

The Criminal Justice System in the Czech Republic

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1. Demographic Data

The Czech Republic's population as of 1st January 2001 was 10,266,546. The total number of foreigners registered as permanent or temporary residents in the same year was approximately 201,000. The largest ethnic groups are Ukrainians, Vietnamese, Slovaks, Poles, Russians and Germans.

Most of the population (71%) live in towns and cities; however the boundaries between urban and rural settlements are indistinct as both types of settlements merge ¹.

Unemployment as of 31st January 2002 in the Czech Republic was 9.3 %. According to the 2001 figures approximately 4,765,000 people were employed, and 57 % of this number (2,703,000) 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: over 8.6 million people had reached the minimum age relevant for criminal law in the Czech Republic, and almost 8.2 million had reached the age for full criminal liability – 18 years – (for further details see Ch. 5) according to data available for 2001.

¹ 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 district as decisive for distinguishing „towns and other districts“. Towns according to this definition are those districts that are granted the status of a town according to the relevant law. In 2000 Act No. 128/2000 Coll. Art. 3 defines a „district that has a population of at least 3,000 as a town if so decreed by the chairman of the Chamber of Deputies after consideration by the government“. The Act therefore clearly determines a limit of 3,000 inhabitants as a condition and is the first Act which stipulates the demographic condition of 3,000 inhabitants directly in its wording. At the present time 522 districts meet all the criteria for a town.

2. Criminal Law Statutes

2.1. The Czechoslovak Republic became an independent state on 28th October 1918 after the break-up of the Austro-Hungarian Empire. After the state was founded, the foremost priority was to determine which laws would come into force in Czechoslovakia. It was in essence decided to adopt fully the legislation that had been in force in the former Austro-Hungarian Empire, which was incorporated into the law of the Czechoslovak Republic by Act No. 11/1918 Coll. (the „Reception Act“). The purpose of this Act was „to preserve continuity of the existing rule of law with the new situation and to ensure a smooth transition to the new state“. As far as criminal substantive law was concerned, the result of the „Reception Act“ was that 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).

During the Second World War several drafts and outlines were prepared of a new Criminal Code but overall codification of the new criminal law did not take place. Criminal legislation became more ambiguous due to the validity of two criminal codes in the Czechoslovak Republic with the progressive adopting of further laws of a criminal nature. For example, 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. were adopted. 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 how to handle young 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. Specially trained judges tried juvenile criminal cases together with lay judges, called a „panel of judges for juveniles“.

During the occupation of Czechoslovakia in the Second World War the democratic rule of law was more or less paralysed. Nevertheless, basic legislation remained in force within the so-called „Protectorate of Bohemia and Moravia“. German criminal law progressively also 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 on 3rd August 1944. 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 start 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 political regime and rejecting the entire socialist class system. 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 14th July 1948, work began as part of the so-called two-year legal plan on the draft of a new Criminal Code. On 12th 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 working-class character and their explicit purpose was to „protect the People's Democratic Republic, build its socialist structure, 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. The majority of the facts of the case for individual crimes 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 the political situation by adopting several additional laws of a substantive legal nature. This concerned the enhancement of an individual approach to punishment with regard to the offender and 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 the abandonment of 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 present criminal law in the Czech Republic.

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 making decisions and passing judgements on less dangerous offences described as „wrongdoings“ for which sentences were passed of an above all educational nature. Act No. 60/1961 Coll. annulled the existing Criminal Administrative Code and defined new tasks and powers for the national committees regarding decision-making 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 and introduced 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 called transgressions was created. 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.

Criminal Code No. 140/1961 Coll. was amended many times during its existence and although various distortions of criminal law introduced by the Communist system and the class-concept of criminal law were substantially suppressed or removed, it is necessary to initiate a completely new codification of the Czech Republic's criminal law. This new codification will be based on recognised principles of democratic criminal law, which include:

- the subsidiary role of criminal law (principle of „ultima ratio“) as a means of last resort for protecting individuals and society,
- an offender may be found to be guilty and a criminal sanction may be imposed on him only according to the law („nullum crimen nulla poena sine lege“),
- the retroactive jurisdiction of a stricter law is not permitted,
- the inadmissibility of analogy to extend the conditions of criminal liability, sentencing and protective measures including the terms and conditions for their enforcement (the ban 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,
- 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 will not be directly defined in the newly codified Criminal Code, but will, of course, form the foundation of the new codification and will continue to determine the nature of all criminal legislation.

2.2. The full wording of the Czech Criminal Code was published in English: „Criminal Code“, Trade Links Praha, 1999, 277 pages. This is an unofficial translation and commentary made by a private firm.

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 the Criminal Code. Apart from the Criminal Code, other criminal offences stipulated in other laws only appear in isolated cases. This concerns the Peace

Protection Act No. 165/1950 Coll., concerning which a proposal has been put forward for annulment, and a new crime of inciting war will be included in the new Criminal Code.

Provisions for substantive legal protection are 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 by Act No. 359/1999 Coll.,
- 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.,
- 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.

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 or administrative offences (delicts). This particularly concerns the Misdemeanours Act No. 200/1990 Coll.; foreign exchange administrative delicts are regulated by Act No. 528/1990 Coll. and customs delicts by Act No. 44/1974 Coll., as amended. 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 (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.

3. Procedural Law Statutes

3.1. The first codex for criminal procedure law after 1945 was the Criminal Judicial Procedure (Criminal Procedure Code) – Act No. 87/1950 Coll. - adopted on 12th 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 contained in the Austrian Military Criminal Procedure Code of 1912 Act No. 131, 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 for the power of the 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 codices of criminal law. 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 Criminal Procedure Code from 1956, 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. 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 community service sanctions.

Throughout the 1990s extensive discussions took place about the need to draft completely new codices of criminal law, which would replace the existing repeatedly amended Criminal Code and Criminal Procedure Code. Re-codification commissions have been appointed to deal with the task of preparing these codices. The most important trends of the re-codification 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 at the end of the 1990s still proved to be inadequate. Several drafts of an extensive amendment of the current Criminal Procedure Code were prepared as part of the judicial reforms. On 29th June 2001 Act No. 265/2001 Coll. was passed, which came into effect on 1st January 2002 and substantially amended and supplemented the Criminal Procedure Code.

The 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 device (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. Shortened preliminary proceedings were introduced as a special form of preliminary proceedings in less serious and less complicated cases, which form the basis for the 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 phase of proceedings before a court. Appellate review was added to the range of extraordinary appeals. Also the proceedings procedure was amended for proceedings after a decision was cancelled by a ruling of the Constitutional Court.

3.2. In view of the short time since the adoption of the latest important amendment 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 codex 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 offences (*správní delikty*) exists in the legislation of the Czech Republic. An administrative offence is generally considered to be a form of misconduct classified by the law and on which the law imposes administrative sanctions. The two basic types of administrative offences are misdemeanours (*přestupky*) and other administrative offences (*jiné správní delikty*). The rules for proceedings concerning administrative offences are set out in two fundamental acts: in the Administrative Proceedings (Administrative Procedure Code) Act No. 71/1967 Coll. as amended and in the Misdemeanours Act No. 200/1990 Coll. as amended. Some partial rules for proceedings concerning administrative offences are set out in special acts regulating the bodies of such offences. Generally speaking it is the Misdemeanours Act that governs proceedings concerning administrative offences 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. No special criminal proceedings law concerning young offenders exists as yet in the Czech Republic. The Criminal Procedure Code contains a special provision concerning proceedings involving juveniles under the section dealing with special types of procedure. This part deals particularly with ascertaining the circumstances of the juvenile and his defence, the possibilities of taking him into custody and the special elements in proceedings before a court. The Re-codification Commission is also dealing with the issue of criminal proceedings involving juveniles in connection with the previously mentioned ensuing re-codification of criminal law. The government has submitted to the Parliament of the Czech Republic draft bills for Juvenile Liability for Illegal Actions and the Juvenile Judiciary and these are currently under discussion. This act would not only deal with proceedings in cases of young offenders, but also with general proceedings in cases when a child below the age of fifteen, a juvenile or a young adult (a person over eighteen but under twenty-one years of age) commit an offence listed as a crime in the Criminal Code.

4. The Court System and Enforcement of Criminal Justice

4.1. After the end of the Second World War, Presidential Decree No. 79/1945 Coll. first regulated the judicial system. 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 29th 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 as 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 recommended by the public prosecutor).

The People's Justice Act No. 319/1948 Coll. modified the organisation of the judiciary which, besides a system of courts that included district courts, regional courts and the Supreme Court, also regulated public prosecution – public prosecutors' offices, jurisdiction, civil and criminal procedure 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 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, bodies, institutions and individuals. 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 and as bodies of working people in communities

and at workplaces, were to treat less serious cases of violations of the law (in criminal proceedings concerning wrong-doings and less serious crimes) and minor disputes between citizens. The 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, it 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 principles 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 with the previous Act No. 62/1961 Coll. The amendments to the wording of Act No. 36/1964 Coll. up to 1991 concerned adapting the judicial system to reflect the changes in the legal structure of the then Czechoslovak Socialist Republic. Further amendments concerned the abolition of the local people's courts, the way in which 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 country's National Councils, or their presidia).

New legislation concerning the judiciary, in response to the fall of the communist regime and the building of a democratic legal state, appeared with Act No. 335/1991 Coll. It distinguished District, Regional and Supreme Courts of the Czech and the Slovak Republic as well as the military courts and the Czechoslovak Federation's Supreme Court. It contained rules for the election or appointment of judges and lay judges (judges continue to be appointed while lay judges are still elected), cases for terminating the office of judges and lay judges, and regulating the status of judges, lay judges and candidate judges. It also formulated new 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 31st 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 instead. The President of the Republic was entrusted with the task of appointing judges.

On 1st April 2002 the Courts and Judges Act No. 6/2002 Coll. came into effect fully replacing the previous Act No. 335/1991 Coll. This is part of the judicial reforms. The court system is still composed of District, Regional and High Courts as well as the Supreme Court (as of 1st January 2003, the judicial system will be extended to include the Supreme Administrative Court, which will not, of course, 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, but above all introduces the somewhat controversial system of assessing the professional qualifications of judges. This amendment is understood by some judges as an attempt to restrict their independence, while representatives of the Ministry of

Justice consider the assessment of the professional qualifications of judges as essential for ensuring the high quality of the work of the judiciary.

4.2. The Courts and Judges Act has not yet been officially published in any foreign language due to the short period it has been in force.

4.3. At the constitutional level, the principles of the organisation and performance of the judiciary are set out in the Section 4 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. The Proceedings in Cases of Judges and Public Prosecutors Act No. 7/2002 Coll. 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 members of the disciplinary court 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 state prosecutors to exercise their office. Mention should be made of other regulations including the Senior Court Clerks Act No. 189/1994 Coll., as amended, which regulates the position and scope of activity of senior court clerks who are authorised, to the defined extent, to perform independent acts as part of judicial proceedings or other court activities.

4.4. A fundamental piece of police legislation is Act No. 283/1991 Coll., as amended, which regulates the organisation and activity of the Police of the Czech Republic. This act has been in force since 1991 and was amended more than fifteen times. 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. Until now, the most recent important amendment was Act No. 265/2001 Coll., which inter alia and in connection with the extensive changes to the criminal procedure concept abolished the hitherto autonomous investigation offices and merged their work with that of the criminal police into the newly conceived Criminal Police and Investigation Department. Act No. 186/1992 Coll., as amended, 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 jurisdiction 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 districts. 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 1st January 1994 when it replaced the 1965 Prosecutor's Office Act applicable to that date. It governs the organisation and activity of public prosecution offices. The latest – and very extensive – amendment to this act was adopted as No. 14/2002 Coll. 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, jurisdiction, 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 method of assessing the professional qualifications of public prosecutors, the system of education of

public prosecutors and candidate prosecutors and the jurisdiction of the Ministry of Justice in this area.

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

A fundamental legal regulation stipulating the organisation of prisons is the Prison Service and Judicial Guard of the Czech Republic Act No. 555/1992 Coll., as amended. This established the Prison Service of the Czech Republic, which handles the carrying out of custody and imprisonment and, to a defined extent, 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 latest important amendment to this act was Act No. 460/2000 Coll. 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.

The Probation and Mediation Service was established and became operational as of 1st January 2001. It provides probation and mediation services in cases subject to criminal proceedings. This came about under Act No. 257/2000 Coll. It regulates the organisation and activity of the Probation and Mediation Service, the position of probation officers and assistants, and the enforcement of state administration in cases of probation.

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 which 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. 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 ideas on which criminal procedure is based. Individual provisions and the stages of proceedings are built on these ideas. 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; the fundamental principles of the organisation of the judiciary which are also set out in the Constitution are enforced in criminal proceedings. 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 this concerns extension of the conditions of criminal liability and if the form of punishment to be imposed is in question, protective measures or other infringement of rights or property may be imposed for an offence under specified conditions.

5.2. According to Czech criminal law currently in force, criminal liability arises from a criminal offence (*trestný čin*). The Criminal Code is derived from a single category of crimes

classified as indictable offences and does not divide them into crimes, transgressions and so on. The definition of a crime is described in Art. 3 para. 1 of the Criminal Code: it is an offence dangerous to society whose characteristics are defined in the Criminal Code. A criminal offence must therefore bear the attributes of being a danger to society (the material aspect of a crime) and must be correlated with the characteristics of the relevant body of a crime (the formal aspect of a crime). Both these features must exist concurrently otherwise an offence is not indictable. The characteristics of the facts of the case of an offence are set out in a Special and a General Part of the Criminal Code and form a complete whole. The characteristics which are common for all or most criminal offences are defined in the general section for practical reasons so that they need not be repeated in the Special Part for all bodies of a crime.

An offence by an adult offender who presents a negligent level of danger to society is not classified as a crime despite otherwise demonstrating the characteristics of a criminal offence; for young offenders the danger must be greater than minor (the same applies to avoidance of national service in the armed forces under Art. 270 of the Criminal Code and some other military crimes).

Other less serious offences against society are regulated by the following legislation: the Misdemeanours Act (*zákon o přestupcích*) No. 200/1990 Coll., as amended, acts regulating other administrative misdemeanours or other administrative offences and provisions on liability for disciplinary and breach-of-order offences.

5.3. An essential characteristic of a criminal offence is also that it is committed by a criminally liable person and that the offender is liable for punishment for the offence.

The minimum age of criminal liability is defined as 15 years of age. Art. 74 para. 1 of the Criminal Code defines the term juvenile. Juveniles are persons who at the time of committing a crime 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 criminal law does not recognise the category of young adults and only Art. 33 (b) mentions age close to the age of a juvenile as a mitigating circumstance. The Criminal Code states others age limits for award a judgment imposing protective youth and aoung offender rehabilitation (see also point 7.1.). This is practicable to impose on a person which have reached the age of 12 and is not over the age of 15, if this person commits a criminal offence, what is possible to punish by an exeptional punishment. Protective trainig could last until an offender reaches the age of 19 in his own interest. Otherwise it is imposed maximally until an offender's age of 18. Protective rehabilitation is possible to impose on a person younger than 15 years only in a Civil law procedure (Art. 176 - 180 Civil Procedure Code).

5.4. - 5.6. An offence is indictable if there is intentional culpability unless the Criminal Code expressly states that culpable negligence suffices (Art. 3 para. 3). Culpability is a necessary feature of a subjective side of a criminal offence. The Criminal Code is based on the consistent enforcement of culpable liability. Criminal liability does not arise from merely causing an effect as there must also be culpability. If there is no culpability, there is no offence and thus no punishment, this principle is developed in more details in Art. 4, 5, and 6 of the Criminal Code, it is not possible to impute to an offender anything what is not related to his culpability.

Czech criminal law is based on the principle of individual liability. It does not recognise collective liability nor liability for somebody else's guilt or corporate liability. 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. A crime may only be an illegal act and it is necessary to define illegality from the legal system as a whole. Under certain circumstances an act whose characteristics make it resemble a crime is not dangerous to society and is therefore not a criminal offence. These are circumstances excluding illegality and the law directly stipulates necessary defence (*nutná obrana*) (Art. 13), extreme distress (*krajní nouze*) (Art. 14) and the justified use of a weapon (*oprávněné použití zbraně*) (Art. 15). Apart from these cases set out in the law, theoreticians come up with several other reasons, particularly the consent of the injured party and cases which may be considered as being performance of authorised or even ordered activity. All these cases have a common feature in that the illegality of the action is not present.

5.8. The reasons for a lapse of criminal liability must be distinguished from these circumstances because it arises only after a crime 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 term of limitation (*promlčení*) of prosecution. The statute of limitation applies to all crimes with the exception of crimes stipulated in Art. 67a of the Criminal Code and in Act No. 184/1964 Coll. 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, twelve or twenty years.

Certain circumstances affect the extension of the term of limitation, which may stay or discontinue the limitations. 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 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 limitations is not included in the term of limitation.

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 current Criminal Code No. 140/1961 Coll., and procedural law embodied in the Criminal Procedure Code. (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 characteristics of individual offences, which are divided into twelve Sections according to subject matter. At the highest point of the system under the current law is the protection of the country and other interests concerning society as a whole. The next three Sections represent a transition to the protection of individuals and the following three Sections deal with offences against the person and against property. The concluding Sections specify military offences and some other categories of offences closely related to these.

The structure of the Criminal Code is as follows:

Criminal Code No. 140/1961 Coll.

Part One – General Part

- Section 1 Purpose of the Code
- Section 2 Essentials of Criminal Liability
- Section 3 Applicability of Criminal Laws
- Section 4 Punishment
- Section 5 Lapse of Criminal Liability and Punishment
- Section 6 Protective Measures
- Section 7 Special Provisions on Juvenile Prosecution
- Section 8 Joint Provisions

Part Two – Special Part

- Section 1 Crimes against the State
- Section 2 Economic Crimes
- Section 3 Generally Dangerous Crimes
- Section 5 Crimes Grossly Violating Civil Co-existence
- Section 6 Crimes against Family and Young Persons
- Section 7 Crimes against Life and Health
- Section 8 Crimes against Freedoms and Human Dignity
- Chapter 9 Crimes against Property
- Section 10 Crimes against Humanity
- Section 11 Crimes against Military and Alternative Military Service
- Section 12 Military Crimes

Part Three – Transitional and Final Provisions

5.10. As far as the essential body of a crime of the selected types of crimes are concerned, our criminal law differentiates between murder and murder of a newly born child by its mother (Art. 220), but not between other forms of intentional homicide; it does not recognise the term manslaughter. The crime of murder (*vražda*) is defined in Art. 219 para. 1 as committed by somebody „who intentionally kills somebody else, will be punished with imprisonment of ten to fifteen years“.

Robbery (*loupež*) is classified among crimes against freedom because the threat from robbery lies primarily in interference with personal freedom. It is described in Art. 234 as a crime committed by somebody „who uses force or threatens to use direct force against somebody else in order to take another person’s object, will be punished with imprisonment for two to eight years“.

The crime of assault or bodily harm (*ublížení na zdraví*) is defined in Arts. 221 to 224 of the Criminal Code. Punishable are intentional offences (Art. 221 and 222): „one who assaults another person will be punished with imprisonment of up to two years“, „one who intentionally causes grievous bodily harm to another person will be punished with imprisonment of two to eight years“, as well as negligence offences (Art. 223 and 224): „One who, through negligence, causes bodily harm to another person by breaching an important obligation arising from his employment, profession, position or function or one imposed on

him by the law will be punished with imprisonment of up to one year or prohibition to undertake activities“, and „one who, through negligence, causes grievous bodily harm or death will be punished with imprisonment of up to two years or prohibition to undertake activities“. From the objective point of view two levels of assault or bodily harm must be distinguished: assault or bodily harm and grievous bodily harm (*ublížení na zdraví, těžká újma 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 his state of health in absolute terms.

In the case of the crime of theft (*krádež*) under Art. 247, one who takes an item or object belonging to another person by seizing it and

- a) causes damage 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 on an object that is on or with the other person, or
- e) was convicted or punished for such an offence in the last three years

will be punished with imprisonment of up to two years or a fine or forfeiture of the item.

What is taken into consideration for all the aforementioned crimes is the use of qualified facts which comprise the characteristics of the essential body of a crime and some additional characteristic which is typical of a higher degree of danger to society and where conditions and circumstances requiring a more severe sentence (*okolnosti podmiňující použití vyšší trestní sazby*) are identified - for example, such a characteristic for theft is the level of damage caused or membership in an organised gang; for murder it is possible to impose a prison sentence of twelve to fifteen years or an exceptional punishment if the crime was committed in a particularly brutal or painful manner or on a person under 15 years of age, repeatedly or with the intention of enrichment, etc. (Art. 219 para. 2). As far as assault or bodily harm is concerned, the most aggravating circumstance is committing an offence against another person because of his race, nationality, political conviction or creed, or against a witness, expert witness or sworn interpreter acting in the execution of their duty, or causing their death.

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 crime has been committed and directed towards identifying the offender. They complete a report on 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 crime. The public prosecutor may extend these time-limits.

This verification may result in termination of the case if there is no suspicion of a crime, 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 ascertained and well-documented facts indicate that a crime 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 an 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 state prosecutor's consent. Prosecution for crimes 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 would result in a series of procedural consequences.

The stage of prosecution up to completion of preliminary proceedings is defined as the 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 Criminal Procedure Code provides the state prosecutor with a range of authorisations to supervise observance of the legality of the entire preliminary proceedings. 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 must be carefully examined if it is shown not to be altogether insignificant.

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

Upon completion of the investigation, the police submit to the state 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 state 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 recommendation for punishment (*návrh na potrestání*), which is presented by the state prosecutor. He 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 state 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 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 state prosecutor, on his 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 state 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, ethics or 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 state 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 presence and when further conditions are met as stipulated by the law.

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

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 shortened preliminary proceedings (*zkrácené přípravné řízení*) on which simplified proceedings (*zjednodušené řízení*) before a single judge are based. These summary 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 state 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 state prosecutor arrives at the conclusion that the results of the summary preliminary proceedings warrant committal of the suspect for trial, punishment is recommended. The single judge at the trial in the simplified proceedings will hear the accused and he may decide to refrain from evidence of those facts which the parties describe as indisputable.

Another special type of procedure is proceedings against juveniles (*řízení proti mladistvým*). The specific features of these consist above all in the fact that the juvenile must have a defence counsel right from the commencement of prosecution. The law expressly demands the most thorough determination of his circumstances and acknowledges in the proceedings the role of the authority entrusted with youth care. Further modifications, as 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 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, who 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 there will be a new trial.

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. It 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 crimes 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 sentence of up to one year. It may not be issued in proceedings involving a juvenile who at the time of its issue has not reached the age of eighteen. 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 out-of-court settlement (*schválení narovnání*). These marked the tendency to move away from standard proceedings and towards alternative punishments and measures in less serious and simpler cases. The court and, in the preliminary proceedings, the state prosecutor may, with the consent of the accused, conditionally cease prosecution for an offence for which the law stipulates a prison sentence of not more than five years if the accused pleads guilty to the offence, compensates for the damage or has taken other necessary steps for compensation. The decision sets a probation period of from six months up to two years and it may order the accused to make compensation or observe some reasonable restrictions and obligations aimed at encouraging his good behaviour. If the accused misbehaves during the probation period or does not meet all the obligations imposed, the court or state prosecutor will decide to proceed with prosecution.

The court and, in preliminary proceedings, the state prosecutor may decide to approve an out-of-court settlement and cease prosecution with the consent of the accused and the injured party if this concerns proceedings on an offence for which the law stipulates a prison sentence of up to five years. The precondition for such a decision is that the accused declares that he has committed an offence for which he is prosecuted, compensates the injured party for the damage or otherwise redresses the damage incurred by the offence and deposits the appropriate sum of money designated for a specified recipient for socially beneficial purposes. The accused must allocate at least 50% of the money for beneficial purposes to the state to provide financial assistance to victims of crime.

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

Part One – Joint Provisions

Section 1 General Provisions

Section 2 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 3 General Provisions on Acts of Criminal Proceedings (request, records, submissions, deadlines, delivery, document inspection, disciplinary fines)
- Section 4 Detention of Persons and Seizure of Objects (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 operations)
- Section 5 Rules of Evidence (statement of the accused, witnesses, certain special rules of evidence, expert witnesses, real and written evidence, examination)
- Section 6 Decision (judgement, resolution, legal force and enforceability of the decision)
- Section 7 Complaints and Proceedings therein
- Section 8 Criminal Proceedings Expenses

Part Two – Preliminary Proceedings

- Section 9 Procedure before Commencement of Prosecution
- Section 10 Commencement of Prosecution, Further Procedure therein and Summary Preliminary Proceedings (commencement of prosecution, investigation, special provisions on investigation of certain crimes, decision in preliminary proceedings, supervision by the state prosecutor, indictment, summary preliminary proceedings)

Part Three – Proceedings before a Court

- Section 11 Fundamental Provisions
- Section 12 Preliminary Hearing of Indictment
- Section 13 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 14 Open Court
- Section 15 Closed Trial
- Section 16 Appeal and Proceedings Therein
- Section 17 Appellate Review
- Section 18 Complaint for Breach of the Law and the Proceedings Therein
- Section 19 Re-opening of Proceedings
- Section 20 Special Types of Procedure (proceedings against juveniles, proceedings against a fugitive, conditional cessation of prosecution, out-of-court settlement, proceedings before a single judge, proceedings after a decision has been cancelled by a ruling of the Constitutional Court)
- Section 21 Execution procedure (sentence of imprisonment, sentence of community service, sentence of certain other penalties, protective treatment and protective youthful and young offenders rehabilitation, execution of certain other decisions)
- Section 22 Deletion of Conviction

Part Four – Some Measures Associated with Criminal Proceedings

- Section 23 Granting Pardons and Use of Amnesty
- Section 24 deleted

Section 25 Legal Relations with Foreign Countries (requests for extradition from a foreign country, extradition to a foreign country, acceptance and handing over of a criminal case, requests, execution of judgements from foreign courts, referring execution of a judgement to a foreign country)

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 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 informed of the reasons for the arrest immediately, questioned and released within 48 hours 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 arrested except for reasons 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 4. It distinguishes between the apprehension of a suspect, the apprehension 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.

The police may apprehend a person suspected of committing a crime, if there are certain reasons for taking into custody (see further) with the consent of the state prosecutor in urgent cases, even if prosecution of the suspect has not yet been initiated. The personal freedom of a person caught committing a crime or immediately afterwards may be restricted by anybody if his identity needs to be determined, to prevent his escape or to secure evidence. However such a person or persons is/are obliged to deliver the suspect to the police immediately. The police will question the apprehended person and either release him immediately or refer the case to the state prosecutor so that the state prosecutor may file a petition for custody. The police must deliver the petition without delay so that the apprehended person may be committed to a court no later than 48 hours from the apprehension; otherwise the apprehended person must be released.

If there is a reason for custody and due to the urgency of the case a custody decision cannot be obtained in advance, the police may temporarily apprehend the accused themselves. However they are obliged to immediately report the apprehension to the state prosecutor. The accused must be committed to a court within 48 hours of detention otherwise he must be released.

The apprehended person has the right to a defence counsel, may talk to him without the presence of a third party and can consult with him during the apprehension. The state prosecutor is obliged to commit the apprehended person to a court with a custody petition within 48 hours of the apprehension. A judge is obliged to hear this person and decide within 24 hours of delivery of the state prosecutor's petition about his release or taking to custody. If the 24-hour period from delivery of the state prosecutor's custody petition is exceeded, this always constitutes a reason for a 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 will escape or go into hiding to avoid prosecution or punishment particularly if his identity cannot be immediately determined, if he has no permanent residence or if he is liable to receive a severe sentence (anti-escape custody - *vazba útěková*),
- b) he 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 will commit the offence again for which he is prosecuted or complete the attempted offence, or commit a crime which he has planned or threatened to commit (preventive custody - *vazba předstižná*).

The established facts must also indicate that the offence for which prosecution has been commenced has all the characteristics of a crime and evident reasons must exist for suspicion that this crime was committed by the accused. When making a decision on custody, the court is therefore 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.

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

If any of the reasons exist for custody and the presence of the accused cannot be secured for questioning, 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 to a court within 24 hours. If he does not, the accused must be released. The judge to whom the accused was committed must hear him within 24 hours and decide on custody, 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 it is evident that in view of the accused person's circumstances or 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 in custody. The accused has the right at any time to apply for release. The court must decide immediately about any such application. If the application is rejected, the accused may, unless he 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 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 should be released. If the state 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 crime. 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.

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 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. 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 into custody. The last alternative to custody is acceptance of a bail whose amount is determined by the authority deciding on custody. If an accused who was granted an alternative to custody avoids prosecution or does not cease committing offences, the amount of bail is forfeited to the state. The court will 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 prosecutor decide whether the accused should be kept in custody. The public prosecutor may decide during the preliminary proceedings to release the accused from custody even without an application. If the state prosecutor rejects an application for release from custody, he 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 was in custody and if he 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 (*vazba vyhošťovací*), into which it is possible to take a person who has been sentenced for banishment under conditions stipulated by law, and extradition custody (*vazba vydávací*), into which a person may be taken under conditions stipulated by law about whom extradition proceedings are under way for extraditing him to a foreign country.

6.2.7 - 6.2.9 Czech criminal law distinguishes between regular and extraordinary remedies for the decisions of a authority 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 for breaching of the 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 may be filed only for such resolution of the court of first instance which the law expressly allows. The court issues resolutions on many different aspects of cases, ranging from simple procedural decisions, to serious decisions concerning custody and up to decisions about the case itself (cessation of prosecution, conditional cessation of prosecution,

approval of an out-of-court settlement, etc). 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 whereby the purpose of criminal proceedings may be achieved without a formal trial. On the other hand, the accused and the state prosecutor should 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 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 for 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 the legality and substantiation of the contested parts of the judgement and the correctness of the procedure applied in the previous proceedings. If it finds them unjustified, it will reject them, 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 state prosecutor which was filed to the disadvantage of the accused. The court of appeal may not pronounce the accused guilty of a crime for which he was acquitted by the contested judgement or pronounce him guilty of a more serious crime than the one the court of first instance could have pronounced in the contested judgement.

As regards the possibility of holding a trial in the absence of the accused, in general his 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 there was a hearing of the offence which is the subject-matter of the indictment. The trial may not be held in the absence of the accused if he is in custody or serving a prison sentence or if it involves a crime for which the law stipulates a prison sentence of more than five years (this does not apply if the accused requests that the trial should be held in his absence). In cases of compulsory defence, a trial may not be held without the presence of a defence counsel.

Another instance when criminal proceedings (as a whole or only to a certain extent) 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. When the accused has to have a defence counsel, he must in all cases have him at the trial. In the absence of the accused because he 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 waives his right to be present at the public session.

All of Section 5 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 governing Czech law of evidence are those of fact-finding, the presumption of innocence, 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 reviewing all the relevant circumstances of 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 state 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 state 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 examination. 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 examination. The special rules of evidence regulate confrontation, recognition, investigative experiment, crime reconstruction and inspection on site. Any violation of the stipulated rules during the evidence procedure may result in invalidation of such evidence and it may no longer be used 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 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 state prosecutor, the accused, his 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 defence counsel may in that case 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 belief. 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 at its discretion.

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*). Act No. 283/1991 Coll., as amended,

specifically includes in the tasks of the police the detection of crimes, identification of offenders and investigation of crimes. The police are under the jurisdiction of the Ministry of the Interior. They comprise the Police on the Beat, the Criminal Police and Investigation Department, the Traffic Police, the Administrative Service, Security Service, the Aliens and Border Police, the Task Force, the Railway Police and the Airport Service.

The Police Presidium of the Czech Republic (*Policejní prezídium 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. 186/1992 Coll. 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 the Financial Crime and State Protection Office, the Special Activities Department, the Department for Detection of Corruption and Serious Economic Crime, the Department for Detection of Organised Crime, the Specific Operations Department, the National Anti-Drug Headquarters and the Documentation and Investigation of Communist Crime Office.

The Inspection Division of the Ministry of the Interior, 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. The Military Police (*Vojenská policie*) are authorised to conduct proceedings for crimes committed by members of the armed forces, Prison Service authorities are authorised to conduct proceedings for crimes committed by members of the Prison Service and the Security Intelligence Service (*Bezpečnostní informační služba*) is authorised to conduct proceedings for crimes committed by members of the Security Intelligence Services. 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 state prosecutor investigates crimes committed by the Police of the Czech Republic and the Security Intelligence Service. The state 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 voyage may also conduct an investigation of crimes committed on board the ship.

The state prosecutor is entrusted with supervision of adherence to legality throughout preliminary proceedings. The state 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 is also authorised to withdraw any case from the police or temporarily suspend initiation of criminal prosecution. In performing supervision, the state 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 an investigation personally and issue a decision on any case. He may also return a case to the police instructing them to supplement it and cancel their illegal or unjustified decisions and measures, which he may replace with his 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 state prosecutor that delays in proceedings or irregularities in police procedure are rectified.

As regards cases investigated by a state prosecutor, supervision of adherence to legality of preliminary proceedings is performed by a state prosecutor at a higher level

prosecutor's office which also deals with requests to rectify delays in proceedings or errors in state prosecutor's procedure.

As stated previously, apart from the aforementioned exceptions, the detection and particularly investigation of crimes falls under the jurisdiction 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 crimes is concerned, the Criminal Procedure Code stipulates an obligation for state authorities to inform the state prosecutor or the police immediately of facts indicating that a crime has been committed. In addition to autonomous authorities such as the Intelligence Service, various specialist divisions operate within individual ministries focusing specifically on 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. 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.

Specialized divisions operate within the Criminal Police and Investigation Service of the Police of the Czech Republic which deal with certain types of crime. The Department for Detection of Corruption and Serious Economic Crime and the Financial Crime and State Protection Office deal with economic crimes, the Department for Detection of Organised Crime deals with organised crime and the National Anti-drug Headquarters deals with drug related crime.

6.4. Organisation of the Prosecution agency

Act No. 283/1993 Coll., as amended, regulates the jurisdiction and organisation of state prosecutors' offices. The state prosecutors' offices form a system of state offices designed to represent the state in protecting public interests. A state 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 state prosecutors' offices comprises the Supreme State Prosecutor's Office (*Nejvyšší státní zastupitelství*), the High State Prosecutors' Offices (*Vrchní státní zastupitelství*), the Regional State Prosecutors' Offices (*Krajské státní zastupitelství*) and the District State Prosecutors' Offices (*Okresní státní zastupitelství*); also higher and lower Field State Prosecutors' Offices (*Polní státní zastupitelství*) during the state of emergency. The jurisdiction of individual state prosecutors' offices is the same as the jurisdiction of individual courts.

The higher level state prosecutors' offices supervise the activities of the lower level state prosecutors' offices in their own districts. They also adjudicate on remedies against decisions of the state 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 state prosecutors' offices. The higher level state prosecutor's office is authorised in specific cases to instruct the state prosecutor's office at the level immediately below in its district. Each state prosecutor's office has its own head. The Supreme State Prosecutor is responsible to the Minister of Justice, who supervises the activity of the Supreme State Prosecutor's Office.

At the proposal of the Supreme State Prosecutor, the Minister of Justice appoints a state prosecutors for an undetermined period of time. The government, at the proposal of the Minister of Justice, appoints and replaces the Supreme State Prosecutor. The Minister of Justice appoints and replaces the other heads of the state prosecutors' offices.

As stated previously, in criminal proceedings it is the state prosecutor who brings a charge behalf of the state and represents the state in the proceedings. For simplification, his role may be divided into the role he plays in preliminary proceedings and his role in judicial proceedings. In preliminary proceedings the state prosecutor is entrusted with supervision of adherence to legality. See the relevant text in Point 6.3 defining his 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 what are termed intelligence means and device - feigned transfer, surveillance of persons and objects, use of an undercover agent. In this connection, the state 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 state prosecutor to investigate crimes committed by police officers or members of the Security Intelligence Service. He is also authorised in preliminary proceedings to adjudicate on extension of custody and keeping an accused in custody, release from custody, applications of the accused for release from custody and certain other measures.

The state prosecutor's powers are fundamental in connection with the completion of preliminary proceedings. He has the exclusive authority to bring a charge (or recommendation for punishment upon 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 pursued in a manner other than through an indictment (recommendation for punishment). It is within the state prosecutor's powers to make decisions to this effect. If the conditions listed in the law are met, the state 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 in appropriate cases, the state 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 may also suggest any of the protective measures (*ochranné opatření*) either in the indictment or separately.

The state 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 state prosecutor may lodge a complaint against the decisions of a court, regardless of whether they are procedural decisions or on merits (except for the judgement). The state prosecutor is also authorised to appeal against a judgement because of its incorrectness, regardless of whether it is to the advantage or to the disadvantage of the accused person. The state prosecutor's presence in appellate proceedings is mandatory.

The Supreme State Prosecutor may contest the final decision of a court on merits by appellate review (*dovolání*). The participation of a state prosecutor from the Supreme State Prosecutor's Office is mandatory in proceedings on appellate review held at the Supreme Court. The state prosecutor from the Supreme State Prosecutor's Office also participates in proceedings at the Supreme Court on a complaint for a breach of the law which is lodged by the Minister of Justice. Finally, the state prosecutor may petition for permission to re-open proceedings that have run their lawful course. He may, but need not, participate in

proceedings pursuant to the petition for reopening the proceedings. In proceedings pursuant to an extraordinary legal remedy, the state prosecutor has the right to provide an opinion on the case or file a petition for examination of evidence. If he himself petitioned for an extraordinary legal remedy, he may withdraw the petition.

The state prosecutor has additional competencies and duties pertaining to the phase of enforcement of a decision, particularly where it is a decision he has issued himself. He also plays an important role in legal relations with foreign countries, when requesting extradition of an 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 came into effect on 1st 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*) will begin to operate as of 1st January 2003. It will not, of course, 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 as a panel 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 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, which 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.

The aforementioned indicates 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 criminal cases are tried. In proceedings, they participate in 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 these crimes a sentence of imprisonment with a minimum term of five years, or if they are liable to exceptional punishment. As a first instance jurisdiction court it also conducts proceedings on certain other

crimes 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 for a breach of the 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 within the context of proceedings on a complaint for a breach of the 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, forms standpoints on the decision-making activity of courts in cases of a certain type. It publishes these standpoints together with its own selected decisions and those of other courts in the Collection of Judicial Decisions and Standpoints. 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 crime was committed. If the location of the crime cannot be identified or if the crime was committed abroad, then the case is assigned to a 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 state prosecutor who filed the petition operates. A special provision exists for proceedings involving juvenile offenders when, with a view to the young offender's well-being, the respective court may assign the case to a court in whose district the juvenile lives or to a court which for some other reasons is the most effective in view of the young offender's interests.

6.6. The Bar and Legal Counsel

The right to a defence is one of the fundamental elements of Czech criminal law which is also guaranteed at a 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 by either being able to defend himself or retain a defence counsel. At each stage of the proceedings he must be informed of the rights allowing him to fully avail himself of his defence and the fact that he may also choose his own defence counsel. Only a lawyer 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 throughout criminal proceedings. There is a difference between a chosen defence counsel selected by the accused or selected for him by one of the persons closely related to him 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 did not take advantage within the set time limit of his right to choose one. Cases of compulsory defence, when the accused must have a defence counsel, include proceedings on a crime for which the law stipulates a sentence of imprisonment 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.

The defence counsel is entitled to file petitions on behalf of the accused, file applications, appeal on his behalf or inspect documents. If the accused is in custody, he may talk with him without a third party present. From the commencement of prosecution, he is entitled to be present during investigations the results of which may be used as evidence in proceedings before the court. He may ask questions of any person examined and raise objections against the method of investigation. Upon completion of the investigation, he is entitled to read through the investigation file and propose additional evidence. In proceedings before the court he 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 has the right to choose his defence counsel, talk with him without a third party present, consult with him during the period of arrest and request that the defence counsel should be present at his first investigation session. The defence counsel may also take part in the hearing of the arrested person before a court making a decision on custody. As stated previously, if the accused is in custody, he must have a defence counsel.

Czech law makes provision for a free defence. If the accused proves his inability to pay the costs of his defence, the court can make a decision that he 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 financial situation is difficult. Otherwise, the principle applies that the state does not bear the costs of the accused for a chosen defence counsel with the exception of costs of compulsory defence incurred as a result of a complaint for a breach of the 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 exams and swear a bar oath. In cases stipulated by law, the work experience of a candidate attorney and the passing of a bar exams 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 use the term victim 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 an individual or 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 is reflected in the legislative changes made in recent years. One of the important changes, though not through legislation, came about 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 it 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 be able to 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 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 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 concerning which those who committed them may be prosecuted only with the injured party's consent if they are related in a specific way to the injured party. Exceptions to this are cases when such a crime resulted in death, the injured party is not able to give consent because of his mental condition, 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 state 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 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 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 exercising of their individual rights, they will exercise their rights in the proceedings through a joint agent whom they choose and 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 in the context of the obligations imposed on the accused with the use of alternative punishment such as suspended sentence, conditional discharge with supervision or 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, in principle it applies that the compensation procedure in criminal proceedings is an adhesive procedure and 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. 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 within the context of 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 its demand enforcement of the obligation to compensate for damage caused by an offence, regardless of whether this is recognised within the context of criminal proceedings or not, 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 and the state prosecutor in preliminary proceedings. 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). The activities of a number of non-governmental organisations should also be noted in conjunction with the issue of assistance provided to victims of crimes.

7. Sentencing and the System of Sanctions

7.1. - 7.2. The methods used to achieving the intention of the Criminal Code are the deterrents of punishment, sentencing and execution of punishment and protective measures. 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 crimes may be imposed, exhaustively listed under Art. 27 of the Criminal Code, in the following forms: a sentence of imprisonment, community service, forfeit of honorary titles and distinctions, military demotion, prohibition to undertake activities, forfeiture of property, fines, forfeiture of an object or item, banishment or a residence ban. In addition, it is also possible to impose exceptional punishment specially regulated in Art. 29 of the Criminal Code.

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 insanity or because they are under age). They are imposed by a criminal court or, in exceptional cases, by a civil court (imposing protective rehabilitation on persons under 15 years of age). 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 way. The legal conditions include committing a crime 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. The means for achieving this effect is not the detriment to, but rather treatment and education of the offender or disposal of an item or object. Protective measures are protective treatment, protective education and confiscation of an item or object; protective rehabilitation may only be imposed on a juvenile.

7.3. The principle of the supporting role of criminal repression is particularly stressed for juveniles. This is reflected above all in the fact that an offence with a low degree of danger to society is not classified as a crime for juveniles, while for other persons it is only an offence with a negligible degree of danger to society that does not constitute a crime. Prime emphasis is laid on the educational purpose of punishment for juveniles. A juvenile may only be sentenced by the court to imprisonment, community service, forfeiture of an object, deportation, or a fine if he is gainfully employed; prohibition to undertake activities may only be imposed by the court on a juvenile if this does not interfere with vocational training, while the maximum term which may be imposed is five years (Art. 78).

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. If a juvenile commits a crime for which the law in its Special Part allows an exceptional punishment and the degree of danger of such a crime to society in view of the particularly abominable manner of its perpetration or its particularly abominable motive, or the particularly grave and difficult to remedy consequence is exceptionally high, the court may impose a term of imprisonment of from five up to ten years, if it believes that punishment within the range cited above is not enough to achieve the purpose of the punishment (Art. 79).

This provision only applies to prison sentences; as regards other types of punishment which may be imposed on juveniles, the same terms apply as for adult offenders, with the exception of a prohibition to undertake activities.

7.4. The Criminal Code of the Czech Republic provides protection for specific internal relations in the armed forces, particularly in the provisions on military crimes in Section 12 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 (co-offender) of a military crime may only be a soldier, i.e. a special entity. Art. 90 para. 4 of the Criminal Code defines the term „soldier“ differently

from the Armed Forces Act (No. 218/1999 Coll.). The persons mentioned herein must hold this status at the time they commit the crime.

7.5. - 7.6. 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 on the Protection of Human Rights and Freedoms, including its supplementary Protocol No. 6. The abolition of the death penalty is in compliance with a series 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 now 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 current Criminal Code, 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 crime and on any offender. This punishment is therefore the only or at least one of the alternative sanctions for all crimes. In addition to the sentence of imprisonment, any protective measure and any other type of punishment may as a rule be imposed, with the exception of community service.

The sentence of imprisonment is also the most severe form of punishment. It is only considered if all other types of sentence, enforced outside prison, are insufficient for the purpose of punishment. The 1990 amendment expressly stipulated that for crimes for which the maximum term of imprisonment is one year a prison sentence may be imposed if a different punishment would clearly not attain the purpose of the punishment. Maintaining the same precondition, the amendment which is effective as of 1st January 2002 extended this range of crimes to include crimes for which the maximum term is three years.

The essence of serving a term of imprisonment lies in the temporary restriction of freedom of movement of the offender forced to serve time in prison and the associated restriction of civil rights and freedoms. The serving of a sentence is subject to a special law (Act No. 169/1999 Coll.).

In general, the term of imprisonment is determined on the basis of a maximum limit – the maximum term which may be imposed is fifteen years (Art. 39 para.1), and also on the basis of individual sentence categories. The minimum sentence for the maximum term stipulated by the Criminal Code is 6 months, and there is no general rule for the minimum limit in the Czech Criminal Code. It may be inferred from this that the shortest term of imprisonment is one day - 24 hours.

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

- a) a suspended prison sentence or a suspended prison sentence with supervision
- b) a sentence of imprisonment
- c) exceptional punishment

Exceptional punishment means a sentence of imprisonment of between fifteen and twenty-five years, and life imprisonment. Exceptional punishment may be imposed only for a crime for which this punishment is permitted by a special Part of the Criminal Code. If a court imposes such a punishment, it may also decide that a term of imprisonment served in a stricter security prison will not be taken into consideration for the purpose of conditional prison release.

A court may impose a sentence of imprisonment of between fifteen and twenty-five years only if the degree of danger of the crime to society is very high or the possibility of reforming the offender is particularly difficult to envisage. A court may impose the sentence of life imprisonment on an offender who committed a crime of murder under Art. 219 para. 2, or who intentionally caused the death of another person when committing the crime of treason (Art. 91), terrorism under Art. 93 or Art. 93a para. 3, a public threat under Art. 179 para. 3 or genocide (Art. 259) on the condition that:

- a) the degree of danger of such a crime to society is extraordinarily high in view of the particularly abominable manner in which the crime was committed or the particularly abominable motive or the particularly grave or difficult to rectify consequences, 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 fifteen and twenty-five years.

Community Service (*Obecně prospěšné práce*)

Punishment through community service may be imposed for a crime for which the Criminal Code in its Special Part stipulates a maximum term of imprisonment of five years, provided that a different form of sentence is not required for the purpose of punishment in view of the envisaged possibility of reforming the offender and the nature of the crime committed. When imposing punishment, a court will consider the attitude of the offender and his state of health (i.e. particularly whether he is capable of regular work). The court may impose this punishment with a term of 50 up to 400 hours.

The punishment of community service 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, humanitarian, social, charity, religious, physical education and sports activities. The work may not be carried out for gainful purposes. This punishment was introduced into the Criminal Code by Amendment No. 152/1995 Coll. which was effective as of 1st January 1996 and a further amendment effective as of 1st January 2002 extended the range of non-profit-oriented entities for whose benefit the work may be performed; hitherto these were only local districts.

The convicted must perform community work in person, free of charge and in his free time but no later than within a year of the date the court ordered this punishment. If, from the time of conviction to the completion of the community service sentence, the offender did not lead an orderly life or did not serve the punishment within the set period of time through his own fault, the court will alter the sentence of community service or its remainder to a prison sentence, and each, and started, two hours of unserved punishment of community service count as one day of imprisonment.

The convicted person serves this punishment within the district court area in which he resides. If the convicted person consents, the punishment may also be served outside this district.

Fines (*Peněžité trest*)

A court may impose a fine of between CZK 2,000 and CZK 5,000,000 if the offender profited by or attempted to profit by an intentional crime, or if the Criminal Code permits the imposition of such punishment in its Special Part. It is also possible to impose a fine for intentional crimes and crimes committed through negligence for which the maximum term of imprisonment is three years and, in view of the nature of the crime committed and the possibility of reforming the offender, a prison sentence is not imposed concurrently.

When determining the fine, the court takes into account the personal and property circumstances of the offender; it does not impose a fine if it is obvious that he lacks the funds to pay it. The court may order that the fine should be paid in monthly instalments of a reasonable amount. A fine may be imposed on a juvenile only if he is gainfully employed. The sum collected from a fine goes to the state.

If a court imposes a fine, it also provides an alternative punishment of imprisonment of up to two years in the event that the fine is not paid by the set deadline. However, the alternative punishment together with the imposed punishment of imprisonment may not exceed the maximum term.

Discharge/Waiver

A court may discharge an offender if the crime committed is of a lesser degree of danger to society, if the offender regrets the crime and convincingly demonstrates an effort to reform himself and if in view of the nature of the offence committed and the previous behaviour of the offender, it may be reasonably expected that the hearing of the case itself before a court will be sufficient for his reform.

Under the same conditions, discharge may be conditional, if the court considers it necessary to monitor the conduct of the offender for a set period of time. Regarding discharge, the court will set a probation period of up to one year and will also order supervision of the offender. Supervision of the offender means it will be provided throughout the probation period.

If the offender who was conditionally discharged has led an orderly life and complied with the conditions imposed during the probation period, the court will acquit him (the offender is deemed not to have been convicted), otherwise the court will decide to impose punishment. It may do this even during the probation period.

Conditional discharge(waiver) with supervision under Art. 26 of the Criminal Code closely relates to discharge under Art. 24 of the Criminal Code and both of them may be applied under the same conditions. However, conditional discharge with supervision under Art. 26 of the Criminal Code is the more severe alternative as it is not the final decision, but conditionally subject to fulfilment of certain preconditions, is connected with a probation period and may be made more severe by imposing reasonable restrictions and reasonable obligations; and usually also usually the obligation is imposed on the offender to endeavour to compensate for the damage he has caused by the crime committed.

7.7. In the provisions of Art. 26 para. 4 (a) to (f) of the Criminal Code, an illustrative list is given of reasonable restrictions and obligations which may be imposed on the offender to ensure that he leads an orderly life during the probation period. Reasonable restrictions and obligations may be imposed in connection with a conditional cessation of criminal

prosecution, conditional discharge with supervision, suspended prison sentence, suspended prison sentence with supervision and substitution of custody with the offender's pledge. These may also be imposed in connection with the punishment of community service and for parole with supervision. From the range of reasonable restrictions and obligations, the judge or public prosecutor may in particular impose the obligation to:

- undergo training to acquire suitable work skills
- undergo an appropriate social training and corrective education programme
- undergo anti-drug addiction treatment, which is not protective treatment
- undergo appropriate psychological consultancy programmes
- avoid visits to unsuitable environments and contact with specified persons
- avoid gambling, fruit machines and betting

The court also usually orders the offender to endeavour to compensate for the damage caused by the crime; the obligation to provide compensation is mandatory in connection with the conditional cessation of criminal prosecution (Art. 307 and 308 of the Criminal Procedure Code) and out-of-court settlement (*narovnání*) (Art. 309 para. 1 (b) of the Criminal Procedure Code).

7.8. A general trend is becoming evident in the rule of law of the Czech Republic, as reflected in international documents on criminal law and punishment, which consists in looking for more effective methods of fighting and restricting crime. On the other hand, the unrestrainable growth in crime, its brutality and associated public concerns are giving rise to an atmosphere of repression not only among the public, but in a large part of the criminal justice system.

In spite of this, the meaning, purpose and function of punishment are perceived differently; in the abstract sense of the word, punishment is again conceived as a necessary means of redressing the balance of the social system. On a somewhat more practical level there is basic agreement that the purpose of punishment is as follows:

- a) retributive and punitive – i.e. the offender should suffer appropriately and be punished for his crime
- b) generally preventive – deterring other potential offenders from committing further crimes
- c) restitutive and satisfactory – with regard to the victim
- d) neutralising – i.e. making it difficult or impossible for an offender to commit further offences (at least for the period of imprisonment)
- e) socially rehabilitative – primarily aimed at the offender's integration into society

Punishment does not merely represent retribution for a crime in Czech criminal law; the fundamental purpose and objective of punishment under Art. 23 of the Criminal Code is to protect society against crimes and from those who commit them. The further effects of punishment are derived from the methods applied for achieving the purpose and the essence of punishment: prevent the offender from committing further crimes, educate him to lead an orderly life and thereby have an educational effect on the rest of society. The punishment imposed must not be degrading.

When determining the type of sentence and its term, the court takes into consideration the degree of danger of a crime to society, the possibility of reforming the offender and his circumstances. Important elements of the judicial individualisation of punishment are also the general mitigating and aggravating circumstances listed in the Criminal Code under Arts. 33 and 34.

8. Conditional and/or Suspended Sentence, Probation

8.1. - 8.6. The most frequent and important 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 probation period and complies with the imposed conditions. A suspended sentence is often accompanied by supervision of the convicted person or certain obligations and restrictions are imposed on him.

The legal nature of a suspended sentence in the Czech Republic is still being debated in theory and practice. A suspended sentence set out in Arts. 58 to 60b of the Criminal Code may be considered a special form of setting aside an imposed punishment, a special method of serving a sentence, or a special approach which, apart from punishment and protective measures, is a means of achieving the purpose of the Criminal Code (classified as a threat of punishment – Art. 2 of the Criminal Code) ².

The Criminal Code of the Czech Republic regulates the simple suspended sentence as follows: if, in view of the person of the offender, particularly with regard to his previous life and the environment in which he lives and works, and the circumstances of the case, the court is justified in holding that the purpose of the punishment will be achieved even if it is not served, the court may conditionally suspend a sentence of imprisonment with the maximum term of two years. It will also set a probation period of between one and five years (for juveniles between only one and three years) commencing when the verdict comes into legal force.

The court may impose reasonable restrictions and reasonable obligations on the person punished with a suspended sentence as set out in Art. 26 para. 4 in order to make him lead an orderly life; as a rule, the court should also order him to endeavour to compensate for the damage he has caused by his crime.

If the person given the suspended sentence leads an orderly life during the probation period and complies with the imposed conditions, the court will acquit him; otherwise it will decide, and may do so even during the probation period, that the sentence will be served. In exceptional cases the court may, in view of the circumstances of the case and the person of the convicted, uphold the suspended sentence even though the convicted person has given cause for ordering that the sentence should be served, and

- a) order supervision of the convicted person
- b) extend probation by a reasonable period of time, however of not more than two years, while it must not exceed the maximum term of the probation period set out in Art. 59 para. 1 or
- c) order reasonable restrictions or reasonable obligations not hitherto imposed and as set out in Art. 26 para. 4 in order to encourage him lead an orderly life.

If it is determined that the person given a suspended sentence has proved himself, or if he is deemed to have proved himself (ie the court will not make a decision within a year from the expiry of the probation because of a fault of the convicted person), the offender is deemed not to have been convicted.

² P. Šámal, - F. Púry, - S. Rizman, : The Criminal Code: Commentary, 3rd edition, Prague, C. H. Beck 1998

A suspended prison sentence with supervision under Art. 60a and Art. 60b of the Criminal Code (introduced by amendment to the Criminal Code No. 253/1997 Coll.) differs in that the term of the sentence the serving of which can be conditionally suspended may be a maximum of 3 years (as opposed to 2 years), and also in that concurrently with the suspended sentence the court is obliged to order supervision of the offender. The aim of supervision is to ensure more intensive monitoring of the offender's conduct during the probation period and also provision of necessary care and psychosocial assistance. Reasonable restrictions or reasonable obligations may be imposed on the offender as part of the conditions set for the probation period in order to make him lead an orderly life. As a rule, the court also orders that the offender should endeavour to compensate for the damage he has caused by his crime.

The suspended prison sentence with supervision is a typical form of probation, which facilitates achievement of the purpose of punishment as defined by the Criminal Code, without any severe repression. Just as in other countries of continental Europe, this provision was influenced by the French-Belgian concept of suspending a prison sentence for a probation period during which the convicted person has to observe certain restrictions or comply with certain conditions.

Probation is one of the methods of dealing with an offender, 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 probation period, is also applied to conditional release from prison. Another probation element introduced into Czech criminal legislation is conditional discharge with supervision. The term „supervision“ is used consistently to establish conformity of terminology.

Supervision under Art. 26a means 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 probation period and monitoring adherence to the conditions imposed on the offender by the court or stipulated by the law. The probation officer supervises the offender.

The purpose of supervision is:

- a) monitoring and control of the offender's conduct thereby ensuring the protection of society and diminishing the possibility of his committing further crimes,
- b) professional guidance and assistance provided to the offender to ensure that he leads an orderly life in future.

The offender on whom supervision is imposed is obliged to:

- a) co-operate with the probation officer in the manner set by the probation officer based on his probation programme,
- b) appear before the probation officer on dates set by the probation officer,
- c) inform the probation officer of his residence and job, and observe reasonable measures or obligations imposed on him by the court and other circumstances important for supervision, as set by the probation officer,
- d) 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 informs the presiding judge of the court which imposed supervision of the progress of supervision of the offender, observance of the reasonable restrictions and obligations and his circumstances.

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 or 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.

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 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 centre may also be further structured as required into departments focusing particularly on young accused persons at an age close to the age of a juvenile, or on users of narcotic and psychotropic drugs.

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 punishment may be imposed and completed which is not a sentence of imprisonment, or custody can be substituted by an alternative measure. For this purpose, it provides professional guidance and assistance to the accused, monitors and controls his conduct and co-operates with his family and the social environment in which he lives and works so that he can lead an orderly life in the future. Probation for the purpose of this law means organisation and supervision of an accused, charged or convicted person (hereinafter the „accused“), checking on the serving of sentences which do not involve imprisonment, including the obligations and restrictions imposed, monitoring the conduct of the convicted person during the probation period of conditional release from prison, individual assistance to the accused and guiding him towards an orderly life, and compliance with the conditions imposed on him by the court or the public prosecutor, thereby redressing disturbed legal and social relations. Mediation means out-of-court action to settle a 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.

Probation and mediation work involves the following in particular (Art. 4):

- obtaining data on the accused and his family and social background
- 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
- supervision of the accused person's conduct in cases when it was decided to replace custody by probation supervision
- supervision of the accused person's conduct in cases when supervision was imposed, monitoring and control of the accused during the probation period, control of the serving of other punishment not involving imprisonment, including community service, monitoring compliance with protective measures

- monitoring and control of the accused person's conduct during the probation 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.

9. The Prison System and After-care

9.1. Organisation of the Prison System

The Prison Service of the Czech Republic (Act No. 555/1992 Coll., which was amended by Act No. 460/2000 Coll. defining the status and tasks of the Prison Service), administers the prison system. The Prison Service is a department of the Ministry of Justice. The Minister of Justice manages the Prison Service through a Director General whom he 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, detention centres (for custody) and prisons (for imprisonment). Individual prisons, i.e. facilities for custody and imprisonment, are established and abolished by the Minister of Justice. The head of each prison is the director appointed and recalled by the Director General of the Prison Service.

The Prison Service also has a separate organisational unit called the Institute of Education, which organises the 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 appropriate resocialisation programmes it influences the persons serving a term of imprisonment so that the punishment served will have a positive effect on their 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).

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

The Prison Service is divided into the 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 detainees and inmates, whereas justice guards maintain order and safety in court buildings, public prosecutor's office buildings and in the buildings of the Ministry of Justice. The administrative service handles the organisational, economic, educational and other specialist activities in the prison system, including medical service.

9.2. Act No. 169/1999 Coll. regulates prison sentences. Under this act (Art. 2) a sentence or penalty may only be enforced in a manner which respects the personal dignity of the convicted person and limits the harmful effects of imprisonment; however, it may not endanger the required protection of society. The 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.

When received at a prison, the convicted person must be demonstrably familiarised with his rights and duties under this law and other procedures (these are the Prison Sentence Rules issued by the Ministry of Justice and the internal rules of individual prisons).

Prisoners are placed in cells and the men are always separated from the women. As a rule, juvenile prisoners are also separated from adult inmates, repeated offenders from those convicted and serving a sentence for the first time, those convicted for intentional crimes from those convicted of crimes through negligence. Prisoners with mental or behavioural disorders are also situated separately, as well as certain other groups of convicted persons requiring special treatment. A special group is formed of prisoners serving life sentences. They are placed in specially allocated areas of selected maximum security prisons.

In practice these prisoner placement rules are met depending on the accommodation space available in each prison. In situations when 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 prisoner“ 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 the convicted in groups of prisoners. A long-term problem is also the overall lack of space for prisoners, their leisure activities and the needs of the prison staff.

The Prison Sentence Act guarantees the rights of prisoners and the scope of these complies with the European Prison Rules and other international documents (the UN Human Rights Convention and so on).

Prisons create conditions for assigning work to prisoners either in their own workshops or in manufacturing centres, or in external companies. The prisoner's written consent is required in order for him to work for a company which is not run by the state (e.g. for a private firm). The prisoner may withdraw his 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.

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. A government decree sets out in detail the conditions for the remuneration of prisoners 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 convicted. Total deductions may not exceed 86% of the net wage. The remainder of the wage is the prisoner's pocket money (12%) and any amount left over is deposited on his personal account the in prison. If a disciplinary penalty is imposed, the pocket money may be reduced.

A persistent problem is the lack of job opportunities for prisoners. Only about 50% can be assigned work.

Prisoners are provided with regular meals, while consideration is given to 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 prisoner.

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 suitable for the weather conditions and sufficient to protect their health. Prisoners have a right to medical care and treatment. In the event of illness or injury, they may be put in the Prison Hospital; in extreme cases a prisoner's sentence may be discontinued for a necessary period to be spent in hospital or for treatment outside prison. At their own request and if prison conditions permit, female prisoners can keep their children, usually up to the age of three, so they may look after them while serving their sentence. So far this has been applied only rarely in practice.

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 lawyer or between the prisoner and state authorities (this also applies to foreign consulates or international organisations).

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. Here a prisoner may be allowed undisturbed personal contact with his wife during the course of the visit.

Prisoners are also ensured the right to religious services and other 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 (and non-governmental and charity organisations too) to provide prisoners with social services or other forms of charity to help prepare prisoners for their future independent life when released.

Prisoners 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 to satisfy their cultural needs.

A prisoner 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 prisoner can freely spend. If a prisoner is sent money, it is transferred to his 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 birthday and Christmas. The Prison Service officers check the parcels. 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 prisoners 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. Prisoners may be allowed a higher form of study. Prisoners serving a sentence in a low security prison (with supervision, 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 his rights and justified interests, the prisoner 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 sentence may be interrupted for up to 20 days during a calendar year. A prisoner may have his sentence interrupted for up to 10 days for serious family reasons and a sentence may also

be interrupted for an essential 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 a prisoner injures himself intentionally and treatment had to be provided immediately 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. (amended by several provisions in 2000). 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 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. He is entitled to visit all places where prison sentences are served at any time, inspect prison documents, talk to the prisoners 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. He may also order the 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. A convicted person may only be taken into a prison on the basis of a written court order.

A sentence of imprisonment is served in prisons which are divided in accordance with the method of external guarding and security into four basic types as follows:

- with supervision
- with control
- with security
- with stricter security

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 kind of prison the convicted will serve his sentence. As a rule, the court sends to a prison with supervision any offender who has been sentenced for a crime of negligence and who has never been sentenced before for an intentional crime. In principle, it will send to a prison with control an offender who has committed a crime of negligence and has served a sentence of imprisonment before for an intentional crime, or an offender who has been sentenced for an intentional crime for which the maximum term is 2 years. People convicted for intentional crimes are usually sent to a prison with security unless lower-security prisons are considered. Offenders who are sentenced for life, or who have committed a particularly serious crime for which a prison sentence of at least 8 years is imposed, or offenders who committed intentional crimes and have absconded from custody or from a prison in the last 5 years are placed in prisons with stricter security.

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 believes that the transfer will contribute to achieving the purpose of punishment. The convicted may make an application himself 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 will be prosecuted for the crime of obstructing the enforcement of an official decision (Art. 171 of the Criminal Code) and may be sentenced to prison for up to 5 years or fined.

There are 35 prisons in the Czech Republic (including custodial prisons); 4 prisons have a capacity of more than 1000 places for prisoners, while the capacity of most prisons is 300 to 600 places. 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 being served.

Foreigners account for about 10% of those convicted serving a term of imprisonment in Czech prisons. About 20% of accused persons held in custody are foreigners. The majority of the foreigners are from Slovakia, Ukraine, Belarus, Moldavia and the former Yugoslavia, as well as Vietnam and some Arab countries, and from Poland and Germany.

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 1st August 1992). Convicted persons may also be extradited on the basis of bilateral agreements on legal force which the Czech Republic concluded with several 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 prisoner has served half of the sentence and proved by his behaviour and observance of his duties that he has reformed sufficiently to be expected to live an orderly life in future, the court may release him on parole. The court may also conditionally release a prisoner eligible for the aforementioned reasons and will accept a guarantee provided by a civic association that his reform will be completed. A civic association for this purpose is understood to mean particularly a trade union or other social organisations, work teams and the church, with the exception of political parties and movements. These associations may propose to the court that they are prepared to undertake to guarantee reform of the convicted person, if there are preconditions that a team effort will have a positive effect on him.

Persons who are sentenced for serious crimes, an exhaustive list of which is given in the law, may be conditionally released only after serving two-thirds of their sentence. 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 prison; some people rightly argue that parole is actually counterproductive to the purpose of life imprisonment, others point out that even life prisoners should be allowed to live in the hope that there is a chance of release, which may positively motivate their behaviour in prison.

The court sets a probation period for parole of between 1 and 7 years. The court may impose reasonable restrictions and obligations on a person on parole, such as anti-drug addiction treatment, training to acquire work skills or attendance social training and re-education programmes, refraining from visiting unsuitable places and so on. The court may also impose supervision of the paroled prisoner. Supervision means regular personal contact between the paroled prisoner and his probation officer. The purpose of supervision is to monitor and control the behaviour of the person on parole, checking whether he is complying with the conditions imposed by the court, professional guidance and assistance provided to the person on parole to help him live an orderly life.

If a person on parole lives an orderly life and complies with the conditions imposed on him, the court will rule that he has proved himself, otherwise it will decide, and may do so even during the probation period, that he will serve the remainder of his sentence.

Under Article 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 own or request the Minister of Justice for an investigation and opinion. However the Minister himself may not decide on a pardon and if he believes that there are reasons for granting pardon, he will submit to the President an application setting out his standpoint. The President decides when the Minister of Justice may deal with the application for a pardon himself 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, 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 him. 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 1st 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 are entrusted with the care of released prisoners. They operate within the local authorities and look after people who have been unable to adjust to society. There are also parole officers who specialise in dealing with juveniles. Upon release from prison, the convicted person is instructed to contact his parole officer, who will help him 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, prisoners 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 should be noted 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 Czech Republic's legal system has been significantly marked by the socio-political changes 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 walks of life. Inevitably, these events influenced the nature of the legal system and its overall reform is regarded as essential.

The current Criminal Code no. 140 of 1961 was repeatedly amended 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. As a consequence, the current Criminal Code and Criminal Procedure Code is not in conformity with the changing realities of society, inadequately ensures the protection of freedoms and rights of the individual and contributes to the stability of society only to a limited extent. It is therefore generally acknowledged that it is 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 state prosecutors, legislation staff of the Ministry of Justice and the Ministry of the Interior, and further agencies and institutions, including officials engaged in the field of criminal law. 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 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 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 procedure 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 is to complete the re-codification work within a reasonable period of time, which is considered to be around the time the Czech Republic is accepted as a member of the EU. There are clearly several reasons for the legal system of the Czech Republic to be brought into conformity with the system of other member countries and the *acquis communautaire* before the country joins the European structures and be firmly established both in its concept and application in practice.

At the beginning of 2000, an international scientific conference was held to discuss the „Concept of the New Codification of criminal law of the Czech Republic“ as elaborated by the commission.³ The Draft Concept was also presented for comments to home and foreign experts⁴. The Concept was published together with other papers presented at the conference in professional journals⁵.

Thus, 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 were approved by the Czech government on condition that the wording of the new Criminal Code is prepared and presented to the government by the end of 2002 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:

- ensure the full protection of civil rights and freedoms
- ensure the implementation of the criminal policy of a democratic society based on humanitarian principles, directed at social reintegration of offenders, and ensure reasonable satisfaction for crime victims
- achieve greater differentiation and individualisation of criminal liability of individuals and the legal consequences of this liability and also enable, under strictly defined conditions, to define the criminal liability of legal entities
- provide comprehensive legislation for the protection of juveniles by interlinking criminal juvenile law with other relevant areas of the legal system
- change 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
- consistent removal of all relics of the non-democratic concept of the function and purpose of the Criminal Code and ensuring there is no ideological continuity with the legal system of the totalitarian period

³ P.Šámal, Z.Karabec: "On the concept of the re-codification of criminal substantive law". *Právník* (Lawyer's Magazine) no.4/2000, pages 321-357

⁴ Specialist opinion prepared 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).

⁵ „Concept of the new codification of the criminal substantive law of the Czech Republic“. *Acta Universitatis Brunensis, Juridica*, no. 246, Masaryk University in Brno, 2000, 255 pages.

- achieve 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 most important proposed changes to the Criminal Code are in particular:

- introduction of the formal concept of a crime (to replace the current material concept),
- binary categorisation of indictable offences into crimes and transgressions (the current concept of a single category of offence will be abandoned). This categorisation will also form the foundation for various types of criminal procedure, i.e. simplified proceedings, diversions and alternative approaches to transgressions will prevail,
- circumstances excluding illegality will be extended to include „consent of the injured party“, however this circumstance will not apply to cases of euthanasia,
- „admissible risk in production and research“ will be included in the circumstances excluding illegality,
- introduction of criminal liability of legal entities,
- 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.

It should be noted that the new codification of criminal procedural law was developed in parallel with the concept of criminal substantive law. 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 1st January 2002. This amendment realises 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 re-codification 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. 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 prisons are becoming overcrowded, the deterrent effect of a sentence of imprisonment is insufficient and does not result in the reform and re-socialisation of prisoners. It is obvious that

- therapeutic re-education programmes may not 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. Appropriate legislative provisions should therefore be adopted to achieve these expected results. Of considerable assistance in this respect are various recommendations and resolutions of the respective bodies of the Council of Europe aiming at wide ranging introduction of community sanctions.

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 often displays repressive attitudes and 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 service⁶ 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
- 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 1999, a total of 672 prison sentences were imposed from 5 to 15 years, i.e. 4.4% of the total number of all sentences imposed, a total of 11 exceptional sentences from 15 to 25 years and 4 life sentences.

⁶ As a part of this survey, 335 court files and decisions were analysed concerning the sentencing of community service according to Art. 45 – 45a of the Criminal Code; in total 669 judges, state prosecutors and probation officers were asked to present their opinions on the key issues of the legislation and application of this sanction.

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-education and re-socialisation function of imprisonment is limited. Consequently, empirical criminological research focuses on the undesirable effects of long-term imprisonment.

In general, increases in sanctions are not envisaged, and instead it will be an issue of 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.

Further hitherto unused sanctions are to be incorporated into the new Criminal Code, in particular house arrest, including the future possibility of electronic monitoring for this type of sanction. The range of community sanctions is also expected to be extended, with different enforcement regimes and varying intensities of restriction and isolation, such as weekend sanctions and different forms of detention.

Further sanctions are proposed in conjunction with the debate on the introduction of corporate liability, 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.

In view of the social harm caused by some forms of crime, such as drug-related crimes, racially motivated crimes, organised crime, serious economic crimes and so on, state prosecution tends to recommend more severe sentences for these crimes. Within the context of the reform, it is envisaged that the maximum term of imprisonment will be increased from the current 15 years to 20 years. This would establish a sufficiently broad framework for appropriate differentiation between sentences for the most serious crimes.

10.4. It is evident that there is growing interest in the situation of crime victims in the Czech Republic. The adopted concept of the new codification of criminal law expressly stipulates enhanced protection and assistance for victims as one of the objectives of the reform. It should be noted that non-governmental organisations are also actively involved, 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 to victims of domestic violence which often meet the criteria of a crime.

A court decision on compensation for loss which is classified as **damage to property** may, under Arts. 228 and 229 of the Criminal Code, be made even during the course of criminal proceedings.

The important Financial Assistance to Victims of Crime Act No. 209/1997 Coll. came into effect as of 1st 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. Aid is also provided to citizens of the Czech Republic or to stateless persons with a permanent or long-term residence permit in the Czech Republic; foreigners may receive such aid on the basis of an international treaty. As of 1st January 2002, one-off lump sums were increased to

CZK 25,000. In justified cases, for instance in view of the limited capability of earning an income in the future, a further sum of up to CZK 150,000 may be provided.

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. The victim is obliged to return the money to the Ministry of Justice account within five years of the provision of financial assistance. 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 money.

There are further legislative provisions for securing assistance to crime victims. These are mainly „out-of-court-settlements“ (*narovnání*) under Arts. 309 - 314 of the Criminal Code. Under this provision the court and, in criminal proceedings, the state prosecutor, may stay criminal proceedings with the consent of the accused and the injured party for a crime for which a term of imprisonment may be imposed of up to 5 years 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 for crime victims). The general trend toward 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 awareness of the situation into which he has brought his victim by his crime and endeavours to rectify the damage caused. Additional provisions for a wider use of mediation are set out in Act No. 257/2000 Coll., which came into effect as of 1st January 2001, and established the Probation and Mediation Service in the Czech Republic. Mediation for the purpose of this law means out-of-court mediation to settle disputes and conflicts between the accused and the injured party in conjunction with criminal proceedings.

There are also further options of imposing sanctions connected with probation supervision under Art. 26a of the Criminal Code. Alternative sanctions usually include the obligation of the accused to endeavour to compensate for the damage during the probation period. The probation officer's supervision of the convicted person's behaviour and adherence to the imposed obligations and restrictions during the probation period may also contribute to securing compensation for damage more effectively and rectification of the harm caused to the crime victim.

The same applies to alternative sanctions, particularly community service, under Arts. 245 - 245a of the Criminal Code.

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 from 1993 to 2001. 1993 was chosen as the baseline because of the splitting up of the Czech and Slovak Federal Republic and the establishment of the Czech Republic as of 1st January 1993. The relevant crime indicators were monitored regarding crime in general as well as the specific crimes of murder, robbery, intentional assault and theft. Data has also been included on punishment as well as the length of prison sentences imposed. Data on the prison population is given for individual convicted persons and for the total prison population including the accused in custody. 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 –Total Crimes:

Year	Crimes registered	Crimes cleared up	Cleared up in %	Persons prosecuted	Persons charged	Persons convicted
1993	398,505	126,442	31.72	82,575	57,917	35,157
1994	372,427	136,935	36.76	85,929	65,139	51,931
1995	375,630	151,842	40.42	108,680	84,066	54,957
1996	394,267	162,929	41.32	109,204	85,347	57,974
1997	403,654	169,177	41.90	108,275	84,066	59,777
1998	425,930	185,093	43.46	106,488	73,905	54,083
1999	426,626	193,354	45.32	107,879	84,973	69,594
2000	391,469	172,245	43.99	110,808	86,074	63,211
2001	358,577	166,827	46.52	110,461	84,855	60,182

The table also includes transgressions in 1993 and 1994 prosecuted under Act No. 150/1969 Coll. (9 people were convicted in 1993, 1 person in 1994). In the following years there were no convictions for transgression. The category of transgression was abolished as of 1st July 1990.

When assessing data on crimes and the sentences imposed, it should be borne in mind that there were two presidential amnesties in the Czech Republic during these nine years. These were the President's Amnesty Decision No. 56/1993 Coll. of 3rd February 1993, and the President's Amnesty Decision No. 20/1998 Coll. of 3rd February 1998. On assuming office, the President ordered that criminal proceedings should not be initiated for certain crimes committed prior to the date of the decision or that they should be ceased, and pardoned certain sentences imposed, which is reflected, inter alia, in the statistics presented (see for example the significant drop in the number of people charged and convicted in 1998).

The data indicate that the last two years were marked by a positive trend in the decrease of the number of crimes and an increase in crimes cleared up. However some experts point out in this respect that this phenomenon may be caused by changes or inaccuracies in the way the police record their statistics. Moreover, the greatest fall in the number of crimes is shown for those types of crime which are generally characterised by high latency. The decreasing number of convicted persons in the last two years with the stagnating number of persons prosecuted may be regarded, inter alia, as a sign of the tendency towards alternative methods of handling cases.

In order to derive a correct assessment of the below given data on individual crimes, it should be noted that in the period under survey there was no legislative change to the classification of the selected crimes in the Criminal Code which in itself would have accounted for any significant change to these statistical data.

Table 2 – Crimes of Murder (including attempts):

Year	Crimes registered	Crimes cleared up	Cleared up in %	Persons prosecuted	Persons charged	Persons convicted
1993	278	229	82.37	223	177	103

1994	286	237	82.87	261	222	102
1995	277	239	86.28	290	254	134
1996	267	226	84.64	225	197	203
1997	291	252	86.60	272	221	168
1998	313	272	86.90	281	247	188
1999	265	236	89.06	288	237	182
2000	279	228	81.72	240	201	163
2001	234	201	85.90	224	186	144

Table 3 –Crimes of Robbery:

Year	Crimes registered	Crimes cleared up	Cleared up in %	Persons prosecuted	Persons charged	Persons convicted
1993	4,109	1,530	37.24	2,175	1,688	878
1994	3,826	1,767	46.18	2,265	1,874	989
1995	3,978	1,752	44.04	2,706	2,369	1,202
1996	4,218	1,965	46.59	2,673	2,355	1,418
1997	4,751	2,006	42.22	2,655	2,313	1,351
1998	4,306	1,861	43.22	2,590	2,236	1,619
1999	4,817	1,900	39.44	2,400	2,058	1,490
2000	4,644	1,811	39.00	2,294	1,999	1,427
2001	4,372	1,813	41.47	2,326	1,999	1,287

Table 4 – Crimes of Bodily Harm (only intentional – Arts. 221 and 222 of the Criminal Code):

Year	Crimes registered	Crimes cleared up	Cleared up in %	Persons prosecuted	Persons charged	Persons convicted
1993	8,003	6,299	78.71	5,798	4,192	1,784
1994	7,293	5,838	80.05	6,036	4,494	2,501
1995	8,007	6,590	82.30	6,913	5,555	2,261
1996	7,787	6,585	84.56	6,939	5,698	2,578
1997	7,654	6,618	86.46	6,658	5,436	3,055
1998	7,943	6,997	88.09	5,783	3,345	2,116
1999	7,390	6,599	89.30	5,685	4,664	2,615
2000	7,194	6,466	89.88	5,754	4,740	2,804
2001	7,065	6,347	89.84	5,645	4,675	2,852

Table 5 – Crimes of Theft:

Year	Crimes registered	Crimes cleared up	Cleared up in %	Persons prosecuted	Persons charged	Persons convicted
1993	304,257	56,707	18.64	36,259	27,244	13,786
1994	280,758	57,745	20.57	35,176	27,933	17,651
1995	267,247	62,925	23.55	42,399	35,393	17,545
1996	274,397	63,212	23.04	40,671	34,107	17,531

1997	275,812	62,620	22.70	37,809	31,596	17,890
1998	281,955	62,703	22.24	36,312	26,792	15,473
1999	269,972	60,302	22.34	32,850	27,669	17,029
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

As regards the crime of theft, it will be of interest to monitor the further development of statistics, inter alia in view of the change in legislation as of 1st January 2002, when the limit of damage caused, which is one of the alternative characteristics of the facts of the case of a crime of theft, was increased from CZK 2,000 to CZK 5,000, i.e. two and a half times higher.

Table 6 - Sentences:

Year	Total	Imprisonment	Suspended	Fine	Community service	Other sentences	Discharge
1993	35,157	8,244	20,201	4,591	-	339	1,782
1994	51,931	11,126	33,554	5,648	-	427	1,176
1995	54,957	12,552	35,724	4,978	-	471	1,232
1996	57,974	13,375	37,020	4,734	725	427	1,693
1997	59,777	13,933	37,190	4,703	1,600	488	1,863
1998	54,083	14,656	33,059	2,634	1,776	372	1,586
1999	62,594	15,340	38,188	3,370	3,215	707	1,774
2000	63,211	14,114	35,617	3,571	7,084	754	2,071
2001	60,182	12,533	32,817	3,324	8,835	589	2,084

The figures in this table for 1993 and 1994 include sentences under the Transgressions Act No. 150/1969 Coll. (9 cases in 1993, 1 case in 1994). No such sentences were imposed in the following years.

The community service sentence was incorporated in the Criminal Code as of 1st 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.

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
1993	8,244	4,290	3,635	307	12	0
1994	11,126	6,606	4,117	394	8	1
1995	12,552	7,722	4,312	506	12	0
1996	13,375	8,289	4,501	553	28	4
1997	13,933	8,756	4,560	587	26	4
1998	14,656	8,987	4,951	700	17	1
1999	15,340	9,925	4,728	672	11	4
2000	14,114	9,365	4,125	603	15	2
2001	12,533	8,407	3,563	547	15	1

Table 8 – Persons convicted and serving a sentence as of 31st December of the year in question:

Year	Number of prisoners	No. of prisoners per 100,000 inhabitants	Male prisoners	Female prisoners
1993	8,759	84.8	8,483	276
1994	9,925	96.0	9,616	309
1995	11,508	111.4	11,103	405
1996	12,973	125.8	12,530	443
1997	13,824	134.2	13,347	477
1998	14,942	145.1	14,423	519
1999	16,126	156.9	15,510	616
2000	15,571	151.6	14,966	605
2001	14,737	143.3	14,190	547

Table 9 – Prison population (including accused in custody) as of 31st December of the year in question:

Year	Number of prisoners	No. of prisoners per 100,000 population	Male prisoners	Female prisoners
1994	18,753	181.4	18,133	620
1995	19,508	188.8	18,816	692
1996	20,860	202.2	20,092	768
1997	21,560	209.2	20,760	800
1998	22,067	214.3	21,202	865
1999	23,060	224.3	22,076	984
2000	21,538	209.7	20,570	968
2001	19,320	187.8	18,531	789

Table 10 – Ratio of juveniles convicted to total persons convicted

Year	Total number of persons convicted	Number of juveniles convicted	%
1989	57,743	5,378	9.3
1990	18,871	2,256	12.0
1991	27,964	3,500	12.5
1992	31,032	4,169	13.4
1993	35,157	5,200	14.8
1994	51,931	6,034	11.6
1995	54,957	6,192	11.3
1996	57,974	6,239	10.8
1997	59,777	6,423	10.7
1998	54,083	4,615	8.5
1999	62,594	4,721	7.5
2000	63,211	4,252	6.7
2001	60,182	3,912	6.5

Throughout the 1990s, criminal courts mostly imposed suspended sentences on juveniles, in about 70% of cases every year. The sentence of imprisonment was imposed on 12% to 14% of convicted juveniles. As compared with the 1980s, there was also a drop in the ratio of short-term prison sentences of up to one year. The ratio of convicted juveniles to the total number of convicted persons was highest in 1993, when they accounted for almost fifteen percent of all convicted persons. Since then up to 2001, the percentage ratio has fallen by half with a clearly downward trend particularly in the last four years.

Table 11 – Crimes Committed by Children and Young People in the Czech Republic

CR	1990	1991	1992	1993	1994	1995
Total no. of Crimes	216,852	282,998	345,205	398,505	372,427	375,630
of which:						
Children	4,146	5,939	7,093	8,280	8,053	10,322
Juveniles	11,407	15,952	15,952	21,074	22,160	22,310

CR	1996	1997	1998	1999	2000	2001
Total no. of Crimes	394,267	403,654	425,930	426,626	391,469	358,577
of which:						
Children	12,059	12,086	11,999	12,464	10,216	9,926
Juveniles	22,719	19,139	16,730	14,920	13,507	12,913

We may state that the crime rate among children and juveniles reflects changes in the crimes committed by the adult population. In the context of the overall development, it was one of the most dramatically increasing areas of crime up to 1998. In 2000, child crime fell by 18% and juvenile crime by 9.5%. The downward trend continued in 2001, when child crime fell beneath the level of 1995 and juvenile crime approached the figures of 1990. Predominant are property-related crimes.

11.2. The Criminology and Social Prevention Institute has carried out several research studies on 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 easily overcome if the legislation regarding the new legal procedures is appropriately drafted and its application well organised.

A comprehensive research study on the effects of transformation of criminal legislation to reflect the crime situation and enhance efficiency of the judicial system (2001) draws 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).

12. Bibliography

General References to Crime and Criminal Justice in the Czech Republic

Pavel Šámal: *Základní zásady trestního řízení v demokratickém systému*, Praha : MS/SEVT a.s. 1992 - 256 pages
[Fundamental principles of criminal proceedings in a democratic system]
SEVT 98 631 0

Eduard Vlček: *Dějiny trestního práva v českých zemích a v Československu*, Brno: Masarykova univerzita 1993 - 67 pages
[History of Criminal Law in the Czech Lands and Czechoslovakia]
ISBN 80-210-0791-5

Petr Janda, et al: *Stručný úvod do problematiky práva*, Praha: IKSP 1994 - 88 pages (in English)
[Brief introduction to the problems of law]

Vladimír Kratochvíl: *Trestněprávní reforma v České republice*, Brno, Masarykova univerzita 1994 - 211 pages
[Criminal Law Reform in the Czech Republic]
ISBN 80-210-1013-4

Pavel Šámal, et al: *Trestní řád : Komentář*, Praha: C.H.Beck/SEVT 1995 – 1,439 pages
[Criminal Procedure Code: Commentary]
ISBN 80-7179-027-3

Koncepce nové kodifikace trestního práva hmotného České republiky: Sborník příspěvků z mezinárodní konference konané dne 17.4.2000 na MS ČR v Praze, Brno: Masarykova univerzita 2000 - 256 pages
[Concept of the new codification of criminal substantive law in the Czech Republic: Collection of papers from an international conference held on 17th April 2000 at the Ministry of Justice in Prague]
ISBN 80-210-2469-0

Alena Marešová, et al: *Kriminalita v roce 2000: Sborník statí pracovníků IKSP a časové řady vybraných ukazatelů kriminality*, Praha: IKSP 2001 - 135 pages (with a summary in English)
[Criminality in 2000: Collection of papers by IKSP workers and the time sequences of selected criminality indicators]
ISBN 80-86008-96-7

Jan Vůjtěch, et al: *Účinky transformace trestního zákonodárství na stav kriminality a zvyšování efektivnosti justice ve vztahu k bezpečnosti občanů ČR v horizontu roku 2000: Závěrečná zpráva k projektu RC96*, Praha, IKSP 2001 - 193 pages

[Effects of the transformation of criminal legislation on the state of criminality and enhancing the efficiency of justice in relation to the safety of the citizens of the Czech Republic in 2000: Concluding Report to the RC96 Project]

ISBN 80-86008-86-X

Pavel Šámal, František Púry, Stanislav Rizman: *Trestní zákon: Komentář*, Praha: C.H.Beck 2001 – 1,482 pages

[The Criminal Code: Commentary]

ISBN 80-7179-670-8

APPENDIX

1. Demographic issues

- 1.1. What is the *total population* as of 1 January 19 ----?
- 1.2. What is the *minimum age of criminal responsibility*? Is this an absolute limit, or are courts allowed discretion on a case-by case basis? What is the total population that has reached this minimum age?
- 1.3. What is the age at which *full (adult) criminal responsibility* is reached? What is the total population that has reached this age?
- 1.4. What is the total number of *non-natives* (aliens) as of 1 January 19 ---?
- 1.5. What are the most important *nationalities* represented among these non-natives?
- 1.6. What proportion of the population lives in *urbanized areas*? (What is the definition of urbanized areas used in your country?)
- 1.7. How many people are *employed*? What percentage of the employed are male? How large is the unemployment rate?

2. Criminal law statutes

- 2.1. Please provide a brief history of your *Penal Code*. When was it enacted? Has it been influenced by foreign Penal Codes and, if so, by which? What have been the major reforms of the Penal Code since 1945?
- 2.2. In what languages has the Penal Code been officially published? What translations are available (English, French, German, Spanish, Russian, other)?

Please provide the bibliographical references and, if available, the international standard book number (ISBN).

2.3. What *other main statutes* contain definitions of criminal offences, such as narcotics offences, traffic offences, environmental offences or economic offences? Please list these statutes, with their date of enactment and describe in brief their content. Should violation of these statutes be deemed an administrative infraction or transgression, please note this.

3. Procedural law statutes

3.1. Please provide a brief history of your *Code of (Criminal) Procedure*. When was it enacted? Has it been influenced by foreign procedural codes and, if so, by which? What have been the major reforms of the Code since 1945?

3.2. In what languages has the Procedural Code been officially published? What translations are available (English, French, German, Spanish, Russian, other)? Please provide the bibliographical references and, if available, the international standard book number.

3.3. What *other main statutes* contain provisions on criminal procedure? Please list these statutes, with their date of enactment and describe in brief their content. If your country has a system of administrative penal offences, please refer also to the statute which contains the applicable procedural provisions.

Is there a special statute on juvenile offenders? Please give the date of enactment and describe in brief its content.

4. The court system and the enforcement of criminal justice

4.1. Please provide a brief history of the statute on the *organization of the court system* (if separate from the Code of Procedure). When was it enacted? What have been the major reforms of this statute since 1945?

4.2. In what languages has this statute been officially published? What translations are available (English, French, German, Spanish, Russian, other). Please provide the bibliographical references and, if available, the international standard book number.

4.3. What *other main statutes* contain provisions on the organization of the court system? Please list these statutes, with their date of enactment and describe in brief their content.

4.4. What statutes contain provisions on the *organization of the police, the bar, and the prison and probation agency*?

4.5. Is there a special statute on criminal procedure in the case of juvenile offenders?
Please give the date of enactment and describe in brief its content.

5. The fundamental principles of criminal law and procedure

5.1. Is the *principle of legality* established in the Penal Code? If so, please annex an English translation of the relevant provision.

5.2. What *division of offences* (e.g. crime/delict/contravention or *Vegrehen/Verbrechen*) is made by the Penal Code, and on what criteria is this division based? Is the same division used in other criminal law statutes as well and, if not, what divisions are used?

5.3. What are the *minimum and maximum ages* at which an offender is dealt with as a juvenile? What is the minimum age at which an offender is dealt with as an adult offender?

5.4. Is *strict liability* ⁷ for certain offences or categories of offences recognized in the Penal Code? If yes, for which offences?

5.5. Is strict liability for certain offences or categories of offences recognized elsewhere in criminal law? If yes, for which offences?

5.6. Is criminal responsibility restricted to individuals, or can also groups of persons be held responsible („*corporate responsibility*“)?

5.7. What grounds for *justification* are expressed in the Penal Code? Apart from these written grounds, are other grounds recognized in case law?

5.8. What *time limits* bar prosecution of criminal offences?

5.9. Is the Penal Code divided into a *general part* and a *special part*? If not, is another division used? In order to provide an overview of the contents of the Penal Code, please append a table of contents that provides the titles of parts and chapters of the Penal Code.

5.10. Please provide an English translation of the *legal definition of* (a) murder, (b) intentional homicide, (c) robbery, (d) (ordinary, simple) assault, and (e) (ordinary, simple) theft. What *aggravating circumstances* are mentioned in the Penal Code in the cases of assault and theft?

6. The organization of the investigation and criminal procedure

6.1. General issues

- 6.1.1. Please describe briefly the main aspects of ordinary criminal procedure (for example, how is the procedure initiated, how is evidence gathered and presented, who is summoned, what is the role of counsel, who has the right to be heard, who presents questions).
- 6.1.2. Does the pre-trial phase have an inquisitorial or an accusatorial character?
- 6.1.3. At what stage is the pre-trial phase deemed to end, and the trial stage to begin?
- 6.1.4. Does the trial phase have an inquisitorial or an accusatorial character?
- 6.1.5. Does your system recognize the role of the examining judge (juge d' instruction, Untersuchungsrichter), and if so, what is the function of the examining judge?
- 6.1.6. Is the Code of Judicial Procedure divided into a *general part* and a *special part*? If not, is another division used? In order to provide an overview of the contents of the Code of Judicial Procedure, please append a table of contents that provides the titles of parts and chapters of the Code.

6.2 Special issues

- 6.2.1. Please describe briefly the stages of apprehension, arrest and pre-trial detention as recognized in your system.
- 6.2.2. What are the legal prerequisites for the application of apprehension / arrest/ pre-trial detention?
- 6.2.3. Who decides on the application of pre-trial detention?
- 6.2.4. Is the maximum term of pre-trial detention determined in law? Is there any trend towards shortening this maximum term?
- 6.2.5. Who may request a review of the decision to hold a suspect in pre-trial detention, and/or does the law prescribe an automatic review of this decision at regular intervals?
- 6.2.6. How is the term of pre-trial detention to be deducted from the sentence?
- 6.2.7. What are the general legal remedies (appeal) against a decision by the court of first instance?
- 6.2.8. May a case be tried in the absence of the defendant?
- 6.2.9. Please describe briefly the main rules of evidence (types of admissible evidence, methods of acquiring evidence and the assessment of evidence).

6.3. The organization of detection and investigation

⁷ Strict liability means that a statute imposes criminal sanctions for an unlawful act without requiring that the criminal intent of the offender be demonstrated.

- 6.3.1 What is the composition and internal organization of the national agency responsible for the detection and investigation of criminal offences?
- 6.3.2 Who supervises and controls this activity?
- 6.3.3 Is this agency subject to written or oral instructions by the prosecution agency in the investigation of specific offences?
- 6.3.4 6.3.4. Do special law enforcement agencies exist for the detection and investigation of (1) traffic offences, (2) narcotics offences, (3) firearms offences, (4) environmental offences, (5) economic offences, or other major offence categories?

6.4. The organization of the prosecution agency

- 6.4.1 What is the composition and internal organization of the national prosecution agency?
- 6.4.2 What are the main duties and powers of the prosecution agency in criminal cases?
- 6.4.3 Is the prosecution agency a dependent or independent body? Are its decisions subject to review by another body? Who is vested with the right to issue directives to the prosecution agency regarding (a) general prosecution policy and (b) prosecution of specific cases?
- 6.4.4 What possibilities exist in your system for the police or the prosecution agency to close a criminal case officially on the basis of, for example, composition, caution or simplified procedure?

6.5 Organization of the courts

- 6.5.1 What is the composition and internal organization of the court system?
- 6.5.2 What courts deal with criminal offences as the first instance and as the appellate level?
- 6.5.3 What are the main rules of jurisdiction?
- 6.5.4 What criminal offences are tried by a full bench and what are tried by a single judge?
- 6.5.5 What forms of participation by laypersons are recognized in your system? What questions are they competent to decide?
- 6.5.6 What is the highest court in criminal matters? Is it competent to review a decision in full, is its review limited to the issues appealed, or is it restricted to controlling due process and the fairness of the procedure?
- 6.5.7 What is the significance of decisions of this highest court as precedents?

6.6 The Bar and legal counsel

- 6.6.1 What are the legal rights of the Bar during the pre-trial stage?
- 6.6.2 Does the suspect have the right to counsel immediately upon apprehension / arrest by the police? Does the suspect have this right during pre-trial detention?
- 6.6.3 Is cost-free legal aid provided to (1) those who are apprehended / arrested by the police, (2) those held in pre-trial detention, and/or (3) those charged with an offence? If so, under what conditions is cost-free legal aid provided?
- 6.6.4 What qualifications must a member of the Bar or legal counsel fulfill?

6.7 The position of the victim

- 6.7.1 Does your system recognize a legal definition of „victim“ („injured person“, „complainant“)?
- 6.7.2 Does the victim have an officially recognized role in pre-trial proceedings, for example in the presentation of evidence or in questioning?
- 6.7.3 Does the victim have legal remedies against a decision of the police or the prosecutor not to proceed with a case?
- 6.7.4 Does the victim have the right to present civil claims in connection with criminal proceedings? Are there any restrictions on this right?
- 6.7.5 Does the victim have the right to present criminal charges and /or to be heard on the charges presented by the public prosecutor?
- 6.7.6 Does the victim have the right to counsel?
- 6.7.7 Does the victim have the right of appeal?
- 6.7.8 Is the victim assisted by the State in claiming compensation from the offender?
- 6.7.9 Does the victim have the right to State compensation for injuries or loss caused by crime? If so, please describe briefly the system used.
- 6.7.10 Does your country have national and / or local victim support schemes? If so, please describe these schemes briefly, including the extent to which they are supported by the State.

7. Sentencing and the system of sanctions

- 7.1 What *classification of sanctions* is given in the Penal Code?
- 7.2 Does the Penal Code distinguish between *punishments and measures* and / or between *principal and additional punishments*?
- 7.3 Does the Penal Code or another statute provide *special sanctions for juveniles*? If so, please describe these provisions.

7.4 Does the Penal Code or another statute provide *special sanctions for civil servants, military personnel or other major groups*?

7.5 Please provide information concerning the provisions on the following *sanctions*:

- capital punishment;
- imprisonment (what is the general minimum and maximum);
- deprivation of liberty for an indeterminate period;
- other forms of detention (what is the general minimum and maximum);
- probation and other measures involving supervision;
- community service;
- compensation orders;
- fines and / or day-fines (what is the general minimum and maximum; how is the size of the day-fine calculated)
- (other)alternatives or substitutes for imprisonment or fine.

7.6 In case of *default of payment of a fine*, may a fine be converted into imprisonment or another sanction? What is the term of such imprisonment, or the severity of such sanction? Who determines the conversion?

7.7 What *measures* (for example withdrawal of license, restriction of rights) may be imposed on adults as a reaction to an offence? In what cases can such measures be imposed, and for how long?

7.8 Does the Penal Code (or other statute) contain general provisions on sentencing? If so, please explain them briefly.

7.9 What general or specific sanctions or measures are used for (1) traffic offences, (2) narcotics offences, (3) firearms offences, (4) environmental offences, and (5) economic offences?

8. Conditional and/or suspended sentence, and probation

8.1 Please describe the basic provisions concerning the conditional and / or suspended sentence.

8.2 For what offences and what sentences may the conditional or suspended sentence be applied?

8.3 May the court impose a sentence that is suspended only in part?

8.4 What general or special conditions may be attached to a conditional or suspended sentence?

8.5 Who supervises compliance with such conditions?

- 8.6 What is the procedure followed if an offender is in breach of a condition, and what are the possible consequences?
- 8.7 What are the main lines of the organization of the probation service on the national and the regional level?
- 8.8 What are the main functions of the probation service?
- 8.9 What is the role of volunteers in probation activities?

9. The prison system and after-care of prisoners

9.1. Organization of the prison system

- 9.1.1 Does the prison administration form part of the Ministry of Justice? If not, under which Ministry does it function?
- 9.1.2 What are the main lines of the organization of the prison administration?
- 9.1.3 Who is responsible for the development of prison policy?
- 9.1.4 Please describe briefly the main legislation on the enforcement of prison sentences and fines, and on the legal position of prisoners.
- 9.1.5 Please describe briefly the prison system in your country (the number, size and classification of prisons; high security, semi-open, open, night prisons etc.).
- 9.1.6 Please describe briefly the juvenile prison system in your country.
- 9.1.7 Who decides on the placement of prisoners in different prisons?
- 9.1.8 Does your system allow more than one prisoner per prison cell?
- 9.1.9 What activities are convicted prisoners and pre-trial detainees required to participate in (prison work, education, other)?
- 9.1.10 Under what conditions can a prisoner work or pursue education outside the prison?
- 9.1.11 Under what conditions can a prisoner be granted a furlough?
- 9.1.12 Is absconding from prison deemed a criminal offence, and if so what is the minimum and maximum penalty imposed?
- 9.1.13 Do your prisons contain any significant minority categories of prisoners (e.g.aliens)?
- 9.1.14 Is your country a contracting party to an international convention on the transfer of prisoners to their home country in order to serve a prison sentence imposed by a judge abroad?

9.2. Conditional release (parole), pardon and after-care

- 9.2.1 Please describe the basic provisions concerning conditional release (parole).
- 9.2.2 Under what legal conditions may a prisoner be released conditionally, and what is the minimum term to be served?
- 9.2.3 What general or special conditions may be attached to conditional release?
- 9.2.4 Who decides on conditional release?
- 9.2.5 Who supervises compliance with the conditions?
- 9.2.6 What is the procedure followed if an offender is in breach of a condition, and what are the possible consequences?
- 9.2.7 Which person or agency is empowered to grant pardon or amnesty?
- 9.2.8 Please describe briefly how the after-care of released prisoners is organized in your country.
- 9.2.9 What functions does this organization have (assistance in providing housing and employment, counselling services, etc.)

10. Plans for reform

- 10.1 Are there any major reforms related to the issues dealt with in this questionnaire that are now under discussion and that are planned to come into force during the following five years? If so, please describe briefly the purpose of the reforms, and what agency or committee is preparing the reforms. Please provide bibliographical references if available.
- 10.2 Is there a tendency in your country to reduce the use of imprisonment and/or to expand the use of non-custodial sanctions? If so, please describe briefly the reasons for this tendency and the results achieved.
- 10.3 Is there a tendency in your country to increase sentences for certain offences (e.g. narcotics offences, environmental offences, certain briefly the reasons for this tendency and the results achieved.
- 10.4 Is there a tendency in your country to increase the support provided to victims of offences? If so, please describe briefly the reasons for this tendency and the results achieved.

11. Statistics and research results on crime and criminal justice

Please prepare a short (ca. 3-5 page) summary trends and the operation of criminal justice in your country over the past decade, using available statistics and research results.

Such a summary might include indicators on, for example, the following:

- trends in homicide, robbery, assault and theft (NB question 5.10)
- clearance rate
- number of convicted offenders
- number of different sanctions imposed
- trends in the use of imprisonment and in the total prison population

12. Bibliography

Please provide a list of general references in crime and criminal justice in your country, with particular attention to references available in the major international languages.