is not deemed an offence by law or it has been committed with a cause of justification, the court shall revoke the decree of conviction also against those accused of the same offence who have not lodged any opposition.

TITLE V-*BIS*

SUSPENSION OF PROCEEDINGS

PENDING PROBATION

Article 464-*bis*

Suspension of proceedings pending probation

1. In the cases provided for in Article 168-*bis* of the Criminal Code, the accused may request the suspension of proceedings pending probation.

2. The request may be submitted, orally or in writing, either until conclusions are formulated according to Articles 421 and 422 or prior to the opening of the first-instance direct trial and of the proceedings with a direct summons for trial. If the decree ordering immediate trial has been served, the request shall be submitted within the time limit and according to the procedure provided for in Article 458, paragraph 1. In case of proceedings by decree, the request shall be submitted along with the application for opposition.

3. The accused shall express his intention, either personally or through a proxy, and his signature shall be authenticated as set forth in Article 583, paragraph 3.

4. A treatment plan drafted in agreement with the Office for Noncustodial Sentence Enforcement shall be attached to the request. If no treatment plan has yet been drafted, the request for its drafting shall be attached. The plan shall in any case set out:

a) measures to involve the accused, his family and his living environment in the process of social reintegration, whenever necessary and possible;

b) the behavioural rules and other specific commitments the accused shall abide by, in order to, amongst others, nullify or mitigate the consequences of his offence, considering for this purpose any damages paid, any restorative conducts and any restitutions, as well as the rules concerning either community work or socially-relevant volunteer work;

c) the conducts aiming at promoting, where possible, victim-offender mediation.

5. In order to decide on the suspension of proceedings and the obligations and rules thereof, the court may gather, through the criminal police, social services or other public agencies, any further information in relation to the family and social life as well as personal and economic circumstances of the accused that may be deemed necessary. The Public Prosecutor and the lawyer representing the accused must be promptly provided with such information.

Article 464-*ter*

Request for suspension of proceedings pending probation during preliminary investigations

1. If a request for suspension of proceedings pending probation is submitted during preliminary

investigations, the Preliminary Investigation Judge shall forward the case file to the Public Prosecutor so that the latter can express his consent or dissent within five days.

2. Should the Public Prosecutor give his consent, the Preliminary Investigation Judge shall decide according to Article 464-*quater*.

3. The Public Prosecutor's consent must be expressed in a briefly motivated written document and accompanied by the accusation brought against the accused.

4. Should the Public Prosecutor dissent, he must provide the reasons thereof. In case of rejection, the accused may submit his request again prior to the opening of the first-instance trial and, if the court deems the request well-founded, it shall comply with Article 464-*quater*.

Article 464-*quater*

Article 464-*quater*

Judicial decision and its effects

1. If no judgment of dismissal must be issued by the court in compliance with Article 129, it shall decide by order during the same hearing, after hearing the victim and the parties, or in a specific hearing in chambers whose date is communicated simultaneously to both the victim and the parties. The provisions of Article 127 shall be applied.

2. If the court deems it necessary to verify that the request was submitted voluntarily, it shall order the appearance of the accused.

3. The suspension of proceedings pending probation shall be ordered when the court, on the basis of the parameters referred to in Article 133 of the Criminal Code, deems the submitted treatment plan adequate and believes that the accused will refrain from committing further offences. For this purpose, the court shall also verify that the place of abode of the accused specified in the treatment plan is suitable and has no effect on the protection needs of the victim.

4. The court, also on the basis of the information gathered in line with Article 464-*bis*, paragraph 5, and for the purposes referred to in paragraph 3 of this Article, may add information to or modify the treatment plan, provided that the accused gives his consent.

5. The proceedings shall not be suspended for a period of time that is:

a) longer than two years when the penalty imposed for the offences under prosecution is either imprisonment alone or joined with another penalty or as an alternative to a financial penalty;

b) longer than one year when the penalty imposed for the offences under prosecution is a financial penalty alone.

6. The time limits provided for in paragraph 5 shall start as of the signing of the record of probation by the

accused.
7. The order deciding on the request for probation may be appealed to the Court of Cassation by the accused and the Public Prosecutor, also upon request of the victim. The victim may appeal the order independently if he is not informed of the hearing or, even when he attended the hearing, he was not heard according to paragraph 1. The appeal shall not suspend the proceedings.
8. In case of suspension of proceedings pending probation, the provisions of Article 75, paragraph 3, shall not be applied.
9. In case of rejection of the request for suspension, the request may be submitted again prior to the opening of the trial.

Article 464-*quinquies*

Enforcement of the order directing suspension of proceedings pending probation

1. In the order directing the suspension of proceedings pending probation, the court shall set the time limit for fulfilment of the rules and obligations of the restorative conducts or compensation imposed. This time limit may be postponed, upon request of the accused, once only and for serious reasons. The court may also, upon consent of the victim, authorise the payment in instalments of any amount due for damages.
2. The order shall be immediately forwarded to the Office for Non-custodial Sentence Enforcement which shall take charge of the accused.
3. During the suspension of proceedings pending probation, the court, after hearing the accused and the Public Prosecutor, may modify by order the original rules, provided that the new rules comply with the aims of probation.

Article 464-*sexies*

Gathering of evidence during suspension of proceedings pending probation

1. During the suspension of proceedings pending probation, the court shall, upon request of a party, gather non-deferrable evidence and the evidence that may lead to dismissal of the accused following the procedure established for the trial.

Article 464-*septies*

Probation outcome

1. After the suspension of proceedings pending probation, the court shall declare by judgment that the offence is extinguished if, considering the behaviour of the accused and his compliance with the established rules, it believes probation has been successful. To do so, the court shall receive the final report from the Office for Noncustodial Sentence Enforcement that took charge of the accused, set the

hearing for evaluation and inform the victim and the parties concerned.

2. If probation has been unsuccessful, the court shall direct by order that the trial be resumed.

Article 464-*octies*

Revocation of order

1. The court shall direct, by order and also of its own motion, the revocation of the order imposing the suspension of proceedings pending probation.

2. For the purpose referred to in paragraph 1 of this Article, the court shall set the hearing according to Article 127 to evaluate the prerequisites for revocation and shall inform the victim and the parties at least ten days prior to the hearing.

3. The order of revocation may be appealed to the Court of Cassation on the grounds of breach of law.

4. When the order of revocation becomes final, proceedings shall be resumed as of the moment in which they were suspended and enforcement of the imposed rules and obligations shall cease.

Article 464-*novies*

Prohibition to re-submit a request for probation

1. In the cases provided for in Article 464-*septies,* paragraph 2, or in the cases of revocation of the order directing the suspension of proceedings pending probation, the request shall not be re-submitted.

BOOK VII

TRIAL

TITLE I

ACTIONS PRIOR TO TRIAL

Article 465

Actions by the President of the Tribunal or the Court of Assizes

1. Upon receipt of the decree for committal to trial, the President of the Tribunal or Court of Assizes may, by decree, advance the hearing or postpone it once only for well-founded reasons.

2. The decision shall be forwarded to the Public Prosecutor and served on the private parties, the victim and the lawyers. If the hearing is advanced, without prejudice to the time limits provided for in Article 429, paragraphs 3 and 4, the decision shall be notified or served at least seven days prior to the new hearing.

Article 466

Lawyers' rights

1. Prior to expiry of the time limit for appearing in court, the parties and their lawyers have the right to

examine the seized objects in the place where they are located and view the acts and documents collected in the trial dossier at the Court Registry and to copy them.

Article 467

Urgent actions

1. In the cases provided for in Article 392, the President of the Tribunal or the Court of Assizes shall order, upon request of one of the parties, non-deferrable evidence to be gathered following the procedure established for the trial.
2. The Public Prosecutor, the victim and the lawyers shall be informed of the day, time and place set for gathering such evidence at least twenty-four hours in advance.
3. The records of the acts performed shall be included in the trial dossier.

Article 468

Summons of witnesses, experts and technical consultants

1. The parties who intend to request the examination of witnesses, experts or technical consultants, as well as of the persons referred to in Article 210, must file with the Court Registry a list of the aforementioned persons specifying the circumstances on which their examination must be based, under penalty of inadmissibility, at least seven days prior to the date set for the trial.
2. If such a request is made, the President of the Tribunal or the Court of Assizes shall authorise, by decree, the summons of witnesses, experts or technical consultants as well as of the persons referred to in Article 210, excluding the testimonies that are not allowed by law and those manifestly redundant. The President may decide that the summons of witnesses, experts or technical consultants as well as of the persons referred to in Article 210 be made for the date set for the trial or for further hearings when their examination is to take place. In any case, this decision shall not interfere with the decision on the admissibility of evidence under Article 495
3. The parties may also present the witnesses and technical consultants mentioned in the lists directly at the trial.
4. Concerning the circumstances specified in the lists, each party may request the summons of witnesses, experts and technical consultants that are not included in their lists in order to present rebuttal evidence, or present them at the trial.

4-*bis.* The party who intends to request the gathering of the records of evidence from other criminal proceedings must submit an explicit request upon filing the lists. If the records regard statements of persons of which the same or the other party requests the summons, the

President of the Tribunal or Court of Assizes shall authorise the summons only after the court has

admitted the examination under Article 495 during the trial.

5. The President of the Tribunal or Court of Assizes shall in any case order of his own motion the summons of the expert appointed in the special evidentiary hearing under Article 392, paragraph 2.

Article 469

Dismissal prior to trial

1. Without prejudice to the provision of Article 129, paragraph 2, if prosecution should not have been started or must not continue or if the offence is extinguished and it is not necessary to hold a trial to ascertain it, the court shall deliver an unappealable judgment of non prosecution specifying the cause in its operative part. The judgment shall be delivered in chambers after the court has heard the Public Prosecutor and the accused and if the latter persons do not object.

1 *-bis.* The judgment of non prosecution shall be delivered also when the accused is not to be punished according to Article 131 *-bis* of the Criminal Code, provided that also the victim, if he attends the hearing, is heard in closed sessions.

TITLE II TRIAL

CHAPTER I

GENERAL PROVISIONS

Article 470

Order during hearings

1. Order and discipline during hearings and the conduct of the trial shall be overseen by the President of the bench who shall decide without formalities. In his absence, order and discipline during hearings shall be overseen by the Public Prosecutor.

2. To exercise the functions referred to in this Chapter, the President of the bench or the Public Prosecutor shall avail himself, if necessary, also of police forces who shall immediately enforce the respective decisions.

Article 471

Publicity of hearings

1. Hearings are public under penalty of nullity.

2. Whoever is under eighteen years of age, is subject to a prevention measure or appears to be in a state of drunkenness, intoxication or mental instability shall not be admitted into the courtroom.

3. If any of the aforementioned persons must attend hearings as witnesses, they shall be removed from the courtroom as soon as their presence is no longer necessary.

4. Persons carrying arms or holding potentially harmful objects are not allowed in the courtroom, except

for police officers. Anyone disrupting the regular course of the hearing shall be removed by injunction of the President of the bench or, in his absence, by the Public Prosecutor, and prevented from attending further activities at trial.

5. For reasons of order and in exceptional cases, the President of the bench may direct that only a limited number of persons be allowed to enter the courtroom.

6. The decisions mentioned in the previous Article shall be delivered orally and without any formality.

Article 472

Cases of proceedings in closed court

1. The court shall order that the trial or some of its activities be held in closed court if publicity may offend morality or, if requested by the competent authority, whenever publicity may cause the disclosure of information to be kept secret in the interest of the State.

2. Upon request of the person concerned, the court shall order the gathering of evidence in closed court if such evidence may compromise the privacy of the witnesses or private parties in relation to facts not regarding the accusation. If the person concerned is absent or not involved in the trial, the court shall decide of its own motion on the proceedings in closed court.

3. The court shall also order that the trial or some of its activities be held in closed court if publicity may affect public hygiene, if the behaviour of the audience disrupts the regular course of the hearings or if it is necessary to protect the security of the witnesses or accused persons.

3-*bis.* The trials concerning the crimes provided for in Articles 600, 600-*bis,* 600-*ter,* 600-*quinquies,* 601, 602, 609-*bis,* 609-*ter* and 609-*oc-ties* of the Criminal Code shall be held in open court. Nevertheless, the victim may request that the trial, or parts of it, be held in closed court. The trial shall always be held in closed court when the victim is a minor. In such proceedings questions on the victim's private life or sexuality are not allowed unless they are necessary for reconstruction of the criminal act.

4. The court may order that the examination of minors be held in closed court.

Article 473

Injunction to proceed in closed court

1. In the cases provided for in Article 472, after hearing the parties, the court shall decide, by an order delivered in open court, that the trial or some of its activities be held in closed court. The order shall be revoked following the same procedure when the grounds of the decision cease.

2. If an order to proceed in closed court is issued, no person other than those having the right or duty to

participate shall be admitted to the courtroom for any reason whatsoever. In the cases provided for in Article 472, paragraph 3, the court may admit the presence of journalists.
3. Witnesses, experts and technical consultants shall be heard in the order in which they are called and shall remain in the courtroom solely for the time required for their examination, with the exception of those whose presence in the courtroom is essential at all times.

Article 474

Participation of the accused person in the hearing

1. The accused shall attend the hearing free from physical restraint devices, even if detained, unless in the latter case such devices are necessary for preventing the risk of flight or violence.

Article 475

Compulsory removal of the accused person

1. The accused who, after being admonished, persists in behaving in a way which interferes with the regular course of the hearing, shall be removed from the courtroom by order of the President of the bench.
2. The removed accused person shall be deemed present in the courtroom and shall be represented by his lawyer.
3. The removed accused person may be readmitted to the courtroom, at any time, also of the court's own motion. If the accused must be removed again, the court may direct by the same order that the person be expelled from the courtroom and banned from further participation in the trial, unless he must make the statements provided for in Articles 503 and 523, paragraph 5.

Article 476

Offences committed during a hearing

1. If an offence is committed during a hearing, the Public Prosecutor shall act according to the law, directing the arrest of the offender in the cases allowed.
2. A witness shall not be arrested at a hearing for offences concerning the content of his testimony.

Article 477

Duration and continuation of the trial

1. When it is absolutely impossible to conclude the trial in a single hearing, the President of the bench shall direct that the trial continue the following working day.
2. The court may suspend the trial only for reasons of absolute necessity and for a maximum period which, computing all deferments shall not exceed ten days, excluding public holidays.
3. The President of the bench shall give the relevant notices orally and his assistant shall record them. The

notices shall substitute the summons of and services on whoever appeared or must be considered present.

Article 478

Incidental issues

1. The court shall immediately decide by order on the incidental issues raised by the parties during the trial, after the debate provided for in Article 491.

Article 479

Civil or administrative issues

1. Without prejudice to the provisions of Article 3, if the decision on the existence of the offence depends on the resolution of a particularly complex civil or administrative controversy, which is already being prosecuted before a competent court, the criminal court may order suspension of the trial. The trial may be suspended if the law imposes no limits on evidence demonstrating the controversial subjective stance in civil or administrative proceedings. The trial shall be suspended until the case is closed with a final judgment.

2. The suspension shall be directed by order, against which an appeal to the Court of Cassation may be lodged. The appeal to the Court of Cassation shall have no suspensive effect.

3. If the civil or administrative trial is not concluded within one year, the court may revoke the suspension order also of its own motion.

Article 480

Record of trial hearings

1. The judicial assistant shall record hearings. The record shall include:

a) the place, date and time of the opening and closing of hearings;

b) the names and surnames of the judges;

c) the name and surname of the Public Prosecutor's representative, the personal details of the accused or other personal features that may identify him, as well as the personal details of the other parties and their representatives and the names and surnames of their lawyers.

2. The record of the hearing shall be included in the trial dossier.

Article 481

Content of the record

1. The record shall include the description of the activities carried out at the hearing and a synthesis of the

requests and conclusions of the Public Prosecutor and the lawyers.
2. The decisions delivered orally by the President of the bench shall be transcribed in their full form. Judicial decisions that are read during hearings shall be attached to the record.

Article 482

Parties' rights in relation to records

1. The parties shall be entitled to have any statement of interest to them included in the record, within the strictly necessary limits and provided they do not violate the law. The written briefs submitted by the parties to support their requests and conclusions shall be attached to the record.
2. The President of the bench may request, also of his own motion, the assistant to read individual parts of the record in order to verify their faithfulness and comprehensiveness. The decision on the request for rectification or cancellation as well as on issues regarding the provisions of paragraph 1 shall be taken by the President of the bench by means of an order.

Article 483

Signature and transcription of the record

1. Immediately after conclusion of the hearing or closure of the trial, the record, signed at the bottom of every page by the public official who has drafted them, shall be submitted to the President of the bench for his written approval.
2. Without prejudice to the provisions of Article 528, the stenotyped tapes shall be transcribed into alphanumerical characters no later than three days after their recording.
3. The records and transcriptions shall be included in the trial dossier.

CHAPTER II

ACTIONS INTRODUCING THE TRIAL

Article 484

Appearance of the parties

1. Prior to initiating the trial, the President of the bench shall verify that all parties are regularly present.
2. If the lawyer of the accused person is not present, the President of the bench shall appoint another lawyer as his substitute under Article 97, paragraph 4.
2-*bis.* The provisions of Articles 420-*bis,* 420-*ter,* 420-*quater* and 420-*quinquies* shall be observed, provided they are applicable.

Article 485

(...)

Article 486

(...)

Article 487

(...)

Article 488

(...)

Article 489

Statements of the accused prosecuted in his absence during the preliminary hearing

1. The accused who was prosecuted while he was absent during the preliminary hearing may request to make the statements provided for in Article 494.

2. If the accused proves that his absence during the preliminary hearing was due to one of the situations referred to in Article 420-*bis,* paragraph 4, he is granted a new time limit in order to submit the requests according to Articles 438 and 444.

Article 490

Compulsory appearance of the accused who is absent

1. Under Article 132, the court may order the compulsory appearance of the accused who is absent if his presence is necessary for the gathering of evidence other than his examination.

Article 491

Preliminary issues

1. Any requests concerning territorial competence or competence by reason of connection, the nullities referred to in Article 181, paragraphs 2 and 3, the joining of proceedings as a civil party, the summons or participation of the person with civil liability for damages and the person with civil liability for financial penalties and the participation of organisations and associations provided for in Article 91 shall not be allowed unless they are submitted immediately after the first ascertainment on the appearance of the parties. A decision on them shall be immediately taken.

2. The provision of paragraph 1 shall also apply to the issues concerning the content of the trial dossier and the joining or separation of the trials, unless the possibility of submitting them emerges only during the course of the trial.

3. Preliminary issues shall be debated by the Public Prosecutor and one lawyer for each private party. The debate shall not exceed the time limits that may be strictly necessary for the illustration of the issues. No

further argument is allowed.

4. The court shall decide on the documents that must be included in the trial dossier or excluded from it.

5. The court shall decide on preliminary issues by order.

Article 492

Declaration of trial opening

1. After completing the activities referred to in Articles 484 and following, the President of the bench shall declare the trial open.

2. The judicial assistant shall read the accusation.

Article 493

Requests for evidence

1. The Public Prosecutor, the lawyers of the civil party, of the person with civil liability for damages, of the person with civil liability for financial penalties and of the accused shall specify, following this order, the facts they intend to prove and request the admission of evidence.

2. The admission of evidence that is not included in the list provided for in Article 468 is allowed if the requesting party proves he has not been able to specify them in the list at the due time.

3. The parties may agree on the inclusion in the trial dossier of documents contained in the investigative dossier, as well as of the documentation concerning defence investigation activities.

4. The President of the bench shall impede any digression, repetition and interruption and any reading or explanation of the content of the acts carried out during preliminary investigations.

Article 494

Spontaneous statements from the accused

1. After the introductory remarks, the President of the bench shall inform the accused of his right to provide, at any stage of the trial, the statements he considers appropriate, provided they concern the subject of the accusation and do not hinder the trial evidentiary hearing. If the accused does not keep to the subject of the accusation while making his statements, the President of the bench shall admonish him and, if the accused persists, he shall interrupt him.

2. The assistant shall transcribe integrally the statements made under paragraph 1, unless the court orders the record be drafted in summary form.

Article 495

Judge's decisions on evidence

1. After hearing the parties, the court shall direct, by order, the admission of evidence under Articles 190, paragraph 1, and 190-*bis*. If the acquisition of the records of evidence from other proceedings is

admitted, the court shall decide on the request for a new acquisition of the same piece of evidence only after the documentation related to the evidence from the other proceedings has been gathered.
2. The accused has the right to the admission of pieces of evidence in his defence on the facts in issue presented against him. The Public Prosecutor has the same right regarding the pieces of evidence against the accused on the facts in issue presented in defence of the accused.
3. Before any decision on the request is taken by the court, the parties have the right to examine the documents for which admission has been requested.
4. During the trial evidentiary hearing, the court shall decide, by order, on the objections raised by the parties on the admissibility of evidence. After hearing the parties, the court may revoke, by order, the admission of superfluous pieces of evidence or admit pieces of evidence previously excluded.
4-*bis.* During the trial evidentiary hearing, each party may waive, with the consent of the other party, the acquisition of evidence admitted on his own request.

Chapter III

TRIAL EVIDENTIARY HEARING

Article 496

Chronological order for the gathering of evidence

1. The trial evidentiary hearing starts with the gathering of the evidence required by the Public Prosecutor and continues with the gathering of the evidence requested by other parties, following the order provided for in Article 493, paragraph 1.
2. The parties may agree to follow a different order for the gathering of evidence.

Article 497

Actions preliminary to the examination of witnesses

1. The witnesses shall be examined one after the other in the order established by the parties who requested their examination.
2. Prior to the start of the examination, the President of the bench shall warn the witness of his obligation to tell the truth. Unless the witness is a person under fourteen years of age, the President of the bench shall also warn him of the liabilities set by the criminal law for false or reticent witnesses and requires him to make the following statement: “Aware of the moral and legal responsibility which I assume through my testimony, I commit myself to telling all the truth and not to hiding anything I am acquainted with”. He shall then require him to provide his personal details.
2-*bis.* Criminal police officials and officers-also belonging to foreign police forces -, intelligence and security services personnel, assistants, and third persons called to testify at any stage and instance of the

proceedings on the undercover activities carried out under Article 9 of Law No 146 of 16 March 2006 and under Law No 124 of 3 August 2007 and subsequent amendments, shall provide the identity they use during undercover activities when required to provide their identity.

3. The provisions of paragraph 2 shall be observed under penalty of nullity.

Article 498

Direct examination and cross-examination of witnesses

1. Questions shall be asked directly by the Public Prosecutor or the lawyer who required the examination of the witness.

2. Subsequently, further questions may be asked by the parties who have not requested the examination, following the order specified in Article 496.

3. The person who requested the examination may ask new questions.

4. The examination of an underage witness shall be conducted by the President of the bench on the basis of questions and challenges raised by the parties. For the examination the President of the bench may avail himself of the help of one of the minors family members or a child psychology expert. After hearing the parties, if the President of the bench holds that the direct examination of the minor does not harm the witness's serenity, he shall direct, by order, that the testimony continue as set forth in the previous paragraphs. The order may be revoked during the examination.

4-*bis.* The procedure referred to in Article 398, paragraph 5-*bis,* shall apply if requested by one of the parties or if deemed necessary by the President of the bench.

4-*ter.* If the proceedings concern the offences under Articles 572, 600, 600-*bis,* 600-*ter,* 600-*quater,* 600-*quinquies*, 601, 602, 609-*bis,* 609-*ter,* 609-*quater* and 609-*octies* and 612-*bis* of the Criminal Code, the examination of a victim who is either underage or of age but mentally ill shall be conducted, upon request of the person to be examined or his lawyer, using a mirror screen combined with a phone device.

4-*quater.* Without prejudice to the previous paragraphs, when the victim to be examined needs specific protection, the court shall order, upon request of the victim or his lawyer, the adoption of protection measures.

Article 499

Rules for witness examination

1. Witness examination is by questioning on specific facts.

2. During the examination, questions which may compromise the sincerity of the answers are not allowed.

3. Leading questions are not allowed when the examination is conducted by the party who requested the

witness to be summoned and by the party having a common interest.
4. The President of the bench shall guarantee that the witness examination is conducted without harming the person's dignity.
5. The witness may be authorised by the President of the bench to consult his own notes as a memory aid.
6. During the examination, the President of the bench shall intervene, also of his own motion, to guarantee the appropriateness of the questions, the truthfulness of the answers, the loyalty in the examination and the correctness of the challenges and shall order, if necessary, that the parties show him the part of the record including the statements that have been used for challenging the oral evidence.

Article 500

Challenging witness statements

1. Without prejudice to the prohibition to read and produce witness's statements, the parties may challenge, in whole or in part, the content of the testimony by using the out-of-court statements previously made by the witness and contained in the investigative dossier. Such right may be exercised if the witness has already testified on the facts or circumstances to be challenged.
2. The statements that are read for challenging purposes may be used to ascertain the witness's credibility.
3. If the witness refuses to be examined or cross-examined by one party, the statements made to another party shall not be used against the former, unless he gives his consent. Criminal sanctions shall in any case be applied against the witness.
4. If, also on the basis of the circumstances emerged at the trial, there are concrete elements to believe that the witness has been subject to violence, threat, an offer or promise of money or other benefits to prevent him from testifying or to force him to give a false testimony, the statements contained in the investigative dossier that had been previously made by the witness shall be included in the trial dossier and those provided for in paragraph 3 may be used.
5. The court shall decide without delay on the acquisition of evidence referred to in paragraph 4 by carrying out the ascertainment procedures it considers necessary, upon request of a party, who may provide the concrete elements to believe that the witness has been subject to violence, threat, an offer or promise of money or other benefits.
6. Upon request of a party, the statements gathered by the court under Article 422 may be included in the trial dossier and shall be used for evidentiary purposes against the parties who participated in their acquisition, if they have been used for the challenges provided for in this Article. With the exception of the case provided for in the previous period, the provisions under paragraphs 2, 4 and 5 shall apply.

7. With the exception of the cases provided for in paragraph 4, upon agreement of the parties, the statements contained in the investigative dossier that had been previously made by the witness shall be included in the trial dossier.

Article 501

Examination of experts and technical consultants

1. For the examination of experts and technical consultants the provisions valid for witness examination shall be observed, provided they are applicable.
2. The expert and technical consultant have in any case the right to consult documents, written notes and publications, which may be gathered also of the court's own motion.

Article 502

Home examination of witnesses, experts and technical consultants

1. In case of absolute impossibility for a witness, an expert or a technical consultant to appear due to a legal impediment, the court, upon request of a party, may order that his examination be performed in the place where he is located, informing him, under Article 477, paragraph 3, of the day, time and place of the examination.
2. The examination shall be carried out as set forth in the previous Articles, without the presence of the audience. The accused and the other parties shall be represented by their own lawyers. If a request is submitted, the court shall admit the participation of the accused interested in the examination.

Article 503

Examination of private parties

1. The President of the bench shall order the examination of the parties who requested or who have agreed to be examined in the following order: civil party, person with civil liability for damages, person with civil liability for financial penalties and accused person.
2. The examination shall be carried out as set forth in Articles 498 and 499. The examination shall start with the questions of the lawyer or Public Prosecutor who has requested the examination and, according to the case, shall continue with the questions of the Public Prosecutor and lawyers of the civil party, the person with civil liability for damages, the person with civil liability for financial penalties, the co-accused and the accused. Subsequently, the person who has started the examination may ask new questions.
3. Without prejudice to the prohibition to read and produce statements, the Public Prosecutor and the lawyers may challenge, in whole or in part, the content of the testimony by using the out-of-court

statements previously made by the witness and contained in the investigative dossier. Such right may be exercised only if the party has already testified on the facts and circumstances to be challenged.
4. The provision of Article 500, paragraph 2, shall be applied.
5. The statements made during questioning which the lawyer is entitled to attend and gathered by the Public Prosecutor or the criminal police by proxy of the Public Prosecutor shall be included in the trial dossier, if they have been used for the challenges provided for in paragraph 3.
6. The provision of paragraph 5 shall apply also to the statements made under Articles 294, 299, paragraph 3-*ter,* 391 and 422.

Article 504

Oppositions during witness examination

1. Unless otherwise provided by law, the President of the bench shall decide immediately and without any formality on the oppositions submitted during the examination of witnesses, experts, technical consultants and private parties.

Article 505

Right of organisations and associations representing the interests affected by the offence

1. The organisations and associations that intervened in the trial under Article 93 may request that the President of the bench ask questions to the witnesses, experts, technical consultants, as well as private parties who were examined. They can also request that the court admit new means of evidence that are useful to ascertain the events.

Article 506

Powers of the President of the bench on the examination of witnesses and private parties

1. Upon request of another member of the bench and on the basis of the results of the evidence gathered during the trial upon initiative of the parties or after the reading provided for in Articles 511, 512 and 513, the President of the bench may indicate to the parties new or broader topics of evidence, useful to carry out an exhaustive examination.
2. The President of the bench, also upon request of a different member of the bench, may ask questions to the witnesses, experts, technical consultants, as well as to the persons referred to in Article 210 and to the parties who have already been examined, only after the examination and cross-examination have been carried out. The right of the parties to conclude the examination following the order referred to in Articles 498, paragraph 1 and 2, and 503, paragraph 2, remains in force.

Article 507

Admission of new evidence

1. Upon completion of evidence gathering, the court may order, also of its own motion, the admission of new means of evidence, if absolutely necessary.
1-*bis*. The court may also order, under paragraph 1, the admission of new means of evidence related to the documents gathered in the trial dossier under Articles 431, paragraph 2, and 493, paragraph 3.

Article 508

Decisions following the admission of the expert report in the trial

1. If the court, of its own motion or upon request of a party, orders an expert report, the expert shall be immediately summoned to appear and shall give his opinion in the same trial. If it is impossible to proceed in such way, the court shall deliver an order by which, if necessary, it suspends the trial and sets the date of the new hearing within sixty days.
2. By means of the order, the court shall appoint a member of the bench to exercise the powers provided for in Article 228.
3. During the new hearing, the expert shall answer the questions and be examined under the provision of Article 501.

Article 509

Suspension of the trial for evidentiary purposes

1. In the cases provided for in Articles 495, paragraph 4, 506 and 507, if it is not possible to take a decision in the same hearing, the court shall suspend the trial for the time strictly necessary, setting the date of the new hearing.

Article 510

Record on the gathering of means of evidence

1. The record shall contain the personal details of the witnesses, experts, technical consultants, as well as the interpreters, and shall make reference to the provision of Article 497, paragraph 2.
2. In the record, the judicial assistant shall document the development of the examination of the witnesses, experts, technical consultants, as well as private parties, reproducing the questions asked to the parties or by the President of the bench, as well as the answers provided by the examined persons, integrally and in form of direct speech.
3. When the court orders that the record be drafted only in summary form, the powers of monitoring provided for in Article 140, paragraph 2, shall be exercised by the President of the bench.

Article 511

Allowed readings

1. The court shall order, also of its own motion, the reading of the documents enclosed to the trial dossier, in their integral or partial form.
2. The reading of the recorded statements shall be ordered only after the examination of the person who has made them, unless the examination did not take place.
3. The reading of the expert report shall be ordered only after the examination of the expert.
4. The reading of the recorded statements regarding a complaint or a petition shall be allowed only to ascertain the existence of a requirement for prosecution.
5. As an alternative to the reading, the court may, also of its own motion, specifically indicate the documents which may be used for the decision. The indication of the documents shall be equivalent to their reading. However, the court shall order integral or partial reading in the case of recorded statements and if requested by one of the parties. In case of different documents, the court shall be bound to the request to read the documents only in case of a serious disagreement on their content.
6. The right to request the reading or the indication of the documents, provided for in paragraphs 1 and 5, shall also be extended to the organisations and associations that intervened under Article 93.

Article 511 *-bis*

Reading of recorded evidence from other proceedings

1. The court shall order, also of its own motion, the reading of recorded evidence referred to in Article 238. The provision of paragraph 2 of Article 511 shall apply.

Article 512

Reading of documents due to impossibility of repetition

1. The court shall order, upon request of a party, the reading of the documents collected by the criminal police, the Public Prosecutor, the private parties' lawyers and the Preliminary Hearing Judge during the preliminary hearing if, due to unforeseeable facts or circumstances, it has become impossible to gather that evidence again.

1-*bis.* The reading of the records regarding the gathering and the procedure to destroy the documents under the provision of Article 240 shall always be allowed.

Article 512-*bis*

Reading of statements made by persons residing abroad

1. The court may order, upon request of a party and taking into account the other elements of evidence that have been gathered, the reading of the recorded statements made by a person residing abroad, also

after an international letter rogatory, provided that such person, being summoned, has not appeared and only if it is absolutely impossible to proceed with the trial examination.

Article 513

Reading of statements made by the accused during preliminary investigations or preliminary hearing

1. If the accused is absent or refuses to be examined, the court shall order, upon request of a party, the reading of the recorded statements made by the accused either to the Public Prosecutor, to the criminal police by proxy of the Public Prosecutor, or to the single judge during the preliminary investigations or preliminary hearing, provided that these statements are not used against other persons without their consent, unless the conditions referred to in Article 500, paragraph 4, apply.
2. If the statements have been made by the persons referred to in Article 210, paragraph 1, the court, upon request of a party and according to the case, shall order either the compulsory appearance of the declarant, the examination at his temporary residence, the international letter rogatory, or the examination in a different form provided by law, following the procedures of cross-examination. If it is not possible to secure the presence of the declarant or if it is impossible to proceed following one of the aforementioned procedures, the provision of Article 512 shall be applied, provided that the impossibility is due to facts or circumstances that are unforeseeable at the moment of the statement. If the declarant avails himself of the right to silence, the court shall order the reading of the records containing such statements, provided that the parties agree.
3. If the statements referred to in paragraphs 1 and 2 of this Article have been taken in accordance with Article 392, the provisions referred to in Article 511 shall apply.

Article 514

Prohibition on readings

1. With the exception of the cases provided for in Articles 511, 512, 512-*bis* and 513, the reading of the recorded statements made by the accused, the persons referred to in Article 210 and the witnesses to the criminal police, the Public Prosecutor during the preliminary investigations or preliminary hearing, shall not be allowed, unless, during the preliminary hearing, the statements have been made as provided for in Articles 498 and 499, with the presence of the accused or his lawyer.
2. With the exception of the cases provided for in Article 511, the reading of the records and other documents reporting the activities carried out by the criminal police shall not be allowed. The criminal police official or officer who has been examined as a witness may use these documents under Article 499, paragraph 5.

Article 515

Enclosure of documents in the trial dossier

1. The records that have been read and the documents that have been gathered under Article 495 shall be enclosed in the trial dossier, together with the record of the hearing.

CHAPTER IV

NEW ACCUSATIONS

Article 516

Changes to the accusation

1. If, during the trial evidentiary hearing, it emerges that the criminal act differs from its description provided in the decree for committal to trial and does not fall within the competence of a higher court, the Public Prosecutor shall modify the accusation and bring it against the accused.

1 *-bis.* If, after the modification, it emerges that the offence should have been assigned to the cognisance of the collegial Tribunal, rather than to a single-judge Tribunal, the failure to comply with the provisions on the composition of the Tribunal shall be raised or objected, under penalty of expiry, either immediately after the new accusation is brought against the accused or, in the cases referred to in Articles 519, paragraph 2, and 520, paragraph 2, before carrying out any other action during the new hearing set under the aforementioned Articles.

1 *-ter.* If, after the modification, it emerges that the offence should have been treated in a preliminary hearing, but this did not occur, the failure to comply with the related provisions shall be objected, under penalty of expiry, within the time limit referred to in paragraph 1 *-bis.*

Article 517

Joined offence and aggravating circumstances resulting from the trial

1. If, during the trial evidentiary hearing, a joined offence under Article 12, paragraph 1, letter *b)* or an aggravating circumstance emerges, which is not mentioned in the decree for committal to trial, the Public Prosecutor shall bring an accusation concerning the offence or the circumstance against the accused, provided that the cognisance does not belong to a higher court.

1 *-bis.* The provisions of Article 516, paragraphs 1 *-bis* and 1 *-ter,* shall apply.

Article 518

New criminal act resulting from the trial

1. With the exception of the cases provided for in Article 517, the Public Prosecutor shall proceed following standard procedures, if a new criminal act emerges from the trial which is not mentioned in the

decree for committal to trial and which is subject to prosecution of the Public Prosecutor's motion.
2. However, the President of the bench may authorise the accusation in the same hearing, if the Public Prosecutor requests so, if there is the consent of the accused present at the hearing and if this does not hinder the smooth development of proceedings.

Article 519

Rights of the parties

1. In the cases provided for in Articles 516, 517 and 518, paragraph 2, the President of the bench shall inform the accused of his right to request a period of time to prepare the defence, unless the accused has been charged with recidivism.
2. The President of the bench shall suspend the trial for a period of time equal to or longer than the time limit set for appearance under Article 429, and in any case for no more than forty days, if the accused requests so. In such case, the accused may request the admission of new evidence ([6]).
3. The President of the bench shall order the summoning of the victim, observing a time limit of at least five days.

([6]) Constitutional Court judgment No 50/1995 has extended the right to request the admission of new evidence to the Public Prosecutor and private parties other than the accused.

Article 520

New accusations against the accused in his absence

1. If the Public Prosecutor intends to bring new accusations regarding the criminal acts or circumstances referred to in Articles 516 and 517 against the accused who is absent, he shall request the President of the bench that the new accusation be enclosed in the trial record and that the record be served on the accused in a summary form.
2. In such case, the President of the bench shall suspend the trial and set a new hearing, observing the time limits referred to in Article 519, paragraphs 2 and 3.

Article 521

Correlation between accusation and judgment

1. In the judgment, the court may provide a different legal definition of the criminal act from the one mentioned in the accusation, provided that the offence does not exceed the competence of the court and the cognisance of the single-judge Tribunal.
2. The court shall direct, by order, that the case file be forwarded to the Public Prosecutor if it ascertains that the criminal act is different from the one described in the decree for committal to trial or in the new accusation brought against the accused under Articles 516, 517 and 518, paragraph 2.

3. The court shall follow the same procedure if the Public Prosecutor has brought a new accusation other than those provided for in Articles 516, 517 and 518, paragraph 2.

Article 521 *-bis*

Changes to the composition of the Tribunal following new accusations

1. If, after a different legal definition has been provided or the accused has been charged according to Article 516, paragraph 1 *-bis* and 1 *-ter,* 517, paragraph 1 *-bis,* and 518, it emerges that the offence belongs to the cognisance of the Tribunal and thus should have been treated in a preliminary hearing, which did not occur, the court shall direct, by order, that the case file be forwarded to the Public Prosecutor.

2. Failure to comply with the provision provided for in paragraph 1 shall be objected, under penalty of expiry, in the arguments for appellate remedies.

Article 522

Nullity of the judgment due to breach of provisions on new accusations

1. Failure to comply with the provisions referred to in this Chapter shall result in nullity.

2. The judgment of conviction delivered for a new criminal act, for a joined offence or an aggravating circumstance without observing the provisions of the previous Articles, shall be considered null, exclusively in the section dedicated to the new criminal act, the joined offence or the aggravating circumstance.

CHAPTER V

FINAL DEBATE

Article 523

Debate procedure

1. After gathering evidence, the Public Prosecutor and, thereafter, the lawyers of the civil party, of the person with civil liability for damages, of the person with civil liability for financial penalties and of the accused, shall make and describe their respective conclusions, also with reference to the cases provided for in Article 533, paragraph 3-*bis.*

2. The civil party shall present his written conclusions, which shall also indicate the amount of damages, provided that compensation has been requested.

3. The President of the bench is in charge of the debate and prevents any digression, repetition or interruption.

4. The Public Prosecutor and the lawyers of the private parties may reply; such reply shall be allowed only once and strictly limited to objecting to the arguments of the opponents.

5. In any case, the accused and the lawyer, under penalty of nullity, must be the last to speak, if they require so.

6. The debate may not be interrupted to gather new evidence, unless it is absolutely necessary. If this is the case, the court shall follow the provision of Article 507.

Article 524

Closure of trial

1. After the debate has finished, the President of the bench shall declare the trial closed.

TITLE III

JUDGMENT

CHAPTER I

DELIBERATION

Article 525

Immediacy of deliberation

1. The judgment shall be handed down immediately after closure of the trial.

2. Under penalty of absolute nullity, the same judges who participated in the trial shall be present at the deliberation. If judges who cannot participate must be temporarily substituted by other judges, the decisions which have already been issued shall maintain their effectiveness, unless they are expressly revoked.

3. Without prejudice to the provision of Article 528, the delivery shall not be suspended, unless there is a case of absolute impossibility. The suspension shall be directed by the President of the bench by order.

Article 526

Evidence for the purposes of deliberation

1. For the purposes of deliberation, the court shall not use evidence other than that lawfully gathered during the trial.

1 *-bis.* The accused person's guilt shall not be proven on the basis of statements made by the person who deliberately chose not to be examined by the accused or his lawyer.

Article 527

Collegial deliberation

1. The bench, under the supervision of the President of the bench, shall decide separately on the preliminary issues that are yet to be solved and on any other issue regarding the case. If the examination of the merits of the case is not precluded by the outcome of the vote, decisions shall be taken on the *de facto* and *de jure* issues regarding the accusation and, if necessary, on those issues related to the

application of penalties and security measures, and to civil liability.
2. All judges shall state the grounds for their opinion and vote on each issue regardless of the vote expressed on the other issues. The President of the bench shall collect the votes starting from the lower seniority and shall be the last person to vote. In the trials before the Court of Assizes the lay judges shall vote first, starting from the youngest.
3. If, during the vote on the amount of penalty or security measure to be imposed, more than two opinions are expressed, the votes given to the more serious penalty or measure shall be added to those given to less serious penalty or measure, until the majority is reached. In any other case, in the event of a tie, the most favourable solution for the accused shall prevail.

Article 528

Reading of the record in closed sessions

1. If it is necessary to read the record of the hearing drafted by means of stenotyping or to listen or watch the audio-visual recordings of trial actions, the court shall suspend the deliberation and proceed in closed sessions to the necessary operations, aided by its assistant and possibly the technician in charge of the documentation.

CHAPTER II
DECISION
Section I
Judgment of dismissal

Article 529

Judgment of non prosecution

1. If the criminal prosecution should not have been initiated or continued, the court shall deliver a judgment of non prosecution mentioning the cause in the operative part of the judgment.
2. The court shall follow the same procedure in case of insufficient or contradictory proof of the existence of a requirement for prosecution.

Article 530

Judgment of acquittal

1. If the criminal act did not occur, the accused did not commit it, the act is not deemed an offence by law or it has been committed by a person who cannot be accused or punished for a different reason, the court shall deliver a judgment of acquittal, mentioning the cause in the operative part of the judgment.
2. The court shall deliver a judgment of acquittal also in case of insufficient, contradictory or lacking proof that the criminal act occurred, the accused committed it, the act is deemed an offence by law, the

offence was committed by a person with mental capacity.
3. The court shall deliver a judgment of acquittal under paragraph 1 if there is proof that the underlying causes of the committed act are either a reason for justification or a personal reason for exemption from punishment or there is a doubt on the existence of such reasons.
4. By means of the judgment of acquittal, the court shall apply the security measures, in the cases provided for by law.

Article 531

Declaration of extinguishment of the offence

1. Without prejudice to the provision of Article 129, paragraph 2, if the offence is extinguished, the court shall deliver a judgment of non prosecution, mentioning the cause in the operative part.
2. The court shall follow the same procedure if there are doubts regarding the cause for extinguishing an offence.

Article 532

Decisions on personal precautionary measures

1. By means of the judgment of dismissal, the court shall order the discharge of the accused under precautionary detention and declare the cessation of the other personal precautionary measures that might have been ordered.
2. The same provision shall be applied in the case of a judgment of conviction granting the suspended sentence.

Section II

Judgment of conviction

Article 533

Conviction of the accused person

1. The court shall deliver a judgment of conviction if the accused is proven to be guilty of the alleged offence beyond a reasonable doubt. By means of the judgment, the court shall apply the penalty and any security measures.
2. If the conviction concerns several offences, the court shall set the penalty for each of them and therefore determine the penalty that shall be applied in compliance with the norms on the concurrence of offences and penalties, as well as on continuation. In the cases provided for by law the court shall declare the convicted person a habitual or professional criminal or transgressor or delinquent by propensity.
1. If the court holds that the suspended sentence should be granted or that the conviction should not be mentioned in the criminal record certificate, it shall decide accordingly by means of a judgment of

conviction.

3-*bis*. If the conviction concerns proceedings for the crimes referred to in Article 407, paragraph 2, letter *a),* even if they are joined to other offences, the court, while delivering the judgment, may order the separation of proceedings also with reference to the same convicted person when one of the convicted persons is under precautionary detention and he should have been discharged, due to the expiry of time limits and the lack of other grounds for custody.

Article 534

Conviction of the person with civil liability for financial penalties

1. In the cases provided for in Articles 196 and 197 of the Criminal Code and in the Special Laws, the court shall sentence the person with civil liability for financial penalties to pay an amount equal to the financial penalty imposed on the convicted person, if the latter is insolvent.

Article 535

Conviction to costs

1. The judgment of conviction shall require the convicted person to pay the costs of proceedings.
2. (…)
3. The convicted person shall also pay the costs resulting from maintenance during the precautionary detention, under the provision of Article 692.
4. If the court has not decided about the costs, the judgment shall be rectified under the provision of Article 130.

Article 536

Publication of the judgment following conviction

1. In the cases provided for in Article 36 of the Criminal Code, the court shall establish in the operative part whether the judgment shall be published integrally or in summary form and shall decide the newspaper or newspapers in which it should be inserted.

Article 537

Decision on false documents

1. The falsity of a document or documentary evidence ascertained by a judgment of conviction shall be declared in the operative part of the judgment.
2. Through the same operative part of the judgment, the total or partial cancellation, according to the circumstances, and, if necessary, the restoration, renewal or revision of the document or documentary evidence shall be ordered, indicating the corresponding procedure. The cancellation, restoration, renewal or revision shall not be ordered if the interests of third parties who have not intervened in the proceedings

as parties may be compromised.

3. The decision on false documents may be appealable, also individually and through the means set by law, for the section of judgment containing the decision on the accusation.

4. The provisions of this Article shall also apply in the case of a judgment of dismissal.

Section III

Decision on civil issues

Article 538

Decision on civil liability

1. When delivering a judgment of conviction, the court shall decide on the request for the restitution and compensation of damages, which shall be submitted under Article 74 and following.

2. If the court sentences the accused to compensation for damages, it shall also decide on the payment, unless competence thereof falls with a different court.

3. If the person with civil liability for damages has been summoned or appeared in the trial, the conviction to the restitution and compensation of damages shall be delivered also against him jointly and severally, if his liability is recognised.

Article 539

Sentencing to payment of damages and interim compensation

1. If the gathered evidence does not allow the quantification of damages, the court shall sentence the accused to payment of damages without setting the amount. It shall also order that the parties appear before the civil court.

2. Upon request of the civil party, the accused and the person with civil liability for damages shall be sentenced to the payment of interim compensation within the limits of the damage which has already been proven.

Article 540

Provisional enforcement of civil provisions

1. The sentence to the restitution and compensation of damages shall be declared provisionally enforceable, upon request of the civil party, provided that there are reasonable grounds for doing so.

2. The section of the judgment ordering the payment of interim compensation shall be immediately enforceable.

Article 541

Sentencing to payment of costs concerning civil action

1. By means of the judgment granting the claim to restitution and compensation of damages, the court

shall sentence the accused and the person with civil liability for damages to pay, jointly and severally, the costs of proceedings to the civil party, unless there are valid grounds for full or partial setoff.
2. By means of the judgment rejecting the claim referred to in paragraph 1 or acquitting the accused for reasons other than lack of mental capacity, the court shall sentence the civil party to recover the costs of proceedings incurred by the accused and the person with civil liability for damages, unless there are valid grounds for full or partial setoff. In case of gross negligence, the court may also sentence the civil party to compensate the damages caused by the accused or the person with civil liability for damages.

Article 542

Condemnation of the complainant to costs and damages

1. In case of acquittal because the criminal act did not occur or the accused did not commit it, or if the offence is to be prosecuted on the basis of a complaint, the provisions of Article 427 shall apply in relation to the condemnation of the complainant to payment of the costs of proceedings advanced by the State, as well as the recovery of the costs and compensation of damages to the accused and the person with civil liability for damages.
2. The notice of filing of the judgment shall be served on the complainant.

Article 543

Injunction to publish the judgment as compensation for damages

1. The publication of the judgment of conviction under the provision of Article 186 of the Criminal Code shall be ordered by the court upon request of the civil party in the same judgment.
2. The judgment shall be published at the expense of the convicted person and, if applicable, also of the person with civil liability for damages, once or twice, integrally or in summary form, in the newspapers indicated by the court.
3. If the insertion does not take place within the time limit set by the court in the judgment, the civil party may directly do so with the right to claim back the costs from the liable person.

CHAPTER III

ACTIONS FOLLOWING DELIBERATION

Article 544

Drafting of the judgment

1. Upon conclusion of deliberation, the President of the bench shall draft and sign the operative part of the judgment. A brief description of *de facto* and *de jure* grounds upon which the judgment relies shall be drafted immediately after.
2. If it is not possible to proceed to the immediate drafting of the grounds of the judgment in closed

sessions, the grounds shall be drafted no later than the fifteenth day after the judgment was delivered.

3. If drafting the grounds of the judgment is particularly complex due to the number of parties or the number or seriousness of the accusations, the court that holds that it may be unable to file the judgment within the time limit provided for in paragraph 2, may indicate in the operative part of the judgment a longer time limit, which in any case must not exceed the ninetieth day after delivery of the judgment.

3-*bis.* In the cases provided for in Article 533, paragraph 3-*bis,* the court shall proceed to the drafting of the grounds for each separate proceedings, giving priority to the grounds of the conviction against the accused under precautionary detention. In such case, the time limit referred to in paragraph 3 shall be doubled for the grounds of the judgment to which priority was not given.

Article 545

Publication of the judgment

1. The judgment shall be delivered during the hearing by the President of the bench or by a judge of the bench by reading the operative part of the judgment.

2. The reading of the grounds of the judgment drafted under Article 544, paragraph 1, shall follow that of the operative part of the judgment and may be replaced by a summary exposition.

3. The publication provided for in paragraph 2 shall correspond to the service of the judgment on the parties who are or shall be considered present at the hearing.

Article 546

Requirements of the judgment

1. The judgment shall contain:

a) the heading 'in the name of the Italian people' and the indication of the authority delivering it;

h) the personal details of the accused or other personal features that may identify him, as well as the personal details of the other private parties;

c) the accusation;

d) the indication of the conclusions of the parties;

e) a brief description of the *de facto* and *de jure* grounds upon which the decision lies, including the indication of the results reached and the evidence assessment criteria adopted as well as the reasons for which the court believes the rebuttal evidence to be unreliable in relation to:

1) the ascertainment of the facts and circumstances that concern the accusation and their legal definition;

2) criminal liability and the determination of both the sentence, in the forms provided for in Article 553, paragraph 2, and the security measure;

3) civil liability deriving from the offence;

4) the ascertainment of facts on which the application of procedural rules depends;

f) the operative part with the indication of the Articles of law applied;

g) the date and signature of the judge.

2. The judgment issued by any collegial court shall be signed by their President and the reporting judge. If the President of the bench is unable to sign it, due to death or any other impediment, the oldest member of the bench shall sign it, provided that mention is made of the impediment. If the reporting judge is unable to sign, the judgment shall be signed exclusively by the President of the bench, provided that mention is made of the impediment.

3. In addition to the case provided for in Article 125, paragraph 3, the judgment shall be considered null either if its operative part lacks one of the essential elements or they are incomplete or if the judge does not sign it.

Article 547

Correction of the judgment

1. With the exception of the cases provided for in Article 546, paragraph 3, if it is necessary to complete the grounds of the judgment which are insufficient or if one of the requirements provided for in Article 546 is lacking or incomplete, the correction of the judgment shall be carried out, also of the court's own motion, under Article 130.

Article 548

Filing of the judgment

1. The judgment shall be filed with the Court Registry immediately after its delivery or within the time limits provided for in Article 544, paragraphs 2 and 3. The public official in charge of the filing shall sign it and place the date of the filing.

2. When the judgment is not filed within the thirtieth day or within a different time limit set by the court under Article 544, paragraph 3, the notice of filing shall be forwarded to the Public Prosecutor and served on the private parties who are entitled to apply for appellate remedies. It shall also be served on the accused person's lawyer at the time of the filing of the judgment.

3. The notice of filing including the extract of the judgment shall, in any case, be notified to the Prosecutor General attached to the Court of Appeal.

BOOK VIII

PROCEEDINGS BEFORE A SINGLE-JUDGE TRIBUNAL

TITLE I

GENERAL PROVISION

Article 549

Rules applicable to proceedings before a single-judge Tribunal

1. In proceedings before a single-judge Tribunal, the rules contained in the previous Books, if applicable, shall be observed with reference to any matter which is not provided for in this Book or in other provisions.

TITLE II

DIRECT SUMMONS FOR TRIAL

Article 550

Cases of direct summons for trial

1. The Public Prosecutor shall prosecute by means of direct summons for trial in cases of misdemeanours or crimes punishable either with the penalty of imprisonment not exceeding a maximum term of four years, or by fine only or jointly by fine and the aforementioned imprisonment. The provisions of Article 415-*bis* shall be observed, provided they are compatible. The provisions of Article 4 shall be observed to determine the sentence.

2. The provision of paragraph 1 shall also be applied when the case being prosecuted is one of the following offences:

a) violence or threats against a public officer provided for in Article 336 of the Criminal Code;

b) resistance to a public officer provided for in Article 337 of the Criminal Code;

c) insult to a bench, judge or Public Prosecutor in the courtroom aggravated under Article 343, paragraph 2, of the Criminal Code;

d) tampering with seals aggravated under Article 349, paragraph 2, of the Criminal Code;

e) affray under Article 588, paragraph 2, of the Criminal Code, with the exclusion of cases in which someone is killed or suffers serious or very serious harm during such affray;

e-bis) personal injuries, also aggravated, in road traffic accidents, under Article 590-*bis* of the Criminal Code;

f) aggravated theft under Article 625 of the Criminal Code;

g) receiving under Article 648 of the Criminal Code.

3. If the Public Prosecutor has prosecuted by means of direct summons for an offence which should be treated in a preliminary hearing and the related objection is submitted within the time limit referred to in Article 491, paragraph 1, the single-judge Tribunal shall direct by order the forwarding of the case file to the Public Prosecutor.

Article 551

Joined proceedings

1. In the case of joined proceedings, if the direct summons for trial is allowed exclusively for some of them, the Public Prosecutor shall submit a request for committal to trial for all the proceedings under Article 416.

Article 552

Decree for direct summons for trial

1. The decree for direct summons for trial shall contain:

a) the personal details of the accused or other personal features that may identify him, as well as the personal details of the other private parties and the specification of their lawyers;

b) the indication of the victim, if identified;

c) the clear and precise description of the criminal act, the aggravating circumstances and those that may result in the application of security measures, indicating the relevant articles of law;

d) the indication of the single-judge Tribunal with competence over the trial, as well as the place, day and time of the appearance, with the warning to the accused that failure to appear shall result in his prosecution *in absentia;*

e) the notice to the accused informing him of his right to appoint a retained lawyer and, if he does not have one, that he shall be assisted by a court-appointed lawyer;

f) the notice that, if requirements are met, the accused may submit the requests provided for in Articles 438 and 444 or submit a request for immediate payment extinguishing prosecution, prior to the declaration stating the opening of the first-instance trial;

g) the notice that the preliminary investigation dossier is filed with the Public Prosecutor's Clerk's Office and that the parties, as well as their lawyers, are entitled to read it and copy it;

h) the date and signature of the Public Prosecutor and his assistant.

1 *-bis.* When the case is prosecuted for one of the offences provided for in Article 590, paragraph 3, of the Criminal Code, and for the offences provided for in Article 590-*bis* of the same Code, the decree for direct summons for trial shall be issued within thirty days of the closure of preliminary investigations.

1 *-ter.* When the case is prosecuted for one of the offences provided for in Article 590, paragraph 3, of the Criminal Code, and for the offences provided for in Article 590-*bis* of the same Code, the date of appearance referred to in paragraph 1, letter *d),* shall be set within and no later than ninety days of the issuing of the decree.

2. The decree shall be null if the accused is not identified appropriately or if one of the requirements provided for in letters *c), d), e)* and *f)* of paragraph 1 is missing or insufficient. The decree shall also be null if it is not preceded by the notice provided for in Article 415-*bis*, as well as the summons to appear and be questioned under Article 375, paragraph 3, if the suspected person has requested to be questioned within the time limit referred to in paragraph 3 of the same Article 415-*bis.*

3. The decree for summons shall be served on the accused, his lawyer and the victim at least sixty days prior to the date set for the hearing of first appearance at trial. The time limit shall be reduced to forty-five days for urgent cases, which must be reasoned.

4. The decree for summons shall be filed by the Public Prosecutor with his Clerk's Office, along with the dossier containing the documentation, the documents and the objects referred to in Article 416, paragraph 2.

Article 553

Forwarding of case file to the single-judge Tribunal administering the hearing of first appearance at trial

1. The Public Prosecutor shall assemble the trial dossier and forward it to the single-judge Tribunal, together with the decree for summons, immediately after the service.

Article 554

Urgent actions

1. The Preliminary Investigation Judge shall be competent for ordering urgent actions under Article 467 and deciding on the precautionary measures to be taken until the decree, together with the trial dossier, is forwarded to the single-judge Tribunal in compliance with Article 553, paragraph 1.

Article 555

Hearing of first appearance at trial following direct summons

1. At least seven days prior to the date of the hearing of first appearance at trial, the parties shall file with the Court Registry, under penalty of inadmissibility, the lists of witnesses, experts or technical consultants, and the persons referred to in Article 210, who they intend to examine.

2. Prior to the opening of the trial, the accused or the Public Prosecutor may submit the request provided for in Article 444, paragraph 1. The accused may also request a summary trial or submit a request for

immediate payment extinguishing prosecution.
3. If the offence is subject to prosecution on the basis of a complaint, the single-judge Tribunal shall verify whether the complainant is willing to withdraw the complaint and the accused intends to accept the withdrawal.
4. If the trial is to be held, the parties, after its opening, shall indicate the facts they intend to prove or request the admission of evidence. The parties may also agree on the enclosure in the trial dossier of the documents contained in the investigative dossier, as well as the documentation related to defence investigations.
5. The provisions contained in Book VII, if applicable, shall be observed with reference to any matter which is not provided for in this Book.

TITLE III

SPECIAL PROCEEDINGS

Article 556

Summary trial and application of punishment upon request

1. If applicable, the provisions of Titles I and II of Book VI shall be observed respectively for the summary trial and the application of punishment upon request.
2. If there is no preliminary hearing, the provisions of Articles 555, paragraph 2, 557 and 558, paragraph 8, shall be applied, according to the case. The provision of Article 441-*bis* shall also be observed, provided they are applicable. In the case referred to in paragraph 4 of the same Article, after revoking the order directing a summary trial, the single-judge Tribunal shall set the trial hearing.

Article 557

Proceedings by decree

1. By submitting the opposition application the accused requests the Preliminary Investigation Judge to issue a decree of summons for trial or requires a summary trial or the application of the punishment under Article 444 or submits a request for immediate payment extinguishing prosecution.
2. In the trial following an opposition, the accused shall not request a summary trial or the application of punishment upon request nor shall he submit a request for immediate payment extinguishing prosecution. In any case, the single-judge Tribunal shall revoke the criminal decree of conviction.
3. The provisions of Title V of Book VI shall be observed, provided they are applicable.

Article 558

Confirmation of arrest and direct trial

1. The criminal police officials and officers who have arrested a person *in flagrante delicto* or to whom

an arrested person has been delivered shall take the arrested person directly before the single-judge Tribunal with competence over the trial for confirmation of the arrest and simultaneous trial, on the basis of the accusation leveled by the Public Prosecutor. In such case they shall also orally summon the victim and the witnesses and inform the retained lawyer or, if there is no retained lawyer, the lawyer appointed of the court's own motion under Article 97, paragraph 3.

2. If the single-judge Tribunal does not hold a hearing, criminal police officials and officers who have arrested a person *in flagrante delicto* or to whom an arrested person has been delivered shall immediately inform the single-judge Tribunal and take the arrested person to the hearing set by the same Tribunal within forty-eight hours of the arrest. The provision of Article 386, paragraph 4, shall not be applied.

3. The single-judge Tribunal before which the arrested person is taken shall authorise the criminal police official or officer to provide an oral report and shall then hear the arrested person to decide whether to confirm the arrest.

4. If the Public Prosecutor orders that the person arrested *in flagrante delicto* be made available to him, he shall take him directly to the hearing under arrest, for confirmation of the arrest and simultaneous trial, within forty-eight hours of the arrest. The provisions of Article 391 shall be applied to the confirmation trial, provided they are compatible.

4-*bis.* Without prejudice to the provision of paragraph 4-*ter,* in the cases referred to in paragraphs 2 and 4, the Public Prosecutor shall order that the arrested person be held in custody in one of the places referred to in paragraph 1 of Article 284. If such places are lacking, are unavailable or unsuitable or if they are located outside the district where the person has been arrested or the arrested person may pose a danger, the Public Prosecutor shall direct that the arrested person be held in suitable facilities available to the criminal police officials or officers who have arrested him or to whom the arrested person has been delivered. If such places are lacking, are unavailable or unsuitable or in case of other specific reasons of necessity or urgency, the Public Prosecutor shall direct, by reasoned decree, that the arrested person be taken to the district prison of the place where he has been arrested or, if this may seriously compromise investigations, to another nearby district prison.

4-*ter.* In the cases provided for in Article 380, paragraph 2, letters *e-bis)* and *f),* the Public Prosecutor shall order that the arrested person be held in custody in suitable facilities available to the criminal police officials or officers who have arrested him or to whom the arrested person has been delivered. The provision of paragraph 4-*bis,* third period, shall apply.

5. If the arrest is not confirmed, the single-judge Tribunal shall return the case file to the Public Prosecutor. The single-judge Tribunal shall in any case hold a direct trial if the accused and the Public

Prosecutor give their consent.

6. If the arrest is confirmed according to the aforementioned paragraphs, a trial shall be held immediately.

7. The accused has the right to request a time limit, not exceeding five days, to prepare his defence. When the accused avails himself of this right, the trial shall be suspended until the hearing that will be held immediately after the expiry of the said time limit.

8. Immediately after the confirmation hearing, the accused may request a summary trial or the application of punishment upon request. In this case the trial shall be held before the same single-judge Tribunal with competence over the trial. The provisions of Article 452, paragraph 2, shall be applied.

9. The Public Prosecutor may also proceed to a direct trial in the cases provided for in Article 449, paragraphs 4 and 5.

TITLE IV

TRIAL

Article 559

Trial

1. The trial shall be held according to the rules established for the proceedings before the collegial Tribunal, provided they are applicable.

2. In addition to the cases provided for in Article 140, the record of the hearing shall be drafted in summary form only if the parties give their consent and the single-judge Tribunal believes the drafting of the record in full form is unnecessary.

3. The direct examination and the cross-examination of witnesses, experts, technical consultants, the persons referred to in Article 210 and private parties shall be conducted by the Public Prosecutor and the lawyers. Upon request of the parties, the examination may be conducted directly by the single-judge Tribunal on the basis of the questions and challenges suggested by the Public Prosecutor and the lawyers.

4. Should the judge be unable to sign the judgment, it shall be signed by the President of the Tribunal after specifying the reason for substitution of the judge.

Article 560

(...)

Article 561

(…)

Article 562

(...)

Article 563

(...)

Article 564

(…)

Article 565

(...)

Article 566

(…)

Article 567

BOOK IX

APPELLATE REMEDIES

TITLE I

GENERAL PROVISIONS

Article 568

General rules

1. The law sets the cases in which the decisions of the court are subject to appellate remedies and determines the means by which they may be appealed.
2. The decisions by which the court decides on personal freedom and judgments, except for those concerning competence which may result in a conflict of jurisdiction or competence under Article 28, shall always be subject to appeal to the Court of Cassation, unless they are otherwise appealable.
3. The right to apply for appellate remedies against a decision shall be granted exclusively to the person expressly referred to in the law. If no distinction between different parties is established by the law, such right shall be conferred to each party.
4. The application for appellate remedy requires an interest in doing so by the party.
5. The application for appellate remedy shall be admissible irrespective of the denomination given to it by the appellant. If such application is submitted to a court without competence, it shall forward the case file to the court with competence.

Article 569

Immediate appeal to the Court of Cassation

1. The party who is entitled to appeal a first-instance judgment may lodge a direct appeal with the Court of Cassation.
2. If the judgment is appealed under Article 593 and following by one of the other parties, the provision of Article 580 shall apply. Such provision shall not apply if, within fifteen days of the service of the appeal to the Court of Cassation, all the parties who have lodged the appeal declare their intention to file for a waiver in order to lodge a direct appeal with the Court of Cassation. In this case, the appeal lodged under Article 593 and following shall be converted into an appeal to the Court of Cassation and the parties shall submit new arguments within fifteen days of their declaration of waiver if the original appeal did not meet the requirements to be valid as an appeal to the Court of Cassation.
3. The provision of paragraph 1 shall not apply in the cases provided for in Article 606, paragraph 1, letters *d)* and *e)*. In such cases, the appeal to the Court of Cassation that may have been lodged is converted into an appeal.

4. Except in cases where the first-instance judgment should have been annulled during the appeal trial, the Court of Cassation shall order that the case file be forwarded to the court with competence over the appeal, when delivering the annulment with referral of the judgment appealed under paragraph 1.

Article 570

Appellate remedy by the Public Prosecutor

1. The Public Prosecutor of the Republic attached to the Tribunal and the Prosecutor General attached to the Court of Appeal may submit an application for appellate remedy, in the cases set by law, irrespective of the conclusions presented by the Public Prosecutor's representative. The Prosecutor General may submit an application for appellate remedy notwithstanding the appellate remedy or acquiescence of the Public Prosecutor attached to the court that issued the decision.

2. The application for appellate remedy may also be submitted by the Public Prosecutor's representative who presented the conclusions.

3. The Public Prosecutor's representative who submitted the conclusions may participate in the subsequent instance of the trial as a substitute of the Prosecutor General attached to the Court of Appeal, if he makes such request in the appeal application. The participation shall be ordered by the Prosecutor General attached to the Court of Appeal if he considers it necessary. The Prosecutor General shall in any case receive the notices.

Article 571

Appellate remedy by the accused

1. Without prejudice to the provision of Article 613, paragraph 1, regarding the appeal to the Court of Cassation, the accused may submit an application for appellate remedy either personally or by means of a proxy designated even prior to delivery of the decision.

2. The guardian of the accused who is subject to guardianship and the special administrator of the accused who is in a state of evident lack of mental capacity and has no guardians may submit an application for appellate remedy in the name of the accused.

3. The lawyer of the accused or the lawyer appointed for this purpose may also submit an application for appellate remedy upon the filing of the decision.

4. The accused, following the procedure set for the waiver, may waive the application for appellate remedy submitted by his lawyer. The consent of the guardian or of the special administrator is necessary for the effectiveness of the statement in the case provided for in paragraph 2.

Article 572

Request by the civil party or victim

1. The civil party, the victim, also if he has not joined the proceedings as a civil party, as well as the organisations and associations that participated under Articles 93 and 94, may submit a reasoned request to the Public Prosecutor to lodge an application for appellate remedy to any criminal effect.
2. If the Public Prosecutor does not submit an application for appellate remedy, he shall issue a reasoned decree to be served on the applicant.

Article 573

Appellate remedy for civil interests only

1. The application for appellate remedies for civil interests only shall be submitted, discussed and decided upon in compliance with the standard procedures for criminal proceedings.
2. The appellate remedy for civil interests only shall not suspend the enforcement of the criminal provisions of the appealed decision.

Article 574

Appellate remedy by the accused for civil interests

1. The accused may submit an application for appellate remedy against the sections of the judgment sentencing him to restitution and compensation of damages and against the recovery of the costs of proceedings.
2. The accused may also apply for an appellate remedy against the provisions of the judgment of acquittal concerning the compensation of damages and the recovery of the costs of proceedings.
3. The accused shall apply for an appellate remedy by the means established for the criminal sections of the judgment.
4. The appellate remedy invoked by the accused against a criminal judgment of conviction or acquittal shall extend its effects to the sentence of restitution, compensation of damages and recovery of the costs of proceedings, if such decision depends on the appealed section or subsection.

Article 575

Appellate remedy by the person with civil liability for damages and the person with civil liability for financial penalties

1. The person with civil liability for damages may apply for an appellate remedy against the provisions of the judgment concerning the liability of the accused and against those provisions sentencing the accused and the person with civil liability for damages to the restitution, compensation of damages and recovery of the costs of proceedings. The appellate remedy shall be submitted by the means established by law for

the accused.

2. The same right shall be granted to the person with civil liability for financial penalties if he has been convicted.

3. The person with civil liability for damages may also apply for an appellate remedy against the provisions of the judgment of acquittal concerning the requests submitted for compensation of damages and recovery of the costs of proceedings.

Article 576

Appellate remedy by the civil party and the complainant

1. The civil party may apply for an appellate remedy against the sections of the judgment of conviction concerning the civil action and, for the purposes of civil liability only, against the judgment of dismissal delivered during the trial. The civil party may also lodge an appellate remedy against the judgment delivered under Article 442, if he has agreed to proceed with a summary trial.

2. The same right shall be granted to the convicted complainant under the provision of Article 542.

Article 577

(…)

Article 578

Decision on civil effects in case of extinguishment of offence for amnesty or statute of limitations

1. If a judgment of conviction has been delivered against the accused, even if it is a general sentence of restitution and compensation of damages caused by the offence to the civil party, the appeal courts and the Court of Cassation, upon declaring the offence extinguished for amnesty or statute of limitations, shall decide on the appellate remedy to the effects of the provisions and sections of the judgment concerning civil interests only.

Article 579

Appellate remedy of judgments ordering security measures

1. Judgments of conviction or dismissal may also be appealed with regard to security measures, provided that the appellate remedy is invoked for a different section of the judgment and does not solely concern civil interests.

2. The application for an appellate remedy invoked only against the provisions of the judgment which concern security measures shall be lodged in accordance with Article 680, paragraph 2.

3. The application for an appellate remedy invoked only against the provision concerning confiscation shall be lodged by the same means established for criminal sections.

Article 580

Conversion of the appeal to the Court of Cassation into appeal

1. In the event of joined proceedings as referred to in Article 12, if different appellate remedies are invoked against the same judgment, the appeal to the Court of Cassation shall be converted into an appeal.

Article 581

Form of appellate remedies

1. An appellate remedy shall be invoked by means of a written application containing indication of the appealed decision, the date of the appealed decision and the issuing court. The application shall also specify, under penalty of inadmissibility:

a) the sections or subsections of the decision to which the appellate remedy refers;

b) the elements of evidence which are claimed to be non-existent, have not been gathered or have not been assessed or have been erroneously evaluated;

c) the requests made, also evidentiary;

d) the arguments, with the specification of the *de jure* and *de facto* reasons sustaining each request.

Article 582

Submission of the application for appellate remedy

1. Unless otherwise provided by the law, the application for appellate remedy shall be submitted personally or by means of an appointed person to the Registry of the court that issued the appealed decision. The appointed public official shall write on the application for appellate remedy the date of receipt of the application and the name of the person submitting it, he shall sign it and enclose it to the case file, and he shall also issue, if requested, a proof of receipt.

2. The private parties and their lawyers may apply for the appellate remedy also to the Registry of the Tribunal or of the Justice of the Peace of the place in which they are located, if such place is different from that in which the decision has been issued, or before a consular agent abroad. In such cases, the application for appellate remedy shall be immediately forwarded to the Registry of the court that issued the appealed decision.

Article 583

Forwarding of the application for appellate remedy

1. The parties and their lawyers may apply for the appellate remedy by means of a telegram or an application to be forwarded by registered letter to the Court Registry referred to in Article 582, paragraph 1. The appointed public official shall enclose the envelope containing the application for appellate

remedy in the case file, after writing on the application the day of receipt of the application and placing his signature on it.

2. The application for appellate remedy shall be considered submitted as of the date of shipment of the registered letter or telegram.

3. In case of private parties, the signature of the application shall be certified by a notary, another authorised person or the parties' lawyer.

Article 584

Service of the application for appellate remedy

1. The Registry of the court that has issued the appealed decision shall notify the Public Prosecutor attached to the same court of the application for appellate remedy and shall serve it on the private parties without delay.

Article 585

Time limits for appellate remedies

1. For each party, the time limit to apply for an appellate remedy shall be of:

a) fifteen days for the decisions issued following proceedings in chambers and in the case provided for in Article 544, paragraph 1;

b) thirty days in the case provided for in Article 544, paragraph 2;

c) forty-five days in the case provided for in Article 544, paragraph 3.

2. The time limits provided for in paragraph 1 shall start as of:

a) the service or notification of the notice of filing of the decision issued following proceedings in chambers;

b) the reading of the decision during the hearing, when the grounds of the judgment are also drafted, for all the parties who have been or shall be considered present at the trial, also if they are not present during the reading;

c) the expiry of the time limit set by law or established by the court for the filing of the judgment or, in the case provided for in Article 548, paragraph 2, the day in which the notice of filing has been served or notified;

d) the day in which the notice of filing was notified, together with the extract of the decision, to the Prosecutor General attached to the Court of Appeal for the decisions issued during the hearing by any court of his district other than the Court of Appeal.

3. If the starting date is different for the accused and his lawyer, the time limit which expires last shall apply.

4. Up to fifteen days prior to the hearing, new arguments may be submitted to the Registry of the remedy court in a number of copies necessary for all the parties. The inadmissibility of the application for appellate remedies shall extend to the new arguments.
5. The time limits provided for in this Article shall be observed under penalty of expiry.

Article 586

Appellate remedy of orders issued at the trial

1. Unless otherwise provided by law, the appellate remedy against the orders issued during the preliminary actions or trial may be invoked, under penalty of inadmissibility, only by means of the application for appellate remedy against the judgment. Such application shall be admissible also if the judgment is appealed only in order to contest the order.
2. The appellate remedy invoked against the order shall be jointly assessed with that invoked against the judgment, unless otherwise provided by law.
3. Against the orders concerning personal freedom, immediate appeal shall be admitted, irrespective of the appellate remedy invoked against the judgment.

Article 587

Appellate remedy extension

1. In the case of concurrent persons being involved in the same offence, the appellate remedy invoked by one of the accused persons shall have effect also on the other accused, provided that it is not based exclusively on personal arguments.
2. If proceedings for different offences are joined, the application for appellate remedy submitted by one of the accused persons shall have effect on the other accused, only if the arguments concern the breach of procedural law and not exclusively personal arguments.
3. The application for appellate remedy submitted by the accused shall have effect also on the person with civil liability for damages and the person with civil liability for financial penalties.
4. The application for appellate remedy submitted by the person with civil liability for damages and the person with civil liability for financial penalties shall also have criminal effects on the accused, provided that it is not based exclusively on personal arguments.

Article 588

Suspension of enforcement

1. As of delivery of the decision, enforcement of the decision shall be suspended during the time limits set for applying for an appellate remedy and until the outcome of the remedy trial, unless otherwise provided by law.

2. The applications for appellate remedies against the decisions concerning personal freedom shall in no case suspend the effects of the decision.

Article 589

Waiver of application for appellate remedies

1. The Public Prosecutor attached to the court that delivered the appealed decision may waive the application for appellate remedy he submitted until the opening of the trial. After the beginning of the trial, the waiver may be declared prior to the beginning of the debate by the Public Prosecutor attached to the remedy court, even if such application for appellate remedy has been submitted by a different Public Prosecutor.
2. Private parties may waive the application for appellate remedy also by means of a proxy.
3. The waiver shall be submitted to one of the competent bodies empowered to receive the application for appellate remedy as provided for in Articles 581, 582 and 583 or, during the trial, prior to the opening of the debate.
4. If the application for appellate remedy is discussed and decided in chambers, the waiver may be submitted, prior to the hearing, by the Public Prosecutor who submitted the application for the appellate remedy and, later, by the Public Prosecutor attached to the remedy court, even if such application has been submitted by a different Public Prosecutor.

Article 590

Forwarding of case file following the application for appellate remedy

1. The appealed decision, the application for remedy and the case file shall be forwarded to the remedy court without delay.

Article 591

Inadmissibility of the appellate remedy

1. The appellate remedy shall be inadmissible if:

a) it is lodged by a person who is not entitled to do so or has no interest in appealing;

b) the decision is not appealable;

c) the provisions of Articles 581, 582 , 583 , 585 and 586 are not observed;

d) there is a waiver of application for an appellate remedy.

2. The remedy court, also of its own motion, shall declare, by order, the inadmissibility and shall direct the enforcement of the appealed decision.
3. The order shall be served on the persons who have submitted the application for appellate remedy and may be appealed to the Court of Cassation. If the application for appellate remedy has been submitted

personally by the accused, the order shall be served also on his lawyer.
4. The inadmissibility may be declared at any stage and instance of the proceedings, provided that it has not been raised under the provision of paragraph 2.

Article 592

Condemnation to costs at remedy trials

1. By means of the decision rejecting or stating the inadmissibility of the application for appellate remedy, the private party who submitted it shall be sentenced to pay the costs of the proceedings.
2. The co-accused persons who participated in the trial under Article 587 shall be sentenced to pay the costs jointly with the accused who submitted the application for appellate remedy.
3. The accused who is convicted at the remedy trial shall be sentenced to pay the costs of previous trials, even in the event of his dismissal in such proceedings.
4. In the appellate remedy for civil interests only, the unsuccessful private party shall be sentenced to pay the costs.

TITLE II

APPEAL

Article 593

Appeal cases

1. Without prejudice to the provisions of Articles 443, paragraph 3, **448**, paragraph 2, 579 and 680, the Public Prosecutor and the accused may lodge an appeal against judgments of conviction.
2. The accused and the Public Prosecutor may lodge appeals against the judgments of dismissal in the cases provided for in Article 603, paragraph 2, if evidence is decisive ([1]). If the court, preliminarily, does not order the renewal of the trial evidentiary hearing, it shall declare, by order, the inadmissibility of the appeal. Within forty-five days of the service of the decision, the parties may lodge appeals with the Court of Cassation also against first-instance judgments.
3. Judgments of conviction sentencing only to the penalty of a fine are not appealable.

([1]) Constitutional Court judgments No 26/2007 and 85/2008 have granted the right to appeal against judgments of dismissal also in cases other than those provided for in paragraph 2 respectively to the Public Prosecutor and the accused.

Article 594

(...)

Article 595

Incidental appeal

1. The party who did not apply for an appellate remedy may lodge an incidental appeal within fifteen days of the day of receipt of the notice or service provided for in Article 584.

2. The incidental appeal shall be lodged, submitted and served under the provisions of Articles 581, 582, 583 and 584.

3. The incidental appeal by the Public Prosecutor shall have the effects provided for in Article 597, paragraph 2. Such appeal shall have no effects against the co-accused who did neither lodge the appeal nor participate in the appeal trial. The provisions of Article 587 shall apply.

4. The incidental appeal shall lose effectiveness in case of inadmissibility of the main appeal or its waiver.

Article 596

Court with competence

1. The Court of Appeal shall decide on the appeal lodged against the judgments delivered by the Tribunal.

2. The Assize Court of Appeal shall decide on the appeal lodged against the judgments delivered by the Court of Assizes.

3. Without prejudice to Article 428, the Court of Appeal and the Assize Court of Appeal shall decide on the judgments delivered by the Preliminary Investigation Judge in the event of offences that fall within the competence of the Tribunal or the Court of Assizes, respectively.

Article 597

Cognisance of appeal courts

1. The appeal shall assign cognisance of the proceedings to the second-instance court only with regard to the subsections of the decision to which the raised arguments refer.

2. In cases where the appellant is the Public Prosecutor:

a) if the appeal concerns a judgment of conviction, the court may, within the limits of competence of the first-instance court, provide a more serious legal definition for the criminal act, change the type or increase the length or amount of the penalty, revoke any benefits, apply, if necessary, security measures and adopt any other decision imposed or allowed by law;

b) if the appeal concerns a judgment of dismissal, the court may deliver a judgment of conviction and issue the decisions referred to in letter *a)* or dismiss the accused for a reason other than that referred to in the appealed judgment;

c) if the court confirms the first-instance judgment, it may apply, amend or exclude, in the cases provided for by law, the accessory penalties and the security measures.

3. In cases where the appellant is only the accused, the court shall neither impose a more serious penalty in terms of type, length or amount, nor apply a new or more serious security measure, nor dismiss the accused for a less favourable reason than that referred to in the appealed judgment nor revoke any benefits. The aforementioned rules apply without prejudice to the right to assign a more serious legal definition to the criminal act, within the limits referred to in paragraph 1 and provided that the offence falls within the competence of the first-instance court.

4. In any case, acceptance of the appeal lodged by the accused concerning concurring circumstances or offences, also in the case where they have been unified for continuation, entails a corresponding reduction of the total penalty imposed.

5. In conjunction with the judgment, the following may be applied, also of the court's own motion: suspended sentence, non reporting of the conviction in the criminal record certificate and one or more mitigating circumstances. Whenever necessary, a comparative assessment of the circumstances may also be performed under Article 69 of the Criminal Code.

Article 598

Extension of the provisions of the first-instance trial to the appeal trial

1. The provisions concerning the first-instance trial shall be observed in the appeal trial, if applicable, without prejudice to the provisions of the following Articles.

Article 599

Decisions in chambers

1. In the event of appeals made exclusively against the type or measure of the penalty, also with regard to the comparison among circumstances, or the applicability of the general mitigating circumstances, of substitute sanctions, of the suspended sentence or the non recording of the conviction in the criminal record certificate, the court shall decide on the appeal in closed sessions in compliance with Article 127.

2. The hearing shall be postponed in case of a legal impediment of the accused who has expressed his intention to appear.

3. In the event of renewal of the trial evidentiary hearing, the court shall gather the evidence in chambers, under Article 603, with the compulsory participation of the Public Prosecutor and the lawyers. If the lawyers are not present when the renewal is ordered, the court shall set a new hearing and order that a copy of the decision be notified to the Public Prosecutor and served on the lawyers.

4. (...)

5. (...)

Article 599-*bis*

Agreement on the arguments for appeal also with waiver

1. The appeal court shall decide in chambers also when the parties require it in compliance with Article 589 and declare that they agree on the acceptance, in whole or in part, of the arguments for the appeal and the waiver of other possible arguments.

Should the arguments for which acceptance is requested entail the redetermination of the new sentence, the Public Prosecutor, the accused and the person with civil liability for financial penalties shall inform the appeal court of the sentence they have agreed on.

2. Paragraph 1 shall not be applied to the proceedings for the crimes referred to in Article 51, paragraphs 3-*bis* and 3 -*quater,* the proceedings for the crimes referred to in Articles 600-*bis,* 600-*ter,* paragraph 1, 2, 3 and 5, 600-*quater,* paragraph 2, 600-*quater.* 1, concerning the criminal conduct of producing and selling pornographic material, 600-*quinquies,* and 609-*bis,* 609-*ter,* 609-*quater* and 609-*octies* of the Criminal Code, as well as the proceedings against whoever has been declared to be either a habitual offender, a professional offender or a person with a tendency to commit offences.

3. Should the appeal court hold that it cannot accept the request, it shall summon the parties to appear at trial. In this case the request and the waiver shall cease to be effective, but may be submitted again at trial.

4. Without prejudice to Article 53, paragraph 1, the Prosecutor General attached to the Court of Appeal, after consulting the Public Prosecutors of his Office and the Public Prosecutors of the Republic of his district, shall specify the criteria suitable for directing the evaluation of the Public Prosecutors during the hearing, taking into account the type of offences and the complexity of the decisions.

Article 600

Decisions on the enforcement of civil convictions

1. If the first-instance court omits to decide on or rejects the request for temporary enforcement submitted in compliance with Article 540, paragraph 1, the civil party may resubmit such request by applying for appellate remedies against the first-instance judgment before the appeal court that, upon the party's request, shall decide in chambers on the enforcement of civil convictions, by issuing an order.

2. The person with civil liability for damages and the accused may request, by following the same procedures, the revocation or suspension of the temporary enforcement.

3. Upon request of the same parties, the appeal court may order, following the provisions of paragraph 1, that the enforcement of the sentence to pay interim compensation be suspended if this can result in a serious and irreparable damage.

Article 601

Actions prior to trial

1. With the exception of the cases provided for in Article 591, the President of the bench shall order, without delay, to summon the accused who has lodged the appeal. He shall also order to summon the accused who has not lodged an appeal in case of appeal by the Public Prosecutor, provided that there is at least one of the cases referred to in Article 587 or the appeal has been lodged for civil interests only.
2. If the court proceeds in chambers, under Article 599, this should be mentioned in the decree of summons.
3. The decree of summons for the trial appeal shall contain the requirements provided for in Article 429, paragraph 1, letters *a), f), g),* as well as reference to the court with competence. The time limit to appear shall be no less than twenty days.
4. The summons of the person with civil liability for damages, the person with civil liability for financial penalties and the civil party shall be ordered in any case. The civil party shall also be summoned if the appeal against a judgment of dismissal has been lodged only by the accused.
5. Lawyers shall be informed at least twenty days before the date set for the appeal trial.
6. The decree of summons shall be considered null if identification of the accused is not certain or if one of the requirements provided for in Article 429, paragraph 1, letter *f*), is missing or is insufficient.

Article 602

Appeal trial

1. During the hearing, the President of the bench or a judge appointed by him shall deliver the oral report on the case.

1 *-bis.* Should the parties agree on requesting the acceptance, in whole or in part, of the arguments for the appeal in accordance with Article 599-*bis,* if the appeal court holds that the request must be accepted, it shall decide immediately. Conversely, it shall order the trial to continue. The request and the waiver to the arguments shall have no effect if the decision of the appeal court differs from what has been agreed on.

2. (...)
3. During the trial, documents of the first-instance trial, within the limitations provided for in Article 511 and following, documents of actions performed during the previous stages may be read, also of the court's own motion.
4. The provisions of Article 523 shall be observed for the debate.

Article 603

Renewal of the trial evidentiary hearing

1. If one of the parties has requested, in the appeal application or the arguments submitted under Article 585, paragraph 4, that evidence already gathered during the first-instance trial be taken anew or that new evidence be gathered, the court shall order the renewal of the trial evidentiary hearing, if it holds that it is unable to decide on the basis of the available elements of evidence.

2. If new evidence arises or is discovered after the first-instance trial, the court shall order the renewal of the trial evidentiary hearing within the limits provided for in Article 495, paragraph 1.

3. The renewal of the trial evidentiary hearing shall be ordered of the court's own motion if the court holds that it is absolutely necessary.

3-*bis.* If the Public Prosecutor appeals against a judgment of dismissal on grounds concerning the evaluation of oral evidence, the appeal court shall order the renewal of the trial evidentiary hearing.

4. (…)

5. The court shall decide on the renewal of the trial evidentiary hearing by order, after hearing the parties.

6. The renewal of the trial evidentiary hearing, ordered under the provisions of the previous paragraphs, shall be performed immediately. In case of impossibility, the trial shall be suspended for a time limit of up to ten days.

Article 604

Cases of nullity

1. The appeal court, in the cases provided for in Article 522, shall declare the nullity of the appealed judgment, in whole or in part, and shall order that the case file be forwarded to the first-instance court, in the event of a conviction for a different criminal act or the application of an aggravating circumstance for which the law sets a type of penalty other than the standard one imposed for such offence or the application of an aggravating circumstance having special effect, provided that mitigating circumstances are not considered as prevailing or equivalent.

2. If mitigating circumstances are considered as prevailing or equivalent or aggravating circumstances other than those provided for in paragraph 1 are applied, the appeal court shall exclude the aggravating circumstances, perform a new comparison, if necessary, and establish a new penalty.

3. In case of conviction for a concurrent offence or a new criminal act, the appeal court shall declare the related section of the judgment null and eliminate the corresponding penalty, ordering that the new decision be forwarded to the Public Prosecutor for his decisions.

4. In the event of occurrence of one of the nullities referred to in Article 179, entailing the nullity of either

the decision ordering the trial or the first-instance judgment, the appeal court shall declare the nullity by judgment and shall forward the case file to the court that was in charge of the case when the nullity occurred. The court shall proceed in the same way upon the occurrence of one of the nullities referred to in Article 180 which has not been regularised and which entails the nullity of either the decision ordering the trial or the first-instance judgment.

5. In the case of other nullities which have not been regularised, the appeal court may order the renewal of the null acts or, after declaring the nullity, decide on the merits of the case, if it recognises that the act does not provide any necessary elements for the trial.

5 *-bis.* In the cases where proceedings have been held in the absence of the accused, if there is evidence that Articles 420-*ter* or 420-*quater* should have been applied, the appeal court shall declare the judgment null and order the case file be returned to the first-instance court. The appeal court shall also annul the judgment and order the case file be returned to the first-instance court if the accused proves that his absence was due to his inculpable unawareness of the first-instance trial. The provision of Article 489, paragraph 2, shall apply.

6. If the first-instance court has declared that the offence is extinguished or that the criminal prosecution should not have been initiated or continued, the appeal court shall order, if necessary, the renewal of the trial and decide on the merits of the case, if it recognises that the statement is erroneous.

7. If the first-instance court has rejected the request for immediate payment to extinguish prosecution, the appeal court shall grant the request and suspend the trial setting a maximum term of no more than ten days for the payment of the due amounts, if it recognises that the decision is erroneous. If the payment takes place within the term, the appeal court shall deliver a judgment of dismissal.

8. In the cases provided for in paragraph 1, if the appeal court annuls a judgment delivered by the Court of Assizes or a collegial Tribunal, it shall order that the case file be forwarded to a different chamber of the same Court or Tribunal or, in their absence, to the closer Court of Assizes or Tribunal. If it annuls a judgment delivered by a single-judge Tribunal or the Preliminary Investigation Judge, it shall order that the case file be forwarded to the same Tribunal. The judge shall however be different from the one who delivered the annulled judgment.

Article 605

Judgment

1. With the exception of the cases provided for in Article 604, the appeal court shall deliver a judgment confirming or amending the appealed judgment.

2. The decisions of the appeal court on civil actions shall be immediately enforceable.

3. A copy of the appeal judgment, along with the case file, shall be forwarded without delay by the Court Registry to the first-instance court, if it has competence for enforcing the judgment and no appeal has been lodged with the Court of Cassation.

TITLE III

APPEAL TO THE COURT OF CASSATION

CHAPTER I

GENERAL PROVISIONS

Article 606

Cases of appeal to the Court of Cassation

1. The appeal to the Court of Cassation may be lodged if it is based on the following arguments:

a) the court exercises a power that is granted by law to legislative or administrative bodies or not allowed to public authorities;

b) failure to comply with or misapplication of criminal law or other legal rules which must be considered in the application of criminal law;

c) failure to comply with the procedural rules established under penalty of nullity, exclusion of evidence, inadmissibility or expiry;

d) decisive evidence is not gathered, when a party has requested its gathering also during the trial evidentiary hearing, exclusively in the cases provided for in Article 495, paragraph 2;

e) the grounds of the judgment are lacking, contradictory or manifestly illogical, when the defect results from the text of the appealed decision or from other documents of the proceedings specified in the arguments for the appeal to the Court of Cassation.

2. In addition to cases and effects established in specific provisions, the appeal to the Court of Cassation may be lodged against judgments which are delivered at the appeal stage or are not appealable.

3. The appeal to the Court of Cassation is inadmissible if it is based on arguments other than those allowed by law or which are manifestly groundless or on breaches of law that are not raised in the arguments for the appeal, with the exception of the cases provided for in Articles 569 and 609, paragraph 2.

Article 607

Appeal to the Court of Cassation by the accused person

1. The accused person may lodge an appeal to the Court of Cassation against a judgment of conviction or dismissal or a judgment of no grounds to proceed which is not appealable.

2. The accused person may also lodge an appeal only against the provisions of the judgment concerning

the costs of the proceedings.

Article 608

Appeal to the Court of Cassation by the Public Prosecutor

1. The Prosecutor General attached to the Court of Appeal may lodge an appeal with the Court of Cassation against any judgment of conviction or dismissal which is delivered at the appeal stage or is not appealable.

1 *-bis.* Should the appeal court deliver a judgment that confirms the judgment of dismissal, the appeal to the Court of Cassation may be lodged only if it is based on the arguments specified in Article 606, paragraph 1, letters *a), b)* and *c).*

2. The Public Prosecutor of the Republic attached to the Tribunal may lodge an appeal with the Court of Cassation against any judgment of conviction or dismissal that is not appealable, which has been delivered by the Court of Assizes, the Tribunal or the Preliminary Investigation Judge attached to the Tribunal.

3. (...)

4. The Prosecutor General and the Public Prosecutor of the Republic attached to the Tribunal may also lodge an appeal with the Court of Cassation in the cases provided for in Article 569 and in other legal provisions.

Article 609

Cognisance of the Court of Cassation

1. The appeal to the Court of Cassation assigns cognisance of the proceedings to the Court of Cassation, exclusively with regard to the arguments raised.

2. The Court of Cassation shall also decide on the issues raised of the court's own motion at any stage and instance of the proceedings and on those issues which could not have been raised at the appeal stage.

CHAPTER II

PROCEDURE

Article 610

Actions prior to trial

1. If the President of the Court of Cassation finds a reason for inadmissibility of the appeal to the Court of Cassation, he shall assign it to a dedicated chamber for decision. The President of the chamber shall set the date for the decision in chambers. The Court Registry shall inform the Prosecutor General and the lawyers about the filing of the case file and the date of the hearing within the time limit referred to in paragraph 5. The notice shall contain the specification of the cause for inadmissibility identified from the

grounds for the appeal to the Court of Cassation. Paragraph 1 of Article 611 shall apply. If inadmissibility is not declared, the case file shall be returned to the President of the Court of Cassation.

1 -*bis.* The President of the Court of Cassation shall assign the appeals in Cassation to individual chambers according to the criteria established by the laws on the justice system.

2. The President of the Court of Cassation, either upon request of the Prosecutor General or the lawyers, or of his own motion, shall assign the appeal to the Court of Cassation to the Joint Chambers when the issues raised are particularly relevant or when conflicts among the decisions of individual chambers need to be solved.

3. The President of the Court of Cassation, in case of proceedings in Joint Chambers, or the President of the chamber shall set the date of the appeal in the Court of Cassation in open court or in chambers and shall appoint a reporting judge. The President of the Court of Cassation shall also order the joining of the trials in the cases provided for in Article 17 and the separation of the trials if this contributes to a smooth decision process.

4. (...)

5. At least thirty days prior to the date of the hearing, the Court Registry shall inform the Prosecutor General and the lawyers about the hearing and shall specify in the notice whether the appeal to the Court of Cassation shall be decided in open court or in chambers.

5-*bis.* In the cases provided for in Article 591, paragraph 1, letters *a),* exclusively as regards the lack of entitlement to lodge an appellate remedy, *b), c),* except for the non-compliance with Article 581, and *d),* the Court of Cassation shall declare the appeal to the Court of Cassation to be inadmissible without any formal procedure. Similarly, upon the parties' request, the Court shall declare the inadmissibility of the appeal to the Court of Cassation against both the judgment for the application of the sentence and the judgment delivered in accordance with Article 599-*bis.* An extraordinary appeal to the Court of Cassation may be lodged against the Court's decision in accordance with Article 625-*bis.*

Article 611

In chambers proceedings

1. In addition to the cases specifically provided for by the law, the Court of Cassation shall proceed in chambers whenever it must decide on any appeal to the Court of Cassation against decisions that were not delivered during a trial, except for the judgments delivered under Article 442. Unless otherwise provided and as an exception to Article 127, the Court of Cassation shall decide on the arguments and requests of the Prosecutor General and the briefs of the other parties without the participation of their lawyers. All the parties may submit new arguments and briefs up to fifteen days prior to the hearing and

may submit reply briefs up to five days prior to the hearing.

2. (...)

Article 612

Suspension of enforcement of a civil conviction

1. Upon request of the accused or the person with civil liability for damages, the Court of Cassation may suspend, in a pending appeal before the same Court, the enforcement of a civil conviction if this may cause serious and irreparable damage. The decision on the request for suspension of a civil conviction shall be taken in chambers by the Court of Cassation, by issuing an order.

Article 613

Lawyers

1. The application for appeal to the Court of Cassation, the briefs and new arguments must be signed, under penalty of inadmissibility, by lawyers recorded in the special register of the Court of Cassation. Before the same Court, the parties shall be represented by their lawyers.

2. For all the actions performed during the proceedings before the Court of Cassation, the address for service of the parties corresponds to the address of their lawyers, without prejudice to the provision of paragraph 4. The lawyer shall be appointed for lodging the appeal with the Court of Cassation or afterwards; if a lawyer is not appointed, the lawyer shall be the person who assisted the party in the latest trial, provided that he meets the requirements specified in paragraph 1.

3. If the accused does not have a retained lawyer, the President of the bench shall follow the provisions of Article 97.

4. The notices which must be given to the lawyer shall also be served on the accused who is not assisted by a retained lawyer.

5. If the appeal to the Court of Cassation concerns civil interests, the President of the bench shall appoint a lawyer, if so requested by the party, complying with the rules on legal aid.

Article 614

Trial

1. The rules concerning the publicity, order and discipline of hearings and the management of the debate in first-and second-instance trials, if applicable, shall be observed before the Court of Cassation.

2. Private parties may appear before the Court through their lawyers.

3. In the set hearing, the President of the bench shall verify the appearance of the parties and the regularity of the notices and shall keep a record of his own activities; the President of the bench or a judge

delegated by him shall then deliver the oral report on the case.

4. After the Public Prosecutor's closing speech, the lawyers of the civil party, of the person with civil liability for damages, of the person with civil liability for financial penalties and of the accused shall present their defences in the aforementioned order. No argument is allowed.

Chapter III

JUDGMENT

Article 615

Deliberation and publication

1. The Court of Cassation shall hand down the judgment in closed sessions immediately after the open-court hearing is concluded, unless the President of the bench believes it is essential to postpone the deliberation to a further hearing due to the high number or the importance of the issues to be decided. The provisions of Articles 527 and 546 shall be observed, provided they are applicable.

2. Unless the Court of Cassation follows the provisions of Articles 620, 622 and 623, it shall either declare the appeal to the Court of Cassation inadmissible or it shall reject it.

3. The judgment shall be read at the hearing immediately after its deliberation by the President of the bench or a judge delegated by him who reads the operative part.

4. Prior to its reading, the operative part of the judgment shall be signed by the President of the bench.

Article 616

Costs and financial penalties in case of rejection or inadmissibility of the appeal to the Court of Cassation

1. With the decision whereby the appeal to the Court of Cassation is declared inadmissible or rejected, the private party who has lodged the appeal shall be sentenced to the payment of costs of the proceedings. If the appeal to the Court of Cassation is declared inadmissible, the private party shall also be sentenced by the same decision to the payment of a sum ranging from EUR 258 to EUR 2, 065 to the Treasury of Fines. This sum may be increased to up to three times, taking into account the cause for inadmissibility of the appeal to the Court of Cassation. The same decision may be taken when the appeal to the Court of Cassation is rejected.

1 *-bis.* The amounts specified in paragraph 1 shall be adjusted every two years in line with the variation on the consumer price index for blue and white-collar households that occurred in the two preceding years. This adjustment shall be made by means of a decree of the Ministry for Justice, in agreement with the Ministry for the Economy and Finance and the variation shall be evaluated by the National Institute for Statistics.

Article 617

Grounds of the judgment and filing of the judgment

1. After the deliberation, the President of the bench or a judge appointed by him shall draft the grounds of the judgment. The provisions concerning the judgment in the first-instance trial shall be observed, provided they are applicable.

2. The judgment, undersigned by the President of the bench and
the drafter, shall be filed with the Court Registry within thirty days of its deliberation.

3. If the President of the bench orders so, the Court of Cassation shall meet in closed sessions to read and approve the text of the grounds of the judgment. The Court of Cassation shall decide on the proposals for modification, integration or deletion of the judgment without any formalities.

Article 618

Decisions by the Joint Chambers

1. Should a chamber realize that the question of law under its examination has caused or may cause judicial conflict, it may, upon request of the parties or of its own motion, refer the appeal to the Joint Chambers of the Court of Cassation, by issuing an order.

1 *-bis.* Should a chamber not share the principle of law affirmed by the Joint Chambers, it shall refer the decision on the appeal to the Joint Chambers of the Court of Cassation, by issuing an order.

1-*ter.* The principle of law may be affirmed by the Joint Chambers, also of their own motion, if the appeal to the Court of Cassation is declared inadmissible for a reason that may have arisen later.

Article 619

Rectification of errors not leading to annulment

1. Errors of law in the grounds of the judgment and wrong reference to legal texts shall not lead to the annulment of the appealed judgment, unless they have had a decisive influence on the operative part of the judgment. The Court of Cassation shall in any case specify any criticisms and rectifications in the judgment.

2. If only the type, length or amount of the sentence must be rectified in the appealed judgment due to a denomination or calculation error, the Court of Cassation shall rectify the judgment without annulling it.

3. The same procedure shall be followed when there exists a more favourable law for the accused, also if it has been passed after lodging the appeal with the Court of Cassation, if no new evidence is necessary.

Article 620

Annulment without referral

1. In addition to the cases specifically provided for by the law, the Court of Cassation shall deliver a judgment of annulment without referral:

a) if the criminal act is not deemed an offence by law, if the offence is extinguished or if prosecution should not have been started or continued;

b) if the offence does not pertain to the jurisdiction of the ordinary court;

c) if the appealed decision contains provisions exceeding jurisdictional powers, exclusively with regard to such provisions;

d) if the appealed decision is not allowed by law;

e) if the judgment is null according to and within the limits of Article 522 in relation to a joint offence;

f) if the judgment is null according to and within the limits of Article 522 in relation to a new criminal act;

g) if the judgment of conviction has been delivered due to mistaken identity;

h) if there is contradiction between the appealed judgment or order and a previous judgment or order concerning the same person and the same subject, delivered by the same or another criminal court;

i) if the appealed judgment has decided in the second instance on a subject matter on which no appeal is allowed;

l) if the Court of Cassation holds it can either reach a decision if no further ascertainment of the alleged offences is needed, set a new sentence based on the decisions of the merit court or take any other necessary decision, and in any other case in which it believes referral is superfluous.

Article 621

Effects of the annulment without referral

1. In the case provided for in Article 620, paragraph 1, letter *b),* the Court of Cassation shall order that the case file be forwarded to the authority with competence appointed by the Court. In the case provided for in letter *e)* and in the case provided for in letter *f),* the Court of Cassation shall order that the Public Prosecutor be informed of the decision so that he can take his decisions. In the case provided for in letter *h),* the Court of Cassation shall order the enforcement of the first judgment or order. However, in case of judgment of conviction, it shall order the enforcement of the judgment imposing the less serious conviction established according to Article 669. In the case provided for in letter *i),* the Court of Cassation shall hold the trial, classifying the application for appellate remedies as an appeal to the Court of Cassation. In the case provided for in letter *l),* the Court of Cassation shall proceed to the determination of the sentence or give the necessary instructions.

Article 622

Annulment of the judgment for civil effects only

1. Without prejudice to the criminal effects of the judgment, if the Court of Cassation annuls only the provisions or the sections concerning the civil action or if it accepts the civil party's appeal to the Court of Cassation against the judgment of dismissal of the accused, it shall refer the appeal, if necessary, to the civil court with competence over the value of the case at the appeal stage, also if the annulment concerns a judgment which is not appealable.

Article 623

Annulment with referral

1. With the exception of the cases provided for in Articles 620 and 622:

a) if an order is annulled, the Court of Cassation shall order that the case file be forwarded to the court that delivered the order, who shall proceed by conforming to the judgment of annulment;

b) if a judgment of conviction is annulled in the cases provided for in Article 604, paragraphs 1, 4 and 5-*bis,* the Court of Cassation shall order that the case file be forwarded to the first-instance court;

c) if a judgment of an Assize Court of Appeal or a Court of Appeal or a Court of Assizes or a collegial Tribunal is annulled, the trial shall be referred respectively to another chamber of the same Court or Tribunal or, in their absence, to the nearest Court or Tribunal;

d) if the judgment of a single-judge Tribunal or Preliminary Investigation Judge is annulled, the Court of Cassation shall order that the case file be forwarded to the same Tribunal; however, the judge must be different from the judge who delivered the annulled judgment.

Article 624

Partial annulment

1. If the annulment is not declared for all the provisions of the judgment, the parts of the judgment which are not essentially related to the annulled part shall be considered final.

2. If necessary, the Court of Cassation shall state, in the operative part of the judgment, which parts of the judgment become final. The omission of such statement shall be rectified by the Court in chambers by issuing an order which must be transcribed in the margin or at the end of both the judgment and any copy of the judgment that may be issued subsequently. The order may be delivered of the Court's own motion or upon request of the court with competence for the referral, the Public Prosecutor attached to the same court or the private party concerned. The request shall be submitted without any formalities.

3. The Court of Cassation shall decide on rectification in chambers without observing the provisions of Article 127.

Article 624-*bis*

Cessation of precautionary measures

1. In case of annulment of the judgment of appeal, the Court of Cassation shall order the cessation of precautionary measures.

Article 625

Decisions subsequent to a judgment

1. In case of annulment with referral, the Registry of the Court of Cassation shall forward, without delay, the case file along with a copy of the judgment to the court that must proceed with a new trial.
2. In case of rejection or statement of inadmissibility of the appeal to the Court of Cassation, the Court Registry shall forward the case file and a copy of the operative part of the judgment to the court that issued the appealed decision.
3. In case of annulment without referral or in case of rectification, the Court Registry shall forward the case file and a copy of the judgment to the court referred to in paragraph 2.
4. In any case, the Registry of the court that issued the appealed decision shall note the Court's decision in the margin or at the end of the original version of the judgment.

Article 625-*bis*

Extraordinary appeal to the Court of Cassation due to a clerical or factual error

1. The convicted person is allowed to submit a request for rectification of a clerical or factual error contained in the decisions delivered by the Court of Cassation.
2. The request shall be submitted by the Prosecutor General or the convicted person, with an appeal to the Court of Cassation to be lodged with the Court of Cassation within one hundred and eighty days of the filing of the decision. The lodging of an appeal with the Court of Cassation shall not suspend the effects of the decision but, in exceptionally serious cases, the Court of Cassation shall direct their suspension by order.
3. The clerical error referred to in paragraph 1 may be raised by the Court of Cassation, of its own motion, at any moment and without any formal procedure. The factual error may be raised by the Court of Cassation, of its own motion, within ninety days of delivering the decision.
4. If the request is submitted for a reason other than that provided for in paragraph 1 or, if the request concerns the rectification of a factual error, beyond the time limit provided for in paragraph 2, or if it is proven to be manifestly groundless, the Court of Cassation, also of its own motion, shall issue an order to declare its inadmissibility. Otherwise, the Court of Cassation shall decide in chambers, under Article 127, and, if it accepts the request, it shall adopt the necessary decisions to rectify the error.

Article 626

Effects of the judgment on the decisions on persons or property

1. If, after the delivery of the judgment by the Court of Cassation, a precautionary measure, an accessory penalty or a security measure must cease, the Court Registry shall immediately notify the Prosecutor General of the same Court about the operative part of the judgment so that he may issue the necessary instructions.

Article 627

Referral trial after annulment

1. In the referral trial no debate on the competence assigned by the judgment of annulment is permitted, without prejudice to the provisions of Article 25.
2. The referral court shall decide, exercising the same powers of the court whose judgment has been annulled, without prejudice to the limitations established by law. If a judgment of appeal is annulled, the court shall order the renewal of the trial evidentiary hearing, if so requested by the parties, for the gathering of evidence that is relevant for the decision.
3. The referral court shall conform to the judgment of the Court of Cassation as regards any issue of law it has decided upon.
4. In the referral trial, no issues of nullity, even if absolute, or of inadmissibility, that occurred in previous trials or in the course of preliminary investigations shall be raised.
5. If any of the accused that were convicted by the annulled judgment lodges an appeal with the Court of Cassation, the annulment delivered in favour of the appellant shall also benefit the person who has not submitted the appeal to the Court of Cassation, except in the case where the reason for annulment is exclusively personal. The accused who may benefit from such extensive effect shall be summoned and shall have the right to participate in the referral trial.

Article 628

Possibility to appeal the judgment of the referral court

1. The judgment rendered by the referral court may be appealed to the Court of Cassation if it is delivered at the appeal stage and by the means provided for by law if it is delivered in the first instance.
2. The judgment of the referral court may, in any case, only be appealed for arguments which do not concern the issues already decided by the Court of Cassation or due to failure to comply with the provision of Article 627, paragraph 3.

TITLE IV

REVISION

Article 629

Convictions subject to revision

1. The revision of judgments of conviction or judgments issued under Article 444, paragraph 2, or of final criminal decrees of conviction may be performed at any time and in the cases established by law in favour of the convicted persons, even if the sentence has already been enforced or is extinguished.

Article 629-*bis*

Rescission of final judgment

1. The accused who has been absent for the entire duration of proceedings and has been convicted or ordered a security measure with a final judgment, can obtain the rescission of the final judgment if he can prove that his absence was due to his inculpable unawareness of the proceedings.
2. The request shall be submitted to the Court of Appeal in whose district the decision has been taken, under penalty of inadmissibility. Submission shall take place within thirty days of acknowledgement by the accused of the proceedings and shall be made either in person or through a lawyer holding a special power of attorney authenticated as per Article 583, paragraph 3.
3. The Court of Appeal shall decide in accordance with Article 127 and, should it accept the request, it shall rescind the judgment and order that the case file be forwarded to the first instance court. The provision of Article 489, paragraph 2, shall apply.
4. Articles 635 and 640 shall apply.

Article 630

Cases of revision

1. Revision may be requested:

a) if the facts underlying the judgment or the criminal decree of conviction are incompatible with the facts established in another final criminal judgment issued by the ordinary court or a special court;

b) if the judgment or criminal decree of conviction confirm the existence of the offence committed by the convicted person following a judgment issued by the civil or administrative court, which has been subsequently revoked and whereby a decision has been taken on one of the preliminary issues provided for in Article 3 or one of the issues provided for in Article 479;

c) if new evidence is found or discovered after conviction and, either independently or jointly with already assessed evidence, proves that the convicted person must be dismissed under Article 631;

d) if it is proven that the judgment of conviction has been delivered as a consequence of false documents

or statements provided during the trial or any other criminal act deemed an offence by law ([1]).

([1]) Constitutional Court judgment No 113/2011 has added the possibility to request revision when it is necessary to reopen the proceedings in order to comply with a final judgment of the European Court of Human Rights.

Article 631

Limitations to revision

1. Under penalty of inadmissibility of the request, the arguments underlying the request for revision must be such as to prove, if ascertained, that the convicted person must be dismissed under Article 529, 530 or 531.

Article 632

Persons entitled to submit a request for revision

1. Revision may be requested by:

a) the convicted person or one next of kin or the convicted person's guardian and, if the convicted person is deceased, his heir or one next of kin;

b) the Prosecutor General attached to the Court of Appeal in whose district the judgment of conviction has been delivered. The persons referred to in letter *a)* may join their request to that of the Prosecutor General.

Article 633

Form of the request

1. The request for revision shall be submitted personally or through a proxy. The request shall contain the specification of the reasons and the evidence justifying the request and must be submitted, along with any other documents and documentary evidence, to the Registry of the Court of Appeal pinpointed according to the criteria referred to in Article 11.

2. In the cases provided for in Article 630, paragraph 1, letters *a)* and *b),* the request must include the authentic copies of the judgments or criminal decrees of conviction specified therein.

3. In the case provided for in Article 630, paragraph 1, letter *d),* the request must include an authentic copy of the final judgment of conviction for the offence specified therein.

Article 634

Declaration of inadmissibility

1. If the request is submitted for reasons other than those provided for in Articles 629 and 630 or it is submitted without complying with the provisions of Articles 631, 632, 633 and 641 or the request is proven to be manifestly groundless, the Court of Appeal shall issue an order declaring, also of its own

motion, its inadmissibility and may sentence the private person who submitted the request to the payment of a sum ranging from EUR 258 to EUR 2, 065 to the Treasury of Fines.

2. The order shall be served on the convicted person and to the person who submitted the request, who may appeal to the Court of Cassation. If the appeal to the Court of Cassation is accepted, the Court of Cassation shall refer the revision trial to a different Court of Appeal pinpointed according to the criteria referred to in Article 11.

Article 635

Suspended enforcement

1. The Court of Appeal may direct, at any moment and by order, the suspension of enforcement of the sentence or the security measure and may apply, if necessary, one of the coercive measures provided for in Articles 281, 282, 283 and 284. Any failure to comply with the measure shall result in the Court of Appeal revoking the order and directing the enforcement of the sentence or security measure.

2. The order deciding on the suspension of the enforcement, the application of coercive measures and the revocation may be appealed to the Court of Cassation by the Public Prosecutor and the convicted person.

Article 636

Revision trial

1. The President of the Court of Appeal shall issue the decree of summons under Article 601.

2. The provisions of Titles I and II of Book VII shall be observed, if applicable and within the limits of the reasons specified in the request for revision.

Article 637

Judgment

1. The judgment shall be delivered according to the provisions of Articles 525, 526, 527 and 528.

2. If the request for revision is accepted, the Court shall revoke the judgment of conviction or the criminal decree of conviction and order the dismissal, specifying the cause in the operative part of the judgment.

3. The Court shall not order the dismissal solely on the basis of a different evaluation of the evidence gathered in the previous trial.

4. If the request is rejected, the Court shall sentence the private party who submitted it to the payment of the costs of the proceedings and, if the sentence or the security measure has been suspended, shall order its enforcement.

Article 638

Revision in favour of the deceased convicted person

1. In the event of death of the convicted person after submission of the request for revision, the President

of the Court of Appeal shall designate an administrator who shall exercise the rights which would have been granted to the convicted person in the revision trial.

Article 639

Decisions after acceptance of the request

1. When the Court of Appeal delivers a judgment of dismissal after acceptance of a request for revision, also in the case provided for in Article 638, it shall order the refunding of the sums paid for, enforcing the conviction to financial penalties, pecuniary security measures, costs of proceedings, prison detention costs and compensation for damages in favour of the civil party summoned to the revision trial. The Court of Appeal shall also order the restitution of anything that may have been confiscated, except for the items provided for in Article 240, paragraph 2, number 2), of the Criminal Code.

Article 640

Possibility to appeal the judgment

1. The judgment delivered at the revision trial may be appealed to the Court of Cassation.

Article 641

Effects of inadmissibility or rejection

1. The order declaring the inadmissibility of the request or judgment rejecting the request does not override the right to submit a new request based on different arguments.

Article 642

Publication of judgment of acceptance of the request

1. Upon request of the person concerned, the extract of the judgment of acceptance shall be posted by the Court Registry in the municipality where the judgment of conviction has been delivered and in the municipality of the latest habitual residence of the convicted person. The bailiff shall file the certificate proving that the extract of the judgment has been filed in the Court Registry.
2. Upon request of the person concerned, the President of the Court of Appeal shall direct, by order, the Court Registry to publish the extract of the judgment in the newspaper specified in the request; the expenses shall be borne by the Treasury of Fines.

Article 643

Compensation for miscarriage of justice

1. Whoever is dismissed at a revision trial, without having caused miscarriage of justice by intentional misconduct or gross negligence, is entitled to compensation proportionately to the duration of the sentence or confinement that may have been served and to the personal and family consequences resulting from the conviction.

2. Compensation shall consist in the payment of a sum of money or, according to the conditions of the person entitled to compensation and the type of damage, in a life annuity. The person entitled to compensation, upon his own request, may be accepted in an institution at the expense of the State.
3. The right to compensation shall not extend to that part of the penalty of imprisonment which shall be calculated upon determining the sentence to be served for a different offence, under Article 657, paragraph 2.

Article 644

Compensation in case of death

1. In the event of death of the convicted person, also prior to the revision proceedings, the right to compensation shall be granted to his spouse, descendants and ascendants, brothers and sisters, relatives within the first grade of relationship and the persons related to the deceased by adoption.
2. The aforementioned persons shall not be granted a sum higher than the sum which would have been paid as compensation to the dismissed person. The sum shall be distributed *ex aequo et bono* according to the consequences suffered by each person due to the miscarriage of justice.
3. The right to compensation shall not be granted to the persons who have been disqualified by conduct according to Article 463 of the Civil Code.

Article 645

Application for compensation

1. The application for compensation shall be submitted, under penalty of inadmissibility, within two years of the judgment of revision becoming final and shall be submitted in writing, along with any other documents considered useful, personally or through a proxy, to the Registry of the Court of Appeal which delivered the judgment.
2. The persons referred to in Article 644 may submit the application within the same time limit, also through the administrator referred to in Article 638, or may benefit from the application submitted by others. If the application is submitted only by one of the aforementioned persons, the applicant must specify the other persons entitled to compensation.

Article 646

Procedure and decision

1. The decision on the application for compensation shall be taken by the Court of Appeal in chambers in compliance with Article 127.
2. The application, along with the decision whereby the hearing is set, shall be notified to the Public Prosecutor and served by the Court Registry, on the Treasury Minister attached to the State Legal Service

located in the district of the Court of Appeal and on all the persons concerned, including the persons entitled to compensation who have not submitted an application.
3. The order deciding on the application for compensation shall be notified to the Public Prosecutor and served on all the persons concerned, who may lodge an appeal with the Court of Cassation.
4. The persons concerned who, after being served on according to paragraph 2, do not formulate their own requests within the time limits and according to the procedure provided for in Article 127, paragraph 2, shall lose their right to submit an application for compensation after closure of the proceedings.
5. If conditions are met, the court shall grant a provisional sum of money as maintenance to the person concerned.

Article 647

Compensation for damages and reparation

1. In the case provided for in Article 630, paragraph 1, letter *d),* if the State has granted compensation, it shall acquire, by subrogation, the right to compensation for damages, up to the paid sum, against the person responsible for those damages.

BOOK X

ENFORCEMENT

TITLE I

RES IUDICATA

Article 648

Irrevocability of judgments and criminal decrees

1. Judgments delivered at trial which are not subject to an appellate remedy other than revision are final.
2. If an appellate remedy may be invoked, the judgment becomes final upon expiry of the time limit set to lodge the remedy or to appeal the order declaring its inadmissibility. In case of an appeal to the Court of Cassation, the judgment becomes final from the day of delivery of the order or judgment rejecting the appeal or declaring it inadmissible.
3. The criminal decree of conviction is final upon expiry of the time limit set to lodge an opposition or to appeal the order declaring its inadmissibility.

Article 649

Ne bis in idem

1. The accused person who has been dismissed or convicted by a judgment or criminal decree that has become final shall not be prosecuted again for the same offence, even if his conduct is considered differently in terms of legal definition, stage of the offence or circumstances, without prejudice to Articles 69, paragraph 2, and 345.
2. If, however, the criminal proceedings are started again, the court shall deliver a judgment of dismissal or of no grounds to proceed at any stage and instance of the proceedings, specifying the cause in the operative part of the judgment.

Article 650

Enforceability of criminal judgments and decrees

1. Criminal judgments and decrees shall be enforceable when they become final, unless otherwise provided.
2. Judgments of no grounds to proceed shall be enforceable once they are no longer subject to appellate remedies.

Article 651

Effects of the criminal judgment of conviction in trials for civil or administrative damages

1. The final criminal judgment of conviction delivered after a trial shall have binding effect, with relation to the ascertainment of the criminal act, of its criminal unlawfulness and its commission by the accused,

in the civil or administrative trial for restitution and compensation of damages brought against the convicted person and the person with civil liability for damages who has been summoned or has intervened in the criminal proceedings.

2. The final judgment of conviction delivered under Article 442 shall have the same effects, unless it is opposed by the civil party who has not accepted the summary trial.

Article 651-*bis*

Effects of the judgment of dismissal due to the triviality of the offence in trials for civil or administrative damages

1. The final criminal judgment of dismissal delivered after a trial due to the triviality of the offence shall be binding in relation to the ascertainment of the criminal act, its criminal unlawfulness and its commission by the accused, in civil or administrative trials for restitution and compensation of damages brought against the dismissed person and the person with civil liability for damages who has been summoned or has intervened in the criminal proceedings.

2. The final judgment of dismissal delivered due to the triviality of the offence under Article 442 shall have the same effect, unless it is opposed by the civil party who has not accepted the summary trial.

Article 652

Effects of the criminal judgment of acquittal in trials for civil or administrative damages

1. The final criminal judgment of acquittal delivered after a trial shall have binding effect, with relation to either the ascertainment that the criminal act did not occur, or the accused did not commit it or the act has been carried out to perform a duty or to exercise a legal right, in the civil or administrative trial for restitution and compensation of damages brought by the injured person or in his interest, provided that the injured has joined the proceedings as a civil party or has been given the possibility to join the proceedings, unless the injured has already brought the action in civil court, under Article 75, paragraph 2.

2. The final judgment of acquittal delivered under Article 442 shall have the same effects, provided that the civil party has accepted the summary trial.

Article 653

Effects of the criminal judgment in the disciplinary trial

1. The final criminal judgment of acquittal shall have binding effect in the trial for disciplinary conduct before public authorities with relation to either the ascertainment that the criminal act did not occur, or it is not an offence or the accused did not commit it.

1 -*bis.* The final criminal judgment of conviction shall have binding effect in the trial for disciplinary

conduct before public authorities with relation to either the ascertainment that the criminal act did occur, the accused did commit it and the act is an offence.

Article 654

Effects of the criminal judgment of conviction or acquittal in other civil or administrative trials

1. The final criminal judgment of conviction or acquittal delivered after a trial shall have binding effect in the civil or administrative trial on the accused person, the civil party and the person with civil liability for damages who has appeared or intervened in the criminal proceedings. Such effect shall be valid only if the trial concerns a right or a legitimate interest that may be recognised by ascertaining the same material acts that were under prosecution, provided that the ascertained facts were considered essential for the purposes of the criminal decision and provided that civil law sets no limitations to the evidence of the controversial subjective stance.

TITLE II

ENFORCEMENT OF JUDGMENTS

Article 655

Functions of the Public Prosecutor

1. The Public Prosecutor attached to the court referred to in Article 665 shall enforce decisions of his own motion, unless provided otherwise.

2. The Public Prosecutor shall put forward his requests to the court with competence and shall intervene in all enforcement proceedings.

3. If necessary, the Public Prosecutor may request single actions to be taken by the Public Prosecutor of a different office.

4. If the enforcement of a decision requires an authorisation, the Public Prosecutor shall request it to the authority with competence. The enforcement shall be suspended until such authorisation is granted. The same procedure shall be adopted if the need for an authorisation has arisen during the enforcement.

5. The Public Prosecutor's decisions that require the service on the lawyer under this Title shall be served on the lawyer appointed by the person concerned under penalty of nullity, within thirty days of their issuing. In the absence of a retained lawyer, the service shall be addressed to the lawyer appointed by the Public Prosecutor under Article 97, without suspending or delaying the enforcement.

Article 656

Enforcement of custodial penalties

1. When a judgment of conviction involving custodial penalties must be enforced, the Public Prosecutor shall issue an enforcement injunction whereby he directs the imprisonment of the convicted person,

provided that the latter is not detained. A copy of the injunction shall be forwarded to the person concerned.

2. If the convicted person is already detained, the enforcement injunction shall be forwarded to the Ministry of Justice and served on the person concerned.

3. The enforcement injunction shall contain the personal details of the person on whom it shall be enforced, the accusation, the operative part of the decision and the provisions necessary to the enforcement. The injunction shall be served on the convicted person's lawyer.

4. The injunction directing the imprisonment shall be enforced as set forth in Article 277.

4-*bis.* With the exception of the cases provided for in paragraph 9, letter *b),* when the remaining penalty to be served does not exceed the time limits referred to in paragraph 5, calculating the reductions provided for in Article 54 of Law No 354 of 26 July 1975, the Public Prosecutor, before issuing the enforcement injunction, shall verify whether the judgment to be enforced convicts the accused to periods of precautionary detention or to a penalty that could be substituted. The Public Prosecutor shall also forward the case file to the Sentence Supervision Judge so that the latter can proceed to the application of early release, if necessary. The Sentence Supervision Judge shall decide on the aforementioned issue without delay by means of an order issued under Article 69-*bis* of Law No 354 of 26 July 1975. The present provision shall not be applied against persons convicted of the crimes referred to in Article 4-*bis* of Law No 354 of 26 July 1975.

4-*ter.* If the convicted person is under precautionary detention in prison, the Public Prosecutor shall issue an enforcement injunction and forward the case file without delay to the Sentence Supervision Judge so that he can decide on the early release, provided that the requirements of paragraph 4-*bis* are met.

4-*quater.* In the cases provided for in paragraph 4-*bis,* the Public Prosecutor shall issue the decisions provided for in paragraphs 1, 5 and 10, after the decision by the Sentence Supervision Judge.

5. If imprisonment does not exceed three or four years in the cases provided for in Article 47-*ter*, paragraph 1, of Law No 354 of 26 July 1975, or six years in the cases referred to in Articles 90 and 94 of the Consolidated Text approved by Decree No 309 of the President of the Republic of 9 October 1990, as amended, the Public Prosecutor shall suspend its enforcement, without prejudice to the provisions of paragraphs 7 and 9, also if the imprisonment is the remainder of a more serious penalty. The enforcement injunction and the suspension decree shall be served on the convicted person and the lawyer appointed for the enforcement stage or, in his absence, to the lawyer who assisted him during the trial. Notice shall be given that a petition containing the necessary references and documentation may be filed within thirty days, to be granted one of the alternative measures to detention referred to in Articles 47, 47-*ter* and 50,

paragraph 1, of Law No 354 of 26 July 1975, as amended, and in Article 94 of the Consolidated Text approved by Decree No 309 of the President of the Republic of 9 October 1990, as amended, or the suspension of penalty enforcement referred to in Article 90 of the aforementioned Consolidated Text. Such notice shall also contain the information that the enforcement shall have immediate effect if the petition is not filed or it is considered inadmissible under Article 90 and following of the aforementioned Consolidated Text.

6. The petition shall be filed by the convicted person or the lawyer referred to in paragraph 5 or the one specifically appointed by the Public Prosecutor who shall forward it, together with the documentation, to the Sentence Supervision Tribunal with competence in the location where the Public Prosecutor has his office. Without prejudice to the cases of inadmissibility, if the petition does not contain the necessary documentation, it may be filed with the Registry of the Sentence Supervision Tribunal up to five days prior to the hearing set under Article 666, paragraph 3. The Sentence Supervision Tribunal shall in any case be entitled to proceed, also of its own motion, to request documents or information, or to gather evidence under Article 666, paragraph 5. The Sentence Supervision Tribunal shall decide on the aforementioned issue within forty-five days of receipt of the petition.

7. Suspension of the enforcement of the same conviction shall not be ordered more than once, even if the convicted person files a new petition, which is reasoned differently, either for an alternative measure or for the same measure and for the suspension of enforcement of the penalty referred to in Article 90 of the Consolidated Text approved by Decree No 309 of the President of the Republic of 9 October 1990, as amended.

8. Without prejudice to the provision of paragraph 8-*bis,* if the petition is not filed promptly or the Sentence Supervision Tribunal rejects it or declares it inadmissible, the Public Prosecutor shall promptly revoke the decree suspending the enforcement. The Public Prosecutor shall follow the same procedure if the petition filed is inadmissible under Article 90 and following of the Consolidated Text approved by Decree No 309 of the President of the Republic of 9 October 1990, as amended; or, when the Sentence Supervision Tribunal delivers its decision with delay, if the recovery programme referred to in Article 94 of the aforementioned Consolidated Text did not start within five days of the filing of the petition or it was interrupted. To this end, the Public Prosecutor shall forward the petition to the Sentence Supervision Tribunal while ordering the necessary ascertainment procedures.

8-*bis.* If it has been proven or it is likely that the convicted person was not informed about the notice referred to in paragraph 5, the Public Prosecutor may gather the necessary information, also from the lawyer. After receiving such information, the Public Prosecutor may order the renewal of the service.

9. The suspension of the enforcement referred to in paragraph 5 shall not be ordered:

a) against the persons convicted of the crimes referred to in Article 4-*bis* of Law No 354 of 26 July 1975, as amended, and in Articles 423-*bis,* 572, paragraph 2, 612-*bis,* paragraph 3, 624-*bis* of the Criminal Code, except for whoever is under house arrest ordered under Article 89 of the Consolidated Text approved by Decree No 309 of the President of the Republic of 9 October 1990, as amended;

b) against whoever is under precautionary detention in prison when the judgment of conviction becomes final;

c) (...)

10. In the case considered in paragraph 5, if the convicted person is under house arrest for the offence for which the judgment of conviction shall be enforced and if the remainder of the penalty to be served established under paragraph 4-*bis* does not exceed the time limits referred to in paragraph 5, the Public Prosecutor shall suspend the enforcement of the imprisonment injunction and immediately forward the case file to the Sentence Supervision Tribunal so that it can proceed to the application of one of the alternative measures provided for in paragraph 5, if necessary. The convicted person shall remain under detention until the decision of the Sentence Supervision Tribunal, and the corresponding period of detention shall be considered as a fully served penalty. The Sentence Supervision Judge shall in any case follow the provision of Article 47-*ter* of Law No 354 of 26 July 1975, as amended.

Article 657

Calculation of precautionary detention and penalties served without judgment

1. The Public Prosecutor, in setting the custodial penalty to be enforced, shall calculate the period of precautionary detention served for the same or a different offence, even if the detention is still ongoing. The same procedure shall be followed in case of provisional application of a custodial security measure, if the latter has not been applied by a final judgment.

2. The Public Prosecutor shall also calculate the period of custodial penalty which has been served for a different offence, if the related conviction has been revoked, if amnesty and pardon have been granted for the offence, within the limits of pardon.

3. In the cases provided for in paragraphs 1 and 2, the convicted person may request the Public Prosecutor that the periods of precautionary detention and custodial penalties which have already been served be calculated to determine the financial penalty or the substitute sanctions to be enforced. In the cases provided for in paragraph 2, the convicted person may also request that the substitute sanctions that have been served be calculated as part of the substitute penalties to be enforced for a different offence.

4. In any case, the calculation involves exclusively the precautionary detention and the penalties which

have been served after commission of the offence for which the penalty to be enforced must be determined.
5. The Public Prosecutor shall decide on the aforementioned issue by means of decree, which must be served on the convicted person and his lawyer.

Article 657-*bis*

Calculation of probation period served by the accused in case of revocation

1. In case of revocation or unsuccessful probation, the Public Prosecutor shall deduct the period of probation served when setting the penalty to be enforced. For the purposes of this deduction, three days of probation shall correspond to either one day of imprisonment or arrest or a fine of EUR 250.

Article 658

Enforcement of security measures ordered by judgment

1. If a security measure other than confiscation ordered by judgment must be enforced, the Public Prosecutor attached to the court referred to in Article 665 shall forward the case file to the Public Prosecutor attached to the Sentence Supervision Tribunal with competence for the decisions provided for in Article 679. The security measures to be applied provisionally, as ordered, under Article 312 shall be enforced by the Public Prosecutor attached to the court that delivered the decision, who shall decide on the aforementioned issue under Article 659, paragraph 2.

Article 659

Enforcement of decisions of the Sentence Supervision Judge

1. If, after the decision of the Sentence Supervision Judge, the imprisonment or release of the accused person must be ordered, the Public Prosecutor in charge of enforcement of the judgment of conviction shall issue an enforcement injunction as set forth in Article 656, paragraph 4. In case of urgency, the Public Prosecutor attached to the Sentence Supervision Judge who delivered the decision may issue a provisional enforcement injunction, having effect until the decision is taken by the Public Prosecutor with competence.
2. The decisions concerning security measures other than confiscation shall be enforced by the Public Prosecutor attached to the Sentence Supervision Judge who delivered them. The Public Prosecutor shall forward a copy of the decision to the public security authority and, if necessary, issue an enforcement injunction whereby he orders the surrender or release of the person concerned.

Article 660

Enforcement of financial penalties

1. Sentences involving financial penalties shall be enforced following the procedure set by laws and regulations.

2. If it is impossible to collect the financial penalty or one of its instalments, the Public Prosecutor shall forward the case file to the Sentence Supervision Judge with competence for the conversion, who shall decide on the aforementioned issue after ascertaining the real insolvency of the convicted person and, if applicable, of the person with civil liability for financial penalties. If the penalty has been divided into instalments, the part which has not been paid shall be converted.

3. In case of insolvencies, the Sentence Supervision Judge may either order the division of the penalty into instalments under Article 133-*ter* of the Criminal Code, provided that such penalty has not been ordered by the judgment of conviction, or postpone the conversion for a period not exceeding six months. After the expiry of such time limit, if insolvency persists, a new postponement or the conversion shall be ordered. The period in which the enforcement has been postponed shall not be considered for the purposes of penalty extinguishment due to the expiry of time limits.

4. By means of the order directing the conversion, the Sentence Supervision Judge shall set the types of subsequent sanctions, in compliance with the rules in force.

5. The appeal before the Court of Cassation against the order of conversion shall suspend the enforcement of the order.

Article 661

Enforcement of substitute sanctions

1. For the enforcement of day parole or full parole, the Public Prosecutor shall forward the extract of the judgment of conviction to the Sentence Supervision Judge with territorial competence who shall decide on the enforcement in compliance with the rules in force.

2. The financial penalty imposed as a substitute sanction shall be enforced under Article 660.

Article 662

Enforcement of accessory penalties

1. For the enforcement of accessory penalties, the Public Prosecutor, with the exception of the cases provided for in Articles 32 and 34 of the Criminal Code, shall forward the extract of the judgment of conviction to the criminal police and public security bodies, as well as to the other bodies involved, if necessary, specifying the accessory penalties to be enforced. In the cases provided for in Articles 32 and

34 of the Criminal Code, the Public Prosecutor shall forward the extract of the judgment to the civil court with competence.

2. If the judgment of conviction sets the application of one of the accessory penalties provided for in Articles 28, 30, 32-*bis* and 34 of the Criminal Code, the disqualifying measure that may be ordered under Articles 288, 289 and 290 shall be calculated to set the length of the penalty, provided that it has the same content.

Article 663

Enforcement of concurrent penalties

1. If the same person has been convicted by means of several judgments or criminal decrees for different offences, the Public Prosecutor shall set the penalty to be enforced in compliance with the rules on concurrent penalties.

2. If the sentences have been imposed by different courts, the Public Prosecutor attached to the court referred to in Article 665, paragraph 4, shall decide on the aforementioned issue.

3. The decision of the Public Prosecutor shall be served on the convicted person and his lawyer.

Article 664

Enforcement of other financial penalties

1. The amounts due for either financial disciplinary sanctions, for a sentence to loss of deposit or following the statement of inadmissibility or rejection of a request, shall be paid to the Treasury of Fines, even when this is not expressly stated.

2. The related decisions may be revoked by the court, upon request of the person concerned or the Public Prosecutor, before the conclusion of the stage of the proceedings in which they have been issued, provided that revocation is allowed.

3. (...)

4. For the enforcement of sanctions following administrative infringements ascertained during the criminal trial, the Public Prosecutor shall forward the extract of the judgment to the administrative authority with competence.

TITLE III

FUNCTIONS OF JURISDICTIONAL BODIES

CHAPTER I

SENTENCE ENFORCEMENT COURT

Article 665

Court with competence

1. Unless otherwise provided for by the law, the court that delivers a decision is also competent for its enforcement.
2. The first-instance court shall be competent for enforcement when an appeal has been lodged, if the decision has been confirmed or modified only in relation to the sentence, the security measures or the civil provisions; in all other cases not mentioned above, the appeal court is competent for enforcement.
3. When an appeal to the Court of Cassation has been declared inadmissible or rejected or when the Court has annulled the appealed decision without referral, the first-instance court is competent for enforcement if the appeal to the Court of Cassation has been lodged against an unappealable decision or under Article 569. In all other cases not mentioned above, the court referred to in paragraph 2 is competent for enforcement. When a judgment of annulment with referral has been delivered, the referral court is competent for its enforcement.
4. If enforcement concerns several decisions issued by different courts, the court that issued the latest final decision is competent for their enforcement. However, if the decisions have been issued by ordinary and special courts, the court with competence is, in any case, the ordinary court.

4-*bis.* If enforcement concerns several decisions issued by a single-judge or collegial Tribunal, enforcement shall be assigned, in any case, to the collegial Tribunal.

Article 666

Enforcement procedure

1. The enforcement court shall proceed upon request of the Public Prosecutor, the person concerned or his lawyer.
2. If the request proves to be manifestly groundless because it fails to meet the legal requirements or it is a mere re-submission of a request, based on the same elements or arguments, which has already been rejected, the single judge or the President of the bench, after hearing the Public Prosecutor, shall declare such request inadmissible by means of a reasoned decree which shall be served on the person concerned within five days. An appeal against the decree may be lodged before the Court of Cassation.
3. Without prejudice to the provision of paragraph 2, the single judge or the President of the bench, after

designating a court-appointed lawyer for the person concerned not having one, shall set the date of the hearing in chambers and shall ensure that the parties and their lawyers are informed of such date. The notice shall be communicated or served at least ten days before the above-mentioned date. Up to five days prior to the hearing, briefs may be filed with the Court Registry.

4. The hearing shall take place with the compulsory participation of the lawyer and the Public Prosecutor. The person concerned who requests to be heard shall be heard directly by the court. However, if he is detained or confined in a place outside the court's district, he shall be heard before the day of the hearing by the Sentence Supervision Judge of such place, unless the court orders that he be taken before the court.

5. The court may require the authorities with competence to forward all the documents and information it needs; if evidence needs to be gathered, it shall gather it at the hearing in compliance with the right for all the parties to be heard.

6. The court shall decide by order. The order shall be communicated to or served on the parties and their lawyers without delay; the parties and their lawyers may lodge an appeal with the Court of Cassation. The provisions on the lodging of appeals and the proceedings in chambers before the Court of Cassation shall be observed, provided they are applicable.

7. The appeal to the Court of Cassation shall not suspend the enforcement of the order, unless ordered otherwise by the court that issued it.

8. If the person concerned is mentally ill, the notice referred to in paragraph 3 shall be served also on his guardian or administrator. If the person concerned has no guardian or administrator, the single judge or the President of the bench shall appoint a provisional administrator. The guardian and the administrator are granted the same rights as the person concerned.

9. The record of the hearing is generally drafted in the form of a summary under Article 140, paragraph 2.

Article 667

Doubts about the detained person's physical identity

1. If there are reasons to doubt the identity of the person who was arrested to serve sentence or because he escaped while serving a sentence, the enforcement court shall question him and conduct any investigation which may be useful to identify him, also through the criminal police.

2. Should the court ascertain that the person is not the person who must serve the sentence, it shall immediately order his release. If the person's identity is still unknown, the court shall order the suspension of the enforcement and the release of the detained person and shall request the Public Prosecutor to conduct further investigations.

3. If it appears evident that there has been a case of mistaken identity and it is not possible to promptly

follow the procedure referred to in paragraphs 1 and 2, the release of the detained person may be provisionally ordered by reasoned decree by the Public Prosecutor of the place where the arrested person is located. The Public Prosecutor's decision shall be effective until the court with competence, to which the case file is immediately forwarded, delivers its decision.

4. The enforcement court shall in any case issue, without any formalities, an order and shall forward it to the Public Prosecutor and serve it on the person concerned. The Public Prosecutor, the person concerned and his lawyer may oppose such order before the same court; in such case the procedure referred to in Article 666 shall be followed. The opposition shall be submitted, under penalty of expiry, within fifteen days of the notification or service of the order.

5. If the detained person must be judged for other offences, the order shall be forwarded to the proceeding judicial authority.

Article 668

Person convicted for mistaken name

1. If a person has been wrongfully convicted due to a mistaken name, the enforcement court shall amend the judgment according to Article 130 only provided that the person to be prosecuted has been summoned for the trial as an accused person even under a different name; otherwise, the procedure referred to in Article 630, paragraph 1, letter *c),* shall be followed. In any case, the enforcement against the person convicted by mistake shall be suspended.

Article 669

Several judgments for the same offence against the same person

1. If several final judgments of conviction have been delivered against the same person for the same offence, the court shall order the enforcement of the judgment imposing the less serious sentence and shall revoke the other judgments.

2. When the sentences imposed differ, the person concerned may select which judgment must be enforced. If the person concerned does not avail himself of such right before delivery of the decision by the enforcement court, the provisions of paragraphs 3 and 4 shall apply.

3. If the person has been imposed both a financial penalty and imprisonment, the financial penalty shall be enforced. If the person has been imposed several penalties of imprisonment or financial penalties of different kinds, the less serious penalty shall be enforced. If the penalties are equivalent, the arrest or a fine shall be respectively enforced. If the person has been imposed either a penalty of imprisonment or a financial penalty and the substitute penalty of day parole or full parole, the substitute sentence shall be enforced in case of imprisonment, and, in case of financial penalty, the person shall serve the financial

penalty.
4. When the main penalties are equivalent, the possible application of accessory penalties or security measures and other criminal effects shall be taken into account. When the convictions are equivalent, the first final judgment shall be enforced.
5. If the revoked judgment has been fully or partially enforced, the enforcement shall be considered as subsequent to the judgment that is still in force.
6. The same provisions shall apply if several criminal decrees or judgments and decrees have been issued or if the criminal act has been judged with other acts as part of concurrent offences or as an instance of a continued offence, after the corresponding sentence has been determined, if necessary.
7. If several judgments of no grounds to proceed or several judgments of dismissal have been delivered against the same person for the same offence, if the person concerned does not select the judgment to be enforced within the time limit provided for in paragraph 2, the court shall order the enforcement of the most favourable judgment and shall revoke the other judgments.
8. Without prejudice to the provision of Articles 69, paragraph 2, and 345, if a judgment of dismissal and a judgment of conviction or a criminal decree have been delivered, the court shall order the enforcement of the judgment of dismissal and shall revoke the decision of conviction. However, if the judgment of dismissal has been delivered because the offence is extinguished after the date in which the decision of conviction became final, the latter shall be enforced.
9. If a judgment of no grounds to proceed and a judgment rendered at trial or a criminal decree have been delivered, the court shall order the enforcement of the judgment rendered at trial or of the decree.

Article 670

Issues concerning the enforceable decision

1. When the enforcement court ascertains that a decision is lacking or the decision has not become enforceable, also after assessing the observance of safeguards envisaged when the convicted person is nowhere to be found, it shall declare such lack by order and suspend the enforcement. If necessary, it shall also order that the person concerned be released and the service be repeated if it has not been carried out properly. In such a case the time limit for the appellate remedy starts again.
2. If an appellate remedy is invoked or an opposition is submitted, after deciding on the application of the person concerned, the enforcement court shall forward the case file to the court with competence over appellate remedies or oppositions. The decision of the enforcement court shall not compromise the decision of the remedy or opposition court that shall suspend by order the enforcement not yet suspended, if it considers the appellate remedy admissible.

3. If the person concerned, when submitting a request for the decision to be declared non-enforceable, raises the objection that the prerequisites and conditions for granting a new time limit under Article 175 are met, and the request has not yet been submitted to the appellate remedy court, the enforcement court shall decide whether to grant a new time limit, if it shall not declare the decision non-enforceable. In such a case, the request for a new time limit shall not be submitted again to the appellate remedy court. The provisions of Article 175, paragraphs 7 and 8, shall apply.

Article 671

Application of the rules on concurrent and continued offences

1. If several final judgments or criminal decrees have been delivered in separate proceedings against the same person, the convicted person or the Public Prosecutor may request the enforcement court to apply the rules on concurrent and continued offences, provided that such rules have not been excluded by the court that has delivered the judgment. Among the elements affecting the application of the rules on continued offences there is the commission of several offences by a drug addicted person.

2. The enforcement court shall determine a sentence not higher than the sum of the penalties imposed with each judgment or decree.

2-*bis*. The provisions of Article 81, paragraph 4, of the Criminal Code, shall apply.

3. The enforcement court may also grant a suspended sentence and the non recording of the conviction in the criminal record certificate after concurrent or continued offences have been recognised. It shall then take any other subsequent decision.

Article 672

Granting amnesty or pardon

1. In order to grant amnesty or pardon, the enforcement court shall follow the procedure referred to in Article 667, paragraph 4.

2. Should a security measure need to be applied or modified under Article 210 of the Criminal Code, following the granting of amnesty or pardon, the enforcement court shall order that the case file be forwarded to the Sentence Supervision Judge.

3. The Public Prosecutor responsible for the enforcement of the judgment of conviction may order the provisional release of the detained convicted person or the cessation of substitute penalties and alternative measures, before the final release is ordered with the decision granting amnesty or pardon.

4. Amnesty and pardon shall be granted, upon request of the convicted person, also if enforcement of the sentence has terminated.

5. Conditional amnesty and pardon shall suspend the enforcement of the judgment or the criminal decree

until expiry of the time limit set in the decree granting amnesty or pardon or, if such time limit has not been set, until expiry of the forth month from the day of publication of the decree. Conditional amnesty and pardon shall be definitively applied if it is proven that, upon expiry of the time limit, the conditions or obligations to be fulfilled for the benefit to be granted are met.

Article 673

Revocation of the judgment due to abolition of the offence

1. If the provision defining a conduct an offence is repealed or declared constitutionally illegitimate, the enforcement court shall revoke the judgment of conviction or the criminal decree, declaring that the criminal act is not deemed an offence by law and shall adopt the subsequent decisions.
2. The court shall follow the same procedure when a judgment of dismissal or no grounds to proceed has been delivered because the offence is extinguished or due to lack of mental capacity.

Article 674

Revocation of other decisions

1. The revocation of a suspended sentence, of mercy, of conditional amnesty or pardon and of the non recording of the conviction in the criminal record certificate shall be ordered by the enforcement court, if it has not been ordered by the judgment of conviction for another offence.
1 *-bis.* The enforcement court shall also revoke the suspended sentence if it ascertains the conditions referred to in Article 168, paragraph 3, of the Criminal Code.

Article 675

False documents

1. If a document is found to be false under Article 537, but it has not been declared as such in the operative part of the judgment and no appellate remedy has been invoked against that section, each person concerned may request the enforcement court to declare such document to be false.
2. The full cancellation of the document, ordered by either the court delivering the judgment or by the enforcement court, is enforced by noting down the judgment or the order in the margin of each page of the document and by recording the annotation and declaring that the document shall not have any judicial effect. The document shall be kept attached to the record and a copy of the record shall be issued instead of the document to its owner or to the person holding it, if such copy has been requested for a legitimate interest.
3. In all the other cases, the text of the document as it results from its partial cancellation or restoration, renewal or reformation, shall be included in the record in its full form. If the document was held in a public repository, it shall be returned to the safekeeper along with an authenticated copy of the record

which it must be kept attached to. If the document was owned by a private person, the Court Registry shall keep it attached to the record and shall issue a copy when it is requested for legitimate interest. Such copy has the same judicial effects as the original document.

4. In order to comply with the above obligations, the single judge or the President of the bench shall give the necessary instructions in the relevant record.

Article 676

Other competences

1. The enforcement court shall have competence for deciding on the extinguishment of the offence after conviction, the extinguishment of the sentence when it does not result from the conditional release or the probation period under social services supervision, on accessory penalties, confiscation or restitution of seized objects. In such cases, the enforcement court shall follow the procedure referred to in Article 667, paragraph 4.

2. If a controversy arises on the ownership of seized objects, the provision of Article 263, paragraph 3, shall apply.

3. When the enforcement court ascertains that the offence or sentence have extinguished, it shall declare it also of its own motion by taking the subsequent decisions.

CHAPTER II

SENTENCE SUPERVISION JUDGES AND TRIBUNALS

Article 677

Territorial competence

1. The issues assigned to Sentence Supervision Judges shall be dealt with by the Sentence Supervision Tribunal or Sentence Supervision Judge with jurisdiction over the prison where the person concerned is located at the time when the request or the suggestion for proceedings is submitted or when such proceedings start of the court’s own motion.

2. If the person concerned is not detained or confined, unless otherwise provided for by law, competence shall belong to the Sentence Supervision Tribunal or Sentence Supervision Judge having jurisdiction over the place where the person concerned has his habitual residence or address for service. If competence cannot be established according to the above criterion, it belongs to the Sentence Supervision Tribunal or Sentence Supervision Judge of the place where the judgment of conviction, dismissal or no grounds to proceed has been delivered or, if several judgments of conviction or dismissal have been delivered, to the Sentence Supervision Tribunal or Sentence Supervision Judge of the place where the latest final judgment has been delivered.

2-*bis.* The convicted person who is not detained must, under penalty of inadmissibility, provide or choose his address for service when submitting his request for the application of an alternative measure to imprisonment or for a different decision by a Sentence Supervision Tribunal or a Sentence Supervision Judge as set by law. The convicted person who is not detained must also inform the relevant authority of any change in the provided or chosen address for service. The provisions of Article 161 shall be observed, provided they are applicable.

Article 678

Proceedings before the Sentence Supervision Tribunal or Sentence Supervision Judge

1. Without prejudice to the provision of the following paragraph 1 *-bis,* and upon request of either the Public Prosecutor, the person concerned or his lawyer or of the court's own motion, the procedure of Article 666 shall be followed by either the Sentence Supervision Tribunal for issues that fall within its competence or by the Sentence Supervision Judge for issues concerning hospitalisation, under Article 148 of the Criminal Code, security measures, and the statement that the person is a habitual or professional offender or has a tendency to commit offences. However, whenever a person's physical identity is in doubt, Article 667, paragraph 4, shall be followed.

1 *-bis.* The procedure of Article 667, paragraph 4, shall also be followed, even in particular cases, by either the Sentence Supervision Judge, for issues concerning payment by instalments and conversion of financial penalties, remission of debt, and enforcement of day and full parole, or by the Sentence Supervision Tribunal, for issues concerning rehabilitation requests and evaluation of the outcome of the probation period carried out under social services supervision.

2. In case of prosecution of a person whose personality is under scientific monitoring, the Sentence Supervision Tribunal or the Sentence

Supervision Judge shall gather the relevant documentation and avail themselves of the support of the technicians responsible for the monitoring, if necessary.

3. The Public Prosecutor's functions shall be performed before the Sentence Supervision Tribunal by the Prosecutor General attached to the Court of Appeal and by the Public Prosecutor of the Republic attached to the Tribunal of the place of the Sentence Supervision Judge.

3-*bis.* If the Sentence Supervision Tribunal and the Sentence Supervision Judge must decide on requests for decisions limiting the personal liberty of persons convicted by international criminal tribunals and courts, the Sentence Supervision Tribunal and the Sentence Supervision Judge, each for issues that fall within their respective competence, shall immediately notify the Minister of Justice of the date of the hearing and of the availability of the relevant documentation. The Minister of Justice shall promptly

inform the Minister of Foreign Affairs and, when required by international agreements, the judicial authority that delivered the judgment of conviction.

Article 679

Security measures

1. With the exception of the cases provided for in Article 312, if a security measure other than confiscation has been ordered by judgment or must be subsequently ordered, upon request of the Public Prosecutor or of the court's own motion, the Sentence Supervision Judge shall ascertain whether the person concerned is socially dangerous and shall take the subsequent decisions, after issuing the statement that the person is a habitual or professional offender, if necessary. Either upon request of the Public Prosecutor, of the person concerned or of his lawyer, or of the court's own motion, he shall also decide on any related issue and the revocation of the statement that the person has a tendency to commit offences.
2. The Sentence Supervision Judge shall supervise the enforcement of personal security measures.

Article 680

Appellate remedies against decisions concerning security measures

1. An appeal before the Sentence Supervision Tribunal against the decisions by the Sentence Supervision Judge concerning security measures and the statement that the person is a habitual or professional offender or that he has a tendency to commit offences may be lodged by the Public Prosecutor, the person concerned and his lawyer.
2. With the exception of the cases set out in Article 579, paragraphs 1 and 3, the Sentence Supervision Tribunal shall decide also on the appellate remedies against judgments of conviction or dismissal concerning the provisions on security measures.
3. The general provisions on appellate remedies shall be observed, but the appeal shall not have a suspensive effect, unless otherwise decided by the Tribunal.

Article 681

Decisions concerning mercy

1. The application for mercy, addressed to the President of the Republic, shall be undersigned by the convicted person or by a next of kin, a cohabitee, a guardian or administrator, a lawyer or legal representative and shall be submitted to the Minister of Justice.
2. If the convicted person is detained or confined, the application may be submitted to the Sentence Supervision Judge who, after gathering all useful evidence and the observations of the Prosecutor General attached to the Court of Appeal of the district where the court referred to in Article 665 is located, shall forward the application to the Minister of Justice along with his own reasoned opinion. If the

convicted person is not detained or confined, the application may be submitted to the above Prosecutor General who, after gathering the necessary information, shall forward the application to the Minister of Justice along with his own observations.
3. The proposal for mercy shall be signed by the President of the disciplinary board and submitted to the Sentence Supervision Judge who shall follow the procedure referred to in paragraph 2.
4. Mercy may be granted even if no application or proposal has been submitted. After the decree of mercy has been issued, the Public Prosecutor attached to the court referred to in Article 665 shall be responsible for its enforcement and shall order, if necessary, the release of the convicted person and take the subsequent decisions.
5. If mercy is subject to conditions, the procedure referred to in Article 672, paragraph 5, shall be followed.

Article 682

Conditional release

1. The Sentence Supervision Tribunal shall decide on the granting or revocation of conditional release.
2. If release is not granted due to failure to meet the requirement of repentance, the application shall not be submitted again within six months of the day in which the decision of rejection became final.

Article 683

Rehabilitation

1. Upon request of the person concerned, the Sentence Supervision Tribunal shall decide on his rehabilitation, also if it regards judgments of conviction delivered by special courts, unless otherwise provided by law. The Tribunal shall also decide on the possible revocation of the already granted rehabilitation, unless it has been ordered by the judgment of conviction for another offence.
2. The request must also mention the elements from which it can be inferred that the conditions provided for in Article 179 of the Criminal Code are met. The Tribunal shall gather the necessary documentation.
3. If the request is rejected because it fails to meet the requirement of good conduct, it shall not be submitted again within two years of the day in which the decision of rejection became final.

Article 686

Postponed enforcement

1. The Sentence Supervision Tribunal shall decide on the postponement of the enforcement of penalties of imprisonment and substitute penalties of day parole or full parole in the cases provided for in Articles 146 and 147 of the Criminal Code, with the exception of the case provided for in Article 147, paragraph 1, number 1), of the Criminal Code, which is decided upon by the Minister of Justice. The Tribunal shall

order, whenever necessary, the release of the detained person and shall take any other subsequent decision.

2. If there are justified reasons to believe that preconditions are met for the postponement of the enforcement by the Tribunal, the Sentence Supervision Judge may order the postponement of the enforcement or the release of the detained person, if prolonged imprisonment may seriously prejudice the convicted person. The decision shall be effective until the Tribunal, to which the Sentence Supervision Judge shall immediately forward the case file, issues its decision.

TITLE IV

CRIMINAL RECORDS OFFICE

Article 685

(…)

Article 686

(...)

Article 687

(...)

Article 689

(…)

Article 690

(...)

TITLE V COSTS

Article 691

(…)

Article 692

Precautionary detention costs

1. If the accused person is sentenced to imprisonment for an offence for which he has been subject to precautionary detention, his maintenance during the detention period shall be at his own expenses.

2. If precautionary detention exceeds the length of the sentence of imprisonment, the expenses related to the exceeding period shall be deducted.

3. (...)

Article 693

(...)

Article 694

Expenses for the publication of judgments and obligation to advertise

1. The editor or assistant editor of a newspaper or magazine must publish the final judgment of conviction delivered against him or other persons due to the publication of an article in his newspaper or magazine. Such judgment shall be published within three days of receipt of the injunction by the authority with competence for enforcing the judgment and without any right to anticipation or recovery of expenses.
2. With the exception of the aforementioned case, when the publication of a criminal judgment in a newspaper or magazine is ordered by a court, the editor or assistant editor of the selected newspaper or magazine must publish it, upon request of the Public Prosecutor or the person obliged or authorised to do so.
3. The full or partial publication of a judgment ordered by the court may also be done on a supplement to the newspaper or magazine of the same format, type size and font of the main part of the newspaper or magazine, which shall be attached to any copy of the newspaper or magazine.
4. If the editor or assistant editor violates the above provisions, he shall be sentenced, jointly with the owner of the newspaper or magazine and the owner of the printing company, to the payment of a sum of up to EUR 1, 549 to the Treasury of Fines.

Article 695

BOOK XI

JURISDICTIONAL RELATIONS WITH FOREIGN AUTHORITIES

TITLE I

GENERAL PROVISION

Article 696

Primacy of conventions and general international law

1. Extraditions, international letters rogatory, effects of foreign criminal judgments, enforcements abroad of Italian criminal judgments and other relations with foreign authorities related to the administration of justice in criminal matters are regulated by the rules of the European Convention on Mutual Assistance in Criminal Matters, signed in Strasbourg on 20 April 1959, as well as additional rules of international conventions in force in Italy and rules of general international law.

2. Unless such rules provide otherwise or if they lack, the following rules shall be followed.

TITLE II

EXTRADITION

CHAPTER I

EXTRADITION ABROAD

Section I

Extradition procedure

Articolo 697

Extraditions and powers of the Minister of Justice

1. The surrender of a person to a foreign State for the enforcement of a foreign judgment of conviction sentencing to imprisonment or of another decision limiting personal liberty shall only take place by means of extradition.

2. In case of joined requests for extradition, the Minister of Justice shall set a priority order. To this purpose, he shall consider all the circumstances of the case and, in particular, the date of receipt of the requests, the seriousness and place of commission of the offence or offences, the nationality and place of habitual residence of the requested person and the possibility of re-extradition from the requesting State to another State.

Article 698

Political offences. Protection of fundamental rights of the person

1. Extradition shall not be granted neither for a political offence nor if there are well-founded reasons to believe that the accused or convicted person will be subject to either persecution or discrimination on grounds of race, religion, sex, nationality, language, political opinions or social or personal conditions, or cruel, inhuman, degrading penalties or treatments, or in any case to actions which violate one of the fundamental rights of a person.

2. Should extradition be requested for an offence punishable by death penalty by the foreign State, it may be granted only when the judicial authority ascertains that either a final decision has been issued converting the death penalty into another form of penalty or, in the event of the death penalty having already been imposed, it has been replaced by a different penalty, in compliance with paragraph 1.

Article 699

Specialty principle

1. Extradition, the extension of already granted extradition and re-extradition are always granted under the express condition that the person extradited shall not be subject to either a limitation of his personal

liberty due to enforcement of a sentence or a security measure, or to any other measure depriving him of his personal liberty nor shall he be surrendered to another State for a criminal act committed prior to the surrender other than that for which the extradition has been granted or extended, or for a fact for which re-extradition has been granted.

2. The provision of paragraph 1 shall not be applied if the person extradited has not left the territory of the State to which he had been surrendered within forty-five days of his final release, although he was given the possibility to do so, or if the person extradited had left the State and voluntarily returned to it.

3. The Minister may also decide that the extradition be subject to different conditions which he deems necessary.

4. The Minister shall monitor the compliance of both the specialty rule and other conditions that may have been imposed.

Article 700

Request and supporting documents

1. Extradition shall only be granted upon submission of a request which must include a copy of the decision depriving personal liberty or the judgment of conviction sentencing to imprisonment which has led to the request itself.

2. The request shall include:

a) a report on the criminal acts which the person to be extradited has been charged with, specifying the time and place of the commission of such act and their legal definition;

b) the text of the applicable legal provisions, indicating if the criminal act for which extradition has been requested is punishable by death penalty by the foreign State and, in such case, which safeguards the requesting State provides to ensure that the penalty will not be imposed or, if already imposed, that it will not be enforced;

c) the identification data and other possible information that might determine the identity and the nationality of the person whose extradition has been requested.

Article 701

Jurisdictional safeguard

1. The extradition of a person accused or convicted abroad may not be granted without the favourable decision of the Court of Appeal.

2. If, however, the person accused or convicted abroad accepts the requested extradition, there is no need to obtain the decision of the Court of Appeal. The consent that may be expressed must be given in the presence of the lawyer and should be mentioned in the record.

3. The favourable decision of the Court of Appeal and the consent of the person do not make the extradition mandatory.
4. The competence to decide shall belong, in the following order, to the Court of Appeal of the district where the accused or convicted person has his habitual or temporary residence or address for service when the request for extradition is forwarded to the Minister of Justice or to the Court of Appeal which ordered the temporary arrest under Article 715 or the Court of Appeal of the President who decided upon the confirmation of the arrest under Article 716. If competence cannot be established following such procedure, the Court of Appeal in Rome shall be competent.

Article 702

Intervention of the requesting State

1. The requesting State shall be entitled to participate in the proceedings before the Court of Appeal and the Court of Cassation, represented by a lawyer entitled to plead before the Italian judicial authority, provided that there is reciprocity.

Article 703

Ascertainment procedures by the Prosecutor General

1. When the Minister of Justice receives a request for extradition by a foreign State, he shall forward it, together with the documents enclosed therein, to the Prosecutor General attached to the Court of Appeal with competence under Article 701, paragraph 4, unless he holds that the request must be rejected.
2. Unless Article 717 has already been applied, upon receiving the request, the Prosecutor General shall order the appearance of the person concerned before him to proceed to his identification and obtain his potential consent to extradition. The person concerned shall be assisted by a court-appointed or a retained lawyer. The lawyer is entitled to be present during the identification procedure and shall be informed about it at least twenty-four hours in advance.
3. The Prosecutor General shall request to the foreign authorities, through the Minister of Justice, the documentation and information he deems necessary.
4. Within three months of the date of receipt of the extradition request, the Prosecutor General shall submit his closing speech to the Court of Appeal.
5. The closing speech shall be filed with the Registry of the Court of Appeal, together with the documents and the seized objects. The Registry shall be in charge of serving the notice of filing upon the person whose extradition is requested, his lawyer and, if present, the representative of the requesting State. Such persons are entitled to read and copy the closing speech and the documents, as well as examine the seized

objects and submit briefs, within ten days.

Article 704

Proceedings before the Court of Appeal

1. Upon expiry of the time limit provided for in Article 703, paragraph 3, the President of the Court of Appeal shall set the hearing for the decision by means of a decree to be notified to the Prosecutor General and served on the person whose extradition is requested, on his lawyer and, if present, on the representative of the requesting State, at least ten days in advance, under penalty of nullity. The President of the Court of Appeal shall also designate a court-appointed lawyer for the person who has no retained lawyers. Briefs may be submitted to the Registry up to five days prior to the hearing.
2. The Court shall decide, by issuing a judgment in chambers, whether the conditions for accepting the request for extradition are fulfilled, after gathering the information and ordering the ascertainment procedures deemed necessary, as well as hearing the Public Prosecutor, the lawyer and, if present, the person whose extradition is requested and the representative of the requesting State.
3. In the event of a favourable decision on extradition, the Court, upon request of the Minister of Justice, shall order the precautionary detention in prison of the person to be extradited who is at liberty, and shall seize the *corpus delicti* and the material items related to the offence, establishing which documents and seized objects may be delivered to the requesting State.
4. In the event of a decision against extradition, the Court shall revoke the precautionary measures applied and shall order the restitution of the seized objects.

Article 705

Conditions for the decision

1. In the absence of a convention or if the convention does not provide otherwise, the Court of Appeal shall deliver a favourable judgment on extradition if there are serious indications of guilt or if a final judgment of conviction exists and, for the same criminal acts, there are no ongoing criminal proceedings against the person whose extradition is requested nor a final judgment has been delivered in Italy.
2. The Court of Appeal shall in any case deliver a judgment against extradition if:
a) the person charged with the offence for which extradition has been requested has been or will be subject to proceedings which do not guarantee the protection of fundamental rights;
b) extradition is requested due to enforcement of a judgment that contains provisions which do not adhere to the fundamental principles of the Italian legal system;
c) there are well-founded reasons to believe that the person will be subject to actions, penalties or treatments referred to in Article 698, paragraph 1.

Article 706

Appeal to the Court of Cassation

1. An appeal may be lodged with the Court of Cassation against the judgment of the Court of Appeal, also based on the merits of the case, by the person concerned, his lawyer, the Prosecutor General and the representative of the requesting State.
2. The provisions of Article 704 shall apply during the trial before the Court of Cassation.

Article 707

Renewal of request for extradition

1. The judgment against extradition shall preclude the delivery of a subsequent favourable judgment after submission of another request by the same State for the same criminal acts, unless the request is based on elements which have not been assessed by the judicial authority.

Article 708

Extradition decision. Surrender

1. The Minister of Justice shall decide on extradition within forty-five days of receipt of the records on the consent to extradition or the notice of expiry of the time limit for the application for appellate remedies or the filing of the judgment of the Court of Cassation.
2. If the time limit expires without the Minister issuing a decision, the person whose extradition has been requested, if detained, shall be released.
3. The same person shall also be released if his extradition is rejected.
4. The Minister of Justice shall promptly notify the requesting State of the decision and, if the latter is positive, of the place of surrender and the date from which extradition can take place, also giving detailed indications on the limitations of personal liberty to which the person to be extradited has been subject for the purposes of extradition.
5. The time limit for surrender shall be of fifteen days from the date set forth in paragraph 4, which may be extended to an additional twenty days following a motivation by the requesting State. The time limit for surrender shall be suspended if the administrative court with competence suspends the effects of the decision issued by the Minister of Justice. The time limit shall resume as of the filing of either the decision to revoke the precautionary suspension of the surrender, the decision to accept the appeal against the precautionary suspension, the judgment rejecting the appeal or the decision to terminate the administrative trial.
6. The decision regarding the extradition shall lose effectiveness if, within the set time limit, the requesting State does not take over the person to be extradited. In such case, the latter shall be released.

Article 709

Suspension of surrender. Temporary surrender. Enforcement abroad

1. The enforcement of extradition shall be suspended if the person to be extradited must be prosecuted in the Italian territory or must serve a sentence for offences committed before or after that for which extradition has been granted. The Minister of Justice, after hearing the judicial authority with competence over the ongoing proceedings in Italy or for the enforcement of the sentence, may proceed to the temporary surrender to the requesting State of the person to be extradited who has been accused there, agreeing on time limits and procedure.

2. The Minister of Justice may also agree that the sentence to be served be enforced in the requesting State, provided that the provisions of Chapter II of Title IV are observed.

Article 710

Extension of granted extradition

1. In the case of a new request for extradition, submitted after the surrender of the person extradited and concerning a criminal act that was committed prior to the surrender and was other than that for which extradition has already been granted, the provisions of this Chapter shall be observed, provided they are applicable. The request shall enclose the statements of the person concerned rendered before a court of the requesting State and regarding the requested extension of the extradition.

2. The Court of Appeal shall decide on the aforementioned extension without the presence of the person concerned.

3. The trial before the Court of Appeal shall not take place if the person extradited has agreed to the requested extension by means of the statements provided for in paragraph 1.

Article 711

Re-extradition

1. The provisions of Article 710 shall apply also if the State to which the person has been surrendered requests the consent for the re-extradition of the same person to a different State.

Article 712

Transit

1. The transit through the Italian territory of a person extradited from one State to another shall be authorised, upon request of the latter, by the Minister of Justice, unless the transit compromises the sovereignty, security or other essential interests of Italy.

2. The transit shall not be authorised if:

a) the extradition has been granted for criminal acts which are not deemed offences by the Italian law;

b) one of the cases provided for in Article 698, paragraph 1 or paragraph 2, arises, if the requesting State does not guarantee that the death penalty will not be imposed or, if already imposed, that it will not be enforced;
c) the person concerned is an Italian citizen and his extradition to the State which requests the transit could not be granted.
3. Unless the person extradited has given his consent to the transit by means of a statement rendered before the judicial authority of the State which granted extradition, the authorisation shall not be granted unless a favourable decision is issued by the Court of Appeal. To this purpose, the Minister of Justice shall forward the request and the enclosed documents to the Prosecutor General attached to the Court of Appeal. The Court shall decide in chambers without the presence of the person concerned, in compliance with Article 704, paragraphs 1 and 2. The provisions of Article 706, paragraph 1, shall also be observed. The competence to decide shall in any case belong to the Court of Appeal in Rome.
4. The authorisation shall not be requested if the transit takes place by air and no stopover in the Italian territory is envisaged. In case of a stopover, the provisions of the previous paragraphs and those of Section II of this Chapter shall be observed, provided they are applicable.

Article 713

Security measures imposed on the person extradited

1. The security measures applied to the person dismissed or convicted in Italy who is subsequently extradited shall be enforced when he returns for any cause to the Italian territory, following a new ascertainment of his social dangerousness.

Section II

Precautionary measures

Article 714

Coercive measures and seizure

1. The person whose extradition is requested may, at any time, be subject to coercive measures, upon request of the Minister of Justice. Similarly, the seizure of the *corpus delicti* and the material items related to the offence for which extradition is requested may be ordered at any time upon request of the Minister of Justice.
2. The provisions of Title I of Book IV regarding coercive measures shall be observed, if applicable, with the exception of those of Articles 273 and 280, as well as the provisions of Chapter III of Title III of Book III. When applying coercive measures, the need to guarantee that the person whose extradition is requested avoids a potential surrender shall be taken into account.

3. The coercive measures and the seizure shall in no case be ordered if there are well-founded reasons to believe that the conditions for a favourable judgment on extradition are not met.
4. The coercive measures shall be revoked after one year from their enforcement if no favourable judgment on extradition has been delivered by the Court of Appeal or, after one year and six months if the proceedings have not been concluded before the judicial authority in the case of an appeal to the Court of Cassation against that judgment. Upon request of the Prosecutor General, such time limits may be extended, also more than once, for a total period not exceeding a maximum of three months, when particularly complex ascertainment procedures are to be performed.
4-*bis.* The coercive measures shall also be revoked after three months from the delivery by the Minister of Justice of a favourable decision on the request for extradition without the person to be extradited being surrendered to the requesting State. Such time limit shall be suspended from the date of filing of an appeal against the Minister of Justice's decision with the administrative court to the date of filing of either the judgment rejecting the appeal or the decision terminating the administrative trial, in any case for a maximum period of six months.
5. The competence to follow the provisions of the previous paragraphs shall belong to the Court of Appeal or, during the proceedings before the Court of Cassation, to the Court of Cassation itself.

Article 715

Temporary application of precautionary measures

1. Upon request of the foreign State and a reasoned request of the Minister of Justice, the Court of Appeal may temporarily order a coercive measure before the request for extradition is received.
2. The measure may be ordered if:
a) the foreign State has declared that, against the person concerned, it has issued a decision restricting his personal liberty or a judgment of conviction sentencing him to imprisonment and that it intends to apply for extradition;
b) the foreign State has described the criminal acts, specified the offence and the elements necessary to identify precisely the person;
c) there is a risk of flight.
3. The competence to decide upon the measure to be taken shall belong, in the following order, to the Court of Appeal of the district where the person has his habitual or temporary residence or address for service or the Court of Appeal of the district where the person is located. If competence cannot be established following such procedure, the Court of Appeal in Rome shall be competent.
4. The Court of Appeal may also order the seizure of the *corpus delicti* and the material items related to

the offence.
5. The Minister of Justice shall immediately inform the foreign State that the coercive measure and the possible seizure have been temporarily applied.
6. The precautionary measures shall be revoked if, within forty days of the aforementioned notification, the Ministry of Foreign Affairs or the Ministry of Justice does not receive the request for extradition and the documents provided for in Article 700.

Article 716

Arrest by criminal police

1. In cases of urgency, the criminal police may arrest a person against whom an application for temporary arrest has been submitted, if the conditions provided for in Article 715, paragraph 2, apply. The criminal police shall also decide upon the seizure of the *corpus delicti* and the material items related to the offence.
2. The authority which carried out the arrest shall immediately inform the Minister of Justice and, without delay, within a maximum term of forty-eight hours, shall place the arrested person at the disposal of the President of the Court of Appeal of the district where the arrest has taken place, by forwarding the related record.
3. If the President of the Court of Appeal does not order the release of the arrested person, he shall confirm the arrest by means of an order within ninety-six hours of the arrest, ordering the application of a coercive measure. The President of the Court of Appeal shall immediately inform the Minister of Justice of the decision adopted.
4. The coercive measure shall be revoked if the Minister of Justice does not request its continuation within ten days of the confirmation.
5. The provisions of Article 715, paragraph 5 and 6, shall apply.

Article 717

Examination of the person subject to a coercive measure

1. If a coercive measure has been applied under Articles 714, 715 and 716, the President of the Court of Appeal shall proceed to the identification of the person and shall obtain his potential consent to extradition, mentioning it in the record, without delay and in any case within five days of the enforcement of the measure or its confirmation, as provided for in Article 716.
2. In order to decide upon the required actions provided for in paragraph 1, the President of the Court of Appeal shall invite the person concerned to appoint a retained lawyer. If the person concerned does not

appoint a retained lawyer, the President of the Court of Appeal shall designate a court-appointed lawyer under Article 97, paragraph 3. The lawyer shall be informed, at least twenty-four hours in advance, of the date set for the aforementioned actions and shall be entitled to participate.

Article 718

Revocation and substitution of measures

1. The revocation and substitution of the measures provided for in the previous Articles shall be ordered in chambers by the Court of Appeal or, during the proceedings before the Court of Cassation, by the Court of Cassation itself.
2. The revocation shall always be ordered if required by the Minister of Justice.

Article 719

Appellate remedies against the decisions on precautionary measures

1. A copy of the decisions issued by the President of the Court of Appeal or by the Court of Appeal under the provisions of the previous Articles shall be notified and served, after their enforcement, on the Prosecutor General attached to the Court of Appeal, the person concerned and his lawyer, who may lodge an appeal with the Court of Cassation for breach of law.

CHAPTER II

EXTRADITION FROM ABROAD

Article 720

Request for extradition

1. The Minister of Justice shall have the competence to request to a foreign State the extradition of an accused or convicted person against whom a decision depriving his personal liberty shall be enforced. To this purpose, the Prosecutor General attached to the Court of Appeal of the district in which the proceedings are ongoing or where the judgment of conviction has been delivered shall request the extradition to the Minister of Justice, forwarding him the necessary documents and documentary evidence.
2. The extradition may be requested upon initiative of the Minister of Justice himself.
3. The Minister of Justice may decide not to request extradition or to postpone the request, informing the requesting judicial authority.
4. The Minister of Justice shall have the competence to decide upon the acceptance of the conditions that might be imposed by the foreign State to grant extradition, provided that they do not conflict with the fundamental rights of the Italian legal system. The judicial authority shall be bound to respect the accepted conditions.

5. The Minister of Justice may order, for the purposes of extradition, searches abroad for the accused or convicted person and request his temporary arrest.

Article 721

Specialty principle

1. The person extradited shall not be subject to either a limitation of his personal liberty due to enforcement of a sentence or a security measure, or to any other measure depriving him of his personal liberty for a criminal act that was committed prior to the surrender and was other than that for which extradition has already been granted, unless there is the express consent of the foreign State or the person extradited has not left the Italian territory within forty-five days of his final release, although he was given the possibility to do so, or if the person extradited had left the State and voluntarily returned to it.

Article 722

Precautionary detention abroad

1. The precautionary detention imposed abroad following a request for extradition submitted by the State shall be calculated only to the effects of the total length provided for in Article 303, paragraph 4, without prejudice to the provision of Article 304, paragraph 4.

TITLE III

INTERNATIONAL LETTERS ROGATORY

CHAPTER I

LETTERS ROGATORY FROM ABROAD

Article 723

Powers of the Minister of Justice

1. The Minister of Justice shall order the enforcement of a letter rogatory by a foreign authority for notifications, services and the gathering of evidence, unless he holds that the actions required compromise the sovereignty, security or other essential interests of the State.

2. The Minister shall not order the enforcement of a letter rogatory when it is proven that the actions required are expressly banned by the law or do not adhere to the fundamental rights of the Italian legal system. The Minister shall not enforce a letter rogatory also when there are well-founded reasons to believe that prejudices on account of race, religion, sex, nationality, language, political opinions or personal or social conditions have affected the development or outcome of the trial and the accused person has not freely given his consent to the letter rogatory.

3. If the letter rogatory concerns the summons of a witness, an expert or an accused person before the foreign judicial authority, the Minister of Justice shall not enforce the letter rogatory when the requesting

State does not provide enough safeguards for the protection of the summoned person.
4. The Minister of Justice is also entitled to interrupt the letter rogatory if the requesting State does not provide enough safeguards of reciprocity.

Article 724

Jurisdictional proceedings

1. With the exception of the cases provided for in Articles 726 and 726-*ter*, the letter rogatory shall not be enforced by the foreign authority without a prior favourable decision by the Court of Appeal of the place where the actions required shall be carried out.
1 -*bis*. If the request for judicial assistance concerns actions which shall be enforced in several districts of the Court of Appeal, such request shall be forwarded directly to the foreign authority or, through the Minister of Justice or another Italian judicial authority that may have been involved, to the Court of Cassation, which decides which Court of Appeal is competent following the provisions of Articles 32, paragraph 1, and 127, provided such provisions are compatible. The decision shall also be taken considering the number and types of actions to be carried out as well as their importance, with reference to the location of the various courts concerned. The notice referred to in Article 127, paragraph 1, shall be notified exclusively to the Prosecutor General attached to the Court of Cassation. The Court of Cassation shall forward the case file to the appointed Court of Appeal, notifying the Minister of Justice of the decision.
2. After receiving the documents from the Minister of Justice, the Prosecutor General shall deliver his own closing speech before the Court of Appeal and forward, without delay, a copy of the letters rogatory of the foreign authority concerning the crimes referred to in Article 51, paragraphs 3-*bis* and 3-*quater* to the National Anti-Mafia Prosecutor.
3. The President of the Court of Appeal shall set the date of the hearing and inform the Prosecutor General.
4. The Court of Appeal shall enforce the letter rogatory by means of an order.
5. The enforcement of the letter rogatory shall be rejected if:
a) the actions required are banned by the law or do not adhere to the principles of the Italian legal system;
b) the criminal act prosecuted by the foreign authority is not deemed an offence by the Italian law and the accused person has not freely given his consent to the letter rogatory;
c) there are well-founded reasons to believe that prejudices on account of race, religion, sex, nationality, language, political opinions or personal or social conditions have affected the development or outcome of the trial and the accused person has not freely given his consent to the letter rogatory.

5-*bis.* The enforcement of the letter rogatory shall be suspended if the latter may compromise ongoing investigations or criminal proceedings in Italy.

Article 725

Enforcement of letters rogatory

1. While ordering the enforcement of a letter rogatory, the Court shall delegate one of its members or the Preliminary Investigation Judge of the place where the actions shall be carried out.
2. The rules of this Code shall apply while carrying out the actions required, provided that compliance with the procedures expressly required by the foreign judicial authority does not conflict with the principles of the Italian legal system.

Article 726

Summons of witnesses upon request of foreign authorities

1. The summons of witnesses having their habitual or temporary residence in the Italian territory, requested by a foreign judicial authority, shall be forwarded to the Public Prosecutor of the Republic of the place where it must be enforced, who shall serve it under Article 167.

Article 726-*bis*

Direct service on the person concerned

1. If international conventions or agreements allow direct service on the person concerned by means of postal mail and such service is not used, also the request for service by the foreign judicial authority on the accused having his habitual or temporary residence in the Italian territory shall be forwarded to the Public Prosecutor of the Republic of the place where it must be enforced, who shall serve it under the provisions of Articles 156, 157 and 158.

Article 726-*ter*

Letters rogatory by foreign administrative authorities

1. If an international agreement envisages the submission of the request for judicial assistance in proceedings concerning an offence also by a foreign administrative authority, the Preliminary Investigation Judge of the place where the requested actions must be carried out shall decide on the letter rogatory, upon request of the Public Prosecutor of the Republic. The provisions of Articles 724, paragraphs 5 and 5-*bis*, and 725, paragraph 2, shall apply.

CHAPTER II

LETTERS ROGATORY ABROAD

Article 727

Forwarding of letters rogatory to foreign authorities

1. The letters rogatory which are issued by courts and Public Prosecutors and addressed, within their respective assignments, to foreign authorities for notifications, services and the gathering of evidence, shall be forwarded to the Minister of Justice, who shall send them to their addressees by diplomatic means.

2. Within thirty days of receipt of the letter rogatory, the Minister shall order by decree the non-enforcement of the letter rogatory if he believes it may compromise the security or any other fundamental interests of the State.

3. The Minister shall inform the requesting judicial authority of the date of receipt of the request and of the dispatch of the letter rogatory or decree provided for in paragraph 2.

4. If the letter rogatory has not been forwarded by the Minister within thirty days of receipt and no decree provided for in paragraph 2 has been issued, the judicial authority may directly send the letter rogatory to the diplomatic or consular agent and shall inform the Minister of Justice.

5. In cases of urgency, the judicial authority shall forward the letter rogatory according to paragraph 4, after the Minister of Justice has received a copy of such letter. The provision of paragraph 2 shall in any case be applied until the letter rogatory is forwarded by the diplomatic or consular agent to the foreign authority.

5-*bis.* Whenever the letter rogatory may be enforced according to Italian law procedures, pursuant to international agreements, the judicial authority shall specify in the letter, the procedure and the necessary requirements for the requested documents to be used at trial.

5-*ter.* In any case, a copy of the letters rogatory issued by Public Prosecutors and drawn up during proceedings for crimes referred to in Article 51, paragraphs 3-*bis* and 3-*quater,* shall be forwarded to the National Anti-Mafia and Counter-*ter*rorism Prosecutor without delay.

Article 728

Temporary immunity of the summoned person

1. If the letter rogatory concerns the summons of a witness, an expert or an accused person before an Italian judicial authority, the summoned person appearing before the court shall not be deprived of his liberty as a consequence of the enforcement of a sentence or security measure nor shall he be subject to other measures depriving him of his liberty for criminal acts prior to the service of the summons.

2. The immunity provided for in paragraph 1 shall cease if the witness, the expert or the accused person has not left the Italian territory within fifteen days from the moment when his presence is no longer required by the judicial authority, although he was given the possibility to do so, or he had left the State and voluntarily returned to it.

Article 729

Use at trial of documents gathered by letter rogatory

1. The breach of the rules referred to in Article 696, paragraph 1, concerning the gathering or forwarding of documents or other means of evidence following a letter rogatory abroad shall result in the exclusion of the gathered or forwarded documents or means of evidence. If the foreign State has imposed conditions on the possible use of the requested documents, the judicial authority is obliged to comply with such conditions.

1 -*bis*. If the foreign State enforces the letter rogatory following a different procedure to that specified by the judicial authority according to Article 727, paragraph 5-*bis*, the evidence forwarded by the foreign authority shall not be used.

1-*ter*. The statements concerning the content of the documents which are unusable according to paragraphs 1 and 1-*bis* shall in no case be used, irrespective of the person who made them.

2. The provision of Article 191, paragraph 2, shall be applied.

TITLE IV

EFFECTS OF FOREIGN CRIMINAL JUDGMENTS.

ENFORCEMENT OF ITALIAN CRIMINAL JUDGMENTS ABROAD

CHAPTER I

EFFECTS OF FOREIGN CRIMINAL JUDGMENTS

Article 730

Recognition of foreign criminal judgments for the purposes provided for by the Criminal Code

1. When the Minister of Justice receives a criminal judgment of conviction or dismissal delivered abroad against Italian citizens or foreigners or stateless persons habitually residing in Italy or persons being prosecuted in Italy, he shall forward without delay a copy of the judgment, along with its translation into Italian, any attached documents and related information and documentation to the Prosecutor General attached either to the Court of Appeal of the district where the local Criminal Records Office of the birth place of the person to whom the foreign judicial decision refers is located or the Court of Appeal in Rome. He shall also forward the request, if any, referred to in Article 12, paragraph 2, of the Criminal Code.

2. If the foreign judgment must be recognised for the purposes provided for in Article 12, paragraph 1, numbers 1), 2) and 3), of the Criminal Code, the Prosecutor General shall start the relevant proceedings by submitting a request to the Court of Appeal. For such purpose, also through the Minister of Justice, he may request the foreign authorities with competence to provide the information deemed appropriate.

2-*bis.* When the Prosecutor General is informed by the foreign authority, also through the Minister of Justice, of the existence of a criminal judgment of conviction delivered abroad, he shall request the judgment to be forwarded to the foreign authority by letter rogatory for its recognition under paragraph 2.

3. The request to the Court of Appeal shall contain the specification of the purposes for which the recognition is requested.

Article 731

Recognition of foreign criminal judgments under international agreements

1. If the Minister of Justice believes that, under an international agreement, a criminal judgment delivered abroad must be enforced in Italy or, in any case, that other effects must be assigned to such judgment in Italy, he shall require its recognition. For this purpose, he shall forward a copy of the judgment, along with its translation into Italian, any attached documents and related documentation and information to the Prosecutor General attached to either the Court of Appeal in the district where the local Criminal Records Office of the birth place of the person to whom the judicial decision refers is located or the Court of Appeal in Rome. He shall also forward the potential request for enforcement in Italy by the foreign State or the decision whereby the latter agrees to the enforcement.

1-*bis.* The provisions of paragraph 1 shall also apply when confiscation is enforced and the relevant decision has been adopted by the foreign judicial authority by a decision other than a judgment of conviction.

2. The Prosecutor General shall start the recognition by submitting a request to the Court of Appeal. If the prerequisites are met, he shall request that recognition also have the effects provided for in Article 12, paragraph 1, numbers 1), 2) and 3), of the Criminal Code.

Article 732

Recognition of foreign criminal judgments for civil purposes

1. Whoever may be interested in having the criminal provisions of a foreign judgment employed at trial in order to obtain the restitution or compensation of damages or for other civil purposes, may request that the judgment be recognised by the Court of Appeal in the district where the local Criminal Records Office of the birth place of the person to whom the judicial decision refers is located or the Court of Appeal in Rome.

Article 733

Prerequisites for recognition

1. The foreign judgment shall not be recognised if:

a) the judgment has not become final on the basis of the laws of the State where it has been delivered;

b) the judgment contains provisions that do not adhere to the fundamental principles of the Italian legal system;

c) the judgment has not been delivered by an independent and impartial court or the accused person has not been summoned to appear at trial before the foreign authority or has not been granted the right to be questioned in a language he understands and to be assisted by a lawyer;

d) there are well-founded reasons to believe that prejudices on account of race, religion, sex, nationality, language, political opinions or personal or social conditions have affected the development or outcome of the trial;

e) the act for which the judgment has been delivered is not deemed an offence by the Italian law;

f) a final judgment has been delivered in Italy for the same offence and against the same person;

g) criminal proceedings are ongoing in Italy for the same criminal act and against the same person.

1-*bis*. Without prejudice to the provision of Article 735-*bis*, the foreign judgment shall not be recognised for the purposes of the enforcement of confiscation if the objects to be confiscated would not have been confiscated according to the Italian law if the same criminal act had been prosecuted in Italy.

Article 734

Decision by the Court of Appeal

1. The Court of Appeal shall follow the procedure referred to in Article 127 and shall decide on recognition by judgment, wherein it shall expressly specify the subsequent effects.

2. The judgment may be appealed to the Court of Cassation by the Prosecutor General attached to the Court of Appeal and by the person concerned.

Article 735

Determination of sentence and confiscation injunction

1. When the Court of Appeal delivers a judgment of recognition for the enforcement of a foreign judgment, it shall determine the sentence which must be enforced in Italy.

2. For this purpose, the Court of Appeal shall convert the sentence imposed by the foreign judgment in one of the penalties provided for by the Italian law for the same offence. Such penalty must correspond in its nature and to whatever extent possible to the sentence imposed by the foreign judgment. The length or amount of the sentence shall be determined, possibly taking into account the adjustment criteria provided

for by Italian law, on the basis of the length or amount of the sentence imposed by the foreign judgment. However, such length or amount shall not exceed the maximum limit provided for by the Italian law for the same offence. When the length or amount of the sentence is not established in the foreign judgment, the Court shall determine the sentence on the basis of the criteria specified in Articles 133, 133-*bis* and 133-*ter* of the Criminal Code.

3. In no case shall the sentence determined in the aforementioned way be heavier than the sentence established in the foreign judgment.

4. If enforcement of the sentence has been conditionally suspended in the foreign State where the judgment has been delivered, the Court shall also order, by judgment of recognition, that the sentence be conditionally suspended according to the Criminal Code. If the convicted person has been conditionally released in the foreign State, the Court shall substitute the foreign measure with conditional release and, upon determining the limitations of the conditional release, the Sentence Supervision Judge shall impose an overall sentence that will not be heavier than that imposed in foreign decisions.

5. In order to determine the financial penalty, the amount established in the foreign judgment shall be converted into the same value in EUR according to the exchange rate of the day in which the judgment of recognition is delivered.

6. When the Court delivers a judgment of recognition to enforce confiscation, such confiscation shall be ordered by the same judgment of recognition.

Article 735

Confiscation consisting in the requirement of payment of a sum of money

1. In the case of enforcement of a foreign decision on confiscation consisting in the imposition of payment of a sum of money corresponding to the value of the price, product or profit of an offence, the provisions on the enforcement of financial penalties shall apply, except for the provision concerning the compliance with the maximum limit of the sentence provided for in Article 735, paragraph 2.

Article 736

Coercive measures

1. Upon request of the Prosecutor General, the Court of Appeal with competence for the recognition of a foreign judgment for enforcing a penalty of deprivation of liberty, may order a coercive measure against the convicted person who is in the Italian territory.

2. The provisions of Title I of Book IV concerning coercive measures shall be observed, if applicable, except for the provisions of Article 273.

3. The President of the Court of Appeal shall promptly proceed to the identification of the person, within

five days of the enforcement of the coercive measure. The provision of Article 717, paragraph 2, shall apply.
4. The coercive measure ordered according to this Article shall be revoked if six months have lapsed since its enforcement without the Court of Appeal delivering a judgment of recognition. If an appeal has been lodged with the Court of Cassation against such judgment, the coercive measure shall be revoked if ten months have lapsed without a final judgment of recognition being delivered.
5. The revocation and substitution of the coercive measure shall be ordered in chambers by the Court of Appeal.
6. Upon enforcement of the decisions issued by the Court, a copy of such decisions shall be forwarded to and served on the Prosecutor General, the person concerned and his lawyer, who may lodge an appeal with the Court of Cassation on account of breach of law.

Article 737

Seizure

1. Upon request of the Prosecutor General, the Court of Appeal with competence for the recognition of a foreign judgment may order the seizure of the objects to be confiscated.
2. If the Court does not accept the request, the Prosecutor General may lodge an appeal with the Court of Cassation against the relevant order. An appeal to the Court of Cassation may be lodged by the person concerned against the order directing the seizure on account of breach of law. The appeal to the Court of Cassation shall have no suspensive effect.
3. The provisions regulating the enforcement of the precautionary seizure shall be observed, provided they are applicable.

Article 737-*bis*

Investigations and seizure for confiscation purposes

1. In the cases provided for by international agreements, the Minister of Justice shall order the fulfilment of the request made by a foreign authority to conduct investigations on the objects which may be subject to a subsequent request of confiscation or seizure.
2. For this purpose, the Minister of Justice shall forward the request, along with the attached documents, to the Prosecutor General attached to the Court of Appeal with competence for the recognition of the foreign judgment for the subsequent enforcement of confiscation. The Prosecutor General shall submit a request to the Court of Appeal who shall decide by order as set forth in Article 724.
3. The enforcement of the request for investigations or seizure shall be rejected:
a) if the requested actions conflict with the principles of the Italian legal system or are banned by law or

if such actions would not have been allowed if the same criminal acts had been prosecuted in Italy;

b) if there are reasons to believe that the conditions for the subsequent enforcement of confiscation are not met.

4. Investigations shall be conducted in compliance with the provisions of Article 725.

5. When a request for seizure is submitted, the provisions of Article 737, paragraphs 2 and 3, shall apply.

6. The seizure ordered under this Article shall cease to be effective and the Court of Appeal shall order the restitution of the seized objects to the person entitled to them if, within two years of the seizure, the foreign State does not request the enforcement of confiscation. The time limit may be postponed more than once for a maximum period of two years; the decision on the application shall be taken by the Court of Appeal ordering the seizure.

Article 738

Enforcement following recognition

1. In cases of recognition for the enforcement of a foreign judgment, the penalties and confiscation following recognition shall be enforced according to Italian law. The sentence served in the State of conviction shall be counted for enforcement purposes.

2. Enforcement shall be performed by the Prosecutor General attached to the Court of Appeal delivering the judgment of recognition of his own motion. Such Court is considered equal, for any effect, to the court that has delivered the judgment of conviction in ordinary criminal proceedings.

Article 739

Prohibition on extradition and new proceedings

1. In cases of recognition for the enforcement of a foreign judgment, which does not concern confiscation the convicted person shall not be extradited nor prosecuted again for the same criminal act in Italy, not even if such act is considered differently on account of its legal definition, stage of the offence or its circumstances.

Article 740

Enforcement of financial penalties and devolution of confiscated objects

1. The sum deriving from the enforcement of a financial penalty shall be paid in to the Treasury of Fines. However, the sum shall be paid to the convicting State, upon request of the latter, if under the same circumstances such State would pay the sum to the Italian State.

2. Confiscated objects shall be devolved to the Italian State. Upon request of the State where the recognised judgment has been delivered, such objects shall be devolved to such State if under the same circumstances it would devolve the confiscated objects to the Italian State.

Article 740-*bis*

Devolution of confiscated objects to a foreign State

1. In the cases provided for by international agreements in force in Italy, objects confiscated with a final judgment or another final decision shall be devolved to the foreign State where the judgment has been delivered or where the decision of confiscation has been adopted.

2. The devolution referred to in paragraph 1 shall be ordered when the following prerequisites are met:

a) the foreign State has expressly required the devolution of confiscated objects;

b) the judgment or decision referred to in paragraph 1 has been recognised in Italy according to Articles 731, 733 and 734.

Article 740-*ter*

Devolution injunction

1. Upon delivering the judgment of recognition of a foreign judgment or decision of confiscation, the Court of Appeal shall order the devolution of confiscated objects according to Article 740-*bis.*

2. A copy of the decision shall be immediately forwarded to the Minister of Justice, who shall decide on the procedure for such devolution with the requesting State.

Article 741

Proceedings for the recognition of civil provisions of foreign criminal judgments

1. Upon request of the person concerned, in the same proceedings and by the same judgment provided for in Article 734, the civil provisions of a foreign criminal judgment condemning the convicted person to restitution or compensation of damages may be declared effective.

2. In other cases, the request shall be submitted by the person with a personal interest to the Court of Appeal in the district where the civil provisions of the foreign criminal judgment should be applied. The provisions of Articles 733 and 734 shall be observed.

CHAPTER II

ENFORCEMENT OF ITALIAN CRIMINAL JUDGMENTS ABROAD

Article 742

Powers of the Minister of Justice and prerequisites for enforcement abroad

1. In the cases provided for by international agreements or in Article 709, paragraph 2, the Minister of Justice shall request the enforcement of criminal judgments abroad or shall approve of the enforcement when it is requested by the foreign State.

2. Enforcement abroad of a criminal judgment condemning the convicted person to deprivation of liberty

may be requested or granted only if the convicted person, after being informed of the consequences, has freely declared to agree with it and enforcement in a foreign State allows his social reintegration.
3. Enforcement abroad of a sentence of deprivation of liberty is allowed, even if the requirements provided for in paragraph 2 are not met, if the convicted person is in the territory of the requested State and extradition has been denied or is in any case impossible.

Article 743

Decision by the Court of Appeal

1. The request for the enforcement abroad of a sentence of deprivation of liberty is not allowed without a prior favourable judgment by the Court of Appeal in whose district the judgment of conviction has been delivered. For this purpose, the Minister of Justice shall forward the case file to the Prosecutor General so that he starts proceedings before the Court of Appeal.
2. The Court shall decide by judgment as set forth in Article 127.
3. If the consent of the convicted person is necessary, it must be given before an Italian judicial authority. If the convicted person is abroad, such consent may be given before the Italian consular authority or the judicial authority of the foreign State.
4. The judgment may be appealed to the Court of Cassation by the Prosecutor General attached to the Court of Appeal and by the person concerned.

Article 744

Limits to the enforcement of conviction abroad

1. In no case may the Minister of Justice request the enforcement abroad of a sentence of deprivation of liberty if there are reasons to believe that the convicted person will be subject to persecution or discrimination on account of his race, religion, sex, nationality, language, political opinions or personal or social conditions or to cruel, inhuman or degrading penalties or treatments.

Article 745

Request for precautionary measures abroad

1. If the enforcement of a sentence of deprivation of liberty is requested and the convicted person is abroad, the Minister of Justice shall require the application of precautionary detention.
2. Upon requesting enforcement of confiscation, the Minister is entitled to require seizure.
2-*bis*. In the cases provided for by international agreements, the Minister is also entitled to request investigations to identify and find objects held abroad which may be included in a request for enforcement of confiscation, as well as require their seizure.

Article 746

Effects on enforcement in Italy

1. The enforcement of a sentence in Italy shall be suspended when its enforcement begins in the requested State and it shall be suspended for the entire duration of such enforcement.

2. The sentence shall not be enforced in Italy when it has been entirely served in compliance with the laws of the requested State.