

This Reference GUIDE TO CRIMINAL PROCEDURE was initiated by the Belgian OSCE Chairmanship and translated into Russian by the donation of Spanish OSCE Chairmanship. The OSCE Strategic Police Matters Unit expresses its appreciation to both Chairmanships for their close co-operation and support.

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Report to the Belgian OSCE Chairmanship on the elaboration of a

REFERENCE GUIDE TO CRIMINAL PROCEDURE

December 2006

Introduction

The Belgian OSCE Chairmanship announced its emphasis on criminal justice, the rule of law and fighting organized crime at the Ljubljana Ministerial Council in December 2005.

The idea of elaborating a “Reference Document to Criminal Procedure”, a tool for rule of law practitioners in the field, was first presented to participating States and the OSCE Community during the annual ODIHR Human Dimension seminar in May in Vienna.

The High Level Working Group on Criminal Procedure or “Brussels Working Group” of experts on criminal procedure was created during the months of June and July. Over the summer, a first text was drafted. The Group started its meetings on September 4, 2006. The draft Reference Guide to Criminal Procedure was finalized on 24 October 2006.

The criteria to invite experts to take part in the Brussels Working Group were discussed during preliminary contacts with International Organizations (OSCE, United Nations, Council of Europe, EU) and with the national authorities of different participating States. The intention when creating the Brussels Working Group was to reflect criminal justice systems within the OSCE area and guarantee an approach based on international law by the attendance and input of the experts from the above mentioned International Organizations and the international experience of the national experts.

The Brussels Working Group presents this Reference Guide to Criminal Procedure to the Chairmanship of the OSCE (see annex).

Methodology

Mid-August 2006, the President of the Brussels Working Group presented a draft of the Reference Guide to Criminal Procedure to serve as a basis for discussions.

This draft was based on relevant existing International Criminal Law / Criminal Procedure instruments (see annex I of the Reference Guide) and codifying exercises (e.g. the USIP/Galway University “Draft Transitional Code on Criminal Procedure”, Geneva 2003; the E.U.-CIVCOM “Guidelines for Criminal Procedure in Crisis Management”, 2002) combined with personal national and international experience. It

contained the general principles and rights in criminal procedure, the essential procedural rules applicable during the pre-trial, trial and post-trial phases.

The group met 4 times. Each meeting lasted two days.

During the sessions of the working group, a discussion was held article by article of the draft document. All articles were discussed, reviewed and when necessary amended. As a result of the input of all the participants this process resulted in the current text, in annex.

Approach, scope and development

The Brussels Working Group took note of and analyzed:

- the Decisions of the OSCE Ljubljana Ministerial Council (2005) in relation to the OSCE Human Dimension Commitments regarding the rule of law, the administration of justice, human rights and fundamental freedoms;
- the firm intention of OSCE participating States to combat (organized) crime and impunity, to enhance legal co-operation in criminal matters between States and to collaborate in that respect with international organisations, e.g. with the UNODC;
- lessons learned in post-conflict and transitional regions. In this respect, the expertise (in the framework of UN, EU or OSCE missions) of the members of the Brussels Working Group with regard to the rule of law and in particular relating to the administration of criminal justice, criminal law-making and implementation, the legal and practical search of finding the balance between (individual) human rights and public security, between prosecution and crime prevention, organizing a fair criminal trial with due regard to the criteria of confidence-building, reconciliation and sustainability;
- the actual daily judicial practice (and the obstacles encountered) in the context of mutual legal co-operation (mutual legal aid / extradition) and legal reform;
- the ongoing international efforts to codify internationally accepted principles, standards and norms, good practice in criminal justice (e.g. Rules on Evidence and Procedure in International Tribunals and Courts) and to elaborate tools and instruments in the field of criminal justice with the aim to support and harmonize the assessment of criminal justice systems and criminal justice reforms. In this field the Brussels Working Group acknowledges the remarkable efforts of the USIP projects on Model Codes, various UNODC initiatives and projects, U.N. instruments relating to post-conflict regions in the Balkans (Kosovo, BiH.), East Timor and Cambodia, Recommendations of the Committee of Ministers to Member States of the Council of Europe et cetera;
- international law instruments relating to criminal justice and criminal procedure (combating crime and crime prevention, terrorism) by International Organizations;
- the differences between criminal procedural rules and criminal practices in OSCE participating States.

Therefore,

1. The Brussels Working Group, synthesising the above-mentioned enormous amount of international documents, concluded that a “Reference Guide to Criminal Procedure” should not be seen as an attempt to conceive a unique “model code” applicable in transitional or post-conflict regions neither as a binding instrument containing all minimum rules or standards to be applied in the OSCE Member States, but as a guide and a tool to support and adjust in a practical way the legal reform activities regarding Criminal Procedure in the OSCE participating States. This “translation” of international accepted norms and standards into practical rules in the (national) law is a dynamic and permanent process, essential to upholding the Rule of Law.

The content and the way this Reference Guide was conceived demonstrates that the Brussels Working Group addresses this tool to administrative and legal staff (national or international) working in the field of the administration of justice, law-making and law enforcement.

It shows as well the primary importance of national legislation, national legal traditions and existing binding International Law (e.g. the large majority of the participating States of the OSCE are legally bound by the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the E.C.H.R.).

2. The Brussels Working Group underlines that the Reference Guide should not be seen as:

- a stand-alone document: the Reference Guide will be beneficial when it is combined with a general criminal policy and process aiming at preventing and combating crime and impunity while respecting due process and human rights. The Reference Guide, being a synthesis, shall be read and used in combination with the relevant international instruments.
- a definitive document: the Reference Guide, although it attempts to cover all aspects of the Criminal Procedure, cannot be seen as having reached the level of completeness. In addition, the evolutive and evolving nature of this Reference Guide requires periodical evaluation, adaptation and refinement

3. The Brussels Working Group underlines that its approach on criminal procedure is a general one. A specific procedure applicable on a specific crime is not considered neither supported, although it is noticed that specific crimes have been the object of regional and international documents (on trans-national organized crime, human trafficking, illicit drugs etc..) . In this regard the Working Group stressed that the same criminal procedural rules and effective human rights protection should apply to all forms of criminal behavior.

4. The Brussels Working Group developed this Reference Guide by comparing the criminal procedural law of different criminal justice systems. It observes that the

differences between the (national) criminal procedural laws/systems did not block the discussions and agreement on the current version of the Reference Guide.

Conclusion

The Brussels Working Group, taking into account time limits, the wide scope of the exercise and the enormous amount of material, finalized this Reference Guide to Criminal Procedure in due time. The efficient co-operation of all experts, their professionalism and their open mind, has contributed to the completion of this exercise in four two-day meetings.

The lessons-learned during field missions in post conflict regions, the assessment of difficult ongoing legal reform activities, the legal and practical difficulties and obstacles encountered in establishing a well-functioning criminal justice system in various European States and regions and the almost permanent call for more effective and efficient international legal co-operation in combating crime and impunity show that the Reference Guide to Criminal Procedure is an essential tool that is urgently needed by all national and international practitioners working in the field of criminal justice.

The concept of a "Reference Guide" rather than a rigid model, leaves room for flexibility, for a dynamic and evolving approach, for adaptation to the different law systems and law traditions and intends to contribute therefore to the essential confidence in and sustainability of the legal criminal system and its institutions.

Way Forward

The Brussels Working Group suggests that:

- the Reference Guide to Criminal Procedure be welcomed by the Belgian 2006 OSCE Chairmanship;
- this valuable exercise be continued by the Spanish 2007 OSCE Chairmanship, in order to evaluate and refine the Reference Guide to Criminal Procedure through an appropriate procedure combining the institutions of the OSCE (ODHIR), the OSCE participating States and relevant International Organizations.

Guy Van Craen
President of the Brussels Working Group

President, Court of Appeals, Antwerp
Former International Judge

See Annex to the report: Reference Guide to Criminal Procedure

**ANNEX TO THE REPORT
BY THE BRUSSELS WORKING GROUP:**

**REFERENCE GUIDE
TO
CRIMINAL PROCEDURE**

The rule of law guarantees:

the independent, fair and efficient administration of justice,
the impartial operation of the public judicial service,
respect for human rights and fundamental freedoms,
a peaceful society protected from crime and impunity.

Brussels Working Group, 24 November 2006

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Preamble

The High Level Expert Working Group to Criminal Procedure (the Brussels Working Group)

- was created by the Belgian Chairmanship of the OSCE following the decisions taken during the Thirteenth Meeting of the OSCE's Council of Ministers in Ljubljana on 6 December 2005¹;
- was composed of international experts in criminal law and criminal procedure, with practical and academic as well as national and international experience in different legal systems;
- developed the present Reference Guide to Criminal Procedure on the basis of relevant international rules and standards, best judicial practices and OSCE political commitments on criminal procedure with the aim of bringing together, in an accessible and practical format, a practical instrument for rule of law practitioners in OSCE field missions and at other levels.

The Brussels Working Group, following four two-day meetings, is convinced that:

- the most effective way to combat organized crime in all its forms is a common and coherent approach based on international cooperation;
- the obstacles encountered in fighting organized crime can be overcome by strengthening mutual confidence in the participating States' justice systems, and by developing better workable and more user-friendly legal instruments;
- the effective implementation of existing international standards and norms based on international law, recognized as our common heritage, combined with best judicial practices on criminal procedure, is essential in countering crime and impunity;

- ¹ Ljubljana decision MC 3/05 of 6 December 2005 on Combating Transnational Organized Crime tasked the Organization to
“carry forward co-operation between participating States and to work on designing, with the support of the Secretary General and the relevant OSCE institutions, possible measures and forms of assistance that could be available to requesting participating States with a view to improving and promoting the functioning of criminal justice systems, inter alia, legislation, law enforcement, prosecution, administration of justice, international legal co-operation, including extradition, and the penal system, in consultation with the UNODC, the Council of Europe and other pertinent international organizations”

- a well-functioning criminal justice system shall be constructed, with due regard to the effective protection of human rights and freedoms, as a democratic and transparent civil service;
- an integrated approach, that focuses on the entire criminal justice chain, encompassing but not limited to legislation, law enforcement, prosecution, administration of justice, international legal co-operation and the penitentiary system, is required;
- the legal culture should be respected when strengthening the criminal justice system;

Therefore, the Brussels Working Group:

- underlines that this Reference Guide is to be seen neither as a binding instrument or a political commitment nor as affecting in any way respective international commitments pertaining to binding bilateral or multilateral agreements and international instruments. The proposed text does not attempt to create either hard law or soft law but should be seen in this context as a synthesis. It is therefore recommended to use the text in light of the relevant national and international law instruments.
- purposely chose the flexible format of a reference guide
- is conscious that this text is an evolving document. Ideally, the text should be further developed in a progressive review process at a larger scale within the framework of the OSCE.
- proposes this Reference Guide to Criminal Procedure as a practical instrument for practitioners and other key actors in the OSCE's participating States in the field of Criminal Justice

The Brussels Working Group expresses its thanks and gratitude for the efforts of the Belgian 2006 OSCE Chairmanship.

(signed)
Judge Guy Van Craen, Chairman
Court of Appeal, Antwerp

1. Definitions

Definitions serve to make the document more readable. They are only applicable and valid for the purpose of this text.

Judge: A panel of judges, tribunal or court

Court: Judge, tribunal, or panel of Judges (including where applicable a jury or lay judges)

Judicial Authorities: Judges and prosecutors

Judicial decision: a decision by the Judge

Judiciary: Courts and Tribunals and other judicial bodies, including administration officials or registrars.; bodies having prosecutorial and judicial power according to the Law.

Law Enforcement Agencies: Police and all other State bodies with policing or enforcement powers according to the Law (e.g. tax, security, frontier/border, health, food agencies)

Prosecutor: All authorities invested with prosecutorial power according to the Law (e.g. Prosecutors, some State bodies)

Office of the Prosecutor: The prosecutor or his representative according to the Law.

Prosecution file: The file at the disposal of the judge and/or prosecutor and/or the defence during the trial proceedings.

Competent authority: The authority having power according to the Law.

Defence: suspect, accused, and his/her counsel (advocate)

Suspect: Legal or natural person under investigation, suspected of a crime

Accused: legal or natural person suspected of a crime referred (after indictment) to the Judge

Convict: An accused who has been convicted following a judicial decision declaring that person guilty

Parties: Defence, prosecutor's office and where applicable including

the damaged party.

The law: Applicable national (local) law

“where applicable”: Depending on the legal system concerned. The major differences between legal systems (e.g. common law-civil law - mixed systems, traditional systems) render it difficult if not impossible to define a common definition, or rule. This is the case for example when it comes to the definition of the competencies and powers of judicial authorities during the pre-trial process, the role of the victim(damaged party) during the criminal justice process, the role, duties and competences of judges (with or without a jury/lay judges) during trial . Whatever the tradition concerned the Rule of Law principle that all decisions/orders, measures of law enforcement agencies, prosecutors and judges may be challenged and be subject to judicial control or review in due time by the competent higher independent judicial authority. In particular when those decisions, orders or measures affect (directly or indirectly) the Human Rights and/or Fundamental Freedoms of individuals or a groups.

Prisoner: A person incarcerated on the basis of a sentence of imprisonment.

Detainee: A suspect detained following a pre-trial judicial decision

Arrested person: A suspect deprived of his liberty by the Law Enforcement Agency with or without an order of the Prosecutor

Witness/Victim: A victim of a crime can be a legal or a natural person.

A victim: The person against whom a criminal act or omission has been committed. A witness of a crime is not always a victim, but has some relevant information subject to testimony. An expert assigned as such by the parties or the judge, is considered as an expert-witness with respect to his/her knowledge and experience in the area of a particular scientific area upon which he or she gives evidence.

Partner: Person close to the victim, to the witness or to the accused, considered by them respectively as their partner in life.

Child: All persons below the age of 18 years.

International Standards: International Standards of general or specific application following binding international instruments and internationally recognized good practice. These are related to, inter alia : International Cooperation, Treatment of Offenders, Judiciary and Law Enforcement, Juvenile Justice, Protection of Victims /Witnesses,

Capital Punishment, Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Human Rights, Economic-Social-Cultural Rights, Civil and Political Rights, Protection of Arrested or Detained or Imprisoned persons, Protection of the Rights of the Child , Discrimination, Rights of Minorities Rights of Women.(see annex)

Serious crime: An illegal act or omission defined by the law as a crime attracting a sanction of imprisonment of at least 4 years

Organized Crime: Crime committed by an organized criminal group ie a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing serious crime(s) in order to obtain direct or indirect financial or material benefit.

Organized Transnational/International Crime: Organized crime committed in more than one State; or committed in one State but where a substantial part of its preparation, planning, direction or control takes place in another State; or the crime is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or the crime is committed in one State but has substantial effects in another State.

Where the masculine pronoun is used it is to be read as including the feminine throughout this document.

2. General Principles

2.1 Principle of Legality

2.1.1 Tribunals and Courts must be established by law

2.1.2 Investigating and prosecutorial functions are de facto and de jure strictly separated from any deciding judicial functions in the same criminal case.

2.1.3 The law defines the legal status and powers of the law enforcement agencies, their investigative powers within the criminal procedure and the competent controlling authority.

2.1.4 The law defines the criminal responsibility of natural and legal persons, subject to the criminal procedure and defines the procedure and measures for those persons which due to their mental state or due to their age can not be subject to the criminal process.

2.1.5 A criminal process can not be initiated if the act or its omission was not punishable by law (national/international) at the time it was committed

2.1.6 Criminal Material Law has no retroactive effect to the detriment of the accused. This provision does not prejudice the investigation, prosecution, trial and punishment of any person for acts or omissions which constitute, according to general principles international humanitarian law war crimes, genocide or crimes against humanity

2.2 Rights

2.2.1 All persons shall be presumed innocent until proven guilty by the law and shall be treated as such.

2.2.2 No-one may be convicted unless the Judge is convinced on the basis of the evidence provided during the trial, that he/she is guilty beyond reasonable doubt ('in dubio pro reo').

2.2.3 In the determination of the civil rights and obligations or in the determination of any criminal charge, all persons are entitled to a fair trial and public hearing within a reasonable time by an independent and impartial Judge established by law.

2.2.4 All persons charged with a criminal offence have the right :

To be informed promptly in a language which he understands and in detail, of the nature and cause of the accusation against him.

To have adequate time and facilities to the preparation of his defence

To defend himself in person or through legal assistance of his own choosing or, if he has no sufficient means to pay for legal assistance, to be given for free the legal assistance of his choosing. In particular, when a suspect is arrested or detained, a defence lawyer shall be provided on extremely short notice, at least before the jurisdictional decision on pre-trial detention or measures affecting his liberty of movement.

To examine or have examined witnesses (and other evidence) against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

To have the free assistance of an interpreter if he cannot understand or speak the language during the criminal process. Mute and deaf persons have the same right to free language assistance.

2.2.5 The same rights as those mentioned above, mutatis mutandis are attributed to the victim.

2.2.6 All persons have the right to liberty and security. No one shall be deprived of his liberty except in the following cases and in accordance with due criminal procedure as prescribed by the law:

The lawful detention after conviction by a competent Judge

The lawful arrest or detention affected for the purpose of bringing him before the competent judicial authority on reasonable suspicion of having committed a crime or offence or when it is reasonably considered necessary to prevent his committing a crime or offence or fleeing after having done so.

2.2.7 All suspected or accused persons have the right to remain silent from the start until the end of the criminal procedure. No coercive measures are allowed to obtain self-incrimination or declarations from the suspect or accused about the circumstances or concerning other persons involved in the alleged crime(s) or about the hidden profits of the crime. This silence may not be used in any way against the suspect or accused.

2.2.8 Arrested or detained persons have the right to be brought promptly before a Judge and shall be entitled to trial within a reasonable time or to be released pending trial with or without conditions guaranteeing his appearance for trial. The arrested or detained person has the right to take proceedings by which the lawfulness of his detention shall be decided speedily by a judge and his release ordered if the detention is not lawful.

2.2.9 All parties shall have the right to challenge the first instance judicial decisions rendered, including those decisions rendered in pre-trial matters by a Judge.

2.2.10 Every person arrested, detained or imprisoned during or after criminal proceedings, has the right to be treated with the respect due to his inherent dignity and value as a human being. No discrimination on grounds such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or ethnic or social origin, association with a national is permitted. The arrested, detained or imprisoned person shall be treated with due respect to his religious or philosophical beliefs and to his cultural and traditional principles.

2.2.11 Every victim of an unlawful judicial decision during the pre-trial, trial, or post trial phase in criminal procedure and every victim of the use of disproportionate and/or abuse of power during the execution of a judicial decision, has the right to fair compensation for the damages occurred. There should be no entitlement to compensation where it is established that the damage is caused by the fault of the one claiming compensation.

2.3 Fair trial

2.3.1 Judgment and sentencing in penal matters are the responsibility of Judges who are independent and subject to the law. The functional independence of judges, their freedom of expression and association, their integrity and impartiality, their qualification, selection and training, their condition of service and tenure are regulated and guaranteed by law .It is recommended that the disciplinary code and disciplinary measures are prescribed by the law.

2.3.2 A judge deciding on a case shall not have any involvement at any prior stage of the criminal procedure.

2.3.3 Inappropriate or unwarranted interference (direct or indirect) with the judicial process and/or improper influence on judicial authorities, by private or public persons or institutions, is prohibited by law.

2.3.4 No Revision of Judicial decisions by administrative authorities, except the right of the competent authority to mitigate or commute sentences by judges established by the law, is permitted..

2.3.5 The State (local or national authorities) is obliged to provide adequate resources (personal, material and financial) to enable the judiciary (including their administration and registry) properly to perform its functions. The above-mentioned authorities will ensure the transparent and objective system for the recruitment, selection, promotion and training on a non-discriminatory basis of Judges, Prosecutors and all judicial officers.

2.3.6 The Prosecutor, in accordance with the law, performs an active role in criminal proceedings including the institution of prosecution, and where applicable investigation of crime supervision of the legality of these investigations, and supervision of the execution of judicial decisions.

2.3.7 Prosecuting functions are strictly separated from the judicial functions. The law guarantees the functional autonomy of the Prosecutor.

2.3.8 Judicial immunity from liability is to be seen as a basic pillar of the judicial independence.

2.3.9 The functional independence of the profession of lawyer or advocate and of lawyers professional associations is guaranteed by law.

2.3.10 Coercive measures on, or interference with the exercise of the lawyer's legal profession, direct or indirect, by State Authorities or other, is prohibited except in cases expressly provided by the law.

2.3.11 Improper influence, improper bargaining or improper pressure in order to burden or limit the exercise of the rights of the defence are forbidden.

2.3.12 The independent defence lawyer is essential for the conduct of a fair criminal process.

2.3.13 The Judge shall guarantee the equality of arms principle as defined (inter alia in Rights 1.3.4)

2.3.14 The Prosecutor has the burden of proof.

2.3.15 In the performance of its duties as prescribed by law, the Prosecutor's office protects the public interest, acts with objectivity, takes proper account of the position of the suspect and the victim, and pays attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect or accused. The Prosecutor's functional autonomy is guaranteed by the Law.

2.3.16 The Law defines strictly the statute of limitation except for war crimes, crimes against humanity and genocide where no statute of limitation is applicable.

2.3.17 No one shall be liable to be tried or punished again , in a criminal procedure for criminal acts or omissions for which he has already been acquitted or convicted by a final judicial decision .(the Ne bis in idem rule).

2.3.17.1 The reopening of a case shall be allowed, according to the law, if prima facie new facts or new reliable information-concerning elements of the crime or its perpetrator or victim or witness, which were not known and could have had a decisive effect on the outcome on the case.

2.3.18 Law enforcement agencies, natural and legal persons, have the duty to collaborate with the judiciary and provide in due time the information upon request from Judges and the Prosecutors, unless the law explicitly provides exceptions (e.g. professional privileged information, information which could endanger national security or the personal safety of individuals).

2.3.19 Everyone is equal before the law and shall be treated as such, in particular by those persons and bodies involved in criminal procedure (e.g. court-authorities, law enforcement agencies, prison authorities, any other civil service...)

2.3.20 The enjoyment of rights and freedoms shall be guaranteed without any discrimination on any ground such as sex, sexual orientation, race, colour, language, religion, political other opinion, national or social origin, association with a national minority, property, physical or mental ability, birth or other status.

2.3.21 The law, according to international law, defines person(s) immune to criminal prosecution (e.g. Heads of state, Persons with diplomatic status)

3. Pre-trial

3.1 General provisions

3.1.1 The pre-trial phase in criminal procedure starts from the moment a crime is discovered, or a complaint or a report is brought before a competent judicial authority.

3.1.2 Pre-trial procedural rules, as prescribed by law, determine the competence and powers of law enforcement agencies, the competent Prosecutor's office and the competent Judge and regulate inter alia:

- 2.1 The information, investigation and gathering of evidence;
- 2.2 Coercive measures and special investigation methods;
- 2.3 The decision as to whether to prosecute.

3.1.3 The content of the investigation - file is defined by law and contains inter alia, in a written form :

- 3.1.3.1 The decision(s)/orders relating the start of the criminal investigation;
- 3.1.3.2 The detailed investigation-actions, the reports and analyses (e.g. date, time, persons involved, witnesses, confiscations, and all relevant circumstances), requests for information or investigation, judicial –jurisdictional decisions/remedies,..
- 3.1.3.3 The final report.

3.1.4 The prosecution file contains the precise description of criminal facts (identity of the parties, date and place and circumstances of the allegation of criminal behaviour) foreseen by the specific criminal (material-statute) law, and subsequent judicial orders or requests,

3.1.5 The law defines the legal status and powers of law enforcement agencies and of other (administrative) investigative bodies (e.g. tax, food or security authorities) invested with investigative powers. The law specifies the authority having control and supervision of those investigative bodies.

3.1.6 A Judge, where applicable, decides during the pre-trial phase on the action and/or measures if actual or potential fundamental rights of persons (individuals, group of persons or public at large) are, or may be, affected: Such fundamental rights include but are not limited to :

- 3.1.6.1 Restrictions of the free movement of persons: detention or other limitations of free movement
- 3.1.6.2 Search and seizure of goods and property
- 3.1.6.3 Physical and psychological examination
- 3.1.6.4 Interference with the right to privacy:
- 3.1.6.5 Special investigative methods-techniques of observation,

surveillance and infiltration, undercover operations, where applicable.

3.1.6.6 Controlled deliveries and undercover operations, where applicable

3.1.6.7 Interception of private communication

3.1.7 A judge, where applicable, shall decide on the specific measures/program to protect vulnerable witnesses/victims their family or partner

3.1.8 The law defines, justifies, and regulates restrictively the exceptions to the above mentioned principle under 3.1.6/3.17.

3.2 Arrest

3.2.1 The decision to arrest or release must rest with the judicial authority; It must be made as soon as possible and in any event within 24 hours of the deprivation of liberty.

3.2.2 Pre-trial arrest may not last longer than necessary and in no case longer than 3 days after the initial deprivation of liberty. If transport conditions make it impossible to reach the competent judicial authority in time, pre-trial arrest can be prolonged exceptionally by two days.

3.2.3 The arrested person has the right to inform a family member or nominated individual of his detention, in due time except where expressly forbidden by law where there are grounds concerning a the risk of prejudice to the administration of justice or national security.

3.3 Pre-trial detention

3.3.1 Pre-trial detention, is an *exceptional decision* made by a Judge when other measures to guarantee public safety and/or the collection of evidence or other prerequisites for adequate investigation or prosecution have failed or will fail. Such detention shall last no longer than strictly necessary.

3.3.3 Pre-trial detention is allowed only when it is necessary and in proper proportion to the investigated crime.

3.3.4 The decision of pre-trial detention is rendered by a Judge after the Judge has informed the suspect about the allegations brought against him and after hearing the suspect's defence in a language the suspect understands.

3.3.5 The Judge , according to the law , may order pre-trial detention, and thereby refuse bail if:

3.3.5.1 There is reasonable suspicion of a serious crime having been committed.

3.3.5.2 There is reasonable suspicion that the accused is guilty of a criminal act or omission punishable by a minimum of 1 years imprisonment

and there is reason to believe that he shall seek to escape or evade justice, seek to tamper with the evidence or influence witnesses or other parties to the criminal procedure, or continue his criminal behaviour.

3.3.6 Pre-trial detention should not be considered *either* as a means of applying pressure to the suspect to confess *or* as a form of punishment.

3.3.7 The decision to refuse bail or to detain is reasoned according to the above mentioned legal criteria with due regard given to the person's age, health, family conditions and social circumstances.

3.3.8 The detained suspect has the right to a defence lawyer.

3.3.9 The detainee has the right to inform his family or nominated individual concerning his detention

3.3.10 The decision to detain or refuse bail is to be automatically reviewed regularly, at least every month. Such a decision should be subject to an appeal procedure.

3.3.11 Specific provisions in the law define the procedure in cases of arrest-warrants and detention decisions made "in absentia".

3.3.12 The detainee is to be treated with humanity and with respect for the inherent dignity of the human person. A detained person is presumed to be innocent. The detainee should not be in contact (in the same premises) with convicted persons. Detained men and women are separated from each other.

3.3.13 The detention of a child is a matter of last resort; A child shall be imprisoned separately from adults and should be imprisoned in appropriate conditions. Special and particular attention will be paid as to the needs of the imprisoned child (education facilities, medical and psychological assistance, measures to increase or establish family-ties). A specific institution for detained children where the above-mentioned appropriate conditions are guaranteed is recommended.

3.3.14 The detention of sick, ill or disabled persons will be accompanied either by measures which guarantee their health and safety or will be imprisoned in appropriate conditions which guarantee their health and safety. A specific institution where those conditions are guaranteed is recommended.

3.3.15 The detained person shall be immediately released if the procedural objectives are reached and the legal criteria (mentioned above) are no longer valid.

3.3.16 Time served during the pre-trial detention is deducted from any subsequent final prison sentence .

3.4 Examination in the body and on the body

3.4.1 An invasive body search covers the physical search of the suspect (,e.g.,for narcotics in body cavities), taking of blood samples, saliva, urine, swabs of the skin, hair samples and other means of investigation of the body of the suspect. Such searches require reasonable grounds for suspecting the person of a serious crime. These investigations may not cause distress to the person. The Judge may, according to the law, order an invasive body search of the suspect at the request of the competent (prosecuting or investigating) authority. The law defines the qualifications of the expert (e.g. medical) entrusted with the examination in the body.

3.4.2 An invasive body search can be ordered by a Judge without the suspect's consent, if it is suspected that hidden items in the body may endanger the health of the suspect or other persons.

3.4.3 The same rules apply (sub 1) and 2)) when non-invasive examination is made and physical contact with the body is necessary.

3.4.4 A victim of crime may not be compelled to submit to an invasive body search.

3.4.5 A superficial body search may be made in order to investigate what a suspect is carrying in his clothes and/or possessions. It may be executed by law enforcement officers without prior decision by a judicial authority according to law.

3.4.6 Specific legal provisions regulate the procedures concerning breath tests, fingerprints –voice prints, photographs and DNA examination; Any respective registering and archiving shall be done strictly adhering to established principles concerning the protection of privacy.

3.5 Psychological and Psychiatric examination

Psychological or psychiatric examination, in order to determine the criminal liability of the suspect/accused, may only be ordered by a fully reasoned judicial decision. It may only be executed by a qualified expert, whose qualifications are defined by Law.

3.6 Search of premises

3.6.1 Private premises comprise all areas and places where the privacy of the persons legally present is guaranteed by law; (e.g.. houses and apartments including their annexes and private gardens, stairwells and corridors of residential buildings, hotel-motel-rooms, mobile homes, vessels with sleeping capacity ,caravans, private offices etc...)

3.6.2 The law guarantees respect for the principles of professional confidentiality and

information derived from the exercise thereof of defence lawyers, medical personnel (e.g medical doctors, psychotherapists) religious or other spiritual persons in the context of their consultation, the International Committee of the Red Cross/Red Crescent, or other national or international persons recognized as having such privileged information.

3.6.3 The law defines the search procedure in State premises in order to guarantee the democratic functions of the State Bodies housed in these premises and to guarantee the effectiveness of the legal investigation.

3.6.4 An order or warrant of a competent judge is mandatory to search in the above mentioned premises for defined investigative objectives (i.e. search for evidence, arrest a suspect, confiscate goods, forensic examination). This order or warrant to the investigating authority, is reasoned and shall specify as far as possible the place, the area, the period of time during which the search or intervention is to take place, the police or other law enforcement agency who will execute the order, the specific items or the identity of person(s) for which or for whom to search, and all circumstances relevant to the legality, effectiveness and efficient legal execution of this investigative measure.

3.6.5 A search of premises is legally justified if the criminal act or omission has been alleged to have been committed at these premises and the purpose of the search is the arrest of the suspect and/or the location of objects or the determination of the factual circumstances relevant to the determination of the issue.

3.6.6. A search in premises other than the crime scene itself, at the premises of the suspect/accused, or at the premises where the suspect was found, may be ordered if there are reasonable grounds for believing that the search may yield an object to be seized or other evidence may be obtained.

3.6.7 A Law enforcement agency may carry out a search without a judicial order or warrant when the purpose of the search is to locate a person to be apprehended, arrested or detained and brought to court following a judicial order or subject to a bodily search, or to seize an object, where there has been continuous active monitoring since the commission of a crime

3.6.8 The Law defines the exceptional and urgent circumstances which may allow the law enforcement agency to search premises without a judicial order or warrant

3.6.9 In any event a detailed report with the inventory of the objects seized, to ensure proper scrutiny of the legality, effectiveness and efficiency of the investigative measure shall be made by the investigating authority. Such a report shall be filed with the competent authority and an inventory of the items which have been seized shall be handed over to the legal owner of the property searched.

3.6.10 Where force has to be used to gain access to and search premises, any such force shall be proportionate to the objectives of the investigation and shall be minimised insofar as possible

3.6.11 Where possible an independent witness shall be present when a search of premises is carried out ..

3.7 Special Investigation Methods/Techniques (=SIMT)

3.7.1 Special investigation methods and techniques are by definition exceptional methods and techniques. Such techniques are applied during a limited time-period by judicial, prosecuting and/or investigating authority for the purpose of the detection and investigation of serious and complex (organized) crime(s) and suspects. SIMT are aimed at gathering relevant precise information in such a way that the target person(s) is not alerted. The SIMT consist of, inter alia: Undercover operations including infiltration, Surveillance including technical listening, viewing and homing, The use of informants including whistle blowers, Controlled delivery of (inter alia) criminally proscribed substances

3.7.2 The law defines SIMT and the procedure, the circumstances and conditions under which the competent authorities (law enforcement agencies, prosecutor or investigative judge) may be empowered to use them in the framework of the prosecuting or investigative objectives.

3.7.3 The SIMT are to be considered exceptional measures, They shall only be considered if no other less intrusive investigation methods or techniques are available, taking into account the seriousness of the crime and the effects of the SIMT on all concerned Further taking into account a fair balance ensuring public safety and securing the rights and freedoms of the individuals.

3.7.4 The decision/order to use particular SIMT shall be executed by trained and qualified officers of the competent law enforcement agency; Their legal competency, training and qualification is prescribed by the law. The officer's activity within the SIMT is regulated by precise guidelines in accordance with the law, which covers inter alia :

3.7.4.1 The officers, or other persons involved, and their physical and psychological protection

3.7.4.2 Human and material/technical resources

3.7.4.3 Funding of the operation and of the persons involved

3.7.4.4 The confidentiality of sources and informants

3.7.4.5 Adequate and proper communication with the competent authorising and co-ordinating authorities

3.7.4.6 The procedure for debriefing persons involved.

3.7.5 The law defines, where applicable, the evidential value to be attached to the

results of SIMT. In any event relevant Human Rights and Freedoms (e.g. rights of the defence, fair trial requirements, rights of victims witnesses, rights of third parties, privacy) shall be respected if the obtained evidence and/or information is presented during the trial. The Court, during the trial, might exceptionally decide that information about the SIMT shall not be disclosed. Such a decision may be made in order to ensure the security of legal persons or natural persons involved (including witnesses, victims, third persons and their family and those close to them), or to protect ongoing or future SIMT operations. In any case the rights to an effective defence shall not be harmed.

3.7.6 The law prescribes the competent authorities and the judicial procedure by which the legality and efficiency of the execution of the SIMT is controlled. The law prescribes the competent Judge before whom proceedings concerning the lawful execution and/or alleged breaches of the rights of natural or legal persons are to be brought.

3.7.7 The State shall provide adequate financial, material and human resources to support SIMT

3.7.8 The State shall ensure full adherence to appropriate international mutual judicial/legal assistance instruments (cf. Chapter 6.2 on International Judicial/Legal Co-operation below) in cases of international and/or trans-national crimes (e.g. trans-border controlled delivery, international law enforcement agencies).

3.8 Vulnerable victim and witness-protection .

3.8.1 The status of the vulnerable witness and/or victim, is defined by law. The law defines the criteria (e.g. in cases of serious crime, risk assessment) to be applied in order to be granted the status of vulnerable witness/victim. It defines the measures and/or programs to be put in place during the criminal procedure to ensure the protection of the vulnerable witness or victim, until, through and beyond the trial phase. In circumstances where there is full co-operation with judicial authorities through incriminatory testimony on the criminal activities of a criminal organisation or association a person facing criminal charges or convicted of taking part in a criminal association or organisation, , may be considered to be a vulnerable witness. Similar vulnerable witness status shall be granted to undercover agents.

3.8.2 The law defines the independent authority(ies) competent to decide on granting the status of vulnerable witness /victim, the appropriate protection measure or program, and the effective implementation of the above mentioned decisions

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It is recommended that the law makes a clear distinction concerning on the one hand authority deciding on the granting of protection and defining appropriate protection measure(s) and on the other the training and preparation of the authority responsible for the implementation of such protection measures or program.

3.8.3 The State authority shall ensure the full awareness of the public concerning the existence and content of the legal provisions concerning vulnerable witness and victim protection.

3.8.4 Prior to giving their statements, witnesses and victims are to be informed about their legal rights concerning witness protection.

3.8.5 Statements of victims and witnesses concerning the alleged crime, the crime scene, all circumstances of the alleged crime, and the elements leading to the identifications of the perpetrator(s), shall be in writing and where possible electronically recorded (e.g. audio or video). The written statement shall be dated, signed, numbered and filed. The recorded version is secured, registered and filed .A copy of the written registered statement is to be given to the victim or witness as soon as possible after the hearing or recorded interview as applicable. The witness and/ or victim has to be informed about the registration of the recorded version of his declaration.

3.8.6 Victim(s), and the witness(es) shall be heard and questioned in an appropriate environment and in an appropriate manner. Attention shall be paid to age, life experience, health, dignity, and cultural and religious, philosophical, educational and social background. Specially trained persons, where needed, shall be assisted by professional medical /psychological experts who shall interview and question the vulnerable witness/victim. This is particularly important when there is a risk of causing further trauma to the witness/victim. Those victims and witnesses assessed who may be vulnerable and/or under serious treat, have the right to be assisted by appropriate medical and psychological/psychiatric personnel both during the criminal procedural process and after the imprisonment of the convicted.

3.8.7 The prosecutor and the vulnerable victim and/or witness have the right to request an order from the competent judicial authority for particular protection measures in order to guarantee the protection of the victim/witness, the protection of his/her close family or partner during and after the criminal process and after the final conviction of the accused. Such measures may include but should not be limited to:

- a. Hiding the identity of the witness or victim from the court file (Renaming/new identity)
- b. Relocation programs
- c. Anonymous testimony/ testifying without appearance in Court
- d. Professional (medical), social and financial assistance.

3.8.8 The Judge or competent authority, where appropriate and according to the law, shall decide on the appropriate witness/victim protection measure(s) or program taking into consideration: the personality and vulnerability of the witness/victim and those close to him, the seriousness of the crime, the risk assessment, the possible duration of the protection program or one or more protection measures.

3.8.9 The State shall provide the means (financial, material and trained personnel) to

guarantee the execution of the protection measure(s) and shall guarantee the secrecy of the adopted measure(s)/program.

3.8.10 During the Trial (see also Trial section) the Judge shall hear the victim and/or witness with due respect to the protective measures. In cases where the identity and/or the exposure of vulnerable witnesses and/or victim are restricted for security reasons, the Judge shall permit, according to the law on evidence, inter alia pre-recorded statements, delaying in the disclosure of specified information, the use of technical/electronic features by which the witness or victim may make his statement without his physical presence in the courtroom.

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3.8.10.1 In any event the content of the statements of vulnerable witnesses or victims shall be subject to submissions before the Court by defence and prosecution counsel when the identity of the victim/witness is kept secret.

3.8.11 Infringing the secrecy of these protection measure(s)/program and in particular the confidentiality of the data, shall be a crime according to the Law.

3.9 Forensic medical examination

3.9.1 All forensic examination will be conducted with due respect for the victim's traditional, cultural and religious precepts.

3.9.2 In every case where a crime has been committed which may require it, an exhumation and autopsy, may be requested by the Prosecutor and ordered by the competent Judge. Prior to this decision the consent of the family or next of kin must be requested.

3.9.3 If the body has to be moved from one place to another, a specialised and competent person or institution will be ordered by the competent judicial authority to do so.

3.9.4 Examination of the victim (other than autopsy) must be requested by the Prosecutor and ordered by the Judge where at least two conditions have been fulfilled:

3.9.4.1 The victim's full and written consent prior to the examination and after being properly informed.

3.9.4.2 There is no risk of further physical/psychological harm .

3.9.5 The victim's consent has to be given concerning the examination itself and the conditions under which the examination is to be performed. If the victim is a child, the prior written consent of the parents or it's legal representative is necessary.

3.9.6 The Law provides that every child, victim of violence or of any other crime may be

assisted by a guardian appointed by the court in particular in cases of a conflict of interest between the child and its parents. This is particularly relevant in cases of interfamily/domestic violence or sexual abuse.

3.9.7 If the victim is not able to consent, due to a physical or mental handicap/disability, his legal representative may be empowered to give the prior consent. If the victim can not write or read, his oral consent will be registered in the presence of a witness by a competent judge.

3.9.8 The detailed report(s) on the above mentioned examination(s) shall be transmitted to the competent judicial authority in order to examine the legality of the examination. Such reports shall be entered in the prosecution file. The victim (or his/her legal representative) has the right to receive in due time a copy of the written examination report.

3.9.9 Examination reports are used exclusively for the purpose of the ongoing criminal process. The rights to privacy of the examined person(s) shall be protected. Medical data are considered confidential, while respecting the rights of the defence. This examination-report shall not be used in other judicial or administrative procedures without the prior written consent of the examined person.

3.10 Ending the investigation

3.10.1 A decision by the competent judicial or competent body carrying out the investigation ends the investigation phase. All parties involved (victims/suspect-accused- and law enforcement agencies) are informed about this decision. All parties shall be given, during a certain period of time, the opportunity to request additional reasonable investigative measures/actions.

3.10.2 The decision to prosecute or not prosecute is taken, in due time, by the prosecutor's office, and this decision including the alleged crime-charges, is to be notified to the parties involved (suspect/accused/victim) as prescribed by law.

3.10.3 The form and content of the decision to prosecute and to indict is prescribed by law. It shall give the opportunity to the suspect or person accused and the other parties involved (victim) to present their defence, as prescribed by law, in the appropriate effective way. Therefore this written decision to prosecute has to be precise and has to embody minimal formal requirements concerning:

3.10.3.1 The identity of the suspect or person accused of the alleged crime

3.10.3.2 The date (period), place of the alleged criminal conduct.

3.10.3.3 The possible penal sanction(s)

3.10.3.4 The material facts and circumstances upon which the indictment is built

3.10.3.5 The competence of the court or other jurisdictional body having jurisdiction in the matter.

4. Trial

4.1 General Matters

4.1.1 The Law defines the means (personnel, material, financial resources) of the Court , and the transparent way the latter is efficiently managed and organised in order to make sure that during the trial:

- a. The security of all actors (judges, eventually jury, prosecutor, defence lawyers, experts... witnesses) is assured as to their person and their legal duty and activity.
- b. The access to public and press to the courtroom is effective; attention is paid to the access of the court for disabled people.
- c. The appropriate infrastructure of the courtroom is installed allowing for translation and/or other forms of communication.
- d. safe and secure deliberation room for judges and where appropriate jury, an appropriate room/place for the defence lawyer and his client, for the witnesses, and a secure room to store/keep the evidence material, is provided for.
- e. The appropriate administrative personnel and support staff, available experts, legal materials (i.e. law and legal text books, jurisprudence and legal research) are available to the Judge(s).

4.1.2 The competence of the Court is defined by the law.

4.1.3 Exceptional (temporary) Special Courts, to judge special criminal cases (ratio personae-materiae) according to special procedure, are to be defined expressly by the law. This exceptional jurisdiction and it's procedure must to guarantee effectively the above mentioned principles and rights applicable in criminal procedure.

4.1.4 The Court decides on its jurisdiction, based on the law.

4.1.5 All criminal trials shall be held in the same court-building known to the public and press. If held, exceptionally, in another place (due to security or unexpected circumstances), an appropriate prior broad public announcement in due time (on the place and the time of the trial) is to be given.

4.1.6 The accused and his defence lawyer, the witnesses and experts, victims and their lawyer, interpreters, are to be invited and, if necessary summoned, to appear before the Court in an efficient and an effective way, in a language they understand specifying the time date and place of their appearance. On their arrival the competent Judicial Authority, takes the appropriate measures to separate victims, witnesses and experts from the accused, from the public and press. Particular and appropriate measures to assist and protect children (victims or witnesses) are to be taken by the Court or the

competent Judicial Authority .(see also Chapter 3.8 above).

4.1.7 The Court rules, based on the law, on the organisation of hearings and the timing thereof The court further rules on the proposed presentation of evidence, on all other legal initiatives taken by the parties, on all procedural matters raised by the parties or raised ex officio, on the legal measures to be applied to the accused, witnesses, victims, experts, and on the rights of the defence and on the rights of all persons involved in the trial-procedure. In any event, the Court has to give the accused the last word after the final pleadings.

4.2 Organisation and course of the trial

4.2.1 The law defines and describes the stages of the proceedings, their chronology and their content , the rights and obligations of the parties, the jurisdictional process and the legal remedies, the formalities and registration of the proceedings, with respect to the principles governing a fair and efficient trial in due time.

4.2.2 questions concerning the composition of the trial panel (i.e. excusing and/or disqualifying judge(s) /prosecutor/lawyers), concerning the competence of the Court, concerning disclosure of information or evidence obtained during the investigation, concerning legal representation and assistance of the accused or victim, concerning translation and interpretation, are to be raised preliminary and shall be ruled upon, by the Judge according to the law.

4.2.3 Administrative decisions (judicial orders) of the Court concerning the organisation or administration of the trial are not subject to appeal unless they affect the rights of the parties involved. As a matter of good practice those administrative questions are discussed as preliminary questions with the parties in chambers, although the decisions taken are announced publicly (e.g. planning and chronology of the proceedings)

4.2.4 In principle court proceedings are open to the public, unless the Court decides, based on the law, that the public should be totally or partly excluded from the public trial proceedings. This exceptional decision of the court may be rendered, (following submissions by the parties) only in the interest of: public or national security , public morality, the rights of the child(ren) involved, victims or witnesses (or their family or persons close to them) or if the publicity would seriously prejudice their interest. The decision to exclude the public (totally or partly), is to be announced by the Court in public session. In no circumstances may parties can be excluded from any Court proceedings, including rulings on administrative matters. The law will indicate if other persons, other than the parties involved, can be allowed to assist the proceedings even though the public is excluded. (e.g. medical staff, monitoring authorities ...)

4.2.5 Requests concerning the detention of the accused or protective measures regarding the accused, victims or witnesses, are ruled upon as soon as possible.

4.2.6 All Court decisions/orders are reasoned and registered in writing even if the legal questions (ex officio, where applicable) and the requests are introduced orally.

4.2.7 The Court's deliberations on motions, requests or questions, are not held in public.

4.2.8 The Court deliberates in chambers, strictly only with the designated members of the Court. No other person may be allowed in the deliberation room during the deliberation phase. The secrecy of this deliberation is guaranteed by the law. Breaching the confidentiality of the court's deliberation is to be seen as a major violation of the law and is subject to disciplinary and/or a criminal sanction.

4.2.9 The Court's decisions /orders are executed by the competent judicial or law enforcement authorities.

4.3 Evidence

4.3.1 The Judge guarantees the fundamental principle of "Equality of Arms" . With respect to that principle it decides the mode and the order of the presentation of the evidence.

4.3.2 In general the prosecutor presents his/her evidence first followed by the evidence of the defence. The Judge shall direct or oversee the debates or submissions concerning the evidence presented, shall decide on the admissibility of evidence and shall direct the order and mode of the interrogation of witnesses and experts, the eventual confrontation of witnesses and/or experts. In any case the accused/ defence lawyer has the last word.

4.3.3 The Judge may order (ex officio and at any time) the submission of all evidence, call and summon witnesses and submit obtained evidence material for expertise, relevant for the determination of the judicial issue.

4.3.4 The Prosecutor bears the burden of proof. Therefore it has to prove the existence of the crime and the guilt of the accused beyond reasonable doubt. Consequently the prosecutor has to present all relevant lawful evidence, based on the prior investigative stage. He shall present material evidence, statements from witnesses and victims, findings of experts, confessions of the accused or his co-accused, assessments of facts and/or factual circumstances, known by the parties involved. If new evidence or information (unknown by the defence prior to the commencement of the court proceedings) is presented, the Court has a discretion to reject the evidence (on grounds for example of being outweighed, having no probative value, illegally obtained, not verifiable, not relevant or repetitive). The court may allow the accused additional time to examine this new information or evidence and prepare his defence.

4.3.5 A Judge might decide (upon request or ex officio) during the proceedings not to admit evidence on the ground of its lack of relevance, probative value, authenticity. The

Judge shall verify the objectivity and authenticity of the evidence presented. The law defines the way how information and evidence, in particular obtained through special investigation methods, may or may not be disclosed taking into account the protection of national or personal security.

4.3.6 Evidence shall be excluded if obtained by the violation of Human Rights or Fundamental Freedoms.

4.3.7 The law defines the procedural consequences where evidence is obtained by (other) illegal investigative action..

4.3.8 Witnesses and experts testify during the trial under oath. Close family of the accused or the victim, the victim, children, mentally disturbed witnesses, persons close to the accused or victim, such as partners, cannot be compelled to give evidence under oath and

4.3.9 The Court shall respect privileged private professional information and communications exchanged between the professional and their client (e.g.: medical /psychiatric staff and their clients, religious or other recognised moral-spiritual councils and their clients). Only if the client (accused ,victim, witness) consents may this privileged information may be disclosed. The law defines the privileged character of communication and information.

4.3.10 No witness may be compelled to incriminate him/herself.

4.3.11 Giving false testimony is considered to be an obstruction of the proceedings and a crime according to Law.

4.3.12 The Judge may, if other usual measures are insufficient to guarantee the protection of the victim or witness called to appear before the Court, ex officio or at the request of either party, order appropriate measures to assure the anonymity of the person at risk.

4.3.13 The judicial authorities and in particular the Court (during the trial) are responsible for the safety, physical and psychological integrity and wellbeing, dignity and privacy of the victims, witnesses and children involved in the criminal proceedings. Exceptionally the Court might issue, ex officio or at the request of either party, specific measures to guarantee the protection or the anonymity of the victim(s) or witness(es), their respective family or other persons at risk (mentioned during the proceedings). The Court may order specific professional medical or psychological assistance for to the witness, victim or accused during the trial if their social, physical or psychological health is or may be at risk.

4.3.14 All relevant material or documentary evidence collected during the investigation phase, may be presented to the witnesses, witnesses may be confronted with their previous statements (made during the investigation phase), and witnesses may be confronted with other witnesses. The Court may submit, on request or ex officio, material

evidence to an independent court-expert. The Court may order (ex officio or at the request of either party), if the victim consents, a medical (physical and/or psychiatric/psychological) report in order to establish the extent of any appropriate damages and their evaluation, where applicable.

4.3.15 The accused has the right to be confronted with witnesses' and victim's statements and has the right to examine (by himself or by an advocate or expert) all evidence presented.

4.3.16 A confession by the accused may not be the sole basis of a conviction.

4.3.17 The statement of one anonymous witness cannot be the sole basis of the conviction.

4.4. Final Pleadings (closing arguments)

4.4.1 The Court determines the date, time and order of the final pleadings with respect to the time needed for the preparation by the defence, by the victims legal representative and by the prosecutor. The defence lawyer will be the last to address the Judge and the accused has the right to have the final word.

4.4.2 The Court guarantees the free expression of speech of each party.

4.5. Final deliberation of the Court

4.5.1 The Judge deliberates in chambers and is guided only by issues raised during the previous proceedings (if not already ruled upon) The judge will not take into account information which is not known by all the parties involved in the proceedings, information that has not been subject to the submissions by the parties. If additional relevant information would reach the Judge during final deliberation, the Judge shall re-open the proceedings and submit this information to all parties.

4.5.2 The deliberating judges (and members of the jury) must have been present at all trial proceedings.

4.5.3 The Judge shall consider, examine, and evaluate during his deliberation the following (minimum) legal matters :The competence of the Judge, the evidence presented on the alleged material acts or omissions and its legal criminal qualification , the evidence presented on the criminal liability and guilt of the accused (material and moral element of the crime); the Judge shall be bound by the fundamental general accepted basic principles of criminal law "in dubio pro reo" and "nullum crimen, nulla poena sine lege".

4.5.4 If the Judge finds the accused guilty beyond reasonable doubt, he will deliberate on the sentence with reference made, inter alia to the gravity of the criminal act(s) or omission(s) and the damaging consequences for the state and/or the community and/or the victim(s), the role of the accused as to the perpetration of the crime, the mitigating circumstances as to the facts, as to the personality of the accused and the appropriate criminal sanction or measure;

In addition, the Judge shall decide on:

The further detention or other restrictive measures of the convicted person; The seizure and/or confiscation of objects (evidence, subject or gain of the criminal activity) and their final destination; The damage caused by the crime and the appropriate means by which the offender shall restore the rights of the victim(s) and/or compensate the victim's loss, where applicable; The costs of the proceedings and which party has to pay them (total or partial).

4.6 The Verdict

4.6.1 The verdict is pronounced publicly.

4.6.2 The content of the written verdict is defined by law. It is reasoned, where applicable, in particular stating the legal provisions, the elements of the criminal facts and criminal behaviour (with material and moral elements), evidence supporting criminal responsibility and guilt, the penal sanction(s) with reference to the personality of the convicted, his criminal behaviour, mitigating and aggravating circumstances, the sentence of the court (prison and /or financial sanctions, alternatives to imprisonment - penal measures) and the eventual mode of execution. Additionally according to law, the verdict shall define the damages, the means of restoration or compensation, and/or the way they the damages are to be assessed in financial terms to pay by the convicted (civil law system) as compensation.

4.6.3 A verdict declaring the acquittal of the accused shall order the immediate release of the accused and/or the immediate ending of restrictive measures. The Judge pronouncing the acquittal shall not decide on any civil action brought by the victim or any other injured party.

4.6.4 The convicted person shall be informed about his rights to appeal and any time limits attaching to those rights.

4.7 Remedies against the verdict

4.7.1 Appeal

4.7.1.1 The parties have the right to appeal from the first instance verdict. The appeal

challenges the verdict or part of it (i.e. evidence, criminal liability, indictment/qualification of the crime, guilt, sentence, detention, civil provisions...).

4.7.1.2 A party's appeal is not admissible if he has no personal interest except for the appeal of the prosecutor's office. The latter appeals if it takes the view that the law and/or the public Interest (public order, public security...) are not or not sufficiently respected in the verdict.

4.7.1.3 The appellate procedure starts as soon as one party has appealed formally from the first instance verdict; the hearing of any appeal shall be held as soon as possible.

4.7.1.4 An appeal by a convicted person may not result in an aggravation of the situation of the convicted. An exception is made when the prosecutor's office appeals the same first instance verdict.

4.7.1.5 The law defines the formalities and the time limits to be observed by the parties when appealing a first instance verdict.

4.7.1.6 During the appeal-phase the competent Court shall periodically decide on the further detention of the accused.

4.7.1.7 The appeal hearing is to be conducted in a similar way to the previous described trial-procedure (chapters .4.1- 4.5 above) in order to guarantee the rights of the defence and victim(s), the criteria of the publicity of the debates, the secrecy of the deliberation and the criteria of fairness and efficiency.

4.7.1.8 Judges during the investigation or first instance procedure shall not be involved in the appeal; a Prosecutor or Defence lawyer, becoming judge during the criminal procedure, shall not be involved in cases in which they have been involved in their prior function(s). As long as no final judgement is rendered the accused is to be considered (and treated as such) as innocent.

4.7.1.9 In any appeal from a conviction passed down in the absence of an accused defendant from the proceedings, the appellant's case shall not be prejudiced by the fact of his absence from those first instance proceedings. Where appropriate, a procedure may be adopted whereby the accused who has been convicted in his absence has the right to a trial 'de novo' should he wish to challenge the first trial. In such circumstances the conviction of the accused rendered null and void.

5. Post-trial

5.1 Legal Review

5.1.1 A final verdict does not exclude the right of a convicted person to challenge this verdict on a legal basis if prima facie new facts or new reliable information - concerning elements of the crime(s) or its perpetrator(s) or victim(s) or witness(es), which were not known during the first instance and appeal procedure and could have had a decisive effect on the verdict - show conclusively that likely the final verdict is to be seen as a miscarriage of justice. If the request to review the final verdict is declared admissible by the competent Court, the latter shall decide on the further detention (and/or restricted measures) of the convicted person.

5.1.2 The law defines the competent Court, the formalities to be respected by the convicted person, and the compensation for the victim of a miscarriage of justice.

5.1.3 The death of the convicted person does not exclude the right of his family, damaged by the consequences of this miscarriage of justice, to request the review of the final verdict in order to obtain their entitlement to moral or financial compensation.

5.2. European Court of Human Rights

If a person is under the jurisdiction of the European Court of Human Rights a final verdict may be challenged before this Court.

5.3. Execution of the Sanctions defined in the final judgement

5.3.1 The competent Authority shall execute the sentence as defined by the final judgement in due time.

5.3.2 Any prior detention or other deprivation of liberty, shall be deducted from the (final) prison time to be served if not defined otherwise in the final judgement.

5.3.3 The convicted imprisoned person shall be treated with humanity and respect for his/her inherent dignity according to international standards.

5.3.4 A sentence of imprisonment shall be served in facilities appropriate as far as possible to his individual condition (e.g. family-social-cultural condition)

5.3.5 The competent penitentiary authority and institution shall guarantee effectively international standards ensuring inter alia the following minimum standards:

- Prisoners shall be treated alike without any form of discrimination.

- prisoners' rights to medical care, to education and cultural development, to have contact with members of their family, to socialise with other prisoners, to be informed about the daily news, to be allowed to practice their religious or philosophical/moral beliefs and to be protected against all forms of violence.
- To have access within the prison to meaningful work and appropriate payment in order to be prepared for his reintegration in society.

5.3.6 The competent State Authority, concerned about the increased vulnerability of children and women, shall guarantee the respect of the rights of imprisoned children and women. The competent authority shall pay particular attention to the applicable international recognized standards inter alia:

- that the appropriate prison facilities are available in order to separate juveniles from adult prisoners and male from female prisoners.
- that proper health-, hygiene-, and education measures guarantee the above mentioned standards and rights.

5.3.7 The law defines the competent independent authority and the procedure for inspect and control of the penitentiary authority and penitentiary institutions. In particular the law shall ensure the effective application of the above mentioned international standards, the registration of prisoners and their sentences, the legality and compliance of internal regulations with relevant national and international standards and will ensure that appropriate measures to prevent torture and cruel, inhuman and degrading treatment are in place

5.3.8 The Law guarantees and the State Authorities shall effectively encourage and facilitate, the access by competent national and international authorised and qualified State- and/or private bodies to the penitential facilities and the imprisoned persons in order to ensure regular and effective inspection. Such bodies may include but are not limited to The International Committee of the Red Cross/Crescent, authorised State Commissions, Judicial Authorities and UN Officials

6. International legal cooperation

6.1 General Points

6.1.1 International legal co-operation in criminal justice, serves to render the prosecution and adjudication of trans-national and international crimes, national crime, and organized (national/trans-national) crime and terrorism more effective and efficient. Existing international instruments, ratified by the State, are part of the Criminal Procedure Law and shall be implemented in good faith (*pacta sunt servanda*). That is to say, implemented with the aim of effectively and as efficiently as possible, combating crime whilst ensuring the fundamental principles of the Rule of law and protecting Human Rights and Fundamental Freedoms.

6.1.2 International legal co-operation between two or more States covers extradition/surrender and various forms of mutual judicial/legal assistance and aid *inter alia* : letters and commissions rogatory, securing and collecting evidence and exchange of data ,technical assistance, service of writs and record of decisions, appearances of witnesses abroad, transfer of proceedings and prisoners and the execution of sentences abroad including confiscation and forfeiture of illegal assets, and coercive measures.

International legal co-operation is based on international legal instruments (regional, multi- or bi-lateral treaties) and on the principle of reciprocity according to the law.

6.1.3 Judicial priorities are defined by the law : Territoriality remains the first priority. Exceptions shall be defined by law in accordance with internationally binding instruments. The principle “*aut dedere aut judicare*” shall be respected as a major instrument against impunity in particular in cases of serious crime, organized (international, trans-national) crime and terrorism.

6.1.4 The law defines the State bodies competent to implement international co-operation in it's various forms particularly with due regard to the possibilities of furthering direct contacts between law enforcement agencies of the co-operating States (requesting-requested State) and the judicial authorities of the co-operating states(requesting and requested States).

6.1.5 The law defines the judicial authorities competent to oversee the legality of international co-operation.

6.1.6 Mutual judicial/legal assistance and procedures for legal extradition should be organized in a transparent and efficient way in order on the one hand to minimise administrative formalities, the intervention of State Executive bodies, the questions relating to the rules of competence and jurisdiction (e.g *locus regit actum*, *non bis in idem* , speciality principle, double incrimination principle) and on the other hand to

maximise the use of practical, direct and modern communication facilities/channels between investigative bodies and judicial authorities,) while respecting the essential protection of human rights and the application of internationally accepted standards and norms in criminal justice.

6.2 Extradition /Surrender

6.2.1 The extradition/surrender is regulated by the law in accordance the bilateral and multilateral extradition treaties, or according the reciprocity principle . Nevertheless the absence of reciprocity should not be the sole basis of rejection of the request of extradition/surrender in cases of war crimes, crimes against humanity, genocide or in cases of serious (international/trans-national) crimes.

6.2.2 Particular international instruments regulate the surrender of suspects and the procedure attached thereto with respect to the International Criminal Court and International Criminal Courts and Tribunals.

6.2.3 The law defines the procedure and criteria by which an extradition/surrender request is admissible even though the State is not bound by a bilateral or multilateral treaty with the requesting State. The law also defines the procedure and criteria by which a request to extradite is formulated to another State even though the State is not bound by a bilateral and /or multilateral treaty with the requested State.

6.2.4 The principle by which extradition/surrender is limited to “the crime” for which the extradition is requested shall not be limited to the formal definition or description of that crime. The criminality of the alleged acts or omissions rather than formal differences of definition or formulation are to be taken as the key indicator/s.

6.2.5 The general principle by which “nationals” or “persons seeking asylum” are not extradited and the principle of double incrimination should not be an argument for refusing extradition, in particular in cases, as defined by the law, of : war crimes , crimes against humanity , genocide, terrorism and organized (international/transnational) crime.

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6.2.6 The requested State guarantees during the procedure of extradition/surrender the effective protection of human rights and the same effective protection of the rights of the defence/victim and witnesses and fair trial as they would enjoy during a normal criminal procedure.(pre-trial/trial/post-trial). The requesting State guarantees the same effective protection.

6.2.7 The extradition/surrender will not be granted if the requesting State does not guarantee the above mentioned protection (art 6.2.6 above) and effective protection against degrading treatment or punishment, against all forms of discrimination.

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The requested State may, before and after granting the extradition, apply for facilities to monitor the criminal procedural process in the requested state.

6.2.8 Extradition/surrender will not be granted if it is sought for political crimes (as defined by international norms and standards), crimes for which a conviction or acquittal was already rendered by the requested State (non bis in idem) , requesting State or third State or crimes for which the statute of limitation has been brought into effect.

6.2.9 Any request for the extradition/surrender of a person shall include the following minimum information:

6.2.9.1 The legal basis upon which the extradition/surrender is requested

6.2.9.3 The certified identity of the person requested for extradition (all possible descriptive elements, photographs, official data on the persons identity, fingerprints or all other means to identify)

6.2.9.3 A detailed description of the criminal act(s) or omission(s),it's legal qualification(s)and criminal sanction(s)

6.2.9.4 Relevant judicial decisions (e.g. indictment, arrest warrants, conviction)

6.2.9.5 Relevant evidence, allegations or testimony which ground the reasonable belief that the person requested has committed the crime.

6.2.9.6 Extracts of the applicable criminal law of the requesting State and the state's applicable extradition law provisions.

6.2.10 The law defines the competent independent Authority to which extradition/surrender cases are brought and the procedure applicable.

6.2.11 Extradition/surrender cases are to be considered as urgent, and shall be decided upon without delay in particular when the person, subject to extradition/surrender, is arrested or detained. It is recommended that the rules regarding pre-trial arrest and detention are applied in cases where persons are arrested or detained with a view to extradition/surrender.

6.2.12 The law defines the possibility of fast track surrender/extradition schemes. (e.g. simplified forms of surrender inter alia European Arrest warrants, the Commonwealth Scheme)

6.3 Mutual Judicial/Legal Assistance

6.3.1 Mutual judicial/legal assistance in criminal matters is regulated by law in accordance with bilateral and multilateral treaties.

6.3.2 Particular international instruments regulate judicial/legal assistance and the procedure to be adopted with regard to the International Criminal Court and International Courts and Tribunals.

6.3.3 The law defines the procedure and criteria by which judicial/legal assistance is rendered even though no international instruments bind the requesting and/or requested State. The principle of reciprocity is not an international binding principle and should not be an obstruction to judicial assistance.

6.3.4 Judicial/legal assistance is executed by the competent judicial authority on the one hand according to the law of the requested State unless agreed otherwise, and on the other hand according to international accepted standards and norms in criminal justice.

6.3.5 Criminal act(s) or omission(s) which are considered as a crime in both States, may well be described (formally) in a different formulation. This formal difference in definition in itself may not hinder or exclude the execution of the requested judicial assistance if the illegal behaviour is to be considered in both States as the same crime although differently defined..

6.3.6 International instruments and the law implementing those instruments shall regulate the procedure and the competency of the State bodies involved in such a way that efficient mutual judicial/legal assistance is guaranteed and formal administrative requirements are kept to a minimum. In this way direct contact between the judicial authorities of the States (both requesting and requested State) and the use of modern secure channels of communications (electronic) are appropriate, at least in urgent cases. Fast track mutual judicial/legal assistance schemes and the use of practical (modern) means of communication, including inter alia permanent consultation between the judicial authorities during the execution of the mutual judicial/legal co-operation and the use of liaison-judicial officials, shall be defined and developed by international and national law.

6.3.7 The request of the mutual judicial/legal assistance should be transmitted in a written form (electronic or not), and include at least:

6.3.7.1 The legal basis of the mutual legal/judicial assistance

6.3.7.1 The identification of the competent authority invested with the investigative power and/or judicial authority.

6.3.6.2 A full account of the reasons for the assistance requested and the detailed description of the assistance sought including the alleged criminal act(s) or omission(s) and all factual circumstances. All possible information on the location(s) or identification(s) of the persons and information or goods to be sought and requirements concerning the confidentiality and secrecy of certain information.

6.3.6.3 The legal definition of the alleged crime and the penal sanction laid down by the law and any other requirements of the criminal process of the requesting State.

6.3.6.4 The means by which the requested assistance should be executed and the reasons why.

6.3.6.5 Any time limits to be respected.

6.3.6.6 Relevant judicial decisions

6.2.7 Mutual judicial/legal assistance will not be afforded if the requesting State does not guarantee:

6.2.7.1 Effective protection of the principles mentioned (under 6.2.6 and 6.2.7 above)

6.2.7.2 Effective protection against torture and other forms of cruel inhuman or degrading, treatment

6.2.7.3 Effective protection against all forms of discrimination.

6.2.7.4 That the investigation or prosecution is not barred by the period of statutory limitation.

6.2.8 Judicial/legal assistance will not be afforded for political crimes (as limited by the international norms and standards), criminal act(s) or omission(s) which are already subject of a final conviction. If the criminal act(s) or omission(s) are subject to a judicial investigation or prosecution in the requested State, the request of judicial/legal assistance maybe afforded if a request of transfer of the prosecution is transmitted and approved upon.

6.2.9 Mutual judicial/legal assistance shall be afforded if the conditions under 6.2.7 are MET in cases of War crimes, crimes against humanity or genocide, terrorism or transnational organised crime.

6.2.10 Mutual judicial/legal assistance shall not be afforded if requested with the aim of collecting evidence or information which would affect the national security and the public safety of the requested State save for cases of war crimes, crimes against humanity and genocide.

6.2.11 The refusal or postponement of mutual judicial/legal assistance shall be reasoned in due form and in due time.

6.2.12 Mutual judicial/legal assistance shall not be refused on the sole basis of financial confidentiality.

6.2.13 Requests for mutual judicial/legal assistance shall be treated with urgency.

6.2.13 During the execution of mutual judicial/legal assistance, the parties involved (suspect/accused/victim/witness) and third persons shall have the same Rights and Protection as they have under the criminal procedural rules of the requested State.

6.2.14 The law shall define the procedure, conditions and criteria following which, according to bilateral or multilateral treaties, a sentenced prisoner(s) can be transferred to their country of origin.

Annex I: Participants

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Annex II: International texts

1. On Human Rights :

- Universal Declaration on Human Rights (1948)
- European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and Protocols
- Charter of Fundamental Rights of the European Union (2000)
- International Covenant on Civil and Political Rights (1966) and Protocols.
- International Covenant on Economic, Social and Cultural Rights (1966)
- Universal Islamic Declaration of Human Rights (1981) and Cairo Declaration on Human Rights in Islam (1990)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (1987)
- Conventions of Geneva III and IV(1949) and Protocols (1977)
- Final Act of the Conference on Security and Co-operation in Europe (1975)

2. On Justice and Criminal Procedure:

a) UN Documents

- UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others (1949)
- UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
- UN Resolution on Prevention of Crime and the Treatment of Offenders (1980)
 - Caracas Declaration
- UN Guiding Principles for Crime Prevention and Criminal Justice, General Assembly Resolution A/RES/40/32, 29 November 1985; Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders
- UN Guidelines for the Prevention and Control of Organized Crime, Measures against International Terrorism (8th UN Congress, 1990)
- UN Basic Principles on the Independence of the Judiciary (1985)
- UN Basic Principles on the Role of Lawyers (1990)
- UN Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment (1988)
- UN Standard Minimum Rules for the Treatment of Prisoners (1955/1977)
- UN Standard Minimum Rules for the Administration of Juvenile Justice (1985) (Beijing Rules)
- UN Guidelines for the Prevention of Juvenile Delinquency (1990) (Riyadh Guidelines)

- UN Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113 of 1990)
- UN Standard Minimum Rules for Non-custodial Measures (1990) (Tokyo Rules)
- UN Guidelines on the Role of Prosecutors / Basic principles on the Role of Lawyers (8th UN Congress 1990)
- UN Model Treaties on Extradition, Mutual Criminal Assistance in Criminal Matters, Transfer of Proceedings in Criminal Matters, Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released, Model Agreement on Transfer of Foreign Prisoners (1990)
- UN Declaration of Basic principles of Justice for Victims of Crime and Abuse of Power (1985)
- UN Code of Conduct for Law Enforcement Officials (1979)
- UN Convention against Transnational Organized Crime (General Assembly Resolution A/RES/55/25) and Protocols
- UNODC Reports of Expert Working Groups on:
 - a. Mutual Legal Assistance (2001)
 - b. Witness Protection (2005)
 - c. Special Investigative Techniques (2005)
 - d. Effective Extradition (2004)
- UNODC/OSCE Criminal Justice Assessment Toolkits (2006)
- UN/OCHR Rule of Law Tools for Post-Conflict States (2006)
- UNODC Compilation Part I, "Crime Prevention and Criminal Justice" containing: Standards of General Application, International Cooperation, Treatment of Offenders, Judiciary and Law Enforcement, Juvenile Justice, Protection of Victims, Capital Punishment, Torture/Extra Legal Executions, Human Trafficking
- Geneva Conventions III/IV (1949) and Protocols (1977)

b) European Union / Council of Europe Documents

- European Convention on Extradition (1957)
- European Convention on Mutual Assistance in Criminal Matters (1959)
- European Convention on the Validity of Criminal Judgements (1970)
- European Convention on the Transfer of Proceedings in Criminal Matters (1972)
- Convention relating to Extradition between Member States of the European Union (1996)
- European Convention on the Suppression of Terrorism (1977)
- Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000)
- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981) (see also Regulation of the European Parliament in Off. Journal 12 Jan.2001)
- Convention on the Protection of the European Communities' Financial Interests (1995) and Protocols.

- Guidelines for the Criminal Procedure in Crisis Management (EU/CIVCOM / 55/O2 - 2002)
 - Pre Accession Pact (E.U. Fifteen Principles) (1998)
 - Council Of Europe, Committee of Ministers, Recommendations on:
 - a. Special Investigation Techniques (2005)
 - b. Protection of Witnesses and Collaborators of Justice (2005)
 - c. Remand of Custody (2006)
- c) Islamic Conference Documents
- Convention of the Organization of the Islamic Conference on Combating International Terrorism (1999)
- d) OSCE Documents
- OSCE/Human dimension Commitments/Compilation (Reference Guide published by ODIHR, 2001)
 - Decisions of the Thirteenth Ministerial Council (Ljubljana 2005)
 - Report on the Human Dimension Seminar “Upholding the Rule of Law“ (ODIHR, Warsaw 2006)
 - Charter for European Security (1999)
 - Bucharest Plan of Action for Combating Terrorism (2001)
 - OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century (2003)
- e) International Justice Documents
- ICC Statute (Rome 1998); Rules of Procedure and Evidence
 - ICTY Statute (1993-2006); Rules of Procedure and Evidence
 - European Court of Human Rights (Strasbourg); Case Law.
- f) The Vienna Convention on Diplomatic Relations (1961)