

Relevant provisions of the Austrian Code of Criminal Procedure (CCP)¹:

Victim participation

§ 10. (1) Victims of criminal offences are entitled to participate in criminal proceedings subject to the provisions in Chapter 4.

(2) Criminal investigation and prosecution authorities and the courts have a duty to give reasonable consideration to the rights, interests, and special protection needs of victims of criminal offences and to inform all victims about the fundamental rights during the proceedings and about the possibility to obtain compensation or assistance.

(3) During the proceedings, all authorities, institutions and persons engaged in criminal proceedings have the duty to treat victims with due regard for their personal dignity and respect their interest to keep their personal sphere protected. This specifically concerns the transfer of photographs and the communication of personal information that may lead to their identity being released to a larger number of people without this being warranted for criminal justice purposes. In their decisions about the conclusion of the proceedings, the prosecution authority and the court must always examine the victims' reparation interests and support them to the greatest possible extent.

Regional Court

§ 31. (1) In investigation proceedings, single judges of the Regional Court have responsibility for

1. taking evidence according to § 104,
2. proceedings about decisions concerning motions to seize, to realize secured or seized assets, and to remand in custody and continue remand, as well as motions to approve other coercive means (§ 105),
3. decisions concerning objections because of claims that a personal right has been violated by the prosecution authority or the criminal investigation authority (§§ 106 und 107),
4. decisions concerning motions to discontinue investigation proceedings (§ 108),
5. reviews of the maximum duration of investigation proceedings (§ 108a).
6. the procedure for deciding on applications for orders to investigate the accused (§ 71 para. 1 second sentence).

(...)

Instructions about rights

§ 50. (1) Every accused has to be informed, as soon as possible, by the criminal investigation authority or the prosecution authority about investigation proceedings against him or her, about suspicions held against him or her, and about his or her principal rights in the proceedings (§§ 49, 164 para. 1). As soon as the material facts on which the investigation proceedings are based, by themselves or in connection with newly emerged circumstances, substantiate the suspicion that a different or a further offence has been committed, the accused must also be informed about these changed factors concerning the suspicions against him or her. This may only be omitted so long as special circumstances lead to the assumption, that the purpose of the investigation may otherwise be jeopardized, in particular

¹ It should be noted that the English translations of the provisions of the Austrian Code of Criminal Procedure are either unofficial working translations or taken from Schloenhardt/Eder/Höpfel (Hg./eds.) "Strafprozessordnung – Austrian Code of Criminal Procedure".

if investigations need to be conducted or evidence taken, which, in order to be successful, requires the accused not to be aware of the investigations conducted against him or her.

(2) The instructions about rights need to be given in a language that the accused can understand and in a comprehensible manner, taking into account any special personal needs of the accused.

(3) The fact that the accused received instruction or additional instruction as well as any waiver of a right by the accused have to be recorded in written form (§§ 95 and 96).

§ 52. (1) If the accused is entitled to access files, upon request, copies (photocopies or other reproduction of the content of the files) are to be issued to the accused for a fee or, depending on the technical facilities, the accused may be permitted to produce his or her own copies, unless this right is exercised by defence counsel (§ 57 para. 2). Not included are audio and video recordings of the kind where possession is generally prohibited or that involve content which, according to § 51 para. 2 first sentence, is not covered by the right to access files; if their content concerns confidentiality interests of other participants in the proceedings or of third parties that need to be protected, the duty to keep these recordings confidential must be placed on the accused (§ 301 para. 2 Criminal Code [Strafgesetzbuch (StGB)]). If it is necessary to ensure the security of data, copies stored on data storage devices provided by criminal justice authorities may be given to the accused for refund of the purchase costs.

(...)

Interpretation assistance

§ 56. (1) An accused who does not speak or cannot understand the language in which the proceedings are conducted, has the right to receive interpretation assistance (para. 2). Moreover, insofar as this is necessary to preserve the rights to defence and ensure a fair trial, the accused has the right to obtain written translation of essential documents (para. 3), which needs to be provided within a reasonably set period. § 53 para. 1 first sentence applies, *mutatis mutandis*, to the procedure to exercise this right.

(2) Interpretation assistance is to be provided orally and, in particular, for the hearing of evidence where the accused is present, for court hearings and, upon request, also for contact between the accused and his or her defence counsel if such contact is directly related to the hearing of evidence, court hearings, the use of an appellate instrument or any other motion. If interpretation services in a language which the accused can speak or understand cannot be provided within a reasonable period at the place where the interview takes place, these services may be provided by using technical measures for audio and video transmission, unless the personal presence of an interpreter is required to ensure a fair hearing.

(3) Essential documents include the direction and court approval of an arrest, in cases under § 171 para. 2 the written reasons of the criminal investigation authority, the order by the court to remand a person in custody or to continue remand, the indictment, as well as a copy of the judgment and the penalty order prior becoming legally binding. Unless paras. 5 or 6 are applied, these documents have to be translated in writing; in cases under § 171 para. 2 this has to be organized by the criminal investigation authority, otherwise by the prosecution authority, and in cases of remand or continuation of remand and at trial (§ 210 para. 2) by the court.

(4) Other documents, which need to be exactly specified, are to be translated in writing at the request of the accused, if reasons for the need for a translation within the meaning of para. 1 are given or if the need is obvious. The translation of essential documents (paras. 3 and 4) may be limited to any part of the document that is relevant for the accused to know what he or she has been charged with.

(5) Written translations may be substituted by oral translations, or if the accused is represented by defence counsel, by oral summaries so long as oral translations or summaries do not prevent a fair trial.

(6) Any waiver by the accused concerning written translations is only permissible if the accused has previously been instructed about his or her rights and the consequences of a waiver. The instruction and

waiver have to be recorded in writing (§§ 95 and 96). § 57 para. 2 final sentence applies to waivers by an accused under arrest.

(7) If the accused is deaf or mute, an interpreter using sign language is to be employed, if the accused is able to communicate in sign language. Otherwise, it has to be attempted to engage with the accused in writing or in another suitable way in which the accused can communicate.

Definitions

§ 65. For the purpose of this Code

1. 'victim' refers to

- a) any person who, through an intentionally committed criminal offence, might have been exposed to violence or dangerous threats, or might have been violated in their sexual integrity or sexual self-determination, or whose personal dependency might have been exploited by such an offence,
- b) the spouse, registered partner, domestic partner, relatives in a direct ancestral line, siblings, and other dependants of a person, whose death might have been caused by a criminal offence, or other relatives who were witnesses of the crime,
- c) any other person who might have suffered damage or whose legal interests protected by criminal law might have been violated through a criminal offence.

2. 'private party' refers to any victim stating that he or she will participate in the proceedings in order to receive compensation for damages or violations suffered,

3. 'private plaintiff' refers to any person filing an indictment or any other motion with the court (§ 71) to instigate the main proceedings for a criminal offence that is not prosecuted ex officio,

4. 'subsidiary plaintiff' refers to any private party perpetuating an indictment that was withdrawn by the prosecution authority.

Rights of victims

§ 66. (1) Independent of their role as private parties, victims have the right

1. to be represented (§ 73),
 - 1a. to receive written confirmation of their report of a crime (§ 80 para. 1),
 - 1b. to have their special protection needs assessed as soon as possible (§ 66a),
2. to access files (§ 68),
3. to obtain information about the subject matter of the proceedings and about their principal rights before questioning (§ 70 para. 1),
4. to be notified about the progression of the proceedings (§§ 177 para. 5, 194, 197 para. 3, 206 and 208 para. 3),
5. to obtain interpretation aid through an interpretation service according to para. 3,
6. to participate in the adversarial examination of witnesses and accused (§ 165) and in a re-enactment of the crime (§ 150 para. 1),
7. to be present during the main trial, to question the defendant, witnesses and expert witnesses and to be heard concerning their claims,
8. to demand resumption of proceedings that were ceased by the prosecution authority (§ 195 para. 1).

(2) n/a

(3) Interpretation aid is to be provided by applying mutatis mutandis the provisions under § 56. Essential files that have to be translated at the request of the victim include the written confirmation of the report of the crime (§ 80 para. 1), notification of and the reasons for cessation of investigation proceedings (§ 194 para. 2) as well as copies of the verdict and the penal order; in assessing the necessity, the necessity to preserve the rights and interests of the victim (§ 10) substitutes the necessity to preserve the rights of defence.

(4) n/a

Special protection needs of victims

§ 66a. (1) Victims have the right to have their special protection needs assessed and determined as soon as possible subject to their age, psychological and health condition as well as the type and specific circumstances of the criminal offence. In any case, victims with special protection needs are those victims,

1. whose sexual integrity and self-determination might have been violated,
2. for whose protection a prohibition of entry and approach could be issued for protection against violence pursuant to § 38a para. 1 National Security Police Act [Sicherheitspolizeigesetz (SPG)],
3. who are minors (§ 74 para. 1 subpara. 3 Criminal Code [Strafgesetzbuch (StGB)]).

(2) Victims with special protection needs have the right:

1. to demand to be interviewed in investigation proceedings by a person of the same gender if possible,
- 1a. to require that interpretation services (§ 66 para. 3) are provided by a person of the same sex during questioning of the victim in the preliminary proceedings and in the main hearing, if possible;
2. to refuse to answer questions concerning details of the criminal offence, if they consider giving their account to be unreasonable, or questions concerning details of most personal private sphere (§ 158 para. 1 subparas. 2 and 3, para. 2),
3. to demand to be interviewed in a considerate manner in investigation proceedings and in the main trial (§§ 165, 250 para. 3), namely that a victim who is a minor whose sexual sphere might have been violated by the accused through the offence he or she is accused of is, in any case, interviewed in the manner described in § 165 para. 3, if necessary by an expert witness,
4. to demand to exclude the public from the main trial (§ 229 para. 1),
5. to be informed ex officio immediately according to §§ 172 para. 4, 177 para. 5 and 181a,
6. to consult a person who they trust if questioned (§ 160 para. 2).

(3) If the legal guardian of a victim who is a minor is suspected or convicted of the criminal offence, if there is any other risk of a conflict of interests between the victim who is a minor and his or her legal guardian, or if no legal guardian can assist the victim who is a minor in the criminal process, it must be suggested to the Guardianship Court to assign a legal representative.

(4) A victim who upon request is not afforded the rights under para. 2 must be informed about the reasons.

Court assistance

§ 66b. (1) At their request,

- a) victims within the meaning of § 65 subpara. 1 lit. a or b,
- b) victims (§ 65 subpara. 1) of terrorist offences (§ 278c of the Austrian Criminal Code = CC),
- c) victims (§ 65 subpara. 1) of persistent stalking (§ 107a CC), persistent harassment involving telecommunication or computer systems (§ 107c CC) and hate speech (§ 283 CC),
- d) victims (§ 65 subpara. 1) of criminal defamation (§ 111 CC), accusation of prior offences that have been served or waived (§ 113 CC), insult (§ 115 CC) and false accusation (§ 297 CC), if it can be assumed on the basis of certain indications that such an act was committed by means of a telecommunications or computer system and
- e) minors who have witnessed violence in the social environment (violence in the family, violence against children)

are entitled to psychosocial and legal court assistance insofar as this is necessary to preserve the rights of the victim, taking into account their personal concerns. Victims whose sexual integrity might have been violated and who are under the age of 14 are afforded psychosocial court assistance in any case.

(2) Psychosocial court assistance includes the preparation of the person concerned for the proceedings and for the emotional stress associated with the proceedings as well as accompanying the person to questioning during investigation proceedings and the main proceedings; legal court assistance includes legal advice and representation by an attorney.

(3) The Federal Minister of Justice is authorized to contract suitable institutions that have proven their worth to provide court assistance to the persons referred to in para. 1 after reviewing the legal requirements and to issue, by ordinance, more detailed provisions on the requirements for contracting such institutions and, in agreement with the Federal Minister for Women and Integration in the Federal Chancellery and the Federal Minister of Labor, Family Affairs and Youth, on quality standards for court assistance, in particular on the training and continuing education of court assistance staff.

Private participation

§ 67. (1) Victims have the right to seek restitution for any damages suffered by the criminal offence or compensation for infringements of their legal interests protected by criminal law. The extent of the damages or infringements has to be determined ex officio insofar as this is possible on the basis of the outcome of the criminal process or further simple inquiries. If an expert witness is appointed to assess a bodily injury or any damage to the health of the victim, the expert witness also has to be asked to determine the periods of suffering.

(2) Victims become private parties by way of declaration. In the declaration, unless obvious, victims have to give reasons for their entitlement to participate in the proceedings and for their claims to restitution or compensation.

(3) Declarations pursuant to para. 2 have to be submitted to the criminal investigation authority, to the prosecution authority, or, after the indictment has been filed, to the court. The declaration must be submitted prior to the conclusion of evidential proceedings; by this time, the amount of restitution or compensation also has to be specified. The declaration may be withdrawn at any time.

(4) A declaration must be rejected if,

- 1. the declaration is evidently unfounded,
- 2. the declaration was submitted too late (para. 3), or
- 3. if the amount of restitution or compensation was not specified in time.

(5) The rejection of a declaration pursuant to para. 2 is the responsibility of the prosecution authority or, once the indictment has been filed, of the court.

(6) In addition to the rights of victims (§ 66), private parties have the right to

1. request the taking of evidence pursuant to § 55,
2. uphold the indictment pursuant to § 72, if the prosecution authority withdraws it,
3. raise an objection against the decision by the court to cease proceedings pursuant under § 87,
4. be invited to attend the main trial and, after the closing statement by the prosecution authority, be given the opportunity to state and give reasons for their claims,
5. lodge an appeal because of their private law claims under § 366.

(7) Unless private parties must be afforded legal support for the proceedings by the court (§ 66 para. 2), they are to be granted legal aid for the proceedings by providing them with an attorney free of charge, insofar as the representation by an attorney is in the interest of justice, in particular if this is necessary for a purposeful assertion of their claims in order to avoid further civil proceedings and if they are unable to meet the costs for legal representation without compromising their necessary livelihood. The necessary livelihood refers to the alimentation needed to maintain a simple livelihood by the person for herself or himself and for her or his family in her or his care. §§ 61 para. 4, 62 paras. 1, 2 and 4 as well as § 63 para. 1 apply mutatis mutandis to the assignment and appointment of such a representative.

Right to information

§ 70. (1) As soon as investigation proceedings are conducted, the criminal investigation authority or the prosecution authority has to inform the victims about their fundamental rights (§§ 66 to 67). This may only be omitted as long as special circumstances give reason to fear that otherwise the purpose of the investigation would be jeopardized. Victims within the meaning of § 65 para. 1 shall be informed at the latest at the time of their interrogation that they are entitled to be informed immediately upon request by

1. the release of the accused (§ 172 para. 4, § 177 para. 5),
2. the escape of the accused in pre-trial detention and his recapture (§ 181a),
3. the escape and recapture of the fugitive (§ 106 para. 4 of the Penal Execution Act [Strafvollzugsgesetz = StVG]), and
4. the first unguarded departure from the prison or the imminent or effected release of the prisoner (§ 149 para. 5 StVG).

to be notified. § 50 para. 2 shall apply mutatis mutandis.

(2) At the latest prior to their first interrogation, victims within the meaning of § 66b para. 1 lit. a to d shall furthermore be informed of the requirements for court assistance and particularly vulnerable victims shall be informed of their rights under § 66a.

(3) After having been informed, the victim may declare at any stage of the proceedings that he/she waives further notifications and summonses, in which case the victim shall refrain from further participation in the proceedings.

Exemptions from the duty to answer questions

§ 156. (1) The following persons are exempted from the duty to answer questions:

1. persons who are asked to answer questions in proceedings against a relative (§ 72 Criminal Code [Strafgesetzbuch (StGB)]);
2. victims with special protection needs (§ 66a), if the parties had the opportunity to participate in a prior adversarial questioning (§§ 165, 247).

(2) Paragraph 1 subpara. 1 does not exempt any adult who participates in the proceedings as a private party (§ 67).

(3) If in proceedings against multiple accused the exemption from the duty to answer questions only concerns one accused, the witness is only exempted in relation to the other accused if it is not possible to separate the answers. The same applies if the exemption only relates to one of multiple facts of the case.

Refusal to answer questions

§ 157. (1) The following persons have a right to refuse to answer questions:

1. any person who would expose himself, herself, or a relative (§ 156 para. 1 subpara. 1) to the risk of being criminally prosecuted or who in the context of criminal proceedings against that person would risk incriminating himself or herself beyond any prior statements made,
2. defence counsel, attorneys, patent attorneys, counsel assisting a commission of inquiry of the National Assembly, notaries public, and certified public accountants about matters they become aware of in that capacity,
3. specialist practitioners in psychiatry, psychotherapists, psychologists, probation supervisors, registered mediators under the Private Law Mediation Act [Zivilrechts- Mediations-Gesetz], BGBl. I No. 29/2003, and personnel of recognized institutions for psycho-social counselling and care, about matters they become aware of in that capacity,
4. media owners (publishers), personnel and employees of media companies or media services about questions concerning the person who authors, submits, or approves articles or documents or concerning information obtained in relation to their function,
5. eligible voters about how they exercised a right to vote that is secret by law.

(2) A person's right to refuse to answer questions under para. 1 subparas. 2 to 5 must not be circumvented, in particular by securing and seizing documents or information stored on data storage devices or by questioning aides or persons in training in one of the occupations under para. 1 subparas. 2 to 4, otherwise such action will be void. The same applies to documents and information over which the accused or a co-accused has power of disposition and that were designed by a person mentioned in para. 1 subpara. 2 or the accused to advise the accused or for the defence of the accused by such a person.

Conducting the questioning

§ 160. (1) Generally, each witness must be questioned individually and in absence of other participants in the proceedings and other witnesses. Persons who due to illness, frailty, or for other compelling reasons are unable to abide by the summons may be heard at their home or at their other abode.

(2) At the request of the witness, the presence of a person of trust of the witness must be allowed at the questioning. The summons has to state this right. Persons suspected of involvement in the criminal offence, persons questioned or to be questioned as witnesses, and other participants in the proceedings may be excluded from being a person of trust; the same applies to persons who give reason to fear that their presence would impact on the witness giving free and full answers. Persons of trust have a duty to keep their observations in the course of questioning confidential (§ 301 para. 2 Criminal Code [Strafgesetzbuch (StGB)]).

(3) A person of trust must be brought in in any case when a person suffering mental illness or similarly limited in his/her decision-making capacity or a person under the age of 14 is questioned.

§ 161. (1) Prior to the beginning of questioning, the witness must be reminded to answer accurately and in full. Next, the witness must be asked about his or her given name, family name, place and date of birth, occupation, place of residence or other address appropriate for the summons, and about the witness' relation to the accused. If other persons are present, care needs to be taken that the personal circumstances of the witness do not become publicly known.

(2) Subsequently, the witness is asked to provide a coherent description of his or her observations. Next, where applicable, anything unclear or contradictory must be resolved.

(3) Questions that involve presenting the witness with circumstances that are yet to be ascertained through the witness' answers may only be asked if this is necessary to understand the context; such questions and answers given to them must be transcribed verbatim. Questions about criminal court proceedings against the witness, if any, about their outcome as well as questions about circumstances concerning the most private sphere of the witness must not be asked, unless this is vital in the specific circumstances of the case.

Anonymous answers

§ 162. If because of particular material facts there is reason to fear that the witness or a third person may be exposed to serious danger to life, health, physical integrity, or freedom by stating the name and other information about the person (§ 161 para. 1) or by answering questions from which inferences about the person may be drawn, the witness may be permitted not to answer such questions. In such cases it is also permissible for the witness to change his or her appearance in a manner that he or she is not recognizable. The witness is, however, not permitted to disguise his or her face in a manner that his or her facial expression cannot be observed since this is vital to assess the credibility of the witness' answers.

Adversarial questioning of the accused or a witness

§ 165. (1) Adversarial questioning as well as audio and video recordings of adversarial questioning of the accused or a witness are permissible if there is reason to believe that questioning in a main trial will not be possible for factual or legal reasons.

(2) Adversarial questioning must be carried out by the court at the request of the prosecution authority, applying, *mutatis mutandis*, the provisions under §§ 249 and 250 (§ 104). The court has to afford the prosecution authority, the accused, the victim, private parties and their representatives the opportunity to participate in adversarial questioning and to pose questions.

(3) If a victim with special protection needs (§ 66a) or another witness who meets the criteria listed in § 66a is questioned, or for other purposes to establish the truth, the opportunity to participate must be restricted, upon request by the prosecution authority or *ex officio*, in a manner that participants in the proceedings (para. 2) and their representatives can follow the questioning using technical audio and video transmission equipment and to exercise their right to pose questions without being present at the questioning. In particular, if special protection needs exist, an expert witness may be commissioned to carry out the questioning. In any event, insofar as possible care has to be taken that the witness does not encounter the accused and other participants in the proceedings.

(4) Witnesses who are minors and whose sexual sphere might have been violated through the criminal offence the accused allegedly committed must in any case be questioned by the court in the way and manner set out in para. 3, other victims with special protection needs (§ 66a) and witnesses mentioned in § 156 para. 1 subpara. 1 as well as witnesses to whom the criteria mentioned in § 66a para. 1 CCP apply, must be questioned in that manner requests made by them or by the prosecution authority.

(5) Prior to questioning, the court must further inform the witness that the transcript may be read out and that audio or video recordings of the questioning may be shown in the main trial, even if in the further proceedings the witness refuses to give testimony. If an expert witness has been commissioned

to carry out the questioning (para. 3), the expert witness must provide that information and the information under § 161 para. 1 to the witness. Regard must be had to the age and condition of the witness in this context. The information provided and statements made in relation to that information must be transcribed.

(5a) If the questioning involves the use of technical audio and video transmission equipment, the recording must in every case be transcribed in full without delay and the transcript must be added to the file as a transcript. In cases in which a witness whose sexual sphere might have been violated through the criminal offence the accused allegedly committed is questioned, the recording must be stored by the court (§ 31 para. 1) and must be transferred to the competent court after the indictment has been filed. Contrary to § 52 para. 1, in such cases there is no right to obtain a copy.

(6) Apart from that, the provisions in this Division apply *mutatis mutandis*.

Conducting the arrest

§ 172. (1) The criminal investigation authority must notify without delay the prosecution authority when it is carrying out the direction to arrest, and the prosecution authority must notify the court without delay. The accused must be placed in the detention facility of the competent court without undue delay, at a maximum within 48 hours of the arrest. If this would only be possible with disproportionate effort, especially because of the distance of the place of arrest, or if this would be inappropriate because of illness or injury of the accused, it is permissible to place the accused in a detention facility of a court without jurisdiction or to place the accused in a medical facility. In such cases, the court may also hear the accused using technical audio and video transmission equipment and may deliver the decision about remand in the same manner (§ 174).

(2) If the criminal investigation authority has arrested the accused independently, the criminal investigation authority must question the accused without delay about the matter, the suspicion of the crime, and the grounds for the arrest. The criminal investigation authority must release the accused as soon as it becomes evident that no further ground to keep the accused exists. If the purpose of the continuing arrest can be achieved using more menial means under § 173 para. 5 subpara. 1 to 7, the criminal investigation authority must without delay at the direction of the prosecution authority issue the accused with necessary directives, take the accused's pledges, or remove the keys and documents mentioned in § 173 para. 5 subparas. 3 and 6 from the accused, or collect the bail set under § 172a, and release the accused. The results of the investigation along with the transcript of the directives issued and pledges made together with any keys and documents removed from the accused must be transferred to the prosecution authority within 48 hours of the arrest. The court decides about continuing these more menial means.

(3) Unless the accused must be released pursuant to para. 2, the criminal investigation authority must place the accused in the detention facility of the competent court without undue delay, at a maximum within 48 hours of the arrest, or — in the event of the accused falling ill (para. 1) — in a medical facility. Prior to placing the accused into a facility, the criminal investigation authority must notify the prosecution authority in due time. If the prosecution authority declares that it will not request remand, the criminal investigation authority must immediately release the accused.

(4) If the victim so requested, the victim must be notified immediately of the release of the accused pursuant to this provision and by stating the grounds for release and the more menial means imposed on the accused. However, victims under § 65 para. 1 subpara. 1 lit. a and victims with special protection needs (§ 66a) must be informed *ex officio* without delay. The prosecution authority must make these notifications, if the prosecution authority, after the accused has been placed in a detention facility, declares that it will not request remand; in any other case the criminal investigation authority must make these notifications.

Lifting of remand

§ 177. (1) All authorities participating in the criminal proceedings have a duty to ensure that remand is kept as brief as possible. The prosecution authority and the criminal investigation authority must conduct their investigations emphatically and swiftly.

(2) The accused must be released immediately and more menial means must be revoked as soon as the requirements for arrest, remand, or the use of more menial measures cease to exist or if their continuation would be disproportionate.

(3) If the prosecution authority is of the view that remand has to be lifted, the prosecution authority makes an application to the court to that end and the court must release the accused immediately.

(4) If the prosecution authority is of the view that a revocation of more menial means should be ordered by the court, the prosecution authority makes an application to that end and the court makes orders accordingly. If the prosecution authority requests a change of more menial means or if the accused requests that the more menial means be revoked or changed and if the prosecution objects the court must decide accordingly. Complaints against such court orders must be filed within three days of their announcement.

(5) If the accused is released, the court must proceed pursuant to § 172 para. 4 first and second sentence and must notify the criminal investigation authority about this communication.

Escape

§ 181a. The victim, if the victim so requested, must be notified immediately if an accused held in remand has escaped and once the accused has been recaptured. § 172 para. 4 second sentence applies mutatis mutandis. The detention facility must notify the prosecution authority of the escape and the recapture without delay; the prosecution authority must then notify the victim.

Motion for continuation of investigation proceedings

§ 195. (1) So long as liability for the crime has not passed the statute of limitations, at the request of the victim, the court has to order the continuation by the prosecution authority of investigation proceedings that were ceased under §§ 190 to 192 if

1. the law was violated or applied incorrectly,
2. there are serious concerns regarding the accuracy of the material facts on which the decision to close the proceedings was based, or
3. new material facts or pieces of evidences are provided, which, by themselves or in conjunction with the other outcomes of the proceedings, appear to be capable of sufficiently ascertaining the facts of the case in order to proceed pursuant to Chapters 11 or 12.

(2) The motion has to be filed with the prosecution authority within 14 days of the cessation (§ 194), or in cases of a request under § 194 para. 2 that was filed by the relevant deadline, within 14 days of the service of the explanation of the cessation; if, however, the victim was not notified of the cessation, the motion has to be filed within three months of the cessation of proceedings. Motions by victims who are minors do not require approval by the Guardianship Court. The motion must specify the proceedings for which continuation is sought and must contain all the information required for to assess the on-time lodgement. Furthermore, the reasons from which the violation or wrong application of the law or the serious concerns derive need to be stated individually and definitively. § 55 para. 1 applies, mutatis mutandis, if new material facts or pieces of evidence are presented.

(2a) In addition, in the cases stated in § 194 para. 3, the Commissioner for Legal Protection has the right to file a motion for the continuation of investigation proceedings.

(3) If the prosecution authority finds the motion to be justified, it must continue the proceedings regardless of the requirements under § 193 para. 2 subparas. 1 or 2. In all other cases, the prosecution authority has to transfer the file along with a statement to the court.

Publicness of the main trial

§ 228. (1) The main trial is public; otherwise the trial will be void.

(2) Only unarmed persons may attend a main trial as participants or audience members. The attendance by persons who have an obligation to carry weapons in court because of their public official duty or who have been authorized to carry weapons pursuant to §§ 2 and 8 of the Organisation of Courts Act [Gerichtsorganisationsgesetz (GOG)] may not be refused because of this.

(3) Persons under the age of 14 may be excluded from attending the main trial as audience members if their attendance could compromise their personal development.

(4) Television and radio recordings and transmissions as well as video recordings and the taking of photographs of court proceedings are prohibited.

§ 229. (1) The public may be excluded from the main trial, ex officio or at the request of a participant in the proceedings or of a victim,

1. because of endangerment of public order or national security;
2. prior to consideration of a defendant's, victim's, witness', or third person's personal or private sphere;
3. to protect the identity of a witness or a third person for one of the reasons set out in § 162.

(2) Decisions about an exclusion under para. 1 are made by order of the Court of Lay Assessors at any point during the proceedings. The exclusion may be made for the whole proceedings or any part thereof, insofar as this is necessary because of prevailing interests worthy of protection (para. 1).

(3) Orders by the court under para. 2 and their reasons must be delivered in a public sitting; no separate appellate instruments suspending the further trial are available.

(4) The delivery of a judgment (§§ 259, 260) must always occur publicly.

§ 247a. (1) Witnesses who, because of their age, illness, frailty or who for other relevant reasons, are incapable of appearing before the court, may be questioned by using technical measures for audio and video transmission. The same applies in cases under § 153 para. 4 if plaintiff and defence counsel agree or if they apply jointly.

(2) Witnesses who are unable or unwilling to appear before the court because they are abroad may be questioned in the same manner, provided that the competent authority in that country renders legal assistance.

§ 250. (1) In exceptional cases, the presiding judge is authorized to let the defendant exit from the courtroom while a witness or co-accused is examined. As soon as the defendant has returned to the courtroom and has been questioned about the matters raised during the defendant's absence, the presiding judge must inform the defendant about the action taken during the defendant's absence, especially about any testimony that was given during that time.

(2) If the presiding judge fails to inform the defendant accordingly, this must be added before the closing of the evidence proceedings, otherwise the trial will be void.

(3) Victims under § 65 subpara. 1 lit. a and victims with special protection needs (§ 66a) must be questioned at their request by the presiding judge in the manner set out in § 165 para. 3; otherwise, when questioning witnesses, the presiding judge has to apply § 165 mutatis mutandis. In so doing, the

presiding judge also has to give members of the Court of Lay Assessors who are not present during the questioning the opportunity to follow the questioning of the witnesses and to pose questions to the witnesses.

§ 252. (1) Transcripts of the questioning of co-accused and witnesses, transcripts of the hearing of evidence, official notes and other official documents which record the testimony of witnesses or co-accused, opinions given by expert witnesses as well as audio and video recordings of the questioning of co-accused or witnesses may only be read out or presented in the following cases, otherwise the judgment will be void:

1. if the persons questioned have since died; if their whereabouts are not known or if their personal appearance could not be effected because of their age, illness, frailty, or because of their stay in a distant location or because of other significant reasons;
2. if the persons questioned in the main trial deviate in relevant points from their prior testimony;
 - 2a. if witnesses rightfully refuse to give testimony (§§ 156, 157, and 158) and the prosecution authority and the defendant had the opportunity to participate in the questioning by the court (§§ 165, 247);
 3. if a witness, not authorized to do so, or if a co-accused refuses to give testimony; or, finally,
 4. if the plaintiff and defendant agree on the reading out.

(2) Official notes concerning a visual inspection (§ 149 para. 2) and reports, previous criminal verdicts against the defendant, and legal documents and documents of another type, that are relevant for the matter, must be read out.

(2a) In lieu of the reading out or presentation (paras. 1 and 2), the presiding judge may present the relevant content of the files, so long as the participants in the proceedings agree and so long as the files are accessible to all members of the Court of Lay Assessors and to all participants.

(3) Following any reading out or presentation (para. 2a), the defendant has to be asked if he or she wishes to comment. In so doing, the defendant may also refer to other parts of the presented files and may demand that these or other files that are relevant for the matter be read out.

(4) The provisions of para. 1 must not be circumvented, otherwise the judgment will be void.

§ 366. (1) If the defendant is acquitted, private parties have to be referred to the civil law proceedings for their claims.

(2) If the defendant is convicted, a decision about any private law claims of the private parties (§§ 395, 407 and 409 Code of Civil Procedure [Zivilprozessordnung (ZPO)]) has to be made in the judgment (§§ 260 para. 1 subpara. 5 und 270 para. 2 subpara. 4). In cases in which the outcomes of the criminal proceedings do not provide a sufficient basis to even partly assess the raised private law claims (§ 69 para. 1), the private parties have to be referred to the civil law proceedings, unless the bases necessary for a decision could be ascertained by taking evidence in a manner that does not substantially delay a decision regarding the question of guilt and of the sentencing.

(3) If despite a conviction private parties are referred to civil law proceedings, the private parties, their estate, and their heirs have the right to appeal on the ground that the private law claim could have been already decided pursuant to para. 2.