

**INSTITUTE OF CRIMINOLOGY AND SOCIAL PREVENTION**

# **Criminal Justice System in the Czech Republic**

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# Introduction

For several years, the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI) has carried out an ambitious project of providing comparative information on criminal justice systems in various countries. Within this project, HEUNI has published, for instance, studies on criminal justice in Italy, France, Finland, the Netherlands, Sweden, Ireland, England and Wales, Canada, Spain, Bulgaria, and Greece. As part of the aforementioned project, the Institute of Criminology and Social Prevention also produced such a study on the criminal justice system in the Czech Republic. In order to retain the comparative value of information drawn from various countries, it was necessary, when producing the study, to follow the outline and content delimited by HEUNI. This, of course, predetermined the way the authors approached the study, as well as the aspects of Czech criminal justice they focused on.

Since the first publication of this study, almost ten years have passed, marked by the recodification process which is still going on as part of the reform of Czech justice. Several important changes have taken place in the area of criminal justice, too. Especially the adoption of the new Criminal Code can be seen as a major event reflecting the development of the theory and practice of criminal law. Therefore some passages of the original study have been revised or supplemented wherever it was necessary with regard to the changes in legislation, development of statistical data or outcomes of criminological research.

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# 1. Demographic data

The Czech Republic's population as of 31<sup>st</sup> December 2009 was 10,506,813. At that time, the total number of foreigners registered as permanent or temporary residents was 432,503. The largest ethnic groups (excluding, of course, the Czech nationality) are Ukrainians (32 %), Slovaks (18 %), Vietnamese (14 %), Russians (7 %), Poles (4 %), and Germans (3 %).

Most of the population (approximately 70 %) live in towns and cities; however, the boundaries between urban and rural settlements are indistinct as both types of settlements merge.<sup>1</sup>

In 2009, unemployment in the Czech Republic was 8.1 %; according data available for 2009, approximately 4,934,000 people were employed and more than 57 % of this number (2,824,000) were men.

The age structure of the population with regard to the limit of criminal liability, which commences at the age of 15, is as follows: according to available data from 31<sup>st</sup> December 2009, over 9 million people had reached the minimum age relevant for criminal law in the Czech Republic, and almost 8.7 million had reached the age for full criminal liability – 18 years (for further details see Ch. 5).

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<sup>1</sup> When data must be separated, a limit to the number of people – usually 5,000 or 2,000 – was set. The Czech Statistical Office considers the legal status of a community as decisive for distinguishing “a town/city” from “another community”. Towns/cities according to this definition are those communities that are granted the status of a town/city (i. e. a community with a town/city council) according to the relevant law. As of 1<sup>st</sup> January 2010, the overall number of towns/cities in the Czech Republic was 593.

## 2. Criminal Law Statutes

**2.1.** The Czechoslovak Republic became an independent state on 28<sup>th</sup> October 1918 after the break-up of Austria-Hungary. After the state was founded, the foremost priority was to determine which laws would come into force in Czechoslovakia. It was decided to adopt more or less fully the legislation that had been in force in the former Austro-Hungarian Empire, which the Czechoslovak Republic Act No. 11/1918 Coll. (the so-called Reception Act) expressed by stating that its purpose was “to preserve continuity of the existing rule of law with the new situation, so as to ensure a smooth transition to the life of the new state”. As far as criminal substantive law was concerned, the result of the Reception Act was that, in the Czechoslovak Republic, the Austrian Criminal Code on Crimes, Transgressions and Misdemeanours of 1852, in the wording of later amendments and supplements, the Hungarian Criminal Code of 1878 and the Misdemeanours Act of 1889 remained in force; Hungarian legislation applied only to Slovakia, not to the Czech Lands. Hence a situation arose within Czechoslovakia in which legislation was drawn from several different origins and applied in the sphere of criminal law. There were problems achieving the progressive unification of law for almost the entire existence of Czechoslovakia (up to 1950).

Up to the Second World War, several drafts and outlines were prepared of a new Czechoslovak Criminal Code but overall codification of the new criminal law did not take place. Criminal legislation was somewhat ambiguous due to the validity of two criminal codes in the Czechoslovak Republic, and the situation became more unclear with the progressive adopting of further laws pertaining to criminal law. Examples include the Republic Protection Act No. 50/1923 Coll., the Bribery and Official Secrets Violation Act No. 178/1924 Coll. and the Forced Labour Camps and Police Supervision Act No. 102/1929 Coll. The importance of the Juvenile Criminal Judiciary Act No. 48/1931 Coll. should be noted, which for its time was a very modern piece of legislation based on a series of progressive opinions on the treatment of juvenile offenders and the methods for their re-education. The act introduced the term “juvenile” meaning a person between 14 and 18 years of age. Younger persons were not criminally liable for their actions. Juvenile criminal cases were tried by specially trained judges together with lay judges, comprising so-called panels of judges for juveniles.

By the occupation of Czechoslovakia in the Second World War, the effectiveness of the democratic legal order was more or less paralysed. Although basic legislation remained formally in force within the so-called Protectorate of Bohemia and Moravia, German criminal law progressively began to apply, to an ever greater extent, to Czech citizens. The fundamental principles of democratic criminal legislation ceased to be respected, and criminal law was above all used to enforce the interests of the occupying forces. Laws were applied in various ways depending on the nationality, race and political views of those being prosecuted. Excessively harsh sentences were imposed, even for minor offences, if there was suspicion that they were politically motivated.

After the liberation of Czechoslovakia in 1945 and the restoration of statehood, all amendments made to criminal law by the German occupiers and their collaborators were annulled through a constitutional decree on the restoration of legal order of 3<sup>rd</sup> August 1944. Thus criminal law was restored to the form and content it had existed in prior to the Second World War.

Several regulations were adopted in the first few months of the post-war period enabling the punishment of persons who had committed crimes against the Czech and Slovak nations and who had collaborated with the German occupiers. These so-called Retribution Decrees became the foundation for the prosecution of war criminals, traitors and collaborators before extraordinary people's courts that were established by Act No. 17/1945 Coll. Although very short procedural deadlines were set for proceedings before these extraordinary people's courts, a number of criminal cases could not be completed on time, and these criminal cases were transferred to the jurisdiction of regular courts when these special courts were abolished in 1947.

When the totalitarian regime was imposed in February 1948, a series of changes took place to Czechoslovak criminal law, as well as fundamental infringements of the existing concept of "bourgeois" criminal law. At the very beginning of the totalitarian period the Protection of the People's Democratic Republic Act No. 231/1948 Coll., the State Court Act No. 232/1948 Coll. and the Forced Labour Camps Act No. 247/1948 were passed. These laws significantly altered the character of criminal law, which gradually became an instrument of severe repression directed against people opposed to the recent political changes and against

entire social classes and groups. However, in principle criminal law in Czechoslovakia was still based on the old criminal laws dating back to the period of the Austro-Hungarian Empire.

For this reason, on the basis of a government resolution of 14<sup>th</sup> July 1948, work began as part of the so-called two-year legal plan on the draft of a new Criminal Code. On 12<sup>th</sup> July 1950 the then National Assembly adopted four new acts of legislation: the Criminal Code (Act No. 86/1950 Coll.), the Criminal Procedure Code (Act No. 87/1950 Coll.), the Criminal Administrative Code (Act No. 88/1950 Coll.), and the Criminal Administrative Procedure Code (Act No. 89/1950 Coll.). All these new laws had an exclusive class character and their explicit purpose was to “protect the People’s Democratic Republic and its socialist development, uphold the interests of working people and individuals, and provide education concerning the observance of the rule of socialist co-existence”. The Criminal Code was based on the principles of Soviet law and the definition of a crime was exclusively based on a material concept. Single participation (mono-participation) was introduced, i.e. criminal offences subject to judicial proceedings were all described as a crime. The age of criminal liability was set at 15 years and over. Very often, the merits of a crime were formulated loosely and ambiguously to allow for broad interpretation and criminal sanctions of all actions against the interests of the state, particularly in the political and economic sphere.

Between 1956 and 1957 certain reforms to the Criminal Code were made in line with changes in the political situation by adopting several additional laws of a substantive legal nature (such as, for instance, Act No. 63/1956 Coll. amending the Criminal Code – Act No. 86/1950 Coll.). This concerned a certain enhancement of the individual approach to punishment with regard to the offender, and also increased protection of socialist property (Act No. 24/1957 Coll. on Disciplinary Prosecution of Stealing and Damage to Property in Socialist Ownership).

More fundamental amendments were made to criminal law with the adoption of the new Constitution in 1960, which reflected the changes in the political climate, for example, in abandoning the most severe forms of state terror against political opponents, overcoming the consequences of the so-called personality cult and so on. The new Criminal Code No. 140/1961 Coll. was adopted, which basically came to form the foundation of criminal law in the Czech Republic for the ensuing almost 50 years.



This Criminal Code introduced a series of changes to the existing criminal law. The 1960 Constitution established local people's courts and Act No. 38/1961 Coll. governed their activity. They were entrusted with passing judgements on less dangerous offences described as "wrongdoings" for which sentences were passed of a primarily educational nature. Act No. 60/1961 Coll. annulled the existing Criminal Administrative Code, and defined new tasks and powers for the "national committees" (local councils) regarding passing judgments on misdemeanours and securing the so-called socialist order. Act No. 120/1962 Coll. on the Fight against Alcoholism also contained a provision of a substantive legal nature allowing the enforcement of criminal sanctions for the violation of certain obligations arising from this act. A new law was also enacted on prison sentences, introducing certain more humane elements in the treatment of convicted persons (Act No. 59/1965 Coll.).

As far as the jurisdiction of local people's courts was concerned, after several years it became evident that these institutions were not meeting the expectations originally held of them and had not gained the necessary authority, hence the Transgressions Act No. 150/1969 Coll. abolished the local people's courts as well as the "wrongdoings" category. Instead a new category of criminal offences subject to judicial proceedings was created: so-called "transgressions". The Protective Supervision Act No. 44/1973 Coll. should be noted, which was an attempt at controlling particularly disturbed persons after their release from serving a prison sentence. However, this supervision was soon reduced to mere police surveillance over selected categories of released persons, and the original intention of the act to intensify after-care of the convicted remained unfulfilled. In the new version of the Criminal Code provided by Act No. 175/1990 Coll., the Transgressions Act was annulled, as was the "transgression" category of criminal offence as a subject of judicial proceedings. The previously mentioned Protective Supervision Act No. 44/1973 Coll. was also annulled.

Due to the influence of social, economic and political changes which took place after the fall of the totalitarian regime in 1989, an urgent need arose to reflect these changes in all areas of law. This took place by adopting a number of partial amendments, which, however, focused chiefly on fulfilling the current needs caused by the dynamics of crime, and they were only tangential to the conceptual framework of criminal law.<sup>2</sup> Hence the Criminal Code No. 140/1961 Coll. was amended many times during its existence; and although various

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<sup>2</sup> See the Explanatory Memorandum on Act No. 40/2009 Coll.

distortions of criminal law arising from the Communist ideology and the class concept of criminal law were substantially suppressed or removed, it was necessary to initiate a completely new codification of the Czech Republic's criminal law.

On 1<sup>st</sup> January 2010, the new Criminal Code No. 40/2009 Coll. became effective, which introduced a number of changes in the area of criminal substantive law. This codification is based on recognised principles of democratic criminal law, including above all:

- the subsidiary role of criminal law (the “ultima ratio” principle) as a means of last resort for protecting individuals and society;
- an offender may be found guilty and a criminal sanction may be imposed on him/her only according to the law (“nullum crimen nulla poena sine lege”);
- prohibition of the retrospective effects of a stricter law;
- inadmissibility of analogy to extend the conditions of criminal liability, sentencing and protective measures including the terms and conditions for their enforcement (prohibition of the analogy in *malam partem*);
- individual criminal liability of individuals for their own actions excludes collective liability while criminal liability of legal entities is admissible only under the strict conditions defined in the Criminal Code;
- criminal liability is based on guilt (“nullum crimen sine culpa”);
- the imposition and enforcement of sanctions expresses the adequacy of punishment in relation to the gravity of the criminal offence and the circumstances of the offender.

In view of the fact that the aforementioned principles are generally recognised both in theory and practice in the Czech Republic, they are not directly defined in the Criminal Code, but they form its evident foundation and will continue to determine the nature of all criminal legislation.

The Criminal Code has abandoned the material notion of crime,<sup>3</sup> substituting it with the formal-material notion.<sup>4</sup> The previous concept of “social dangerousness” has now been substituted with the concept of “social harmfulness” of an action, relating to the committed

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<sup>3</sup> In the previous legislation, this notion was the fundamental and foremost element determining the character of criminal law.

<sup>4</sup> For more details, see Šámal, P.: *Trestní zákoník a naplňování funkcí a základních zásad trestního práva hmotného* [The Criminal Code and the fulfilment of functions and basic principles of criminal substantive law]. *Bulletin advokacie* No. 10/2009, p. 23.

act which has affected the interests protected by the Criminal Code, in this sense “harming” them.<sup>5</sup> The categorisation of criminal offences into crimes (*zločiny*) and transgressions (*přečiny*) has been newly introduced, and it is reflected not only in criminal law, but also in criminal procedure. It may generally be stated that the new codification is marked by the substantial change in the hierarchy of interests protected by law, which is reflected in the arrangement of the various sections of the Special Part of the Criminal Code. Criminal law now protects primarily life, health, bodily integrity, personal freedom, inviolability, dignity, esteem, honour, privacy, home and property, as well as other fundamental human rights, freedoms and interests.<sup>6</sup> Evident is also the new philosophy of imposing criminal penalties on the basis of the principle of depenalisation. Imprisonment is now seen as “ultima ratio”; in the case of a less serious offence, the court should consider imposing one of the alternative penalties. House arrest has been newly introduced.

**2.2.** As yet, an official translation of the Criminal Code into any of the world languages does not exist.

**2.3.** Criminal law in the Czech Republic is for the most part codified in one act. It should be noted that according to the Charter of Fundamental Rights and Freedoms (introduced by the Constitutional Act No. 23/1991 Coll.), an action may be described as a criminal offence only on the basis of a law. Apart from the Criminal Code, provisions relating to substantive law also found in:

- Act No. 184/1964 Coll., which excludes a term of limitation for criminal prosecution of the most serious crimes against peace, war crimes and crimes against humanity committed for the advantage or in the service of occupying forces (in connection with the Second World War);
- Act No. 169/1999 Coll. on Serving a Prison Sentence, as amended;
- the Judicial Rehabilitation Act No. 119/1990 Coll. as amended by Act No. 47/1991 Coll., Act No. 633/1992 Coll. and Act No. 198/1993 Coll.;

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<sup>5</sup> See Šámal, P. et al.: *Trestní zákoník I. §1 až 139. Komentář* [The Criminal Code I. Art. 1 to 139. Commentary]. 1<sup>st</sup> edition. Praha: C. H. Beck, 2009, p. 94 f.

<sup>6</sup> See Šámal, P.: *Trestní zákoník a naplňování funkcí a základních zásad trestního práva hmotného* [The Criminal Code and the fulfilment of functions and basic principles of criminal substantive law]. *Bulletin advokacie* No. 10/2009, p. 23.

- Act No. 198/1993 Coll. on the Illegality of the Communist Regime and Resistance to it;
- the Probation and Mediation Service Act No. 257/2000 Coll.; or in
- Act No. 218/2003 Coll. on Juvenile Liability for Unlawful Acts and on Juvenile Justice and on the Amendment of Several Laws (Juvenile Justice Act)

There is further legislation connected with the Criminal Code in which sanctions are defined for actions that are less dangerous than criminal offences. These actions are usually defined as misdemeanours (*přestupky*) or administrative delicts (*správní delikty*). This particularly concerns the Misdemeanours Act No. 200/1990 Coll.; foreign exchange administrative delicts are regulated by Act No. 219/1995 Coll., and customs delicts by Act No. 13/1993 Coll. There are also various rules regulating the disciplinary liability of employees, disciplinary misdemeanours of members of the armed forces, transgressions in transport and so on. These misdemeanours (or administrative delicts) are heard in administrative proceedings by various state executive or control authorities, and they are not subject to punishment as set out in the Criminal Code. The decisions of these authorities may be reviewed by courts.

Following the completed recodification of criminal law, a recodification of criminal procedure is now being prepared.

### 3. Procedural Law Statutes

**3.1.** The first code for criminal procedure law after 1945 was the Criminal Judicial Procedure (Criminal Procedure Code) – Act No. 87/1950 Coll. – adopted on 12<sup>th</sup> July 1950. Until this time the Austrian Act No. 119 of 1873 governed criminal procedure in the Czech state. In addition to this Act, fundamental procedural standards were, until 1950, contained primarily in the Austrian Act No. 131 of 1912 on Military Criminal Procedure, in Act No. 48/1931 Coll. on Juvenile Criminal Justice, in the Jury Courts Act No. 232/1946 Coll., in the State Court Act No. 232/1948 Coll., and in the People’s Justice Act No. 319/1948 Coll.

The Criminal Procedure Code of 1950 was adopted as part of the so-called two-year legal plan (1948–1950) based on the model of the Soviet Criminal Procedure Code. It transferred the focus of criminal proceedings to the phase of preliminary proceedings, and diminished the rights of the accused and position of the defence counsel. Inter alia, it stipulated the principles of material truth (authorities responsible for criminal proceedings are obliged to proceed from the fully ascertained state of the case), legality, public session, oral deposition, directness and discretionary assessment of evidence. It may generally be stated that by stressing the key role of the powerful police in criminal proceedings, the Code reflected the socio-political situation in the first half of the 1950s. A reaction to the criticism of criminal repression under the Stalinist era was the subsequent adoption of Act No. 64/1956 Coll. on the Criminal Judicial Procedure (Criminal Procedure Code). This Criminal Procedure Code removed the most glaring distortions of the trial procedure by enhancing the supervision by the prosecutor over preliminary proceedings, creating the official position of investigator as separate from the operational police units, allowing the review of the indictment in preliminary court hearings, extending the rights of the defence and determining the legal time limits for the duration of custody and investigation.

Once the new Constitution had been passed in 1960, there were increasing calls for the creation of new criminal law codes. The result in the area of criminal proceedings was Act No. 141/1961 Coll. on the Criminal Judicial Procedure (Criminal Procedure Code), which was later amended and is still applicable in the Czech Republic. In principle, it maintained the system of the 1956 Criminal Procedure Code, but put greater emphasis on the preventive and

educational aspect of criminal proceedings. By the end of 2001, the Criminal Procedure Code had been amended more than thirty times, either partially or fundamentally. The amendments which may be considered the most fundamental appeared in the Criminal Procedure Code in the 1960s and subsequently in the 1990s. Amendment No. 57/1967 Coll. introduced two forms of preliminary proceedings – fact-finding and investigation, extended the rights of the defence and defined the position of the prosecutor in greater detail. Amendment No. 149/1969 Coll. introduced proceedings before a single judge and governed the proceedings for new kinds of offences – transgressions (*přečiny*). In the 1990s, amendments were a reflection of the attempts to remove the elements of criminal proceedings by the totalitarian state, and to reach the standard of human rights protection common in developed democratic countries. Amendment No. 178/1990 Coll. extended the rights of the accused and the defence counsel; for the first time it legally regulated the interception of telephone calls, expressly prohibited the use of evidence obtained through illegal coercion, and regulated the consent of the injured party to the initiation of criminal prosecution. Amendment No. 558/1991 Coll. transferred the decision-making process on major infringements of human rights during preliminary proceedings (taking into custody, ordering a search of premises and so on) from the prosecution to the court. Amendment No. 292/1993 Coll. abolished fact-finding as a form of preliminary proceedings, introduced the conditional cessation of criminal prosecution, and reintroduced the criminal court order. Amendment No. 152/1995 Coll. governed in greater detail the concealment of witness identity, introduced temporary suspension of criminal prosecution, out-of-court settlement procedure, and also community service sanctions.

Throughout the 1990s extensive discussions took place about the need to draft completely new criminal law codes, which would replace the existing repeatedly amended Criminal Code and Criminal Procedure Code. Recodification commissions have been appointed to deal with the task of preparing these codes. The most important trends of the recodification process are primarily considered to be diminishing the role of preliminary proceedings and strengthening the position of proceedings before a court, differentiating between various forms of proceedings depending on the gravity and complexity of the offence, strengthening contradictory elements of proceedings before a court, developing diversions in criminal proceedings, more effective rules for evidence and new regulation of juvenile proceedings. Although it is expected that a completely new Criminal Procedure Code will be created, criminal proceedings legislation proved to be no longer adequate at the end of the 1990s. Therefore several drafts of an extensive amendment of the current Criminal

Procedure Code were prepared as part of the so-called judicial reform. On 29<sup>th</sup> June 2001, Act No. 265/2001 Coll. was passed, which came into effect on 1<sup>st</sup> January 2002 and substantially amended and supplemented the Criminal Procedure Code.

This amendment governs the function of the probation officer in criminal proceedings, the single agent of more than one injured party, and the possibility for injured parties to receive cost-free legal aid. Terms of custody were newly regulated, particularly concerning the limitation of its duration. The Criminal Procedure Code also contains the institute of controlled consignment, well-known in developed countries. Other provisions of the amendment deal with types of evidence not expressly defined or insufficiently regulated by the former Criminal Procedure Code (confrontation, recognition, investigative experiment, crime reconstruction...). Preliminary proceedings experienced fundamental changes. A police officer of the Criminal Police and Investigation Department is in charge of investigations now that the autonomous investigator's office has been abolished. Intelligence means and devices (feigned transfer, surveillance of persons and objects, use of an undercover agent) were included in the Criminal Procedure Code, and the results of their use were admitted as evidence under criminal proceedings. New time limits were established for completing investigations. So-called summary preliminary proceedings were introduced as a special form of preliminary proceedings in less serious and less complicated cases, which form the basis for the so-called simplified proceedings before a single judge. The amendment contributed to strengthening the position of the public prosecutor in criminal proceedings, and transferred the focus of substantiation to the stage of proceedings before a court. Appellate review (*dovolání*) was added to the range of extraordinary appeals. Also the proceedings procedure was amended after a decision was cancelled by a ruling of the Constitutional Court.

The Criminal Procedure Code was amended by Act No. 177/2008 Coll., effective from 1<sup>st</sup> July 2008. The aim of this amendment was the new regulation of the interception and recording of telecommunications, specifying the legislation pertaining to the authorisation and use of this intelligence means. In line with the principles of adequacy and moderation, the interception and recording of telecommunications should be used only in the cases when the objective pursued cannot be reached in any other way or when reaching it would be substantially hampered. The intercepted person must be subsequently informed of the fact that it has been intercepted, how long this took, who issued such an order and in what criminal case, and when the interception ended. Such a person has also the opportunity to submit a

motion to the Supreme Court to review the legality of the order to intercept and record telecommunications.

The Criminal Procedure Code was also amended in connection with the adoption of the new Criminal Code No. 40/2009 Coll. The need for these changes arose particularly in connection with the introduction of the categorisation of criminal offences, the transition from the material to the formal notion of crime, the new legislation governing preventive detention or the regulation of house arrest and community service.

**3.2.** In view of the short time since the adoption of the latest important amendments to the Criminal Procedure Code, its current wording has not been officially published in any foreign language. The original wording of the 1961 Criminal Procedure Code was published in English, French and Russian in the *Bulletin československého práva* (Czechoslovak Law Bulletin), published in 1962, nos. 3–4.

**3.3.** Some principles of criminal proceedings are laid down in the Constitution of the Czech Republic (Constitutional Act No. 1/1993 Coll.) and the Charter of Fundamental Rights and Freedoms (Resolution of the Presidium of the Czech National Council No. 2/1993 Coll.). Otherwise the present Criminal Procedure Code is a code of criminal procedure law comprehensively governing the rules for criminal proceedings. During the course of criminal proceedings the relevant authorities therefore proceed in accordance with the Criminal Procedure Code in force. However, some provisions of the Criminal Procedure Code refer to other legal regulations. For example, under Art. 63 of the Criminal Procedure Code, the delivery of documents is subject to the rules for delivery of documents under civil procedure, unless the Criminal Procedure Code contains special provisions. In other parts the Criminal Procedure Code refers to regulations regarding expert witnesses and sworn interpreters or to rules for the executionary sale of objects and items. The provisions of Act No. 137/2001 Coll. on Special Protection of the Witness and Other Persons in Conjunction with Criminal Proceedings are also related to the criminal procedure, as well as the provisions of Act No. 119/1990 Coll. on Judicial Rehabilitation (intended to contribute to the removal of some injustices caused by the criminal judiciary during the communist regime), or certain other



laws. However, these statutes should not be perceived as statutes of criminal procedure in the true sense of the word.

A system of administrative delicts (*správní delikty*) exists in the legislation of the Czech Republic. Generally said, an administrative delict is unlawful conduct whose elements are classified by the law and on which the law imposes administrative sanctions. The two basic types of administrative delicts are misdemeanours (*přestupky*) and other administrative offences (*jiné správní delikty*). The rules for proceedings concerning administrative delicts are set out in two fundamental acts: in the Administrative Procedure Code (Act No. 500/2004 Coll.), and in the Misdemeanours Act No. 200/1990 Coll. Some partial rules for proceedings concerning administrative delicts are set out in special acts regulating the definitions of such offences. Generally speaking, it is the Misdemeanours Act that governs proceedings concerning administrative delicts, or a special law regulating the body of such an administrative offence, and the Administrative Procedure Code for issues that are not subject to these laws.

**3.4.** Criminal proceedings concerning young offenders are regulated by the special Act No. 218/2003 Coll. on Juvenile Liability for Unlawful Acts and on Juvenile Justice. This act regulates the terms and conditions of the liability of juveniles for unlawful acts stipulated by the Criminal Code, measures imposed for such unlawful acts, as well as the procedure, decision-making and execution of juvenile justice. This act determines the aim of hearing unlawful acts committed by children below the age of fifteen and juveniles: using a measure which would efficiently contribute to detaining the offender from committing this unlawful act in the future, which would help the offender find a social role corresponding to his/her abilities and mental development, and which would encourage the offender to contribute, according to his/her powers and abilities, to compensate for the damage caused by his/her unlawful act.

## 4. The Court System and Enforcement of Criminal Justice

4.1. After the end of the Second World War, the judicial system was first regulated by Presidential Decree No. 79/1945 Coll. With just a few differences, this Decree restored the territorial organisation of courts and public prosecutors' offices to the form in which it had existed on 29<sup>th</sup> September 1938. Another reaction to the Nazi occupation was Presidential Decree No. 16/1945 Coll., which introduced extraordinary people's courts to pass judgement on crimes against the state, persons and property committed during the occupation. The National Court, established by Presidential Decree No. 17/1945 Coll., made decisions on these cases if the crimes in question were committed by a person belonging to a defined group of people (e.g. a member of the government or other persons holding a high office, post or important position in economic life in the Protectorate).

Act No. 232/1946 Coll. established jury courts, which operated at first instance courts and had the competence to decide in cases of crimes and transgressions for which it was possible to impose the death penalty or a prison sentence of more than five years, or for those which the offender committed intending to influence public affairs. From 1948 the State Court, established by Act No. 232/1948 Coll., dealt with crimes for which it was possible to impose the death penalty or a prison sentence of more than ten years (or other crimes, if proposed by the public prosecutor).

Following the adoption of the new Constitution on 9<sup>th</sup> May 1948, the People's Justice Act No. 319/1948 Coll. was adopted, as well as Act No. 320/1948 Coll. on the Territorial Organisation of Regional and District Courts. Act No. 319/1948 Coll. modified the court system, which comprised district courts, regional courts and the Supreme Court, and regulated also public prosecution – public prosecutors' offices, competences and procedures in civil and criminal cases, and the execution of prison and judicial administration. The Courts and Public Prosecutor's Office Constitutional Act No. 64/1952 Coll. established judicial powers at the constitutional level. Besides the Supreme Court, the Regional and People's Courts, it also recognised military and arbitration courts as so-called Special Courts. The Prosecutor General was entrusted with supreme control of the precise implementation and observance of laws and other legislation by all ministries and other authorities, courts, "national committees" (local

government authorities), bodies, institutions and individual citizens. The subsequent Courts Organisation Act No. 66/1952 Coll. regulated the organisation of the judiciary in detail.

The Local People's Courts Act No. 38/1961 Coll. introduced an important innovation. The reason the makers of the law introduced the local people's courts was to increase the active participation of working people in the work of the judiciary. These courts, whose judges did not need any legal qualifications, functioned as bodies of working people in communities and at workplaces, and they were to treat less serious cases of violations of the law (in criminal proceedings: wrongdoings and less serious crimes) and minor disputes between citizens. Local people's courts remained within the court system as stipulated by Act No. 62/1961 Coll. Apart from modifying the organisation of the judiciary, including the legal status of the judges, this act also set out some important principles for the operation of the judiciary, such as the principles of independence of judges, the equality of citizens before the law and the courts, oral deposition and public judicial proceedings, the principle of *nullum crimen, nulla poena sine lege*, and the right to a defence counsel. District Court judges were elected by citizens by secret ballot in accordance with general, direct and equal voting rights, Regional Court judges by regional national committees and Supreme Court judges by the National Assembly.

The repeatedly amended Organisation of Courts and Election of Judges Act No. 36/1964 Coll. remained in force for the remaining years of the Communist regime. Its system conformed to the previous Act No. 62/1961 Coll. The amendments to the wording of Act No. 36/1964 Coll. up to 1991 concerned, *inter alia*, adapting the judicial system to reflect the changes in the constitutional structure of the then Czechoslovak Socialist Republic. Further amendments concerned the abolition of local people's courts, the way judges were appointed to the courts and their structure, the term for which judges were elected, and the method of electing judges in general (gradually, the authority to elect district and regional court judges was transferred to the presidia of the Czech and Slovak National Councils).

New legislation concerning the judiciary, in response to the fall of the communist regime and the building of a democratic legal state, appeared with the Courts and Judges Act No. 335/1991 Coll. It distinguished District, Regional and Supreme Courts of the Czech and the Slovak Republic as well as military courts and the Supreme Court of the Czechoslovak Federative Republic. It contained rules for the election or appointment of judges and lay

judges (judges are now appointed while lay judges continue to be elected), the cases for terminating the office of judges and lay judges, and regulated the status of judges, lay judges and candidate judges. It also newly formulated tasks for the courts where protection of the socialist state and its institutions ceased to be of dominant importance, and emphasis shifted to protecting the rights and justified interests of individuals, legal entities and society as a whole. Among the fundamental principles for the operation of the judiciary was that the judges are bound only by the law, citizens have the right to judicial protection, and nobody may be denied their lawful judge. This act was in force until 31<sup>st</sup> March 2002, and during its ten-year existence was amended several times. Above all, it had to be adjusted because, at the end of 1992 and the beginning of 1993, Czechoslovakia was divided into two separate states – the Czech Republic and the Slovak Republic. Military Courts were abolished, and High Courts were introduced into the court system. The President of the Republic was entrusted with the task of appointing judges.

On 1<sup>st</sup> April 2002, the Courts and Judges Act No. 6/2002 Coll. came into effect, fully replacing the previous Act No. 335/1991 Coll. This act is part of the so-called judicial reform. The court system is composed of District, Regional and High Courts, the Supreme Court, and, as of 1<sup>st</sup> January 2003, also the Supreme Administrative Court, which, however, does not have any jurisdiction over criminal cases. Act No. 6/2002 Coll. newly regulates the existence of judicial councils. The section on judges and lay judges contains the usual rules for the appointment/election and status of judges and lay judges, the cases for terminating their office, and the status of judicial officials and candidate judges. An important amendment applies to state administration in the judiciary whereby the act establishes the Judicial Academy as an institution for the lifelong education of judges and public prosecutors.

**4.2.** The Courts and Judges Act No. 6/2002 Coll. has not yet been officially published in any foreign language.

**4.3.** At the constitutional level, the basic principles of the organisation and performance of the judiciary are set out in Section IV of the Constitution of the Czech Republic, which inter alia also defines the position of the Constitutional Court as the judicial body that protects enforcement of the Constitution, and which holds a position outside the

court system. Act No. 7/2002 Coll. on the Proceedings in Cases of Judges, Public Prosecutors and Certificated Bailiffs was passed together with Act No. 6/2002 Coll. This act regulates the jurisdiction of disciplinary courts in proceedings concerning the cases of judges and public prosecutors, the make-up of disciplinary panels of judges, the procedure of the disciplinary court and the parties to the proceedings concerning the disciplinary liability of judges and public prosecutors, and proceedings on the competence of judges and public prosecutors to exercise their office. From other regulations, mention should be made of Act No. 121/2008 Coll. on Senior Court Clerks and Senior Clerks of the Public Prosecutor's Office, as amended. This act regulates the position and scope of activity of senior court clerks; to the defined extent, they are authorised to perform independent actions as part of judicial proceedings or other court activities. Furthermore, this act regulates also the position and scope of activity of senior clerks of public prosecutor's offices; to the extent defined by law, they are authorised to perform actions in criminal proceedings that they have been charged with (in the non-criminal sphere of competence of the public prosecutor's office), and to participate in other activities of the public prosecutor's office.

**4.4.** The main piece of legislation which regulates the organisation and activity of the police is Act No. 273/2008 Coll. on the Police of the Czech Republic, as amended. It contains provisions on the organisation of the police, their tasks and procedures, the authority and duties of police officers, the relationship of the police force to other state authorities, local authorities, individuals and legal entities and to foreign countries. Act No. 361/2003 on the Service of Members of Security Authorities regulates the details of the service of members of the Czech Police Force. The Military Police of the Czech Republic have a special function. Their sphere of competence is defined in the separate Act No. 124/1992 Coll., as amended. The military police provide police protection to the armed forces, military buildings and sites, military equipment and other state property under the management of the Ministry of Defence. In the process of decentralising public administration after 1989, a local police system was established which, as an addition to the Czech Police Force, deals with local public order incidents within the jurisdiction of individual communities. Act No. 553/1991 Coll., as amended, regulates its organisation and tasks.

The Public Prosecutor's Office Act No. 283/1993 Coll., as amended, has been in effect since 1<sup>st</sup> January 1994 when it replaced the 1965 Prosecutor's Office Act applicable to that

date. This act governs the organisation and activity of public prosecution offices. Public Prosecutor's Office is conceived as a system of state offices designed to represent the state in protecting the public interest in cases entrusted to them by the law. Act No. 283/1993 Coll. regulates the position, sphere of competence, internal relations, organisation and administration of the Public Prosecutor's Office, the position of public prosecutors as persons through whom the Public Prosecutor's Office performs its activities, the position of candidate prosecutors, the system of education of public prosecutors and candidate prosecutors, and the responsibilities of the Ministry of Justice in this area.

The work of the Bar – defence in criminal proceedings – is governed primarily by the Bar Act No. 85/1996 Coll., as amended. It regulates the terms and conditions under which legal services may be provided, the position of the attorney and the candidate attorney, and the sphere of competence of the Czech Bar Association and the Ministry of Justice.

The main legal regulation stipulating the organisation of prisons is Act No. 555/1992 Coll. on the Prison Service and Judicial Guard of the Czech Republic, as amended. This act established the Prison Service of the Czech Republic, which handles the carrying out of custody and imprisonment and, to the defined extent, also the protection of order and safety in the operation of judiciary and court administration as well as the work of public prosecutors' offices and the Ministry of Justice. The serving of prison sentences in prisons and special departments of detention centres is regulated primarily by Act No. 169/1999 Coll., as amended, and the related by-laws. The serving of custody during criminal proceedings is regulated by Act No. 293/1993 Coll., as amended, and the related by-laws.

As of 1<sup>st</sup> January 2001, Act No. 257/2000 Coll. established the Probation and Mediation Service which performs probation and mediation activities in cases heard in criminal proceedings. This act regulates the organisation and activity of the Probation and Mediation Service, the position of probation officers and assistants, and the execution of state administration in probation matters.

## 5. Fundamental Principles of Criminal Law

**5.1.** The most important principle of criminal procedure is the principle of legality of prosecution, also called the principle of a regular lawful procedure. This is a constitutional principle expressed in Article 8 paragraph 2 of the Charter of Fundamental Rights and Freedoms: “Nobody may be prosecuted or deprived of their freedoms other than for the reasons and in the manner stipulated by the law.” From this, the provision of Art. 2 para. 1 of the Criminal Procedure Code is derived, which states that nobody may be prosecuted as an accused person other than for lawful reasons and in a manner stipulated by this law. This is the procedural expression of the principle *nullum crimen sine lege* (Article 39 of the Charter).

Art. 2 of the Criminal Procedure Code presents an integrated system of the fundamental legal notions on which criminal procedure is based. Individual provisions and the stages of proceedings are built on these notions. Many fundamental principles are listed directly in the Constitution or in the Charter of Fundamental Rights and Freedoms, such as the principle of safeguarding the right to a defence, the presumption of innocence, the principle of the public session. Criminal proceedings are also based on the fundamental principles of the organisation of the judiciary which are set out in the Constitution. Some other principles expressed in the Criminal Procedure Code are laid down in international documents on human rights.

In Czech criminal law, the analogy directed to the disadvantage of the offender (in *malam partem*) has been and is inadmissible. It is inadmissible in the following respects: if it concerns extension of the conditions of criminal liability; and if it concerns the question of what punishments, protective measures and other infringements of rights or property may be imposed for an offence, and under what conditions.

**5.2.** According to Czech criminal law currently in force, the basis of criminal liability is a criminal offence (*trestný čin*). The new Criminal Code divides criminal offences according to the seriousness of punishable conduct into transgressions (*přečiny*) and crimes (*zločiny*). Transgressions include all negligent criminal offences and those intentional criminal

offences for which the Criminal Code stipulates the maximum prison sentence of up to five years. Other criminal offences (i. e. those which the law does not define as transgressions) are crimes. Particularly serious crimes are those intentional criminal offences for which the Criminal Code stipulates the maximum prison sentence of at least ten years. A criminal offence committed by a juvenile is called a wrongdoing (*provinění*). The definition of a criminal offence can be found in Art. 13 para. 1 of the Criminal Code: a criminal offence is an unlawful act which a criminal law defines as punishable and which has the elements listed in such a law. As opposed to the previous Criminal Code, social dangerousness is not a necessary condition of the punishability of an act. The new codification is therefore based on the *formal notion of a criminal offence*. However, Art. 12 para. 2 of the Criminal Code lays down the principle of the subsidiarity of criminal repression, and the *ultima ratio* principle resulting from it. Therefore the criminal liability of the offender and the penal consequences connected with it may be applied only in socially harmful cases, when it is not sufficient to apply liability according to another legal regulation. For practical reasons, the elements which are common to all or most criminal offences are defined in the General Part so that they need not be repeated in the definitions of all offences in the Special Part.

When the level of social dangerousness of an act makes it possible to apply liability according to another legal regulation, the act is not a criminal offence, although it otherwise has the elements of a criminal offence. In such case, the act is a misdemeanour (*přestupek*) or another minor offence. These less serious types of antisocial conduct of individuals are regulated, above all, by the Misdemeanours Act No. 200/1990 Coll., as amended.

**5.3.** Another essential characteristic of a criminal offence is that it is committed by a criminally liable person and that the offender is liable for punishment for the offence. Criminal liability does not apply to a person who has not reached fifteen years of age when committing the offence. Criminal liability of juveniles and the sanctions imposed on them is governed by the Juvenile Justice Act No. 218/2003 Coll. The provision of Art. 2 para. 1 (c) of this act defines the term juvenile. Juveniles are persons who at the time of committing an offence have reached the age of fifteen and are not over the age of eighteen. They become fully criminally liable at the age of eighteen. At eighteen a person also comes of age (Art. 8 para. 2 of the Civil Code No. 40/1964 Coll.) and receives the right to vote (Art. 18 para. 3 of the Constitution). Unfortunately, current criminal law does not recognise the category of



young adults, and only Art. 41 (f) of the Criminal Code mentions age close to the age of a juvenile as a mitigating circumstance.

The Juvenile Justice Act states also age limits for imposing protective rehabilitation of juvenile offenders (see also point 7.1.). It may be imposed also on a child who has reached the age of 12 and is not over the age of 15, if this person has committed an offence for which the Special Part of the Criminal Code allows imposing an exceptional prison sentence. If it is in the interest of the offender, the duration of protective rehabilitation may be prolonged until he/she reaches the age of nineteen; otherwise it may last up to the age of eighteen.

**5.4.–5.6.** Criminal liability for a criminal offence is constituted by *intentional fault*, unless the Criminal Code expressly states that *negligent fault* suffices (Art. 13 para. 2 of the Criminal Code). The Criminal Code distinguishes two forms of intentional fault: *direct intention* and *indirect intention*. Negligence can be generally defined as follows: by neglecting obligatory caution, the offender has caused an unintended effect. The Criminal Code distinguishes *advertent negligence* and *inadvertent negligence (recklessness)*. Fault is an obligatory element of the subjective side of a criminal offence. The Criminal Code is based on the consistent application of culpable liability. Criminal liability does not arise from merely causing an effect as there must also be fault. If there is no fault, there is no offence and thus no punishment – this principle is developed in more detail in Art. 15, 16 and 17 of the Criminal Code. It is not possible to impute to an offender anything that is not related to his or her culpability.

Czech criminal law is based on the principle of individual liability. It recognises neither collective liability nor liability for somebody else's guilt. In February 2011, the Czech Government approved the proposal of the Minister of Justice to introduce corporate liability. Introducing corporate liability into Czech law will make it possible to punish more efficiently legal entities whose activities break laws. As yet, however, only an individual may be criminally liable for criminal offences committed in the corporate sphere if they commit an offence or participate in it, i.e. an individual who acted on behalf of the legal entity and who, while representing it, committed an offence dangerous to society and was culpable for the consequence. In collective bodies, all their members may be liable as individuals if they are culpable for the consequence.

**5.7.** Only an illegal act can be a criminal offence, and it is necessary to infer illegality from the legal system as a whole. Under certain circumstances, an act whose characteristics make it resemble a criminal offence is not dangerous to society, and is therefore not a criminal offence. These are the so-called circumstances excluding illegality which are covered by Section III of the General Part of the Criminal Code. They include extreme distress (*krajní nouze*, Art. 28), necessary defence (*nutná obrana*, Art. 29), the consent of the injured party (*svolení poškozeného*, Art. 30), admissible risk (*přípustné riziko*, Art. 31), and the justified use of a weapon (*oprávněné použití zbraně*, Art. 32).

**5.8.** The reasons for a lapse of criminal liability must be distinguished from these circumstances, because these reasons arise only after an offence has been committed but before a legal decision has been made on it. With the progress of time stipulated by the law, an offence may no longer be punishable due to the *limitation of criminal liability* (Art. 34 and 25 of the Criminal Code). The statute of limitation applies to all criminal offences with the exception of the offences listed in Art. 35 of the Criminal Code. Examples include crimes against humanity, against peace and war crimes listed in Section XIII of the Criminal Code, with the exception of the following crimes: founding, supporting and promoting a movement which aims to suppress human rights and freedoms (Art. 403); expressing sympathies for a movement which aims to suppress human rights and freedoms (Art. 404); denying, questioning, approving of and justifying a genocide (Art. 405). The term of limitation is graded according to the gravity of an offence as expressed by the type and term of the sentence imposed for the crime in question and is either three, five, ten, fifteen or twenty years.

Certain circumstances affect the extension of the term of limitation, which may stay or discontinue the limitation. For example, if it is discontinued because the offender is accused of an offence which is subject to this limitation or because the offender commits a new criminal offence during the term of limitation for which the law stipulates the same or a more severe punishment, a new term of limitation commences. A stay of limitation means that there is an obstacle (a legal obstacle due to which the offender may not be committed to a court for trial, a period during which the offender resided abroad and so on), due to which the term of limitation does not operate. When the obstacle is removed, the term of limitation continues, and the time that elapsed during the stay of limitation is not included in the term of limitation.

Criminal liability for the offences explicitly listed in Art. 33 of the Criminal Code lapses also due to active repentance of the offender – if the offender voluntarily prevented the harmful effect of the offence or rectified it, or made an announcement of the criminal offence at a time when it was still possible to prevent its harmful effect.

**5.9.** Czech criminal law is not based on custom or court decisions; the conditions of criminal liability, punishment and protective measures as well as conditions for imposing them must be stipulated by law. Criminal law in the Czech Republic is divided into substantive law, which is primarily codified in the single Criminal Code No. 40/2009 Coll., and procedural law embodied in the Criminal Procedure Code No. 141/1961 Coll. (see also points 2.3 and 3.3.)

The Criminal Code is divided into a General and a Special Part. The General Part contains provisions either common for all criminal offences or at least for certain categories of criminal offences. The Special Part contains the elements of individual offences, which are divided into thirteen Sections according to subject matter. Under the current law, the highest point of the system is the protection of life and health, followed by the protection of freedom and the rights to the protection of personality and privacy. This is followed by the protection of human dignity in the sexual sphere, protection of the family and children, and protection of property. The concluding Sections contain military offences, crimes against humanity and peace and war crimes.

The structure of the Criminal Code is as follows:

**Criminal Code No. 40/2009 Coll.**

Part One – General Part

Section I Applicability of Criminal Laws

Section II Criminal Liability

Section III Circumstances Excluding Illegality of an Act

Section IV Lapse of Criminal Liability

Section V Criminal Sanctions

Section VI Expungement of a Conviction

Section VII Special Provisions on Certain Offenders

Section VIII Explanatory Provisions

Part Two – Special Part

Section I Crimes against Life and Health

Section II Crimes against Freedom, and the Rights to the Protection of Personality, Privacy and Privacy of the Post

Section III Crimes against Human Dignity in the Sexual Sphere

Section IV Crimes against Family and Children

Section V Crimes against Property

Section VI Economic Crimes

Section VII Generally Dangerous Crimes

Section VIII Crimes against the Environment

Section IX Crimes against the Czech Republic, a Foreign State and an International Organisation

Section X Crimes against the Order in Public Matters

Section XI Crimes against Military Conscription

Section XII Military Crimes

Section XIII Crimes against Humanity and Peace, and War Crimes

Part Three – Transitional and Final Provisions

**5.10.** As far as the basic characteristics of the selected types of crimes are concerned, Czech criminal law differentiates, in the protection of life, the following forms of homicide: murder (*vražda*, Art. 140), manslaughter (*zabití*, Art. 141), murder of a newborn child by its mother (*vražda novorozeného dítěte matkou*, Art. 142), negligent homicide (*usmrcení z nedbalosti*, Art. 143), and assisting in suicide (*účast na sebevraždě*, Art. 144). The criminal offence of *murder* is defined by Art. 140 para. 1 as follows: “Whoever intentionally kills another person, shall be punished with imprisonment of ten to eighteen years”.

*Robbery (loupež)* is classified among crimes against freedom because the considerable dangerousness of robbery lies primarily in interference with personal freedom. It is described in Art. 173 as follows: “Whoever uses force or threatens to use direct force against another

person with the intention of appropriating another person's thing, shall be punished with imprisonment of two to ten years”.

The crime of *assault* or *bodily harm* (*ublížení na zdraví*) is defined in Art. 145 to 148 of the Criminal Code. Punishable is intentional conduct (Art. 145 and 146a) as well as negligent conduct (Art. 147 and 148). Grievous bodily harm (*těžké ublížení na zdraví*) is defined by Art. 145 para. 1: “Whoever intentionally causes grievous bodily harm to another person, shall be punished with imprisonment of three to ten years”. Negligent bodily harm (*ublížení na zdraví z nedbalosti*) is defined by Art 148 para. 1: “Whoever, through negligence, causes bodily harm to another person by breaching an important obligation arising from his or her employment, profession, position or function or one imposed on him or her by the law, shall be punished with imprisonment of up to one year or prohibition to undertake professional activities.” From the objective point of view, two levels of bodily harm must be distinguished: *bodily harm* (*ublížení na zdraví*) and *grievous bodily harm* (*těžké ublížení na zdraví*). The court decides on the basis of a medical doctor's expert opinion. What is taken into consideration is the victim's state of health prior to the injury, not the state of absolute health.

The crime of *theft* (*krádež*) under Art. 205 is committed by whoever appropriates another person's thing by seizing it and

- a) thus causes damage to another person's property which is not negligible,
- b) commits the offence by breaking and entering,
- c) immediately after the offence attempts to retain the item by force or the threat of direct force,
- d) commits the offence against an item which is on or with another person, or
- e) commits the offence in an area where an evacuation of persons is being carried out or has been carried out,

for which the offender shall be punished with imprisonment of up to two years, prohibition to undertake activities or forfeiture of the thing or another property value.

What may be taken into consideration for all the aforementioned criminal offences is the use of qualified facts of a crime, comprising the basic elements of the offence and some additional element which is typical of a higher degree of harmfulness to society, and where conditions and circumstances requiring a more severe sentence (*okolnosti podmiňující použití*

*vyšší trestní sazby*) are identified. For example, such an element for theft is the level of damage caused or membership in an organised group. For murder, it is possible to impose a prison sentence of fifteen to twenty years or an exceptional sentence if the crime was committed in a particularly brutal or painful manner, or against a person under 15 years of age, or repeatedly, or with the intention of gaining a property benefit for oneself or another person, or in an attempt to conceal or simplify another criminal offence, or out of another reprehensible motive etc. As far as bodily harm (assault) is concerned, particularly aggravating circumstances are, for instance, committing the offence against another person because of their real or supposed race, ethnicity, nationality, political conviction, creed, or because they are really or supposedly nondenominational, or against a witness, expert witness or sworn interpreter acting in the execution of their duty.

## 6. Organisation of Investigation and Criminal Procedure

**6.1.** The initial stage of criminal proceedings in the Czech Republic is preliminary proceedings (*přípravné řízení*). The police are responsible for conducting all the necessary search and measures for revealing the circumstances indicating that a criminal offence has been committed and directed towards identifying the offender. They complete a report on the initiation of criminal proceedings stating the factual circumstances due to which proceedings have been initiated and how these circumstances came to their knowledge. The police are obliged to verify these facts within two, three or six months depending on the nature of the offence. The public prosecutor may extend these time limits.

This verification may result in termination of the case if there is no suspicion of a criminal offence, if criminal prosecution is inadmissible for reasons stipulated by law, if such prosecution would be ineffective, or if the facts have not been ascertained justifying the initiation of criminal prosecution of the person in question. If it is required to deal with the case in another way, then, in line with Art. 159a para. 1 of the Criminal Procedure Code, the public prosecutor or the police pass the case on to the appropriate body which deals with it (as, for instance, a misdemeanour or an administrative delict).

If ascertained and well-founded facts indicate that a criminal offence has been committed, and if it is sufficiently and justifiably concluded that a certain person committed the offence, the police will immediately initiate prosecution of this person as the accused. An exception is cases in which criminal prosecution is inadmissible or ineffective for legal reasons, which is decided by the public prosecutor or the police, or when the police temporarily suspend criminal proceedings with the public prosecutor's consent. Prosecution for certain criminal offences listed in the law may be initiated and prosecution already commenced may be continued only with the consent of the injured party. Prosecution may therefore not be initiated just to "make out a case", i.e. against the hitherto unknown offender, which has a number of procedural consequences.

The stage of prosecution up to the completion of preliminary proceedings is called investigation (*vyšetřování*). Czech criminal law does not recognise the concept of examining judge. The Criminal Police and Investigation Department of the Police of the Czech Republic (*Služba kriminální policie a vyšetřování Policie ČR*) is the body that most often conducts the investigation (for exceptions see point 6.3.1). The legality of the entire preliminary proceedings is supervised by the public prosecutor, for which the Criminal Procedure Code provides him or her with a range of powers. The police proceed with the investigation on their own initiative and in a manner that will enable them to obtain the necessary evidence to the required extent as quickly as possible. They examine witnesses only in exceptional cases. They seek out and provide evidence regardless of whether this evidence is inculpatory or exculpatory. The accused may not in any manner be forced to make a statement or confess. The defence of the accused and the evidence called by him or her must be carefully examined if it is shown not to be altogether insignificant.

Throughout the criminal proceedings including the preliminary proceedings, the accused has the right to plead to the charges against him or her and the evidence therein, but is not obliged to make a statement. He or she may state the circumstances and evidence for his/her defence, make petitions, applications and remedies. He or she has the right to choose a defence counsel and consult with him/her even during actions taken by the authority responsible for criminal proceedings.

Upon completion of the investigation, the police submit to the public prosecutor a file and a recommendation for indictment with a list of proposed evidence, or recommend a different decision (to transfer the case, discontinue prosecution, cease prosecution, conditionally cease prosecution, approve an out-of-court settlement). Depending on the nature of the crime, they are obliged to complete the investigation no later than within two, three or six months from the commencement of prosecution. The public prosecutor must be informed if these deadlines are not observed, and is obliged, in such instances, to review the case once a month.

Criminal proceedings before a court are possible only on the basis of an indictment (*obžaloba*) or a punishment recommendation (*návrh na potrestání*) which is presented by the public prosecutor. He or she acts on behalf of public prosecution in the proceedings before a court. An indictment may be filed only for an offence for which prosecution was initiated.



The court may only try the offence which is stated in the charging document. The public prosecutor may withdraw the indictment before the court of first instance retires for its final session; once the trial commences, it may be withdrawn only if the accused does not insist that the trial should continue. Once the indictment is withdrawn, the case returns to the preliminary proceedings.

The court will first review the indictment filed to determine whether it is possible to order a trial (*hlavní líčení*), or a preliminary hearing of indictment (*předběžné projednání obžaloby*) has to be made. The main purpose of the preliminary hearing of indictment is to determine whether the preliminary proceedings were conducted pursuant to the relevant legal provisions, and whether the results of the preliminary proceedings are sufficient to warrant the accused person's committal for trial.

The trial is conducted by the presiding judge, who usually also examines the evidence. The public prosecutor, on his or her own initiative or at the court's request, provides evidence which has not yet been obtained or examined. During evidence proceedings at the trial, the public prosecutor proposes the examination of further evidence, and usually provides evidence in support of the indictment. The defence counsel or the accused who has no defence counsel has the right to examine evidence to the same extent, in favour of the defence.

In principle, the court holds the trial in public. The public may be excluded from the trial should the public hearing of the case threaten the confidentiality of the facts, morals, the smooth course of the proceedings, or the safety or other important interests of the witnesses. However, judgement must always be pronounced in public. The trial is held in the constant presence of all members of the panel of judges, the court reporter and the public prosecutor. The trial may be held in the absence of the accused only if the case may be reliably tried and determined even without his or her presence, and when further conditions are met as stipulated by the law.

The principal type of court decision in a trial is a judgement of acquittal (*zprošťující rozsudek*) or a judgement of conviction (*odsuzující rozsudek*). However, the court may, in cases stipulated by the law, decide to return the case to the public prosecutor for further investigation, to transfer the case to a different authority, to discontinue prosecution, to cease

prosecution, conditionally to cease prosecution or to approve an out-of-court settlement (*narovnání*).

In addition to the aforementioned fundamental procedure for criminal proceedings, the Criminal Procedure Code also regulates certain special types of proceedings. The 2001 amendment introduced summary preliminary proceedings (*zkrácené přípravné řízení*), followed by simplified proceedings (*zjednodušené řízení*) before a single judge. Summary preliminary proceedings are held for offences under the jurisdiction of a district court for which the law imposes a prison sentence with the maximum term of three years if the suspect was caught red-handed or immediately after committing the offence, or if the facts are established justifying initiation of prosecution and it may be expected that the suspect may be brought before a court within two weeks at the latest. The summary preliminary proceedings must be completed within this two-week time limit (the public prosecutor may extend them but by no more than ten days), and the suspect has the same rights in these proceedings as the accused. If the public prosecutor arrives at the conclusion that the results of the summary preliminary proceedings warrant committal of the suspect for trial, he or she files a punishment recommendation (*návrh na potrestání*). The single judge at the trial in the simplified proceedings will hear the accused, and he or she may decide to refrain from proving those facts which the parties describe as indisputable.

Another special type of proceedings is juvenile criminal proceedings (*řízení v trestních věcech proti mladistvým*), governed by the Juvenile Justice Act No. 218/2003 Coll. The specific features of this type of proceedings are, above all, that they take place before a specialized juvenile court<sup>7</sup>, and that the juvenile must have a defence counsel from the very beginning of prosecution. The law expressly demands that during proceedings, it is necessary to take into account the age, state of health, and intellectual and moral maturity of the person against whom the proceedings are conducted, so that his or her further development is endangered as little as possible. Furthermore, the acts in question and their causes, as well as the circumstances which enabled them, must be duly clarified, and the liability for committing them must be determined in line with the aforementioned law. The law also acknowledges that the relevant authority entrusted with youth care (“social and legal protection of children” – *sociálně-právní ochrana dětí*) has a role in these proceedings. Also further modifications, as

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<sup>7</sup> A juvenile court means a special panel of judges, or, in cases stipulated by the law, the judge who presides over such a panel, or the single judge of the respective District, Regional, High or Supreme Court.

compared with the basic type of criminal proceedings, emphasise the educational effect of proceedings on an offender who at the time of committing the crime had reached the age of fifteen and was not over eighteen, as well as safeguarding the protection of his or her rights.

Proceedings against a fugitive (*řízení proti uprchlému*) may be conducted against anyone avoiding criminal proceedings by residing abroad or being in hiding. The accused must always have a defence counsel in such proceedings. The defence counsel has the same rights as the accused. The trial is held even in the absence of the accused regardless of whether the accused is aware of this. If the proceedings against the fugitive result in a conviction and afterwards the reasons lapse for which proceedings against the fugitive were conducted, a court of first instance will annul such a conviction at the proposal of the convicted person, and a new trial will take place.

Another instance of a special type of proceedings is proceedings after a decision has been cancelled by a ruling of the Constitutional Court (*řízení po zrušení rozhodnutí nálezem Ústavního soudu*). Once the ruling of the Constitutional Court is delivered which renders null and void the decision of the authority responsible for criminal proceedings, this authority proceeds from that stage of proceedings which immediately preceded the pronouncement of the decision which was cancelled. This authority is bound by the legal opinion presented by the Constitutional Court, and is obliged to take steps and additional action as ordered by the Constitutional Court.

Another special type of judicial proceedings classified by the Criminal Procedure Code is proceedings before a single judge (*řízení před samosoudcem*). The single judge conducts proceedings on criminal offences for which the law stipulates a prison sentence with a maximum term of five years. Apart from the already mentioned simplified proceedings, the specific features of the proceedings before a single judge also consist in the fact that the single judge may, without a trial, issue a criminal court order (*trestní příkaz*) if the facts of the case are reliably substantiated by the evidence adduced. A criminal court order may impose only certain types of punishment and a level of punishment only up to certain limits – for example, a suspended prison sentence of up to one year, a house arrest sentence of up to one year or community service. It may not be issued, for instance, in proceedings against a person who has been legally incapacitated, or whose legal capacity has been reduced. A criminal court order has the same weight as a conviction.

During the 1990s, new kinds of decisions on merits in criminal proceedings were included in the Criminal Procedure Code, namely conditional cessation of prosecution (*podmíněné zastavení trestního stíhání*) and approval of an out-of-court settlement (*schválení narovnání*). This was given by the tendency to divert, in simpler and less serious cases, from standard proceedings towards non-punitive approaches and alternative measures. The court and, in the preliminary proceedings, the public prosecutor may, with the consent of the accused, conditionally cease prosecution for a transgression (*přečin*), if the accused pleads guilty, compensates for the damage, closes a deal about compensation with the injured party, or has taken other necessary steps for compensation. The decision sets a probationary period of between six months and two years, and it may order the accused to make compensation or observe some reasonable restrictions and obligations aimed at encouraging his or her good behaviour. If the accused misbehaves during the probationary period or does not meet all the obligations imposed, the court or public prosecutor will decide to proceed with prosecution.

In proceedings on a transgression (*přečin*), the court and, in preliminary proceedings, the public prosecutor may, with the consent of the accused and the injured party, decide to approve an out-of-court settlement and cease prosecution. The precondition for such a decision is that the accused declares that he or she has committed an offence for which he or she is prosecuted, compensates the injured party for the damage or otherwise redresses the damage incurred by the offence, and deposits an appropriate sum of money designated for a specified recipient for socially beneficial purposes. Of this money, the accused must allocate at least 50 % to the state to provide financial assistance to victims of crime.

A special type of court proceedings is also proceedings to review an order to intercept and record telecommunications (*řízení o přezkumu příkazu k odposlechu a záznamu telekomunikačního provozu*). Following a petition by the user of a telephone or another telecommunication device, the Supreme Court, in a closed hearing, reviews the legality of the order to use this intelligence means. If, in reviewing the case, the Supreme Court arrives at the conclusion that the order was issued or implemented in breach of law, it issues a resolution proclaiming a violation of law. No remedy is permitted against such a decision.

**6.1.6** The Criminal Procedure Code of the Czech Republic is divided into five Parts and twenty-five Sections:

Part One – Joint Provisions

Section I General Provisions

Section II Courts and Persons Participating in the Proceedings (authority and jurisdiction of courts, assisting persons, exclusion of authorities responsible for criminal proceedings, the accused, defence counsel, the person involved, the injured party, authorised representative of the person involved and of the injured party)

Section III General Provisions on Acts of Criminal Proceedings (request, records, submissions, deadlines, delivery, document inspection, disciplinary fines)

Section IV Detention of Persons and Seizure of Things and Property Values (custody, apprehension, release and seizure of objects, search of persons, search of dwellings, other premises and land, entry into dwellings, other premises and land, seizure and opening of consignments, their swap and controlling, interception and recording of telecommunications)

Section V Rules of Evidence (statement of the accused, witnesses, certain special rules of evidence, expert witnesses, real and written evidence, examination)

Section VI Decision (judgement, resolution, legal force and enforceability of the decision)

Section VII Complaints and Proceedings therein

Section VIII Criminal Proceedings Expenses

Part Two – Preliminary Proceedings

Section IX Procedure before the Commencement of Prosecution

Section X Commencement of Prosecution, Further Procedure Therein and Summary Preliminary Proceedings (commencement of prosecution, investigation, special provisions on the investigation of certain criminal offences, decision in preliminary proceedings, supervision by the public prosecutor, indictment, summary preliminary proceedings)

Part Three – Proceedings before a Court

Section XI Fundamental Provisions

Section XII Preliminary Hearing of Indictment

Section XIII Trial (preparations for trial, presence of the public at the trial, opening of the trial, evidence, closing of the trial, adjourning of the trial, court decision in the trial, court decision outside the trial)

Section XIV Open Court

Section XV Closed Trial

Section XVI Appeal and Proceedings Therein

Section XVII Appellate Review

Section XVIII Complaint against a Violation of Law and the Proceedings Therein

Section XIX Re-opening of Proceedings

Section XX Special Types of Procedure (juvenile proceedings, proceedings against a fugitive, conditional cessation of prosecution, out-of-court settlement, proceedings before a single judge, criminal court order, proceedings after a decision has been cancelled by a ruling of the Constitutional Court)

Section XXI Execution Proceedings (service of a term of imprisonment, execution of community service, execution of certain other penalties, execution of protective treatment and preventive detention)

Section XXII Deletion of Conviction

Part Four – Some Measures Associated with Criminal Proceedings

Section XXIII Granting Pardons and Use of Amnesty

Section XXIV deleted

Section XXV Legal Relations with Foreign Countries (extradition, special provisions governing extradition between EU member states on the basis of a European Arrest Warrant, transit of a person for trial in a foreign country, requests, take-over and transference of criminal cases, execution of judgements related to a foreign country, special provisions governing the recognition and execution of judgements on the seizure of property or means of evidence between EU member states, the special procedure of the recognition and execution of judgements on pecuniary sanctions and other compulsory payments with EU member states, recognition and execution of judgements imposing forfeiture or seizure of property, things or other property values with other EU member states)

Part Five – Transitional and Concluding Provisions

**6.2.1–6.2.6** The constitutional basis for restricting the personal freedom of an individual for the purpose of apprehending him or her for criminal proceedings is set out in the Charter of Fundamental Rights and Freedoms. Article 8 of the Charter states that personal freedom is

guaranteed. A person accused or suspected of an offence may only be arrested in cases stipulated in the law. An arrested person must be immediately informed of the reasons for the arrest and interrogated, and, within 48 hours, released or committed to a court. A judge must conduct a hearing of the arrested person within 24 hours of the committal and decide on custody or release. The accused may only be arrested upon a judge's written justified warrant. The arrested person must be committed to a court within 24 hours. A judge must conduct a hearing of the arrested person within 24 hours of the committal and decide on custody or release. Nobody may be taken into custody except for reasons set out in the law, for the period set out in the law, and on the basis of a court decision.

The Criminal Procedure Code deals with the apprehension of persons for the purpose of criminal proceedings in Section IV. It distinguishes between the detention of a suspect, the detention of a person accused by the police, the arrest of the accused, and taking the accused into custody. The 2001 amendment introduced important changes into this area. The changes were particularly motivated by the endeavour to reduce the relatively large number of people in custody, and to reduce the average length of custody.

In urgent cases, the police may, with the consent of the public prosecutor and if there is a reason for custody (see further), detain a person suspected of committing a criminal offence, even if prosecution of the suspect has not yet been initiated. The personal freedom of a person caught committing a criminal offence or immediately afterwards may be restricted by anybody if his or her identity needs to be determined, or to prevent his or her escape, or to secure evidence. However, such a person or persons is/are obliged to deliver the suspect to the police immediately. The detained person has the right to choose a defence counsel, to speak to the defence counsel without the presence of a third party, and to consult him or her during the detention. The police will interrogate the detained person and write a report on the interrogation, specifying the place, time and details of the detention, giving the personal data of the detained person, as well as the substantial reasons for detention. If the suspicion has been dispelled, or if the reasons ceased due to a different cause, the detained person must be released without delay. Otherwise the police hands over the interrogation report to the public prosecutor, as well as the resolution on the initiation of criminal proceedings and other evidentiary materials, so that the public prosecutor may file a petition for custody. The police must deliver the petition without delay so that the person detained under this law may be committed to a court no later than 48 hours from the detention; otherwise the detained person

must be released. On the basis of the evidentiary materials gathered by the police, the public prosecutor either orders the release of the detained person, or, within 48 hours of the detention, commits the detainee to a court, and proposes taking him or her into custody. The proposal is accompanied by the evidentiary materials gathered so far. The judge is obliged to hear this person, and decide, within 24 hours of the delivery of the public prosecutor's petition, to release the detainee or to take him or her into custody. In a suitable way and without delay, the chosen or appointed defence counsel is informed of the time and place of the examination, if the defence counsel can be reached and if the detainee asked for his or her presence. The defence counsel and the public prosecutor may take part in the examination and ask the detainee questions, but only after the judge has given them the floor to do so. If the 24-hour period from the delivery of the public prosecutor's custody petition is exceeded, this always constitutes a reason for the decision to release the accused.

The accused may be taken into custody only if specific facts of the case give rise to justified concerns that

- a) he or she will escape or go into hiding to avoid prosecution or punishment particularly if his or her identity cannot be immediately determined, if he or she has no permanent residence or if he or she is liable to receive a severe sentence (anti-escape custody – *vazba útěková*),
- b) he or she will influence hitherto unquestioned witnesses or co-defendants or otherwise obstruct the clarification of facts important for prosecution (collusion custody – *vazba koluzní*), or
- c) he or she will commit again the offence for which he or she is prosecuted, or complete the attempted offence, or commit an offence which he or she has planned or threatened to commit (preventive custody – *vazba předstízná*).

The established facts must also indicate that the offence for which prosecution has been commenced has really been committed, that it has all the characteristics of a criminal offence, and that evident reasons exist for the suspicion that the offence was committed by the accused. Moreover, the facts must indicate that, in view of the accused person's circumstances and the nature and seriousness of the offence, it is impossible, at the time when the decision is made, to meet the purpose of custody by any other measure. In other words, when making a decision on custody, the court is obliged to make a preliminary assessment of



the justifiability of the accused person's prosecution. The absence of this obligation was frequently criticised in the past.

Except for exemptions set out in the law, it is not possible to take into custody an accused person prosecuted for an intentional offence for which the law stipulates a prison sentence of no more than two years, or for a negligence offence for which the law stipulates a prison sentence of no more than three years.

If any of the reasons for custody exists and the presence of the accused at the examination cannot be secured, the judge will issue an arrest warrant. The police officer who arrests the accused on the basis of the warrant is obliged to commit him or her to a court within 24 hours. If he or she does not, the accused must be released. The judge to whom the accused was committed must immediately hear him or her, decide on custody and inform the accused of the decision within 24 hours, otherwise the accused must be released.

All authorities responsible for criminal proceedings are obliged continuously to examine whether the reasons for custody persist or have changed. The accused must be released immediately if the reason for custody lapses, or if it is evident that, in view of the accused person's circumstances and the circumstances of the case, prosecution will not result in a sentence of imprisonment, and that the accused person's behaviour does not constitute a reason for keeping him or her in custody. The accused has the right at any time to apply for release. The court must decide immediately (within 5 working days) about any such application. If the application is rejected, the accused may, unless he or she presents new reasons, repeat the application fourteen days after the decision acquires legal force. Custody may last only for a necessary period of time. Collusion custody may last no more than three months; this does not apply if it is discovered that the accused has already influenced the witnesses or co-defendants or has otherwise obstructed prosecution. If the period of detention during preliminary proceedings reaches three months, the public prosecutor is obliged to decide whether the accused should remain in custody or whether he or she should be released. The court is obliged to decide within thirty days of an indictment whether the accused should remain in custody or whether he or she should be released. If the public prosecutor or the court decides that the accused should remain in custody, they are obliged to make a new decision on this question within three months.

The total length of custody during prosecution may not exceed either one, two, three or four years depending on the nature of the offence. One third of the term of custody is allocated to preliminary proceedings and two thirds to proceedings before a court. Once this period expires, the accused must be released immediately.

There are several alternatives to anti-escape and preventive custody in appropriate cases and if the conditions set by law are met. The first alternative is accepting guarantees given by a citizens' interest association or by a trustworthy person concerning the future behaviour of the accused and an assurance that he or she will not avoid prosecution. The second alternative is acceptance of a written promise by the accused to lead an orderly life, not avoid prosecution, meet the obligations and observe the restrictions imposed on him or her. The third alternative is supervision of the accused by a probation officer instead of committal to custody. If the accused does not meet the obligations imposed in connection with this alternative to custody and if the reasons for custody persist, the relevant authority will decide on taking him or her into custody. The last alternative to custody is acceptance of a bail whose amount is determined by the authority deciding on custody. If the accused who was granted an alternative to custody avoids prosecution or the execution of sentence, or if he or she continues committing offences, the amount of bail is forfeited to the state. The court will then make a new decision on custody. There are no alternatives to collusion custody.

Only the court may make a decision on taking the accused into custody. The court and, in the preliminary proceedings, the public prosecutor decide whether the accused should continue to be kept in custody. During the preliminary proceedings, the public prosecutor may decide to release the accused from custody even without an application. If the public prosecutor rejects an application for release from custody, he or she is obliged to submit it to the court for its decision.

The court which pronounces a conviction must take into consideration the fact that the accused spent a certain period of time in custody during the criminal proceedings. If criminal proceedings were conducted against the offender while he or she was in custody and if he or she was sentenced as a result of these proceedings, the time spent in custody is deducted from the sentence if this is possible in view of the type of punishment imposed. If the time spent in custody cannot be deducted, the court takes this fact into consideration when determining the type of sentence or its duration. Custody in this case means each of the aforementioned ways

of restricting personal freedom for the purpose of apprehension of the suspect or the accused for criminal proceedings.

To complete the picture, it should be mentioned that the Criminal Procedure Code also recognises special types of custody, such as banishment custody (*vyhošťovací vazba*), which, under conditions stipulated by law, may be imposed on a person who has been sentenced for banishment, and extradition custody (*vydávací vazba*), which, under conditions stipulated by law, may be imposed on a person whose extradition to a foreign country has been decided by the Minister of Justice. When extraditing requested persons to other EU member states on the basis of the European Arrest Warrant, such persons may be, under conditions stipulated by law, taken into preliminary custody (*předběžná vazba*) or extradition custody (*předávací vazba*).

**6.2.7–6.2.9** Czech criminal law distinguishes between regular and extraordinary remedies for the decisions of authorities responsible for criminal proceedings. Regular remedies (*řádné opravné prostředky*) are complaint (*stížnost*), appeal (*odvolání*) and protest (*odpor*); extraordinary remedies (*mimořádné opravné prostředky*) include appellate review (*dovolání*), complaint against a violation of law (*stížnost pro porušení zákona*), and re-opening of the proceedings (*obnova řízení*). Extraordinary legal remedies may be applied only after the contested decision acquires legal force. A complaint, appeal or protest may contest a first instance court decision which is not final. It should be mentioned for completeness that a specific legal remedy exists as part of extradition proceedings whereby the Minister of Justice, if there is doubt about the correctness of the court's final decision, may submit the case to the Supreme Court for its consideration.

A complaint against a resolution of a first instance court may be filed only when the law expressly allows it. The court issues resolutions on many different aspects of cases, ranging from simple procedural decisions, to serious decisions (e. g. concerning custody), and up to decisions about the case itself (cessation of prosecution, conditional cessation of prosecution, approval of an out-of-court settlement...). The court which issued the contested resolution may satisfy the complaint itself; otherwise it submits the case to a higher instance court, which will either reject the complaint or annul the contested ruling and issue a decision

itself, or after annulling the resolution charge the court of first instance to reopen the case and make a decision on it.

As stated previously, one of the special types of judicial proceedings is proceedings before a single judge. The single judge may decide, under the conditions stipulated by law, to issue a criminal court order without hearing the case at a trial. The criminal court order is one of the ways of simplifying and speeding up criminal proceedings in cases that are less involved both in terms of facts and legal complexity, when the purpose of criminal proceedings may be achieved without a formal trial. Nevertheless, the accused and the public prosecutor must retain the opportunity to have the case tried at a regular trial before a court. They may therefore file a protest against the criminal court order. If a protest is filed, the criminal court order is rendered null and void, and the single judge will order the trial. During the trial, he or she is not bound by the legal classification or the type and the term of punishment included in the criminal court order.

An appeal is the legal remedy against a judgement of a first instance court. An appeal always suspends the enforceability of a judgement. The appeal is made to the court which issued the contested judgement. A decision on the appeal is made by a superior court. Unless the court rejects the appeal for formal reasons, it will review, with regard to the alleged defects, the legality and substantiation of the contested parts of the judgement and the correctness of the procedure applied in the previous proceedings. The appellate court considers defects which are not included in the appeal only when they have an influence on the correctness of the judicial statements contested by the appeal. If the court finds the appeal unjustified, it will reject it; otherwise it will annul the contested judgement or a part thereof. Then it will either make a decision which should, in its opinion, already have been made by the court of first instance (e.g. it will discontinue the proceedings for legal reasons), or return the case to the court of first instance for a new decision, or decide the judgement of the case itself. The court may alter the contested judgement to the disadvantage of the accused only upon an appeal by the public prosecutor which was filed to the disadvantage of the accused; in a judgement on compensation, the court may do so also upon an appeal by the injured party who made a claim to compensation. The court of appeal may not pronounce the accused guilty of an offence which he or she was acquitted of by the contested judgement, or pronounce the accused guilty of a more serious offence than the one that the first instance court could have pronounced in the contested judgement.

As regards the possibility of holding a trial in the absence of the accused, in general his or her presence at the trial is essential. Despite this, the Criminal Procedure Code recognises cases when a trial is held in the absence of the accused. A trial may be held in the absence of the accused only if the court deems that the case may be reliably tried even without the presence of the accused. Other conditions include inter alia the fact that the indictment was duly delivered to the accused, that the accused was duly summoned to the trial, and that, in the proceedings, the accused has already been interviewed regarding the offence in question. The trial may not be held in the absence of the accused if he or she is in custody or serving a prison sentence or if it involves a criminal offence for which the law stipulates a maximum sentence of more than five years (this does not apply if the accused requests that the trial should be held in his or her absence). In cases of compulsory defence, a trial may not be held without the presence of a defence counsel.

Another instance when criminal proceedings (either as a whole, or only a certain part) take place in the absence of the accused is that of the aforementioned proceedings against a fugitive. The right to a defence is in this case safeguarded by the fact that the accused must have a counsel who then has the same rights as the accused.

For the sake of completeness, it should be mentioned that at a public session dealing with an appeal, the presence of the accused is desirable but not essential. The accused has to have a defence counsel in all cases when he or she has to have one at the trial. When the accused is absent because he or she is in custody or serving a prison sentence, a public session of a court of appeal may only be held if the accused expressly declares that he or she waives his or her right to be present at the public session.

All of Section V of the Criminal Procedure Code deals with the rules of evidence, and the individual means of evidence are also specified in the provisions relating to individual stages of criminal proceedings. The fundamental principles<sup>8</sup> governing Czech law of evidence are those of fact-finding, the presumption of innocence, ascertaining the facts of a case without justified doubts, immediacy and oral deposition, and the principle of discretionary assessment of evidence. The accused person's plea of guilty does not relieve the authorities responsible for criminal proceedings from the duty to review all the relevant circumstances of

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<sup>8</sup> Cf. Musil, J., Kratochvíl, V., Šámal, P. et al.: Kurs trestního práva. Trestní právo procesní [A course in criminal law. Criminal procedural law]. 2<sup>nd</sup> revised edition, Praha: C. H. Beck, 2003, p. 380 f.

the case. In preliminary proceedings, the authorities responsible for criminal proceedings apply equal care to clarifying circumstances to the advantage as well as to the disadvantage of the person against whom the proceedings are being conducted. In proceedings before a court, the public prosecutor and the accused may propose and examine evidence in support of their standpoint. Each of the parties involved may seek out evidence, adduce it or propose that it be examined. The fact that the authority responsible for criminal proceedings did not seek out or demand evidence does not constitute a reason for rejecting such evidence. The public prosecutor is obliged to furnish evidence of the accused person's guilt. This does not, however, relieve the court of the obligation to furnish additional evidence to the extent required for its decision.

Everything which may contribute to clarifying the case may serve as evidence, particularly the statement of the accused and the testimony of the witnesses, expert opinions, objects, items and documents important for criminal proceedings, and inspection. The Criminal Procedure Code contains rules on how to conduct and document the hearing of the accused and the witnesses, the conditions and rules for the use of specialist reports and expert opinions, and the rules for inspection. The special rules of evidence regulated by it include confrontation, recognition, investigative experiment, crime reconstruction, and site inspection. Any violation of the stipulated rules during the evidence procedure may result in invalidation of such evidence and the impossibility to use it in further proceedings. The Criminal Procedure Code defines the exemplary case of evidence obtained illegally by illegal coercion or threat of coercion, which may not be used in proceedings except where it is used as evidence against a person that used such coercion or threat of coercion.

The 2001 amendment to the Criminal Procedure Code transferred the examination of evidence primarily to the stage of proceedings before a court, thereby significantly enhancing the active role of the prosecution and the defence. The basic rule remains that evidence before a court is examined by the presiding judge while the public prosecutor, the accused, his or her defence counsel and certain other parties involved in the proceedings may, with the presiding judge's consent, ask questions of the persons examined. However, the public prosecutor, the accused and his or her defence counsel may, in that case, now demand that they themselves be allowed to examine evidence, particularly through questioning a witness or expert witness. The presiding judge will comply particularly if this concerns evidence related to their petition or obtained and adduced by them.

When adjudicating in criminal proceedings, the court may only take into account evidence which was admitted for examination before the court. Similarly to other authorities responsible for criminal proceedings, the court assesses evidence in accordance with its inner conviction. The Criminal Procedure Code therefore does not stipulate any legal rules as to the extent and type of evidence required to substantiate facts and determine the credibility of each piece of evidence. The court assesses the evidence in accordance with its inner conviction, based on a careful consideration of all circumstances of the case, both individually and as a whole.

### **6.3. Organisation of the Detection and Investigation**

The principal authority responsible for detecting and investigating crimes is the Police of the Czech Republic (*Policie České republiky*). The Czech Police Act No. 273/2008 Coll., as amended, specifically names, among the tasks of the police, fulfilling tasks in accordance with the Criminal Procedure Code. The police belong to the sphere of competence of the Ministry of the Interior, which creates conditions for successful implementation of the police tasks. The police comprise the Police Presidium, units with national responsibilities, Regional Police Headquarters, and units established within these regional headquarters. The act established 14 Regional Police Headquarters. Their territories are identical with the 14 regions of the Czech Republic.

The police comprise a number of units with national responsibilities. They are:

- Institute of Criminalistics Prague
- Airport Service
- National Anti-Drug Headquarters (part of the Criminal Police and Investigation Service)
- Pyrotechnical Service
- Foreign Police Service
- Office for the Documentation and Investigation of the Crimes of Communism (part of the Criminal Police and Investigation Service)
- Department for the Detection of Corruption and Economic Crime (part of the Criminal Police and Investigation Service)
- Department for the Detection of Organised Crime (part of the Criminal Police and Investigation Service)

- Unit for the Protection of the President of the Czech Republic
- Unit for the Protection of Constitutional Officers
- Quick Intervention Unit
- Special Activities Department (part of the Criminal Police and Investigation Service)
- Specific Operations Department (part of the Criminal Police and Investigation Service)

The Police Presidium of the Czech Republic (*Policejní prezidium ČR*) supervises how the police operate when fulfilling their tasks. It is headed by the Police President, who is the superior of all police officers. The Minister of the Interior appoints and replaces the Police President with the consent of the government of the Czech Republic. The Police President is accountable to the Minister of the Interior for the work of the police. The individual police services are headed by Directors. The Police President appoints and replaces the directors of the services. Act No. 361/2003 Coll. (on the Service of Members of Security Authorities) stipulates the qualifications required for a police officer and the job descriptions of the Czech Police Force.

The Criminal Police and Investigation Service conducts investigations. The Criminal Police and Investigation Service comprises specialised departments responsible for the detection and investigation of certain types of offences: economic crime (Department for the Detection of Corruption and Economic Crime), organised crime (Department for the Detection of Organised Crime), and drug-related crime (National Anti-Drug Headquarters).

The Inspection Division of the Police of the Czech Republic, which reports directly to the Minister of the Interior, is responsible for detecting crimes committed by police officers and identifying the offenders. In certain special cases, the Criminal Procedure Code also confers the powers of the police on some other bodies. Military Police (*Vojenská policie*) authorities conduct proceedings for crimes committed by members of the armed forces; Prison Service (*Vězeňská služba*) authorities conduct proceedings for crimes committed by members of this service; Security Intelligence Service (*Bezpečnostní informační služba*) authorities conduct proceedings for crimes committed by members of this service; and Military Intelligence (*Vojenské zpravodajství*) authorities conduct proceedings for crimes committed by members of this service. The powers of the police are also conferred on customs authorities authorised to conduct proceedings for crimes committed by breaching customs regulations and regulations on the import, export or transit of goods.



The public prosecutor investigates crimes committed by members of the Police of the Czech Republic and the Security Intelligence Service. The public prosecutor's supervision of preliminary proceedings includes powers to take action or conduct an entire investigation personally. The captain of a ship on a long-distance voyage may also conduct an investigation of crimes committed on board the ship. The authorised body of the Military Police may also conduct an investigation of crimes committed by members of the armed forces while fulfilling tasks abroad.

The public prosecutor is entrusted with supervision of adherence to legality throughout preliminary proceedings. The public prosecutor may charge the police with taking such action as this body is authorised to conduct and which is required to clarify a case or to identify the offender. He or she is also authorised to withdraw any case from the police or temporarily suspend initiation of criminal prosecution. In performing supervision, the public prosecutor is also authorised to issue binding instructions for the investigation of crimes, demand documents from the police for review, participate in action taken by the police, personally take action or conduct the entire investigation, and issue a decision on any case. He or she may also return a case to the police instructing them to supplement it and cancel their illegal or unjustified decisions and measures, which he or she may replace with his or her own. The person against whom criminal proceedings are being conducted and the injured party have the right at any time during preliminary proceedings to demand from the public prosecutor that delays in proceedings or irregularities in police procedure are rectified.

As regards cases investigated by a public prosecutor, supervision of adherence to the legality of preliminary proceedings is performed by a public prosecutor at a higher level prosecutor's office; he or she also deals with requests to rectify delays in proceedings or irregularities in the public prosecutor's investigation.

As stated previously, apart from the aforementioned exceptions, the detection and particularly investigation of crimes falls into the sphere of competence of the Police of the Czech Republic. No special authorities exist outside the police structure for detecting and investigating specific types of crime. However, as far as the detection of offences is concerned, the Criminal Procedure Code stipulates an obligation for state authorities to inform the public prosecutor or the police immediately of facts indicating that a criminal offence has been committed. In addition to autonomous authorities such as the intelligence services,

various specialist divisions operate within individual ministries focusing specifically on the detection of suspicious activity in conjunction with the sphere of interest of the ministry in question. It is, for example, the Financial Analysis Department (*Finanční analytický odbor*) of the Ministry of Finance which collects and analyses data on unusual trade transactions identified and reported by financial institutions. It takes further steps based on such analysis, and fulfils other tasks in the sphere of measures against the legalisation of the proceeds of crime and the financing of terrorism. Co-operation between the Police and the Customs Administration of the Czech Republic (*Celní správa ČR*) plays an important role in the fight against drug-related crime.

#### **6.4. Organisation of the Prosecution Agency**

Act No. 283/1993 Coll., as amended, regulates the sphere of competence and organisation of public prosecutors' offices. The public prosecutors' offices form a system of state offices designed to represent the state in protecting public interests in cases which the law delegates into its sphere of competence. A public prosecutor's office brings an action on behalf of the state in criminal proceedings and has other duties under the Criminal Procedure Code. Under the conditions stipulated by law, it also supervises adherence to legal regulations in places where personal freedom is restricted under legal authority, and in cases stipulated by law is also involved in areas other than criminal proceedings alone.

The system of public prosecutors' offices comprises the Supreme Public Prosecutor's Office (*Nejvyšší státní zastupitelství*), the High Public Prosecutors' Offices (*Vrchní státní zastupitelství*), the Regional Public Prosecutors' Offices (*Krajské státní zastupitelství*) and the District Public Prosecutors' Offices (*Okresní státní zastupitelství*); also higher and lower Field Public Prosecutors' Offices (*Polní státní zastupitelství*) during the state of emergency (before declaring mobilisation). The seats of individual public prosecutors' offices and their territorial spheres of competence are the same as the seats and jurisdictions of courts.

The higher level public prosecutors' offices supervise the activities of the lower level public prosecutors' offices in their districts. They also adjudicate on remedies against decisions of the public prosecutors' offices at the level immediately below. The Supreme State Prosecutor's Office is authorised to issue general guidelines to unify and direct the activities of public prosecutors' offices. The higher level public prosecutor's office is

authorised to give instructions related to a concrete case to the public prosecutor's office at the level immediately below in its district. Each public prosecutor's office has its own head. The Supreme Public Prosecutor is responsible to the Minister of Justice, who supervises the activity of the Supreme Public Prosecutor's Office. At the proposal of the Supreme Public Prosecutor, the Minister of Justice appoints a public prosecutors for an undetermined period of time. The government, at the proposal of the Minister of Justice, appoints and replaces the Supreme Public Prosecutor. The Minister of Justice appoints and replaces the other heads of the public prosecutors' offices.

As stated previously, in criminal proceedings it is the public prosecutor who brings a charge on behalf of the state and represents the state in the proceedings. For simplification, his or her role may be divided into the role he or she plays in preliminary proceedings and the role in judicial proceedings. In preliminary proceedings, the public prosecutor is entrusted with supervision of the adherence to legality. See the relevant text in Point 6.3 defining his or her competencies with respect to the police authority which verifies the facts indicating that a crime has been committed or conducts the investigation. The 2001 amendment introduced into the Criminal Procedure Code the use of the so-called intelligence means and devices – feigned transfer, surveillance of persons and objects, and use of an undercover agent. In this connection, the public prosecutor was entrusted with certain powers to make decisions on permitting their use.

Reference was made in Point 6.3 of the exclusive power of the public prosecutor to investigate crimes committed by police officers or members of the Security Intelligence Service. He or she is also authorised to adjudicate, in preliminary proceedings, on the extension of custody and keeping the accused in custody, release from custody, applications of the accused for release from custody, and certain other measures.

The public prosecutor has significant powers in connection with the completion of preliminary proceedings. Above all, he or she has the exclusive authority to bring a charge (or recommendation for punishment upon the completion of summary preliminary proceedings), which determines the further course of the proceedings due to the fact that prosecution before a court takes place only on the basis of an indictment, and the court merely decides on the offence specified in the indictment.

In preliminary proceedings, prosecution may also be ceased in a manner other than through an indictment (or a recommendation for punishment). It is within the public prosecutor's powers to make decisions to this effect. If the conditions listed in the law are met, the public prosecutor may terminate the case, transfer it to another relevant authority, cease the prosecution or discontinue it. When these decisions acquire legal force, they are subject to review by the Supreme Public Prosecutor's Office. In conjunction with the tendency to pursue alternative methods of dealing with criminal cases when appropriate, the public prosecutor is also authorised, in preliminary proceedings and under conditions stipulated by law, to conditionally cease prosecution, or decide on approving an out-of-court settlement and cease criminal prosecution. In addition, he or she may also propose, either in the indictment or separately, one of the protective measures (*ochranné opatření*).

The public prosecutor represents public prosecution in proceedings before a court. See Point 6.1 for other competencies and steps in proceedings before a court. In cases stipulated by law, the public prosecutor may lodge a complaint against the decisions of a court; this applies both to procedural decisions and to decisions on merits, but not to the judgment. The public prosecutor is also authorised to appeal against a judgement because of the incorrectness of any finding, regardless of whether it is to the advantage or to the disadvantage of the accused person. The public prosecutor's presence in appellate proceedings is mandatory.

The Supreme Public Prosecutor may contest the final court judgment on merits by the appellate review (*dovolání*), both to the advantage and to the disadvantage of the accused person. The participation of a public prosecutor from the Supreme State Prosecutor's Office is mandatory in proceedings on the appellate review held at the Supreme Court. A public prosecutor from the Supreme Public Prosecutor's Office also participates in proceedings at the Supreme Court on a complaint against a violation of law which is lodged by the Minister of Justice. Finally, the public prosecutor may petition for permission to re-open proceedings that have run their lawful course. He or she may, but need not, participate in proceedings pursuant to the petition for reopening the proceedings. In proceedings pursuant to an extraordinary legal remedy, the public prosecutor has the right to provide an opinion on the case or file a petition for the examination of evidence. If the public prosecutor himself or herself petitioned for an extraordinary legal remedy, he or she may withdraw the petition.

The public prosecutor has additional competencies and duties during the stage of the enforcement of a decision, particularly where it is a decision which the prosecutor has issued himself or herself. He or she also plays an important role in legal relations with foreign countries: when requesting extradition of the accused from a foreign country; during proceedings on extradition of a person for criminal prosecution in a foreign country; during acceptance of a criminal case from a foreign country or its handing over to a foreign country; when requesting legal aid from foreign bodies; and in proceedings on the enforcement of foreign court decisions.

## **6.5. Organisation of the Courts**

As stated previously in the section on the judicial system, legislation pertaining to this area has changed considerably in recent years. The new Courts and Judges Act No. 6/2002 Coll. came into effect on 1<sup>st</sup> April 2002. The court system now comprises the Supreme Court (*Nejvyšší soud*), High Courts (*Vrchní soud*), Regional Courts (*Krajský soud*) and District Courts (*Okresní soud*). The Supreme Administrative Court (*Nejvyšší správní soud*) began to operate on 1<sup>st</sup> January 2003; however, it does not deal with criminal cases. The courts comprise president of the court, vice-presidents of the court, presiding judges and other judges. Depending on the field of their activity, judges of the Supreme Court sit as a criminal division, civil division and commercial division. The Supreme Court decides on criminal cases in panels of judges composed of a presiding judge and two judges. The High Court sits as a panel of judges composed of a presiding judge and two judges. Likewise the Regional Court sits as a panel of judges composed of a presiding judge and two lay judges if it decides as a first instance court, or it sits as a panel of judges composed of a presiding judge and two judges if it decides on a remedy. The District Court sits as a panel of judges or as a single judge. A single judge conducts criminal proceedings concerning offences for which the law imposes maximum prison sentences of no more than five years. The panels of judges of a District Court are composed of a presiding judge and two lay judges. Only a judge may sit as a presiding judge at all these courts.

The internal organisation of the courts is based on court sections formed from panels of judges or single judges. Judicial boards (*soudcovská rada*) are established at the Supreme Court, the High and Regional Courts, and they operate as an advisory body for the president

of the court. The judicial board is also established at a District Court which has more than ten judges.

The President of the Czech Republic appoints judges for an indefinite period of time. Lay judges are elected by local authorities for a four-year period of office.

It follows from what has been said that Czech law assigns a certain role to lay judges in judicial decision-making. Unlike the Anglo-Saxon legal system, their involvement in proceedings is not that of a jury (this does not exist in the Czech judiciary), but instead they sit on a panel of judges when specified criminal cases are tried. In proceedings, they participate in the examination of evidence by questioning the persons examined. The judges and lay judges have equal powers when voting on a verdict, with the lay judges voting before the presiding judges.

First instance criminal proceedings are held at a District Court. First instance criminal proceedings are held at a Regional Court if the law stipulates for the offence a sentence of imprisonment with a minimum term of five years, or if it is liable to exceptional punishment. As a first instance jurisdiction court, it also conducts proceedings on certain other offences as stipulated by law. The immediate higher level court always decides on remedies from decisions of first instance courts.

The Supreme Court is competent to decide on extraordinary legal remedies (appellate review, complaint against a violation of law) against final decisions. During the proceedings on appellate review, the Supreme Court reviews, to the extent and for the reasons stated in the appellate review document, the legality and justification of that part of the decision against which appellate review was filed, as well as reviewing the procedure which preceded the contested part of the decision. If appellate review is filed against a guilty verdict, the court always reviews the punishment verdict as well as the other verdicts arising from the guilty verdict. The Supreme Court will, in the same manner and to the same extent, also review the contested decision in proceedings on a complaint against a violation of law.

Judicial precedents are not a formal source of Czech criminal law. However, decisions already issued, particularly decisions of higher courts, do in fact influence decision-making practice. The Supreme Court monitors and assesses final court decisions, and on the basis of

these, in the interests of conformity in judicial decision-making, it forms standpoints on the decision-making activity of courts. It publishes these standpoints together with its own selected decisions and those of other courts in the Collection of Judicial Decisions and Standpoints (*Sbírka soudních rozhodnutí a stanovisek*). These published decisions and standpoints then become a guide for the interpretation and application of legislation.

The fundamental rules by which the jurisdiction in rem of a court in criminal cases is determined have been described above. As far as local jurisdiction is concerned, the proceedings are held at the court in whose district the offence was committed. If the location of the offence cannot be identified or if the offence was committed abroad, then the case is assigned to the court in whose district the accused resides, works or appears. If it is not possible to identify these places or they are outside the Czech Republic, proceedings are conducted by the court in whose district the crime came to light. Jurisdiction to conduct preliminary proceedings is assigned to the respective District Court in whose district the public prosecutor who filed the petition operates. A special provision exists for proceedings involving juvenile offenders: proceedings are conducted by the juvenile court in whose district the juvenile resides, and if he or she has no permanent residence, then by the court in whose district the juvenile appears or works. If it is not possible to identify any such place or if they are outside the Czech Republic, proceedings are conducted by the juvenile court in whose district the offence was committed; if this place cannot be identified either, proceedings are conducted by the juvenile court in whose district the offence came to light.

## **6.6. The Bar and Legal Counsel**

The right to a defence is one of the fundamental elements of Czech criminal law which is guaranteed also at the constitutional level by the Charter of Fundamental Rights and Freedoms. The accused has the right to be given the time and the opportunity to prepare a defence, and to defend himself or herself or through a defence counsel. At each stage of the proceedings, the accused must be informed of the rights allowing him or her to fully avail himself or herself of the defence, and the fact that he or she may also choose his or her own defence counsel. Only an attorney who is not involved as a witness, expert witness or sworn interpreter may act as defence counsel in criminal proceedings.

The suspect and later the accused has the right to legal aid of an attorney throughout criminal proceedings. There is a difference between a chosen defence counsel selected by the accused (or selected for the accused by one of the persons closely related to him or her, as listed in the law), and an assigned defence counsel. The court assigns a counsel to the accused if there are reasons for compulsory defence, the accused has no counsel, and, within the set time limit, did not take advantage of his or her right to choose one. Cases of compulsory defence, when the accused must have a defence counsel, include proceedings on an offence for which the law stipulates a minimum prison sentence of more than five years, proceedings involving a juvenile or a fugitive, cases when the accused is in custody or serving a prison sentence, and some other cases stipulated by law.

Throughout criminal proceedings, the defence counsel is entitled to file petitions on behalf of the accused, file applications, appeal on his or her behalf or inspect documents. If the accused is in custody, the defence counsel may talk to him or her without a third party present. From the commencement of prosecution, the defence counsel is entitled to be present during investigations whose results may be used as evidence in proceedings before the court. The defence counsel may ask questions of any person examined, and raise objections against the method of investigation. Upon completion of the investigation, the defence counsel is entitled to read through the investigation file and propose additional evidence. In proceedings before the court, the defence counsel is entitled to take part in all actions in which the accused may take part, put forward evidence and participate in its examination.

If a suspect is arrested, he or she has the right to choose a defence counsel, talk to the defence counsel without a third party present, consult with the defence counsel during the period of arrest, and request that the defence counsel should be present at the first investigation session. The defence counsel may also take part in the hearing of the arrested person before a court when a decision on custody is made. As stated previously, if the accused is in custody, he or she must have a defence counsel.

Czech law makes provision for a free defence. If the accused proves his or her inability to pay the costs of the defence, the court can make a decision that the accused is entitled to a free defence or defence for a lower fee. In such a case, the state pays the cost of the defence in full or partially. It does not matter at which stage of the proceedings the claim for a free defence, or defence for a lower fee, is adjudicated. However, the accused must



prove that his or her financial situation is difficult. Otherwise, the principle applies that the state does not bear the costs of the accused for the chosen defence counsel, with the exception of the costs of compulsory defence incurred as a result of a complaint against a violation of law.

An attorney is a person entered in the list of attorneys kept at the Czech Bar Association (*Česká advokátní komora*). The preconditions for exercising the attorney's profession are full legal capacity, university education in law and blamelessness (i. e. being without criminal records). An applicant for the attorney's profession must have at least three years' experience working as a candidate attorney, must pass a bar exam and swear a bar oath. In cases stipulated by law, the work experience of a candidate attorney and the passing of a bar exam may be replaced by another similar examination or by practical experience in a different field of the legal profession.

#### **6.7. The Position of the Victim**

The Criminal Procedure Code does not expressly speak about the “victim” (*oběť*) of a crime. It defines the “injured party” (*poškozený*), which means an entity that suffered bodily harm, property, moral or other damage because of the crime. An injured party in the meaning of the Criminal Procedure Code may be both an individual and a legal entity. However, one who feels injured or damaged morally or otherwise by a crime, but where the damage is not the fault of the offender or is not caused due to a crime, is not considered to be an injured party. The term “victim of a crime” is used by Act No. 209/1997 Coll., which deals with financial assistance provided to crime victims.

The improvement of the position of the injured party in criminal proceedings is one of the overriding trends of Czech criminal law, and it is reflected in some legislative changes. One of the important changes came about (though not through the legislative way) in spring 2001, when a Constitutional Court judgement annulled a provision according to which a court conducting criminal proceedings falling under the jurisdiction of a regional court could, depending on the nature of the case tried, decide that the injured party would not be admitted to the proceedings. This provision had frequently been criticised and, as shown by the Constitutional Court judgement, was contradictory to the constitutional principles of equality of parties before a court and the right to a fair trial. The rights of the injured party were further

improved by the 2001 amendment to the Criminal Procedure Code. Authorities responsible for criminal proceedings are obliged to inform the injured party of its rights, and make it fully possible for the injured party to exercise these rights.

Currently, every injured party, regardless of the nature of the case, has the right, even during preliminary proceedings, to propose additional evidence, inspect documents, attend the trial and the public session of appeal, and, before the end of the proceedings, express an opinion on the case. If the injured party suffered property damage due to a crime, it is also entitled to propose that the court should impose in the conviction an obligation on the accused to compensate the injured party for such damage. In proceedings before the court, the injured party and its agent (see below) have the right, with the court's consent, to question the persons examined and give a closing speech before the end of the session.

The injured party has extensive rights when making remedies. It is entitled to file a complaint against a decision to terminate or transfer the case, against a decision to cease criminal prosecution, against a decision on the approval of an out-of-court settlement or against a decision on conditional cessation of criminal prosecution. The injured party which filed a claim for compensation may contest the court's verdict by appealing against the incorrectness or the absence of a verdict on compensation. If the injured party is a person that has informed the authorities responsible for criminal proceedings of the committed crime, and if it so requests, it must be notified of the measures taken within one month.

In a verdict in which the court sentences the offender for a crime by which he or she caused property damage to another party, the court usually imposes the duty to compensate for such damage provided the injured party filed its claim in time. If the results of the examination of evidence are not sufficient to justify the imposition of an obligation to compensate fully or in part, or if the court acquits the accused of the charge, the verdict will refer the injured party eligible for full or part compensation to civil proceedings.

The injured party also has an important role in relation to the possibility of prosecuting certain offenders for certain crimes. The Criminal Procedure Code defines a range of crimes for which the offender may be prosecuted only with the injured party's consent (provided that the offender and the injured party are related in a specific way). Exceptions to this are cases when such a crime resulted in death, the injured party is not able to give consent because of a

certain mental indisposition, the injured party is a person of under fifteen years of age, or it is obvious from the circumstances that consent was not given or was withdrawn under duress due to threats, pressure, dependence or subordination. The injured party may withdraw its consent to criminal prosecution, but once consent is expressly denied, it cannot be granted again.

In addition to the aforementioned appeals against decisions by which proceedings are closed in various ways without recognition of a claim filed, in order to safeguard the injured party's right to appropriate treatment of the case, it is also possible to request that delays in proceedings or irregularities in the procedure of the police or the public prosecutor be rectified. This must be dealt with immediately and the injured party informed of the result.

It is the right and not the obligation of the injured party to make use of entitlements which the Criminal Procedure Code provides in connection with its status in the proceedings. It may therefore relinquish them by stating so expressly to the authority responsible for criminal proceedings.

The injured party may be represented by an agent (*zmocněnec*) throughout the proceedings. Such an agent is authorised to file petitions on behalf of the injured party, to file applications and remedies on its behalf, as well as to participate in all actions which the injured party is entitled to attend. If the injured party which filed a claim for compensation proves that it lacks the funds to pay the costs incurred in retaining an agent, the court will decide that it is entitled to legal aid provided by the agent free or for a reduced fee, and it will appoint an attorney as an agent. The costs incurred in retaining such an agent are paid by the state. As a rule, if the injured party is found eligible for at least part compensation, the convicted person is obliged to compensate it also for the costs that the injured party incurred in enforcing its claim, including the costs of the agent. If the number of injured parties is exceptionally high and the pace of proceedings could be threatened by the individual exercising of their rights, they will exercise their rights in the proceedings through a joint agent whom they choose; if they do not reach agreement, the court will assign one.

The role of the injured party is further enhanced in conjunction with the introduction of elements of probation and mediation into criminal proceedings. This is reflected in the possibility of the injured party's direct participation in extra-judicial negotiations on the case

with the offender (conditional cessation of criminal prosecution or out-of-court settlement), or the fact that, as part of the obligations imposed on the accused with the use of alternative punishment such as suspended sentence, conditional discharge with supervision or conditional release on parole, the court may also impose on the accused the obligation to provide compensation for damage caused by a crime.

As regards the possibility of the injured party to claim compensation for damage or loss by recourse of private action, the compensation procedure in criminal proceedings is, in principle, an adhesive procedure; if the criminal court, for whatever reason, does not recognise the claim, this does not affect the injured party's right to take its claim to a civil court. In addition, the injured party does not have to file a claim for compensation in criminal proceedings at all and may resort solely to a civil remedy. However, the Criminal Procedure Code expressly states that a claim for compensation may not be filed in criminal proceedings if a decision on such a claim has already been made in a different type of procedure. In view of the fact that only a claim for compensation for damage to property may be recognised in criminal proceedings, the injured party may demand compensation for other damage (to dignity, honour and so on) only outside criminal proceedings, even if it is a claim for compensation in the form of financial satisfaction.

It is at the discretion of the injured party whether it demands enforcement of the obligation to compensate for damage caused by an offence, regardless of whether this is recognised within criminal proceedings or outside them, and the injured party may avail itself of the options set out in civil law. However, the Criminal Procedure Code has a provision for securing the claim of the injured party, which is aimed at facilitating the satisfaction of its claim. If there are reasonable concerns that the satisfaction of the injured party's claim for compensation for damage caused by a crime will be obstructed or difficult, the claim may be secured from the property of the accused, up to the probable amount of the damage, by a procedure stipulated by law. This is adjudicated by the court, or, in preliminary proceedings, by the public prosecutor. The legally recognised claim may then be satisfied from such seized property.

Act No. 209/1997 Coll. introduced into Czech law a provision for financial assistance provided by the state to victims of crimes. This law deems as a victim an individual that has suffered bodily harm as a consequence of a crime. A victim is also deemed to be a person who

survived the victim of a crime if the deceased was the provider of maintenance to this person or was obliged to provide it (for further details on the law see Point 10.4).

At present, preparatory work is in progress on a Crime Victims Bill which should enhance the position of the victims of crime.

The activities of a number of non-governmental organisations should also be noted in conjunction with assistance provided to victims of crimes.

## 7. Sentencing and the System of Sanctions

7.1. The methods used to achieve the intention of the Criminal Code are the deterrents of punishment, sentencing and execution of punishment, and protective measures<sup>9</sup>. According to Article 39 of the Charter, punishment may only be imposed in accordance with the law (*nulla poena sine lege* – the principle of legality). Punishment for criminal offences may be imposed, exhaustively listed under Art. 52 of the Criminal Code, in the following forms:

- imprisonment,
- house arrest,
- community service,
- forfeiture of property,
- fines,
- forfeiture of an thing or a property value,
- prohibition to undertake activities,
- residence ban,
- prohibition to attend sports, cultural and other social events,
- forfeit of honorary titles and distinctions,
- military demotion,
- banishment.

In addition, it is also possible to impose exceptional punishment specially regulated in Art. 54 of the Criminal Code. This punishment can be either a prison sentence of twenty to thirty years, or a life sentence. It can be imposed only for an exceptionally serious offence when the Criminal Code allows it.

Protective measures are a separate area of criminal sanctions, which may be imposed not only on criminally liable persons, but also on persons that are not criminally liable (either due to unsoundness of mind, or because they are underage). They are imposed by a criminal court or by a juvenile court, and they may be imposed as separate sanctions or in addition to punishment. The principle stipulated in Article 39 of the Charter applies to them in the same

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<sup>9</sup> Cf. Novotný, O., Vanduchová, M., Šámal, P. et al.: Trestní právo hmotné. Obecná část [Criminal substantive law. General part]. 6<sup>th</sup> edition, Wolters Kluwer ČR, a. s., 2010, p. 46.

way; the legal conditions include committing a criminal offence or an offence which, regardless of the person of the offender, would otherwise constitute a crime. The aim of protective measures is to protect society exclusively by special prevention. Therefore their therapeutic, educational or preventive component comes to the fore.<sup>10</sup> Protective measures are protective treatment, preventive detention, confiscation of an item or object, and protective rehabilitation. Protective rehabilitation may only be imposed on a juvenile. Protective treatment may not be imposed in addition to preventive detention.

**7.2.** The principle of the supporting role of criminal repression is particularly stressed for juveniles. The term *wrongdoings* (*provinění*) is used to refer to criminal offences committed by juveniles. For a wrongdoing, some of the *measures* (*opatření*) may be imposed as stipulated by the Juvenile Justice Act No 218/2003 Coll.<sup>11</sup> A measure imposed under this act must consider the circumstances of the one on whom it is imposed, including his or her age, intellectual and moral maturity, state of health, as well as his or her personal, family and social background; the measure must also be adequate to the nature and seriousness of the offence. A principal aim of a measure imposed on a juvenile is creating conditions for his or her social and mental development, taking into account the level of his or her intellectual and moral maturity, personal characteristics, family education and his or her original environment; another principal aim is protection of the juvenile against harmful influences and prevention of future wrongdoings committed by him or her. Thus the educational function of the measure comes primarily to the fore.

Only *educational* (*výchovná*), *protective* (*ochranná*) or *punitive* (*trestní*) measures may be imposed on a juvenile. An educational measure may be imposed on a juvenile in the case of a discharge from a punitive measure or a conditional discharge from a punitive measure. If the nature of the measure allows it, an educational measure may be imposed on a juvenile also alongside a protective or punitive measure, or in conjunction with special types of proceedings. The maximum length of an educational measure is the simultaneously imposed probationary period (in the case of a suspended sentence), or the period of the conditional postponement of a financial punishment. If an educational measure is imposed

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<sup>10</sup> For details, see Novotný, O., Vanduchová, M., Šámal, P. a kol.: *Trestní právo hmotné. Obecná část* [Criminal substantive law. General part]. 6<sup>th</sup> edition, Wolters Kluwer ČR, a. s., 2010, p. 48.

<sup>11</sup> With the adoption of this act, restorative justice was, for the first time, unambiguously preferred over retributive justice.

independently or alongside another protective or punitive measure, it may be imposed for the maximum period of three years. Educational measures are *supervision by a probation officer (dohled probačního úředníka)*, *probationary programme (probační program)*, *educational obligations (výchovné povinnosti)*, *educational restrictions (výchovná omezení)*, and *admonition with a warning (napomenutí s výstrahou)*.

Protective measures are *protective treatment (ochranné léčení)*, *preventive detention (zabezpečovací detence)*, *seizure of a thing or another property value (zabrání věci nebo jiné majetkové hodnoty)*, and *protective rehabilitation (ochranná výchova)*. The aims of these measures are to positively influence the mental, moral and social development of the juvenile, and to protect society from wrongdoings committed by juveniles. Protective rehabilitation lasts as long as its aim requires, but no longer than until the juvenile reaches eighteen years of age. However, if it is in the interest of the juvenile, a juvenile court may prolong protective rehabilitation until he or she reaches nineteen years of age.

Art. 24 para. 1 of the Juvenile Justice Act specifies the punitive measures which a juvenile court may impose on a juvenile for a wrongdoing:

- community service,
- financial punishment,
- financial punishment with a conditional postponement,
- forfeiture of a thing or another property value,
- prohibition to undertake activities,
- banishment,
- house arrest,
- prohibition to attend sports, cultural and other social events,
- conditional imprisonment suspended for a probationary period (suspended sentence),
- conditional imprisonment suspended for a probationary period with supervision,
- (unconditional) imprisonment.

Punitive measures imposed under the Juvenile Justice Act and in line with the Criminal Code must contribute to creating suitable conditions for the further development of the juvenile, taking into account the circumstances of the case as well as the character and circumstances of the juvenile. The execution of these punitive measures must not degrade human dignity. The sentences of imprisonment cited in the Criminal Code are reduced to half



for juveniles, while the maximum term which may be imposed is five years and the minimum one year. An unconditional prison sentence may be imposed on a juvenile only if, in view of the circumstances of the case, the character of the juvenile and the previous measures used, another punitive measure would evidently not suffice to fulfil the aim of the Juvenile Justice Act. If a juvenile commits an offence for which the Criminal Code allows an exceptional punishment and the nature and seriousness of the offence is exceptionally high (because of the particularly abominable manner of its perpetration, or its particularly abominable motive, or its particularly grave consequence which it is difficult to remedy), the juvenile court may impose a term of imprisonment of five to ten years, if it believes that imprisonment within the range cited above would not be enough to achieve the purpose of the punitive measure.

**7.3.** The Criminal Code provides protection for specific internal relations in the armed forces, particularly in the provisions on military crimes in Section XII of the special Part. According to these, only the most serious cases of breaching these relations are subject to sanction, because less serious offences not characterised by the stipulated degree of danger to society are dealt with by the officers in charge of exercising their disciplinary powers. The offender (and co-offender) of a military crime may only be a soldier, i.e. a special entity. The term soldier is defined in Art. 114 para. 4 of the Criminal Code. The persons mentioned herein must hold this status at the time they commit the crime.

**7.4.** Act No. 175/1990 Coll. abolished the death penalty and replaced it by life imprisonment. The inadmissibility of the death penalty is explicitly stipulated in Article 6 para. 3 of the Charter. The Czech Republic is also bound by the European Convention for the Protection of Human Rights and Freedoms, including its supplementary Protocol No. 6. The abolition of the death penalty is in compliance with a number of UN resolutions adopted on this issue as well as important international documents on the protection of fundamental human rights. By abolishing this penalty, our state took an unambiguous stand on the inviolability of one of the fundamental human rights, the right to life. However several public opinion polls show that most respondents are in favour of restoring the death penalty for the most serious crimes (murder). Since 1961, the death penalty was officially considered an exceptional and temporary measure in our law. The Criminal Code allowed the death penalty to be imposed under similar conditions to those stipulated for imposing a sentence of life

imprisonment. However, the range of crimes cited was excessively wide, including a total of 33 crimes. Most of these were military crimes and crimes against humanity and against the state. In the 1950s, the death penalty was used in politically motivated trials, particularly for the liquidation of political opponents. Under the jurisdiction of the Criminal Code No. 140/1961 Coll., i.e. in the last 29 years before the abolition of the death penalty, this penalty was in practice exclusively imposed only for crimes of murder (in cases of multiple or extraordinarily brutal murders).

The sentence of imprisonment constitutes a universal kind of punishment because it can be imposed for any criminal offence and on any offender. This punishment is therefore the only or at least one of the alternative sanctions for all criminal offences. If the Criminal Code stipulates several punishments for an offence, more than one of them may be imposed simultaneously. However, community service and house arrest may not be imposed together with imprisonment. The sentence of imprisonment is also the most severe form of punishment; therefore it is only considered if all other types of sentence, enforced outside prison, are insufficient for the purpose of punishment. For criminal offences for which the maximum term of imprisonment does not exceed three years, unconditional imprisonment may be imposed only if, in view of the circumstances of the offender, a different punishment would clearly not result in the offender leading an orderly life. The essence of the service of imprisonment lies in the temporary restriction of the offender's freedom of movement and residence by enforced residence in prison, and in the associated restriction of other civil rights and freedoms. Service of this sentence is regulated by a special law (Service of Imprisonment Act No. 169/1999 Coll.).

The duration of imprisonment is determined, first, generally by the maximum limit – the maximum term which may be imposed is twenty years, unless it is an extraordinary extension of imprisonment, a sentence of imprisonment imposed on the perpetrator of a criminal offence committed for the benefit of an organised crime group, or an exceptional sentence (Art 55 para. 1 of the Criminal Code); and, second, by the various ranges of sentence. The court usually imposes a punishment within the relevant range of sentence.<sup>12</sup> There is no general rule for the minimum sentence in the Czech Criminal Code.

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<sup>12</sup> For details, see Novotný, O., Vanduchová, M., Šámal, P. et al.: *Trestní právo hmotné. Obecná část* [Criminal substantive law. General part]. 6<sup>th</sup> edition, Wolters Kluwer ČR, a. s., 2010, p. 409 f.

The Criminal Code recognises four forms of the sentence of imprisonment:

- sentence of imprisonment,
- suspended sentence of imprisonment,
- suspended sentence of imprisonment with supervision,
- exceptional punishment.

Exceptional punishment means either a sentence of imprisonment of twenty to thirty years, or life imprisonment. Exceptional punishment may be imposed only for a particularly serious crime for which this punishment is permitted by the Criminal Code. If a court imposes a sentence of life imprisonment, it may also decide that a term of imprisonment served in a stricter security prison (*věznice se zvýšenou ostrahou*) will not be taken into consideration for the purpose of conditional prison release. A court may impose a sentence of imprisonment of twenty to thirty years only if the seriousness of a particularly serious crime is very high or the possibility of reforming the offender is particularly difficult to envisage.

A court may impose the sentence of life imprisonment only on an offender who committed a particularly serious crime of murder (Art. 140 para. 3), or who intentionally caused the death of another person when committing the particularly serious crime of endangering the safety of the public (Art. 272, para. 3), high treason (Art. 309), terrorist attack (Art. 311 para. 3), terror (Art. 312), genocide (Art. 400), attack against humanity (Art. 401), use of a forbidden means of combat and an impermissible method of combat (Art. 411, para. 3), war atrocity (Art. 412, para. 3), persecution of civilians (Art. 413, para. 3), or misuse of internationally recognised and national signs and symbols (Art. 415, para. 3). The following conditions must be met:

- a) such a particularly serious crime is exceptionally serious because of the particularly abominable manner of its perpetration, or its particularly abominable motive, or its particularly grave consequence which it is difficult to remedy, and
- b) the imposition of such punishment is required for the effective protection of society, or there is no hope that the offender could be reformed with a sentence of imprisonment of between twenty and thirty years.

Punishment through house arrest is a new alternative to a short-term prison sentence. The court may impose it on the perpetrator of a transgression (*přečin*) for up to two years, if

- a) in view of the nature and seriousness of the offence, and in view of the character and circumstances of the offender, it may justifiably be assumed that this punishment (with or without another punishment) is sufficient, and
- b) the offender submits a written promise to be present, at the appointed time, in the dwelling at the address given, and to cooperate as required in order to enable control.

House arrest may be imposed both individually and alongside another punishment. However, this punishment may not be combined with imprisonment and with community service.<sup>13</sup> Unless the court decides otherwise, the punishment through house arrest entails the obligation of the convicted person to stay in the appointed dwelling, on weekends and public holidays for the whole day and on working days from 8pm to 5am, unless this is impossible due to important reasons, particularly vocational or occupational activities, or the provision of healthcare in a medical facility due to the convict's illness; the medical facility is obliged to inform of this at the request of the authorities responsible for criminal proceedings. The court may allow the convicted person to attend regular worship or religious service, even on weekends and public holidays. For the duration of the punishment, the court may also impose reasonable restrictions or reasonable obligations on the convicted person which should encourage him or her to lead an orderly life; in addition, the court usually decides that the offender must, as far as his or her powers allow, compensate for the damage caused by the offence. An illustrative list of reasonable restrictions and reasonable obligations is given in Art. 48 para. 4 of the Criminal Code (see below).

In the event of the frustration (*zmařeni*) of the execution of house arrest, the court orders a substitute prison sentence of up to one year. The court does this simultaneously with imposing house arrest. Frustrating the punishment of house arrest means not complying with its conditions stipulated by the law; in such case, the court decides about the execution of the entire substitute punishment of imprisonment, and, at the same time, determines the manner of its execution.

Punishment through community service may be imposed as an independent punishment for a transgression (*přečin*), provided that, in view of the nature and seriousness of the offence, and of the character and circumstances of the offender, it is not required to

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<sup>13</sup> Cf. Novotný, O., Vanduchová, M., Šámal, P. et al.: Trestní právo hmotné. Obecná část [Criminal substantive law. General part]. 6<sup>th</sup> edition, Wolters Kluwer ČR, a. s., 2010, p. 392.

impose a different form of sentence. This punishment entails the obligation of the convicted person to perform community service for socially beneficial purposes within a scope stipulated, such as maintenance of public areas, cleaning and maintenance of public buildings and roads, or other similar activities for the benefit of the local district, or for the benefit of the state and other socially beneficial institutions engaged in education and science, culture, school education, health protection, fire protection, environmental protection, promotion and protection of young people, animal protection, or humanitarian, social, charity, religious, and sports activities or physical education. The work may not be carried out for gainful purposes. The court may impose community service of 50 to 300 hours. For the duration of the punishment, the court may also impose reasonable restrictions or reasonable obligations listed in Art. 48 para. 4 of the Criminal Code encouraging the convicted person to lead an orderly life; in addition, the court usually decides that the offender must, as far as his or her powers allow, compensate for the damage caused by the offence. When imposing this punishment, the court considers the attitude of the offender, his or her state of health, and the possibility of imposing this punishment. The convicted person must perform community work in person, free of charge and in his or her free time, and no later than within a year of the date the court ordered this punishment. If, between the conviction and the completion of the community service sentence, the offender does not lead an orderly life, evades the execution of the sentence, violates the agreed conditions of the execution of the house arrest sentence without a serious reason, obstructs the execution of the sentence in any other way, or intentionally fails to perform the ordered punishment at the appointed time, then the court may, even during the duration of the sentence, alter the community service sentence or its remainder into a prison sentence, at the same time determining the manner of its execution. In such case, each, and started, hour of unserved punishment of community service counts as one day of imprisonment.

A court may impose a fine if the offender, by an intentional criminal offence, gained or attempted to gain a profit for himself/herself or for another person. Furthermore, this punishment may be imposed if

- a) the Criminal Code permits the imposition of this punishment for the offence in question, or,
- b) the court imposes it for a transgression (*přečin*) and, in view of the nature and seriousness of the offence and the character and circumstances of the offender, it does not concurrently impose a prison sentence.

A fine is ordered in daily amounts, and it entails at least 20 and at most 730 whole daily amounts, with one daily amount being at least 100 CZK and at most 50,000 CZK. The court determines the number of daily amounts in view of the nature and seriousness of the offence. The court determines the size of one daily amount in view of the personal and property circumstances of the offender. If, considering the personal and property circumstances of the offender, it cannot be expected that he or she will pay the fine immediately, the court may determine that the fine should be paid in reasonable monthly instalments. The court does not impose a fine if it is obvious that it would be uncollectible. The sum collected from a fine goes to the state. If a court imposes a fine, it also orders a substitute punishment of imprisonment of up to four years in the event that the fine is not paid by the set deadline. However, the substitute punishment together with the imposed prison sentence may not exceed the maximum term.

#### **7.5. Discharge/Waiver (*upuštění od potrestání*)**

A court may discharge an offender if he or she committed a transgression (*přečin*) which he or she regrets and convincingly demonstrates an effort to reform himself/herself, and if in view of the nature and seriousness of the transgression and the previous behaviour of the offender, it may be reasonably expected that the mere hearing of the case before a court will be sufficient for his or her reform as well as the protection of society. The court may also opt for a discharge if the perpetrator of the prepared or attempted offence did not recognise that the preparation or attempt could not lead to the accomplishment, in view of the nature or type of the target of the attack which the act was supposed to be committed against, or the nature or type of the means which the act was supposed to be committed with. If the court discharges the offender, he or she is deemed not to have been convicted.

If the court deems it desirable to monitor the conduct of the offender for a set period of time, it may, under the same conditions, opt for a conditional discharge with supervision of the offender. In the case of a conditional discharge, the court will set a probationary period of up to one year and will also order supervision of the offender. Supervision of the offender means that it will be provided throughout the probationary period. On the offender who has been discharged, the court may impose reasonable restrictions and reasonable obligations which should encourage him or her to lead an orderly life; in addition, the court usually decides that the offender must, as far as his or her powers allow, compensate for the damage

caused by the offence. As provided by Art. 48 para. 4 of the Criminal Code, these reasonable restrictions or obligations may be, above all, the following duties:

- undergo training to acquire suitable work skills,
- undergo an appropriate social training and corrective education programme,
- undergo an anti-drug addiction treatment (this is not protective treatment as defined by the Criminal Code),
- undergo appropriate psychological consultancy programmes,
- avoid visits to unsuitable environments, sports, cultural and other social events, and contact with specified persons,
- avoid encroachment upon the rights of other persons or upon their interests protected by the law,
- avoid gambling, playing slot machines and betting,
- avoid the consumption of alcoholic beverages or other addictive substances,
- pay delinquent alimony or another debt,
- make a public and personal apology to the injured party, or
- grant reasonable satisfaction to the injured party.

If the offender who was conditionally discharged has led an orderly life during the probationary period and complied with the conditions imposed, the court will declare that he or she has made good, and the offender is subsequently deemed not to have been convicted. Otherwise the court will decide to impose punishment; it may do this even during the probationary period. If, within one year of the completion of the probationary period, the court does not declare whether the offender has made good and the offender does not bear the blame for this, the offender is deemed to have made good.

The court may also opt for a discharge if the offender committed the offence in a state of diminished sanity or in a state caused by a mental disorder, and the court deems that protective treatment imposed by it will ensure correction of the offender and protection of society better than a punishment. However, this institute may not be used if the offender caused, even through negligence, his or her state of diminished sanity or a mental disorder by the influence of an addictive substance.

In addition, the court may discharge such an offender while imposing preventive detention even if it cannot be reasonably expected that, in view of the nature of the mental

disease and the possibilities of influencing the offender, the imposed protective treatment will lead to the sufficient protection of society, but the court deems that preventive detention will provide a better protection of society than a punishment. The duration of preventive detention is not limited by the law; i. e. it lasts as long as the protection of society requires. However, the court is obliged, once every 12 months (once every 6 months with juveniles), to examine whether the reasons for this measure still apply.

7.6. A general trend is becoming evident in the legal order of the Czech Republic, as reflected in international documents on criminal law and punishment, which consists in looking for more effective methods of crime control and reduction. On the other hand, the considerable growth of crime after 1989, its brutalisation and associated public concerns are giving rise to an atmosphere of repression not only among the public, but also in a part of the criminal justice system.

The main function of criminal law is the protection of society against crime. Thus a punishment can be seen as a means of self-defence of society against criminal offences.<sup>14</sup> On a somewhat more practical level, the purpose of punishment may be understood from the following points of view:<sup>15</sup>

- *the retributive element of punishment* – the offender must suffer an appropriate retribution for the offence
- *the individually preventive purpose of punishment* – the punishment should result in the social reintegration of the offender; i. e. the punishment should aim at the correction of the offender and his or her reintegration into society in which, in the future, he or should live as its full member
- *the neutralising function of punishment* – the punishment should make it impossible or, at least, difficult for the offender to re-offend
- *the corrective effect of punishment* – a broader corrective and socialising direction of the offender is used, in order to achieve a more reliable effect of the punishment
- *the generally preventive effect of punishment* – potential offenders should be deterred from committing crimes

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<sup>14</sup> Cf. Novotný, O., Vanduchová, M., Šámal, P. et al.: Trestní právo hmotné. Obecná část [Criminal substantive law. General part]. 6<sup>th</sup> edition, Wolters Kluwer ČR, a. s., 2010, p. 39.

<sup>15</sup> Cf. Šámal, P. et al.: Trestní zákoník I. Komentář [The Criminal Code I. Commentary]. 1<sup>st</sup> edition. C. H. Beck, 2009, p. 413 f.



- *the restorative and satisfaction function of punishment* – when imposing a punishment, the court must take into account also the interests of the persons injured by the offence; i. e. the punishment should encourage the offender to endeavour to compensate for the damage (and, if applicable, to provide other forms of reasonable satisfaction) to the persons injured by the offence

When determining the type of sentence and its term, the court takes into consideration the nature and seriousness of the offence, the personal, family, property and other circumstances of the offender, his or her previous way of life, and the possibility of reforming him or her. An important means of the judicial individualisation of punishment are also the mitigating and aggravating circumstances, illustratively listed in the Criminal Code (Art. 41 and 42).

## 8. Conditional and/or Suspended Sentence, Probation

**8.1.–8.6.** The most frequent and significant means of educationally influencing the offender and an important alternative particularly to short-term prison sentences is the suspended sentence. The essence of this lies in the fact that the court pronounces a conviction and imposes a sentence of imprisonment, but defers it (or rather waives the sentence of imprisonment) on condition that the convicted person behaves properly during the set probationary period and complies with the imposed conditions. A suspended sentence is often accompanied by supervision of the convicted person, and sometimes by the imposition of certain obligations and restrictions. The legal nature of a suspended sentence in the Czech Republic is still being debated in theory and practice. However, the opinion is gaining ground that it constitutes a special type of punishment. The Criminal Code classifies the suspended sentence as a form of the prison sentence (see Art. 52 para. 2 b ).<sup>16</sup>

The Criminal Code regulates the so-called simple suspended sentence (*prosté podmíněné odsouzení*) as follows: the court may conditionally suspend a sentence of imprisonment with the maximum term of three years, if, in view of the character and circumstances of the offender, particularly with regard to his or her previous life and the environment in which he or she lives and works, as well as the circumstances of the case, the court is justified in holding that the execution of the sentence is not necessary to influence the offender to lead an orderly life. With a suspended sentence, the court sets a probationary period of between one and five years.

The court may impose reasonable restrictions and reasonable obligations listed in the Criminal Code (the illustrative list is given in Art. 48 para. 4; see part 7.5) on the person punished with a suspended sentence, so as to encourage him or her to lead an orderly life; in addition, the court usually decides that the offender must, as far as his or her powers allow, compensate for the damage caused by the offence.

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<sup>16</sup> Cf. Novotný, O., Vanduchová, M., Šámal, P. et al.: Trestní právo hmotné. Obecná část [Criminal substantive law. General part]. 6<sup>th</sup> edition, Wolters Kluwer ČR, a. s., 2010, p. 380.

If the person given the suspended sentence leads an orderly life during the probationary period and complies with the imposed conditions, the court will declare that he or she has made good; otherwise it will decide, even during the probationary period, that the sentence will be served. In exceptional cases the court may, in view of the circumstances of the case and the character of the convicted person, uphold the suspended sentence even if the convicted person has given cause for ordering that the sentence should be served, and

- a) order supervision of the convicted person,
- b) extend the probationary period by a reasonable period of time, but of not more than two years, while it must not exceed the maximum term of the probationary period, i. e. 5 years (see Art. 82 para. 1 of the Criminal Code), or
- c) order reasonable restrictions and reasonable obligations (see above) not hitherto imposed, so as to encourage him or her to lead an orderly life.

If it is declared that the person given a suspended sentence has made good, or if he or she is deemed to have made good (i. e. the court does not make the decision within a year from the expiry of the probationary period, and the convicted person does not bear the blame for this), the offender is deemed not to have been convicted.

If it is required to monitor and control the offender's conduct more intensively and to provide him or her with necessary care and assistance during the probationary period, the court may, under the aforementioned conditions (see Art. 81 para. 1 of the Criminal Code), conditionally suspend a sentence of imprisonment with the maximum term of three years, while concurrently ordering supervision of the offender. Supervision of the offender is carried out by a probation officer. The aim of supervision is monitoring and controlling the offender's conduct (thus the protection of society and the reduced possibility of re-offending are guaranteed), as well as professional guidance of and assistance to the offender, with the aim of ensuring that he or she leads an orderly life in the future. Just as in other countries of continental Europe, this provision was influenced by the French-Belgian concept of suspending a prison sentence for a probationary period during which the convicted person has to observe certain restrictions or comply with certain conditions.

Probation is one of the methods of offender treatment which combines the penological (penalty, restriction) and social (supervision, assistance) aspects. It is the institutionalised supervision of the offender's conduct. The same principle, i.e. observance of the conditions

imposed during the probationary period, is also used in the case of conditional release from prison (conditional parole). Another probation element introduced into Czech criminal legislation is conditional discharge with supervision. The term “supervision” (*dohled*) is used consistently to establish conformity of terminology.

Supervision under Art. 49 para. 1 of the Criminal Code entails the regular personal contact of the offender with an officer of the Probation and Mediation Service (probation officer), co-operation in creating and implementing the probation programme during the probationary period, and monitoring adherence to the conditions imposed on the offender by the court or stipulated by the law. The offender on whom supervision is imposed is obliged:

- a) to co-operate with the probation officer in the manner set by the probation officer, and to implement the probationary supervision plan,
- b) to appear before the probation officer on dates set by the probation officer,
- c) to inform the probation officer of his or her residence, employment and means of subsistence, of the observance of reasonable restrictions and reasonable obligations ordered by the court, and of other circumstances important for supervision, as set by the probation officer,
- d) to allow the probation officer entry into the dwelling where the offender resides.

Unless the presiding judge determines otherwise, the probation officer completes a report at least once every six months by which he or she informs the presiding judge of the court which imposed supervision of the progress of supervision of the offender, of how the offender observes the ordered conditions, the probationary plan and the reasonable restrictions and reasonable obligations, as well as of the offender’s circumstances.

If the offender on whom supervision is imposed infringes, in a serious manner or repeatedly, the conditions of supervision, the probationary plan or the reasonable restrictions and reasonable obligations, the probation officer, without unnecessary delay, will inform the presiding judge of the court which ordered supervision. In the case of a less serious infringement of the stipulated conditions, the probationary plan or the reasonable restrictions and reasonable obligations, the probation officer will alert the offender to the defects found, informing the offender that, in the case of a repetition or a more serious infringement of the stipulated conditions, the probationary plan, or the reasonable restrictions and reasonable obligations, the officer will inform the presiding judge.

**8.7.–8.9.** The Probation and Mediation Service is structured as an organisational agency of the state and is responsible to the Ministry of Justice. It consists of autonomous Probation and Mediation Service Centres usually operating in the location of the district court (or circuit and municipal courts with the same jurisdiction status). If two or more district courts reside in one location, only one centre may be set up. The Probation and Mediation Service is headed by its director, who is appointed and replaced by the Minister of Justice.

The staff of each centre consists of at least two probation and mediation service officers with a university degree and one assistant with a secondary school leaving certificate. In addition, the centre may be structured, as required, into departments focusing particularly on accused juvenile persons, accused persons in a near-juvenile age, or users of narcotic and psychotropic substances. The local jurisdiction of the centres to deal with probation and mediation is in line with the local jurisdiction of the court and, in preliminary proceedings, the prosecutor in whose district the centre operates. In order to speed up proceedings and for other important reasons, the presiding judge or the single judge of the relevant court and, in preliminary proceedings, the prosecutor may order that the action required is taken by the centre in whose district the person subject to such action lives.

The Probation and Mediation Service Act No. 257/2000 Coll. specifies the scope and content of the work of this service. Its jurisdiction is defined in accordance with the provisions of the Criminal Code and the Criminal Procedure Code. The Probation and Mediation Service creates preconditions for a case, if it is deemed appropriate, to be tried in one of the special types of criminal proceedings, or for a punishment to be imposed and executed which is not a sentence of imprisonment, or for custody to be substituted by an alternative measure. For this purpose, it provides professional guidance and assistance to the accused, monitors and controls his or her conduct, and co-operates with his or her family and the social environment in which the accused lives, so that he or she can lead an orderly life in the future.

Probation for the purpose of this act means organisation and implementation of the supervision of an accused, charged or convicted person, control of the execution of sentences which do not involve imprisonment, including the obligations and restrictions imposed, monitoring the conduct of the convicted person during the probationary period of conditional release from prison, as well as individual assistance to the accused and the influence on him

or her, so that he or she leads an orderly life, complies with the conditions imposed on him or her by the court or the public prosecutor, and thereby disturbed legal and social relations are redressed. Mediation means out-of-court action in order to settle the dispute between the accused and the injured party, and activity directed at settling a conflict in conjunction with criminal proceedings. Mediation may take place only with the express consent of the accused and the injured party.

In accordance with Art. 4 of the aforementioned act, probation and mediation work involves the following in particular:

- a) obtaining data on the accused and his or her family and social background,
- b) creating conditions for deciding on the conditional cessation of criminal prosecution, or for approving an out-of-court settlement particularly by negotiating and concluding an agreement between the accused and the injured party on compensation for damage, or an agreement on an out-of-court settlement or conditions for further procedures of this kind or punishment not involving imprisonment
- c) supervision of the accused person's conduct in cases when it was decided to replace custody by probationary supervision,
- d) supervision of the accused person's conduct in cases when supervision was imposed, monitoring and control of the accused during the probationary period, control of the execution of other punishments not involving imprisonment, including community service, monitoring compliance with protective measures,
- e) monitoring and control of the accused person's conduct during the probationary period in cases when a decision was made on the conditional release of the convicted person from prison.

The Probation and Mediation Service also helps to rectify the consequences of the crime inflicted on the injured party and other persons affected by the crime. The service provides special care for accused juvenile persons and accused persons in a near-juvenile age. It contributes to the protection of the rights of persons damaged by crime, and to the coordination of social and therapeutic offender programmes, focusing especially on juveniles and users of narcotic and psychotropic substances. The Probation and Mediation Service participates also in crime prevention.

## **9. The Prison System and After-care**

### **9.1. Organisation of the Prison System**

The prison system is administered by the Prison Service of the Czech Republic (the status and tasks of the Prison Service are defined by Act No. 555/1992 Coll. on the Prison Service and Justice Guard of the Czech Republic, as amended). The Prison Service is a department of the Ministry of Justice. The Minister of Justice manages the Prison Service through the Director General whom he or she appoints and replaces. The Director General is responsible to the Minister of Justice for the work of the Prison Service. The Prison Service comprises the General Director's Office, remand prisons (for custody), prisons (for imprisonment), preventive detention facilities, and the Institute of Education. Individual prisons, i.e. facilities for custody and imprisonment, are established and abolished by the Minister of Justice. Each prison and preventive detention facility as well as the Institute of Education is headed by the director who is appointed and recalled by the Director General of the Prison Service.

The Institute of Education of the Prison Service of the Czech Republic is responsible for theoretical and practical vocational training of staff working in the prison system.

Under the relevant legislation, the Prison Service is responsible for the enforcement of custody and prison sentences. By using treatment programmes, it influences the persons serving a term of imprisonment so that the punishment served will have a positive effect on their way of life after they are released. The Prison Service is also engaged in economic activity within the scope required for the inmates to be assigned work when serving a sentence (or even when in custody). In addition, the Service administers and guards preventive detention facilities, keeps records of persons in custody, persons in preventive detention, and prison inmates in the Czech Republic.

Another important task of the Prison Service is maintaining order and safety in the buildings of the judiciary.

The Prison Service is divided into prison guards, justice guards and administrative service. Prison guards and justice guards have the status of an armed service. Prison guards guard, present and escort persons in custody, persons in preventive detention, and prison inmates. Justice guards maintain order and safety in court buildings, public prosecutor's office buildings, and in the buildings of the Ministry of Justice. In addition, justice guards may be temporarily called to fulfil the tasks of prison guards – to guard remand prisons and prisons, and to guard, present and escort persons in custody, persons in preventive detention, and prison inmates. When doing this, justice guards maintain the appropriate order and discipline. The administrative service handles the organisational, economic, educational and other specialist activities in the prison system, including medical service.

**9.2.** The execution of prison sentences is regulated by Act No. 169/1999 Coll. Under this act (Art. 2), a sentence may only be enforced in a manner which respects the personal dignity of the convicted person and limits the harmful effects of imprisonment; however, this must not endanger the required protection of society. Prison inmates must be treated in a manner which safeguards their health and, if the term of the sentence so permits, such attitudes and skills should be encouraged which will help the convicted person return to the community outside and be able to live an independent law-abiding life.

A convicted person may be received at a prison only on the basis of a written punishment order from a judge. When received at a prison, the convicted person must be demonstrably familiarised with his or her rights and duties under the aforementioned law and other executive regulations (the Prison Sentence Rules issued by the Ministry of Justice, and the internal rules of individual prisons).

Prisoners are placed in cells in such a way that men are always separated from women. In addition, juvenile prisoners are usually separated from adult inmates, repeated offenders from those serving a sentence for the first time, and those convicted of intentional crimes from those convicted of negligent crimes. Other groups which are placed separately include inmates with mental or behavioural disorders, inmates on whom protective treatment or preventive detention has been imposed, and some other groups of inmates requiring special treatment. In practice, of course, these prisoner placement rules are met depending on the accommodation space available in each prison. As the accommodation capacity of prisons is



not sufficient and the prisons are overcrowded, it becomes very difficult to meet all the requirements of the law.

Prisons are establishments for the collective accommodation of prisoners. The “one cell – one inmate” system cannot be applied as yet in view of the structural design of the premises, because the interior lay-out in most prisons was dimensioned for the traditional placement of inmates in groups. A long-term problem is also the overall lack of space for inmates, for their leisure activities, and for the needs of the prison staff.

The rights of prisoners are guaranteed by the Prison Sentence Act, and their scope complies with the European Prison Rules and other international documents (the UN human rights conventions and so on). Prisons create conditions for assigning work to inmates either in their own workshops and manufacturing centres, or in external companies. The inmate’s written consent is required in order for him or her to work for an entity other than the prison (e.g. for a private firm). The inmate may withdraw this consent within the set notice period; the withdrawal of consent may not be deemed to be a refusal to work, i.e. a disciplinary offence. This consent is not required if the inmate is employed by the Czech Republic, a region, a community, a voluntary association of communities or an entity which was established or incorporated by them and where they have a majority share in the estate or in the voting rights, or a decisive influence on its administration or operation.

The working conditions of prisoners are subject to the same regulations as those applying to the rest of the working population. Prisoners are entitled to a wage depending on the quantity and quality of work. The Government Decree No. 365/1999 Coll., as amended, sets out in detail the conditions for the remuneration of convicted persons who are assigned work while serving a sentence. Deductions are made from prisoners’ wages to pay child maintenance if the prisoner is obliged to do so, as well as deductions for covering the costs of imprisonment and custody and other debts of the prisoner. Total deductions may not exceed 78 % of the net wage. The remainder of the wage is the inmate’s pocket money (20 %), and any amount left over is deposited on the inmate’s personal account in the prison. If a disciplinary penalty is imposed, the pocket money may be reduced. A persistent problem is

the lack of job opportunities for inmates; therefore only about 62 % of the inmates are assigned work.<sup>17</sup>

Prisoners are provided with regular meals, while consideration is given to the state of health, age and difficulty of the work performed. As far as the operations routine of a prison permits, consideration is also given to the cultural traditions and religious customs of each inmate.

Prisoners are ensured an eight-hour period of sleep daily, time required for personal hygiene and cleaning up, meals, at least one hour for outdoor exercise and a reasonable period for personal leisure.

Prisoners are issued with prison clothes which must be suitable for the weather conditions and sufficient to protect their health. Inmates have a right to medical care and treatment. In the event of serious illness or injury, they may be put in the Prison Hospital; in exceptional cases, a prisoner's sentence may be discontinued for a necessary period to be spent in hospital or for treatment outside prison. In case of a serious illness or injury requiring hospitalisation, the prison informs, without delay, the inmate's wife or husband, cohabitant, parents or children (if it corresponds to their age) if the inmate is not able to do so on his or her own. At their own request and if prison conditions permit, female inmates can keep their children, usually up to the age of three, if the court has not placed such a child in the custody of another person. Before deciding, the director of the prison requests an opinion of a doctor, a clinical psychologist and a youth care authority whether this would be in the interest of the child.

Prisoners are entitled to receive and send correspondence at their own expense and in general without restriction. However, the Prison Service is entitled to check correspondence for security reasons. It is forbidden to check correspondence between the prisoner and his or her lawyer or between the prisoner and state authorities (this also applies to foreign consulates or international organisations). In justified cases, the inmate may be allowed to use the telephone for contact with a close person (*osoba blízka* – next of kin). In the interest of the

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<sup>17</sup> For details, see the 2009 data of the General Director's Office of the Prison Service of the Czech Republic, available at: <http://www.vscr.cz/generalni-reditelstvi-19/rychla-fakta>.

correction of the inmate or for another serious reason, the inmate may be allowed to use the telephone for contact with another person, too.

Prisoners have the right to receive visiting relatives for a total time of three hours in one calendar month. Visits usually take place in rooms designed for this purpose and at times set by the prison director.

In exceptional cases, the prison director may permit visits in rooms not controlled by Prison Service authorities. In this way, an inmate may be allowed, for instance, undisturbed personal contact with his wife during the course of the visit. In addition, the prison director may allow an inmate to leave the prison in connection with the visit, if it may be justifiably assumed that this will not undermine the purpose of the prison sentence.

Prisoners are also ensured the right to religious services and other similar services serving humanitarian purposes. Prisons therefore allow (usually on days of rest) joint religious ceremonies to be held for prisoners. Attendance at these religious ceremonies is, of course, voluntary. Legal regulations set out the conditions under which officials of registered churches and religious communities may co-operate with prisons to provide religious services.

Prisons also allow appropriate authorities (but also non-governmental and charity organisations) to provide inmates with social services or other forms of charity to help prepare inmates for their future independent life when released.

To satisfy their cultural needs, inmates are entitled to order daily newspapers, magazines and books at their own expense, and may borrow appropriate publications (including legal regulations) from the prison library for free.

An inmate can also buy food and personal articles in the prison shop. Purchases are usually made by direct debit from the part of the money the inmate can freely spend. If an inmate is sent money, it is transferred to his or her account which is opened and maintained by the prison.

Each prisoner has the right to receive a parcel containing food and personal articles weighing up to 5 kg twice a year, usually for his or her birthday and Christmas. These parcels are subject to control by Prison Service officers. The legislation concerning receipt of parcels was widely discussed, particularly whether it should be subject to restrictions at all (apart from checking their contents). The view prevailed that it was not necessary to send parcels containing food and personal articles, because inmates could purchase these in prison shops, and the frequent sending of parcels would facilitate the smuggling of prohibited items into prisons.

Prisoners with the required aptitude are enabled to attend basic schools or secondary vocational schools, or may attend various courses to improve their specialist skills. Prisoner education is usually provided in the educational centres of the Prison Service. Inmates may be allowed a higher form of study, too. Inmates serving a sentence in a low-security prison (with supervision or with control) or in a prison for juveniles may be allowed free movement outside the prison to attend school (attend classes, take examinations, etc.).

An important provision of the Prison Sentence Act is the article on the protection of prisoners' rights (Art. 26). In order to exercise their rights and justified interests, inmates may file complaints and applications to the authorities responsible for dealing with such cases. Prison directors are obliged to ensure that such applications and complaints are immediately delivered to the appropriate recipients. Prison Service staff are obliged to safeguard the rights of prisoners serving their sentences.

If, during a prison sentence, it becomes apparent that a prisoner is being re-socialised, his or her sentence may be interrupted for up to 20 days during a calendar year as a reward. A prisoner may have his or her sentence interrupted for up to 10 days for serious family reasons, and a sentence may also be interrupted for a necessary period of time for serious health reasons. The prison director decides on interrupting a prison sentence, and the period of interruption is deducted from the sentence (however, if an inmate injures himself or herself intentionally and emergency treatment had to be provided outside the prison medical facility, the period of interruption is not deducted from the sentence).

As regards convicted juveniles, an individualised approach to treatment is increasingly applied in order to prevent the negative effects of isolation of juveniles from society as much

as possible during their imprisonment. Convicted juveniles should be treated in a manner that develops their mental, emotional and social maturity. Emphasis is placed on acceptance and awareness of personal responsibility for the crime they committed. Educational and work activities of convicted juveniles should be directed at obtaining knowledge and skills which would help them to find employment once they are released from prison.

Accused persons who have not yet been convicted and are held in prisons are subject to custodial arrangements. Due to the fact that this concerns restriction of personal freedom, custody conditions have to be governed by the law (and not merely by a decree of the Ministry of Justice). This came with the Custody Act No. 293/1993 Coll. The fundamental principle of custody is the presumption of innocence, i.e. that nobody taken into custody may be considered guilty until pronounced guilty by a final court decision. Hence during custody the accused may only be subjected to such restriction as is necessary to achieve the purpose of custody, to observe prison rules and for security (to prevent escape and so on). The human dignity of the accused may not be abused, and he or she may not be subjected to physical or mental pressure. Foreigners, immediately after being taken into custody, must be informed of their right to contact the diplomatic bodies of the country whose citizens they are, and the officials of these diplomatic bodies may visit their citizens in custody without any restrictions.

The public prosecutor regularly inspects the places where custody and imprisonment are enforced. The prosecutor is entitled to visit all places where prison sentences are served at any time, inspect prison documents, talk to the inmates without the presence of other persons, and request relevant explanations from the Prison Service. When on an inspection of a prison, the public prosecutor may issue orders on the spot for observance of regulations applicable to prison sentences. The prosecutor may also order the immediate release of a person illegally subjected to imprisonment or held in custody.

The supervision of the public prosecutor does not override the obligation of the Prison Service authorities to perform their own control activities. The Ministry of Justice through the minister's general inspectorate is also directly involved in control and supervision activities.

**9.3.** The sentence of imprisonment is served in prisons which are divided according to the method of external guarding and security into four basic types as follows:

- with supervision (*s dohledem*),
- with control (*s dozorem*),
- with security (*s ostrahou*),
- with stricter security (*se zvýšenou ostrahou*).

Various types of wards may be established in one prison. In addition to these basic types of prison, there are special prisons for juveniles.

The court decides in which type of prison the convicted person will serve the sentence. As a rule, the court chooses a prison with supervision for any offender who has been sentenced for a negligent transgression and who has never been sentenced before for an intentional criminal offence. As a rule, the court chooses a prison with control for an offender who has committed a negligent transgression and has served a sentence of imprisonment before for an intentional criminal offence, or for an offender who has been sentenced for an intentional criminal offence to no more than three years and has never been sentenced before for an intentional criminal offence. Persons convicted of intentional criminal offences are usually sent to a prison with security, unless placing them in a lower-security prison can be considered. A prison with stricter security is chosen for offenders on whom an exceptional sentence has been imposed, or a prison sentence for a criminal offence committed for the benefit of an organised crime group, or who have been sentenced to imprisonment of at least eight years for a particularly serious crime, or who have been sentenced for an intentional criminal offence and have absconded from custody or from prison in the last five years.

A decision to transfer a prisoner to another type of prison is made by the court, which will take into account progress in the re-education of the prisoner.

The prison director is obliged to petition the court on the transfer of a prisoner to a different type of prison if he or she believes that the transfer will contribute to achieving the purpose of punishment. The convicted person himself or herself may also make an application to the court proposing transfer to a different type of prison.

If a convicted person absconds from custody or from prison, or attempts this, he or she will be prosecuted for the crime of obstructing the enforcement of an official decision (Art. 337 para. 3b) of the Criminal Code) and may be sentenced to prison for up to 5 years or fined.

There are circa 40 prisons in the Czech Republic (including remand prisons); 5 prisons have a capacity of more than 1000 places for inmates, while the capacity of most prisons is 300 to 600 places. Czech prisons have recently had to deal with the problem of insufficient accommodation capacity. The overall capacity of Czech prisons and detention facilities is 20,271 places, but as of 1<sup>st</sup> April 2011, 22,836 persons were placed in them (this means 112.65 % occupation). Some prison buildings are rather outdated because they are historical buildings, in other cases prisons do not fully meet requirements because they were converted from former hostels for manual workers of various industrial enterprises or from former army buildings and so on. Every year, considerable sums of money are invested in the prison system on improvements to ensure that prison buildings meet the legislative requirements (and international conventions) for the environment in which prison sentences are served.

Foreigners account for about 6 % of those convicted serving a term of imprisonment in Czech prisons. About 25 % of accused persons held in custody are foreigners. The largest numbers of foreigners serving a prison sentence are from Slovakia, Ukraine, Vietnam, Rumania, Poland and Russia.

At the beginning of the 1990s, the Czech Republic acceded to the international Convention on the Extradition of Convicted Persons (the Convention came into force for the Czech Republic as of 1<sup>st</sup> August 1992). Convicted persons may also be extradited on the basis of bilateral agreements on legal force which the Czech Republic concluded with a number of countries. Several dozen people are extradited from the Czech Republic every year to serve prison sentences in other countries.

#### **9.4. Conditional Release (Parole), Pardon and After-care**

If a convicted person has served half of the prison sentence (or of the sentence reduced by a decision of the president of the Czech Republic), the court may release him or her on parole, if, after the sentence acquired legal force and particularly when in prison, the

convicted person proved by his or her behaviour and observance of his or her duties that he or she has reformed sufficiently to be expected to live an orderly life in future. The court may also accept a guarantee that the convicted person's reform will be completed. A person convicted of a transgression (*přečin*) may be released on parole even before serving half of the prison sentence (or of the sentence reduced by a decision of the president of the Czech Republic), if he or she has proved by his or her impeccable behaviour and observance of his or her duties that no more punishment is required. When deciding on parole, the court also considers whether the convicted person entered prison in time and whether he or she has partially or fully compensated for (or otherwise redressed) the damage or another harm caused by the criminal offence. If, before or in the course of serving a prison sentence, the convicted person was subjected to protective treatment, the court takes into account also the convicted person's manifested attitude towards protective treatments.

Persons who are sentenced for serious criminal offences, an exhaustive list of which is given in Art. 88 para. 4 of the Criminal Code, may be conditionally released only after serving two thirds of their sentence; but only if, considering the circumstances of the offence they were convicted of and the character of their personality, there is no danger of the repetition of the offence committed, or of a similar particularly serious crime.

Persons sentenced for the exceptional sentence of life imprisonment may be conditionally released only after serving at least 20 years of their sentence. There is no unity of opinion in professional circles regarding conditional release from a life sentence; some people rightly point out that parole is actually counterproductive to the purpose of life imprisonment, while others point out that even life prisoners should be given a certain hope of release, which may positively motivate their behaviour in prison.

The court sets a probationary period for parole of between one and seven years. The court may impose reasonable restrictions and obligations on a person on parole, such as undergoing an anti-drug addiction treatment, undergoing training to acquire work skills or an appropriate social training and corrective education programme, avoiding visits to unsuitable environments, sports, cultural and other social events and contact with specified persons etc. The court may also impose supervision of the paroled prisoner.



If, during the probationary period, a person on parole has led an orderly life and complied with the conditions imposed, the court will declare that he or she has made good; otherwise it will decide, and may do so even during the probationary period, that he or she will serve the remainder of the sentence.

Under Art. 69 g) of the Constitution, only the President may grant a pardon. The granting of a pardon means waiving or reducing a sentence imposed by the court, staying criminal prosecution, or deletion of the conviction. A pardon is not subject to the prisoner's application although the President usually decides whether to grant a pardon on the basis of an application. The President may deal with an application for a pardon on his or her own, or, if perceiving the need, request the Minister of Justice for an investigation and opinion. However, the Minister himself or herself may not decide on a pardon; if the Minister believes that there are reasons for granting pardon, he or she will submit to the President an application setting out his or her standpoint. The President decides about the cases when the Minister of Justice may deal with the application for a pardon himself or herself and reject an unfounded application.

Political discussions often focus on the issue of the extent of the President's constitutional powers to grant a pardon. There are proposals to the effect that a pardon should be subject to the positive recommendation of the Minister of Justice, or that the President should be allowed to grant a pardon only after completion of criminal proceedings and taking into consideration its results, etc.

The President may grant a general pardon (amnesty) under the Constitution by a decision whose validity requires a joint signature with the Prime Minister, or a member of the government authorised by the Prime Minister. Therefore, in the event of an amnesty, it is the government which assumes co-responsibility for the President's decision.

In the Czech Republic, general pardons (amnesties) are granted quite frequently. This usually occurs with the election of the head of state or on the occasion of important state anniversaries or other events of importance. For example, after the totalitarian regime was overthrown, the President declared a wide-ranging amnesty on 1<sup>st</sup> January 1990, under which about 24,000 of the total prison population of approximately 33,000 prisoners were freed. This wide-ranging amnesty caused certain problems because society was not ready for such a

massive return of prisoners to community life within such a short period of time. The relevant authorities providing assistance to released prisoners (accommodation, integration into the labour market etc.) were not prepared either, and even charity organisations could not fully cope with the problems that arose.

Parole officers, who operate within the local authorities, are entrusted with the care of released prisoners. There are also parole officers who specialise in dealing with juveniles. Upon release from prison, convicted persons are instructed to contact their parole officer, who will help them return to the community outside (accommodation, employment and so on). An inadequacy of the system is that contact with the parole officer is voluntary for released persons and many of them do not avail themselves of this option, although they are not able to cope with their social situation on their own. Prior to release from prison, inmates are prepared for their return to the community outside, and the social workers of the Prison Service provide them with the necessary assistance. Various non-governmental and charity organisations, churches, foundations and so on also participate in the system of care of released prisoners. It may be said that society is generally aware of the need to help released prisoners in their return to a free life.

## 10. Reform Plans

**10.1.** The legal system of the Czech Republic has been significantly marked by the socio-political changes which the state experienced. After the collapse of the totalitarian regime at the end of 1989, profound economic, political and social changes occurred which subsequently affected all spheres of social life. Inevitably, this complicated development influenced the nature of the legal system and its overall reform is regarded as essential.

The Criminal Code No. 140 of 1961 was repeatedly amended even earlier, and after 1989 it was necessary to make further profound changes to this Code, the Criminal Procedure Code No. 141/1961 Coll. and other criminal legislation. These legislative changes may be characterised as an effort to respond quickly to changes in society, and their key objective was to eliminate the most flagrant distortions of criminal law of the totalitarian period.

As regards the overall concept of the Criminal Code and the Criminal Procedure Code, there were only a few changes of a more profound nature. The result was a Criminal Code which reflected the changing realities of society only with difficulties, inadequately ensured the protection of freedoms and rights of the individual, and contributed to the stability of society only to a limited extent. It was therefore generally acknowledged that it was necessary to proceed with the new codification of substantive and procedural criminal law in the Czech Republic.

From the beginning of the 1990s, background documentation and source data for the new codification of the Criminal Code and Criminal Procedure Code was being compiled with varying degrees of intensity of effort and in different forms, mainly under the sponsorship of the Ministry of Justice, which set up a reform task force comprising judges and public prosecutors, legislation staff of the Ministry of Justice and the Ministry of the Interior, and further agencies and institutions, including criminal law theorists. In 1995, the Minister of Justice officially appointed a twenty-member commission for the re-codification of criminal substantive and procedural law. The commission progressively produced some sectional documents which were published in professional journals and inspired quite sound professional debate. This period of re-codification work may be summed up as a stage of

discussion on the objectives and form of the proposed changes and the method of their implementation and introduction into practice. These discussions entailed the clarifying of views as to whether and to what extent to incorporate into the Czech criminal justice system, based on continental (inquisitorial) procedure, some elements of the adversarial system and other approaches applied particularly in the Anglo-Saxon countries. Some of the proposals were accepted after a profound exchange of opinions, and the sometimes conflicting views and attitudes of representatives of the authorities responsible for criminal proceedings and scholars from academic and research institutes were reconciled with the progress of time. The opinion prevailed that, in principle, the current continental concept of criminal proceedings should be preserved and the required reforms carried out within its context.

In 1997, the Minister of Justice appointed a new commission for the re-codification of the Criminal Code and Criminal Procedure Code comprising almost forty members. Its task was to complete the re-codification work within a reasonable period of time, which was considered to be around the time the Czech Republic was accepted as a member of the EU.

At the beginning of 2000, an international scholarly conference was held to discuss the Concept of the New Codification of Criminal Law of the Czech Republic” as elaborated by the commission.<sup>18</sup> The Draft Concept was also presented for comments to home and foreign experts.<sup>19</sup> The Concept was published together with other papers presented at the conference in an academic journal.<sup>20</sup>

After approximately 10 years, the debate was successfully closed as to how society should apply criminal substantive law procedures to crime, and a comprehensive concept for the Criminal Code of the Czech Republic was achieved.

The Concept became the foundation for drafting the principles of the new codification of criminal substantive law of the Czech Republic, which was approved by the Czech

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<sup>18</sup> Šámal, P., Karabec, Z.: Ke koncepci rekodifikace trestního práva hmotného [About the concept of the recodification of criminal substantive law]. *Právník* No. 4/2000, p. 321–357.

<sup>19</sup> An external examiner’s report was submitted by Prof. Dr.jur. Dr.jur.h.c. Hans-Heinrich Jescheck, Emeritus Director of the Max-Planck Institute for Foreign and International Criminal Law in Freiburg (Germany).

<sup>20</sup> Koncepcie nové kodifikace trestního práva hmotného České republiky... [Concept of the new codification of criminal substantive law in the Czech Republic...]. *Acta Universitatis Brunensis, Juridica*, No. 246, Masarykova univerzita: Brno, 2000.

government on condition that the wording of the new Criminal Code be prepared and presented to the government, and then submitted for discussion to the legislative bodies.

The main objectives of the new codification of the Criminal Code were set out as follows:

- ensuring the full protection of civil rights and freedoms;
- ensuring the implementation of the criminal policy of a democratic society based on humanitarian principles, directed at social reintegration of offenders, and ensuring reasonable satisfaction for crime victims;
- achieving greater differentiation and individualisation of criminal liability of individuals and the legal consequences of this liability, and also enabling, under strictly defined conditions, to define the criminal liability of legal entities;
- providing comprehensive legislation for the protection of juveniles by interlinking criminal juvenile law with other relevant areas of the legal system;
- changing the overall philosophy of imposing sanctions so that a sentence of imprisonment is applied as *ultima ratio*, and emphasis is placed on the broad use of alternative sanctions to ensure positive motivation of offenders;
- consistently removing all relics of the non-democratic concept of the functions and purpose of the Criminal Code, and stressing the ideological discontinuity with the legal system of the totalitarian period;
- achieving a level comparable with criminal law of a modern European standard while respecting the Czech Republic's international obligations and requirements arising from European integration procedures.

The following, in particular, can be seen as the most important changes:

- introduction of the formal concept of a criminal offence (to replace the hitherto valid material concept);
- binary categorisation of indictable offences into crimes (*zločiny*) and transgressions (*přechiny*); i. e. the earlier concept of a single category of offence has been abandoned. This categorisation also forms the foundation for various types of criminal procedure: simplified proceedings, diversions and alternative approaches prevail with transgressions;
- circumstances excluding illegality have been extended to include “consent of the injured party”. However, this circumstance does not apply to cases of euthanasia;

- “admissible risk in production and research” has been included among the circumstances excluding illegality,
- introduction of criminal liability of legal entities is being prepared;
- new systematic arrangement of the Special Part of the Criminal Code so that priority is given to the protection of fundamental human rights and freedoms of individuals over the collective interests of society and the state.

The new codification of criminal procedural law was developed in parallel with the concept of criminal substantive law. However, the urgency of some of the problems of criminal procedure, particularly the need to speed up and simplify criminal proceedings, demanded that certain procedural issues be dealt with in a fundamental manner as soon as possible without waiting for the overall new codification of the Criminal Procedure Code. This occurred with Act No. 265/2001 Coll., which fundamentally amended the existing Criminal Procedure Code effective as of 1<sup>st</sup> January 2002. This amendment implemented a range of envisaged codification aims, and is therefore perceived as the initial stage of the overall new codification of criminal procedural law. Hence the overall recodification of criminal procedural law (the Criminal Procedure Code) will be completed only after assessment of the effectiveness of this major amendment.

**10.2.** The experience of the Czech Republic confirms that alternative punishment and various forms of diversions in criminal proceedings may be effective instruments for simplifying and speeding up criminal procedure. However, their indisputable significance lies, above all, in appropriate differentiation and individualisation of imposed sanctions with regard to the offender’s circumstances and the gravity of the crime committed. In addition, alternative sanctions imposed instead of a prison sentence are a much better way of taking into account the interests of the crime victim, and effectively securing compensation for the damage caused by the crime.

On the other hand, criminological and penological findings indicate that a sentence of imprisonment cannot always be expected to attain the purpose of punishment and sentencing. In the Czech Republic, too, prisons are becoming overcrowded, the deterrent effect of a sentence of imprisonment is insufficient, and it does not result in the reform and re-socialisation of prisoners. It is obvious that

- therapeutic re-education programmes cannot be fully effective in a prison environment which is inherently unfavourable for providing a positive influence;
- the limited effectiveness of specific re-education programmes arises from the fact that they are applied to unsuitably selected individuals;
- it should be admitted that there are certain categories of offenders (convicted persons) who resist any re-educational efforts during their imprisonment.

Hence a great deal is expected of various alternative forms of punishment (including diversions in criminal proceedings) in the Czech Republic. In order to achieve these expected results, it was necessary to adopt appropriate legislative provisions. The experience and legislation of EU member states provided undoubtedly a great inspiration in this respect. In addition, recommendations and resolutions of the respective bodies of the Council of Europe aiming at wide-ranging introduction of community sanctions were – and will be – of considerable assistance.

The experience of the Czech Republic also confirms that when alternatives to imprisonment are applied, there are certain conservative attitudes which should be overcome, as reflected in the approach of courts and other authorities responsible for criminal proceedings, as well as certain mistrust on the part of the public, which expects that the punishment imposed and the overall sentencing policy of the state will primarily have a deterrent effect on the offender.

For example, the findings of a criminological survey focused on the introduction of community service<sup>21</sup> in the Czech Republic show that this form of punishment was difficult to implement initially mainly for the following reasons:

- the people dealing with theoretical issues and those engaged in the field of practice were slow in coming to agreement about the suitability and effectiveness of establishing and using alternative sanctions;
- conservative attitudes were displayed by judges accustomed to imposing traditional sentences;

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<sup>21</sup> As a part of this survey, 335 court files and decisions were analysed concerning with regard to community service sentences according to Art. 45–45a of the Criminal Code No. 140/1961 Coll.; in total 669 judges, public prosecutors and probation officers were asked to present their opinions on the key issues of the legislation and application of this sanction.

- there were doubts among people engaged in the field of justice whether alternatives to imprisonment would have sufficient deterrent effects and whether in actual fact they would constitute a sanction for the offender;
- an established system of prisons was available for enforcement of traditional sentences of imprisonment whereas enforcement of alternative sanctions was initially insufficiently secured in terms of organisation or institutions.

The current prevailing trend towards further development of alternatives to imprisonment is also supported by the progressively growing public interest in methods of dealing with offenders and the effectiveness of the criminal justice system. Economic aspects also play a role because the increasing costs of criminal justice and the prison system constitute a burden for the state budget. This trend may be summed up by saying that in the criminal policy of the Czech Republic the view is gaining ground that the purpose of alternative sanctions is not just to alleviate criminal repression, i.e. a lenient attitude to crime; on the contrary, appropriate application of alternative sanctions will enable, in restraining crime, to focus on the most serious offences and the most dangerous offenders.

**10.3.** The criminal and sanction policy of the Czech Republic, in comparison with the average length of imprisonment imposed in West European countries, appears to be relatively severe and repressive. This reflects the concerns of a part of the Czech population about crime, and there is even criticism that the sanction policy is too tolerant and does not act as a sufficient deterrent. It should be mentioned for illustration that for example in 2003, a total of 551 prison sentences were imposed from 5 to 15 years, i.e. 5.6 % of the total number of all sentences imposed; a total of 22 exceptional sentences and sentences from 15 to 25 years; and one life sentence.

However, references are made in specialist literature to the fact that when prisoners serve sentences of imprisonment with terms of more than 5 years, penitentiary problems arise due to the long-term isolation of the convicted person from the outside community, the negative effects of the prison environment, adjustment to the prison sub-culture and so on. The purpose of punishment is thus often reduced to merely removing the convicted from the community, and the re-educative and re-socialising function of imprisonment is limited.



Therefore empirical criminological research also focuses on the undesirable effects of long-term imprisonment.

Consequently, no overall increase in sanctions was introduced in the new Criminal Code, but appropriate differentiation in when to impose them, based on the principle of appropriate relationship between punishment, the gravity of the crime committed and the offender's circumstances.

Certain hitherto unused sanctions were incorporated into the new Criminal Code, in particular house arrest, including the future possibility of electronic monitoring for this type of sanction.

On 23<sup>rd</sup> February 2011, the Government of the Czech Republic approved the proposal of the Minister of Justice to introduce corporate liability, and, while the present text is being prepared for print, the proposal is going through the legislative process. In conjunction with the future introduction of corporate liability, sanctions are proposed which will affect the assets of a criminally liable legal entity, such as prohibition of subsidising legal entities from the state budget, their exclusion from public tenders, bans on conducting specific business activities, and winding up companies including conditional termination of business.

**10.4.** It is evident that there is growing interest in the situation of crime victims in the Czech Republic. Therefore the action plan of the judicial reform expressly stipulates enhanced protection of and assistance to victims as one of the objectives of the reform. It should be noted that non-governmental organisations are also actively involved in this field, such as Bílý kruh bezpečí (White Circle of Safety), which focuses on all-round aid and support for crime victims, including advice and psychological and social assistance. Non-governmental and charity organisations provide important help also to victims of domestic violence, which often reaches the intensity of crime. A court decision on compensation for loss which is classified as damage to property may, under Arts. 228 and 229 of the Criminal Procedure Code, be made even during the course of criminal proceedings.

The important Financial Assistance to Crime Victims Act No. 209/1997 Coll. came into effect as of 1<sup>st</sup> January 1998. It ensures that crime victims who suffer grievous bodily

harm or death and are not fully compensated for this injury (by the offender, insurance company, etc.) receive financial assistance from the state through the Ministry of Justice. A victim means an individual who suffers bodily harm as a consequence of crime. A victim is also deemed to a person bereaved of the victim who died as a consequence of the crime. The one-off lump-sum amount of financial assistance is CZK 25,000, or the amount of the proven loss of income and proven medical costs, reduced by the total of all amounts which the victim already received as compensation. In cases stipulated by the law, assistance may be provided repeatedly up to the overall amount of CZK 450,000. The aim of this financial assistance from the state is to provide immediate help to victims to overcome the difficult social situation caused by a crime. The victim is, of course, required to avail itself of all legal means to obtain compensation from the offender or another person or legal entity obliged to provide compensation. Within five years the victim is obliged to return, to the Ministry of Justice account, the money up to the sum of financial assistance received. The Ministry may, in view of the victim's social situation, the total damage and the amount of aid provided, waive the claim for the return of the money provided.

There are further legislative provisions for securing assistance to crime victims. These are mainly out-of-court-settlements (*narovnání*) under Art. 309–314 of the Criminal Procedure Code. Under this provision, the court and, in preliminary proceedings, the public prosecutor, may stay criminal proceedings for a transgression (*přečin*) with the consent of the accused and the injured party, if the accused pleads guilty, compensates the injured party for the damage caused by the crime and deposits a certain amount of money into a designated account for socially beneficial purposes (the accused must allocate at least 50 % of this amount for assistance to crime victims). The general trend towards increased support and assistance provided to crime victims is also apparent from the extension of the range of mediation procedures, where the offender is guided towards realising the situation into which he or she has brought the victim by the crime, and towards rectifying the damage caused. Provisions for a wider use of mediation are set out in Act No. 257/2000 Coll., which came into effect as of 1<sup>st</sup> January 2001, and established the Probation and Mediation Service in the Czech Republic. Alternative sanctions also usually include the obligation of the accused to endeavour to compensate for the damage during the probationary period. The probation officer's supervision of the convicted person's behaviour and adherence to the imposed obligations and restrictions during the probationary period may also contribute to securing

compensation for damage more effectively and rectification of the harm caused to the crime victim.

The efforts to enhance the rights of crime victims led to the drafting of an amendment of the Criminal Procedure Code which will enable the injured party to claim compensation for non-material damage directly in criminal proceedings, without having to undergo separate civil proceedings. Substantive and procedural rights of crime victims may be enhanced by a completely new crime victim law which is being intensively prepared at the moment.

**10. 5.** Gradual implementation of the project of electronic justice is being carried out currently. An important milestone was doubtlessly the 2009 introduction of electronic data boxes, enabling inter alia electronic communication with authorities responsible for criminal proceedings. Other elements of this project which will bear on the sphere of criminal justice will be the electronic collection of laws or the electronic court file.

## 11. Statistical Data and Results of Research on Crime and Criminal Justice

**11.1.** This section contains statistical data on selected indicators of crime and the prison population in timelines from 2000 to 2009. The relevant crime indicators were monitored regarding crime in general as well as the specific crimes of murder, robbery, intentional assault and theft. Data have also been included on punishment as well as the length of prison sentences imposed. Data on the prison population are given for the overall number of convicted persons, as well as for convicted juveniles, always as of 31<sup>st</sup> December of the given year. Data on the number of crimes identified and cleared up was obtained from the statistics of the Police of the Czech Republic, and data on the number of prosecuted, charged and convicted persons, as well as the sentences imposed, was obtained from the statistics of the Czech Ministry of Justice. The Czech Prison Service provided data on the prison population.

**Table 1** – Criminal offences in total

Year	Offences registered	Offences cleared up	Persons prosecuted	Persons charged	Persons convicted
2000	391,469	172,245	110,808	86,074	63,211
2001	358,577	166,827	110,461	84,855	60,182
2002	372,341	151,491	110,800	93,881	65,098
2003	357,740	135,581	110,997	95,920	66,131
2004	351,629	134,444	108,061	94,430	68,443
2005	344,060	135,281	108,100	95,767	67,561
2006	336,446	133,695	110,339	97,880	69,445
2007	357,391	138,852	113,813	101,240	75,728
2008	343,799	127,906	110,411	98,446	75,761
2009	332,829	127,604	113,217	102,667	73,685

Note: Starting in 2002, the number of persons prosecuted includes those against whom summary preliminary proceedings were conducted, and the number of persons charged includes those against whom a punishment recommendation was filed.

**Table 2 – Crimes of murder (including attempts)**

<b>Year</b>	<b>Crimes registered</b>	<b>Crimes cleared up</b>	<b>Cleared up in %</b>	<b>Persons prosecuted</b>	<b>Persons charged</b>	<b>Persons convicted</b>
2000	279	228	81.72	240	201	163
2001	234	201	85.90	224	186	144
2002	234	210	89.74	226	200	152
2003	232	199	85.78	203	171	173
2004	227	205	90.31	218	196	143
2005	186	161	86.56	211	191	153
2006	231	196	84.85	161	146	121
2007	196	174	88.76	204	182	118
2008	202	174	86.14	177	163	133
2009	181	157	86.74	177	161	110

**Table 3 – Crimes of robbery**

<b>Year</b>	<b>Crimes registered</b>	<b>Crimes cleared up</b>	<b>Cleared up in %</b>	<b>Persons prosecuted</b>	<b>Persons charged</b>	<b>Persons convicted</b>
2000	4,644	1,811	39	2,294	1,999	1,427
2001	4,372	1,813	41.47	2,326	1,999	1,287
2002	5,434	2,450	45.10	2,651	2,487	1,441
2003	5,468	2,334	42.68	3,086	2,917	1,587
2004	6,107	2,598	42.54	2,908	2,796	1,695
2005	5,550	2,388	43.03	2,837	2,687	1,608
2006	4,783	2,128	44.49	2,505	2,397	1,532
2007	4,668	1,893	40.55	2,187	2,108	1,411
2008	4,515	1,966	43.54	2,251	2,169	1,291
2009	4,515	2,049	45.38	2,479	2,408	1,350

**Table 4 – Crimes of bodily harm (only intentional)**

<b>Year</b>	<b>Crimes registered</b>	<b>Crimes cleared up</b>	<b>Cleared up in %</b>	<b>Persons prosecuted</b>	<b>Persons charged</b>	<b>Persons convicted</b>
2000	7,194	6,466	89.88	5,754	4,740	2,804
2001	7,056	6,347	89.84	5,645	4,675	2,852
2002	7,321	6,034	82.42	5,853	5,242	3,046
2003	6,853	5,694	83.09	5,660	5,051	3,033
2004	7,180	5,998	83.53	5,803	5,192	3,273
2005	6,439	5,387	83.66	5,333	4,834	3,062
2006	5,765	4,713	81.75	4,673	4,189	2,685
2007	6,175	4,554	73.75	4,334	3,913	2,360
2008	5,397	3,677	68.13	4,030	3,624	2,161
2009	4,756	3,346	70.35	3,322	2,997	1,887

**Table 5 – Crimes of theft**

<b>Year</b>	<b>Crimes registered</b>	<b>Crimes cleared up</b>	<b>Cleared up in %</b>	<b>Persons prosecuted</b>	<b>Persons charged</b>	<b>Persons convicted</b>
2000	253,195	56,724	22.40	32,813	27,610	16,515
2001	227,805	56,985	25.01	33,651	28,000	16,227
2002	236,671	47,531	20.08	22,846	20,394	15,707
2003	235,555	43,982	18.67	23,443	21,307	15,313
2004	226,834	41,810	18.43	21,703	19,713	15,301
2005	212,080	39,697	18.72	20,253	18,525	14,776
2006	204,639	36,533	17.85	17,994	16,445	14,480
2007	209,132	35,066	16.77	16,946	15,429	13,637
2008	200,673	33,119	16.50	16,601	15,111	13,377
2009	193,217	33,411	17.29	12,476	11,459	12,999

Note: As of 1<sup>st</sup> January 2002, a change of legislation took place comprising the increase of the damage caused (from CZK 2,000 to CZK 5,000), which is alternatively one of the elements of the crime of theft.

**Table 6 – Sentences**

Year	Total	Imprisonment	Suspended	Fine	Community service	Discharge
2000	63,211	14,114	35,617	3,571	7,084	2,071
2001	60,182	12,533	32,817	3,324	8,835	2,084
2002	65,098	9,659	34,942	3,500	13,424	2,408
2003	66,131	9,797	35,676	2,941	13,592	2,535
2004	68,443	10,192	36,162	2,913	13,031	2,817
2005	67,561	10,253	37,302	2,682	12,512	2,872
2006	69,445	9,997	41,864	2,685	12,273	2,723
2007	75,728	9,871	43,548	4,558	12,496	2,868
2008	75,761	10,255	42,157	5,307	11,193	2,684
2009	73,685	10,419	40,488	5,270	11,240	2,496

The community service sentence was incorporated in the Criminal Code as of 1<sup>st</sup> January 1996. The changes in the number of the convicted on whom it was imposed clearly show the initial misgivings and mistrust on the part of the courts, compounded by the initially inadequate wording of the legislation and the absence of implementing regulations. However, in 2001 almost 15 % of all sentences imposed were community service, and the proportion remained roughly the same in the subsequent years, too.

**Table 7 – Sentences of imprisonment**

Year	Imprisonment	Up to 1 year	From 1 to 5 years	From 5 to 15 years	From 15 to 25 years	Life
2000	14,114	9,365	4,125	603	15	2
2001	12,533	8,407	3,563	547	15	1
2002	9,659	5,827	3,291	535	2	4
2003	9,797	5,925	3,298	551	22	1
2004	10,192	6,118	3,516	539	13	6
2005	10,253	6,429	3,264	542	14	4
2006	9,997	6,320	3,126	535	14	2
2007	9,871	6,549	2,833	485	4	0
2008	10,255	6,923	2,859	466	8	2
2009	10,419	7,144	2,781	488	3	3

**Table 8 – Persons convicted and serving a sentence**

	Number of convicted persons in prisons as of 31 <sup>st</sup> December									
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
<b>Male</b>	14,966	14,190	12,321	13,298	14,437	15,336	15,376	15,792	17,209	18,367
<b>Female</b>	605	547	508	570	637	741	803	855	891	1,007
<b>Total</b>	15,571	14,737	12,829	13,868	15,074	16,077	16,179	16,647	18,100	19,374

**Table 9 – Juveniles convicted and serving a sentence**

	Number of convicted juveniles in prisons as of 31 <sup>st</sup> December									
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
<b>Male</b>	107	84	80	90	96	120	109	133	148	166
<b>Female</b>	3	3	1	4	6	4	2	1	4	8
<b>Total</b>	110	87	81	94	102	124	111	134	152	174

**Table 10 – Ratio of juveniles convicted to total persons convicted**

Year	Total number of persons convicted	Juveniles	%
2000	63,211	4,252	6.7
2001	60,182	3,805	6.3
2002	65,098	3,854	5.9
2003	66,131	3,512	5.3
2004	68,443	3,235	4.7
2005	67,561	3,080	4.6
2006	69,445	2,773	4
2007	75,728	2,949	3.9
2008	75,761	2,906	3.8
2009	73,685	2,728	3.7

Note: The term juvenile refers to a person who, by the time of committing the offence, had reached between 15 and 18 years of age.



Since 1993, when juveniles accounted for almost fifteen percent of all convicted persons, a considerable downward trend is evident.

**11.2.** The Institute of Criminology and Social Prevention has carried out a number of research studies focusing on the issues of criminal justice. They dealt in particular with the introduction of alternative sanctions and diversions in criminal proceedings (Research Study on Conditionally Terminated Prosecution, 1996; Research Study on Community Service, 1998; Research Study on Out-of-Court Settlement, 1999; Research Study on Short-Term Prison Sentences, 2000; Research Study on Newly Introduced Probation Elements in Criminal Law, 2000).

The research shows that the work of the courts and the entire justice system displays a certain degree of inertia and mistrust with respect to the newly introduced provisions of substantive and procedural law, and that preference is given to the established procedures. This natural conservatism can be overcome more easily if new legislative provisions are appropriately drafted and their application well organised.

A comprehensive research study on how the transformation of criminal legislation influenced the crime situation and the enhancement of efficiency of the judicial system (2001) drew attention, *inter alia*, to the fact that some de-penalising and de-criminalising measures rely on some form of co-operation from society, particularly local communities. Hence public activity should be encouraged accordingly. The research also produced further arguments in favour of experimental verification of the new legislative measures prior to their introduction. It stressed the need for drafting key documents defining the long-term objectives of criminal policy. In this connection, a note should also be made of the research study on the probable development of selected types of crime (2001).

A 2005 research study dealt with selected problems of sanction policy, focusing particularly on imprisonment sentences and their alternatives or the institute of preventive detention.

The research study on how selected provisions of the so-called great amendment of the Criminal Procedure Code influenced criminal proceedings (2008) dealt with the legislation

regulating summary preliminary proceedings and simplified court proceedings, changes in the legislation regulating the status of the public prosecutor in criminal proceedings as well as changes in custody proceedings.

A 2010 research study also dealt with the problems of preventive detention; its aim was to map the current situation with regard to imposing this protective measure, and to describe and analyse the set of persons on whom preventive detention was imposed.

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## **CRIMINAL JUSTICE SYSTEM IN THE CZECH REPUBLIC**

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