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Zdeněk Karabec
Jiří Vlach
Jana Hulmáková et al.

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Authors:
JUDr. Simona Diblíková
JUDr. Jana Hulmáková, Ph.D.
JUDr. Zdeněk Karabec, CSc.
Mgr. Jiří Vlach
JUDr. Petr Zeman, Ph.D.

Reviewed by:
JUDr. Jaromír Hořák, Ph.D. (Faculty of Law of the Charles University Prague)

Translated by:
NK Translators

Technical Editor:
Lucie Černá

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Introduction

The third edition of this paper is being released nearly 7 years after the second edition, i.e. after a relatively long time in which there have been very significant changes of legislation, both in substantive and procedural criminal law. Particularly worth noting is the introduction of criminal liability of legal entities into Czech criminal law, or the significant changes in the position of victims of crime in relation to adoption of the Victims of Crime Act. At the same time, case law has reflected some interpretation problems associated with the legal regulation of the new Criminal Code. Some unintended consequences were also dealt with by amendments to the Criminal Code. The Criminal Procedure Code has similarly undergone certain major amendments. All of which make an update of this paper worthwhile. Its purpose is primarily to provide an up-to-date overview of the Czech criminal law system and the functioning of the criminal justice in the Czech Republic, in particular for legal professionals from abroad. Bearing this in mind, in this edition the paper has undergone certain changes in structure, even though to a large extent its contents remain intact; for more details regarding the structure of this paper see its first edition (Karabec, Diblíková, & Zeman, 2002). The changes primarily concern the organization of the subject matter, ranging from a commentary on substantive-law issues followed by a description of the criminal justice system and criminal proceedings. Emphasis is also given more to contemporary legislation; if a more detailed analysis of the development in the legal regulation of criminal law and organization of the judiciary is required, you should refer to the earlier versions of this paper.

The ICSP (Institute for Criminology and Social Prevention) is publishing the paper Criminal Justice System in the Czech Republic in English as educational material.

JUDr. Jana Hulmáková, Ph.D.

1.

Demographic Data

According to data provided by the Czech Statistical Office,[1] as of December 31, 2016, the Czech Republic had a total population of 10,578,820. As of the same date, the total number of foreigners registered as permanent or temporary residents amounted to 493,441. The most numerous groups of foreigners are citizens of Ukraine (22.3%), Slovakia (21.7%), Vietnam (11.8%), Russia (7.3%), Germany (4.3%) and Poland (4.1%).

Most of the population (approximately 70%) live in towns and cities; however, the boundaries between urban and rural settlements are indistinct, as both types of settlements are merged.[2]

The general unemployment rate in 2016 in the Czech Republic was 3.6%; according to available data there were more than 5 million people employed, approximately 56% of whom were men.

The structure of the population's age composition given the threshold of criminal liability, which begins at the age of 15, is as follows: the number of people aged 15 and above as of December 31, 2016 amounted to 8,931,545 Czech residents; the number of people aged 18 and above (full criminal liability) (for more details see Chapter 3), according to the available data as of December 31, 2016, amounted to 8,657,869.[3]

1 More detailed information is available at: https://www.czso.cz/csu/czso/domov

2 When data for the respective types of municipality (i.e. urban vs. rural) need to be separated, a threshold population – usually 5,000 or 2,000 people – has been set. The Czech Statistical Bureau considers the decisive factor for distinguishing "cities – other towns" to be the legal status of the municipality. According to this status, cities are those municipalities that have been awarded the status of a city according to the applicable legislation, i.e. a municipality exercising the competence of a municipal office or magistrate office. As of January 1, 2017, the overall number of cities in the Czech Republic was 605.

3 Age composition of population in 2016, Czech Statistical Bureau, available at: https://www.czso.cz/csu/czso/vekove-slozeni-obyvatelstva-2016

2.

Criminal Codes

2.1. Evolution of Substantive Criminal Law Legislation

The Czechoslovak Republic became an independent state on October 28, 1918, after the break-up of Austria-Hungary. After the new state was founded, the foremost priority was to determine which laws would come into force in Czechoslovakia. It was decided to adopt substantially the complete legislation previously applied in the former Austria-Hungary. This was formulated in Act of the Czechoslovak Republic no. 11/1918 Coll. (so-called Reception Act) with a view to "maintaining the coherence of the existing legal order with the new situation in order to achieve an uninterrupted transition to the life of the new state." As far as substantive criminal 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 in the Czechoslovak Republic; Hungarian legislation applied only to Slovakia, not to the Czech Lands. This gave rise to a situation where criminal law legislation of different provenance applied in the territory of the Czechoslovak Republic, a situation which lasted for almost the entire existence of Czechoslovakia (up to 1950), and gradual unification of law was achieved only with great difficulty.

In the period before World War II, several drafts and outlines of a new Czechoslovak Criminal Code were prepared, but no overall codification of the new criminal law ever took place. Criminal legislation was somewhat ambiguous due to the applicability of two criminal codes in the Czechoslovak Republic, and the situation became more unclear with the progressive adoption of further criminal law legislation, examples being the Republic Protection Act, Act no. 50/1923 Coll., the Bribery and Official Secrets Violation Act, Act no. 178/1924 Coll. and the Forced Labour Camps and Police Supervision Act, Act no. 102/1929 Coll. The importance of the Juvenile Criminal Judiciary Act, 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 beliefs on the treatment of juvenile offenders and methods for their re-education. The act introduced the term *juvenile* to mean a person between 14 and 18 years of age; younger persons were not held criminally liable for their actions. Criminal cases involving juvenile offenders were handled by specialized judges in the presence of lay associate justices, so-called panels of judges for juveniles (Vlček, 1993, p. 40n.).

With the occupation of Czechoslovakia in World War II, the effects of a democratic legal order were more or less paralysed. Although basic legislation remained formally in force within the so-called Protectorate of Bohemia and Moravia, German criminal law progressively began to apply to Czech citizens to an ever greater extent. The fundamental principles of democratic criminal legislation ceased to be observed, and criminal law was above all used to enforce the interests of the occupying forces. Laws were applied differently according to the nationality, race and political affiliation of prosecuted persons, unreasonably strict sentences were imposed even for minor offences if there was a suspicion of political motivation (Vlček, 1993, p. 40n.).

After the liberation of Czechoslovakia in 1945 and reinstatement of statehood, criminal law returned to the state before World War II, both in form and content. 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.

When the totalitarian regime was imposed in February 1948, a series of changes occurred in Czechoslovak criminal law, accompanied by fundamental infringements of the existing concept of criminal law. At the very beginning of the totalitarian period the Protection of the People's Democratic Republic Act, Act no. 231/1948 Coll., the State Court Act, Act no. 232/1948 Coll. and the Forced Labour Camps Act, Act no. 247/1948 were passed. These laws significantly altered the character of criminal law, which gradually became an instrument of severe repression directed against people opposed to the recent political changes and against entire social classes and groups. However, in principle, the old criminal codes dating back to the Austro-Hungarian era still formed the basis of Czechoslovak criminal law.

To uproot this historical framework the government passed a resolution of July 14, 1948, ordering work to commence on the draft of a new Criminal Code as part of the so-called two-year legal plan. On July 12, 1950 the then National Assembly adopted four new baseline acts of criminal 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.). The Criminal Code was based on the principles of Soviet law and the definition of a crime was exclusively based on the material concept. Single participation (mono-participation) was introduced, i.e. criminal offences subject to judicial proceedings were all described as a criminal offence. The minimum age of criminal liability was set to 15 years. Very often, the elements of crime were formulated loosely and ambiguously to allow for broad interpretation and criminal sanctioning of all forms of conduct against the interests of the state, particularly in the political and economic sphere.

Between 1956 and 1957, certain reforms to the Criminal Code were made in line with changes in the political situation by adopting several additional laws of a substantive legal nature. These involved a certain enhancement of the individual approach to punishment with regard to the offender (Act no. 63/1956 Coll., amending the Criminal Code) and also increased protection of socialist property (Act no. 24/1957 Coll., on Disciplinary Prosecution of Stealing and Damaging Property in Socialist Ownership).

More significant changes in criminal law were made after the adoption of the new Constitution in 1960. The new Criminal Code no. 140/1961 Coll. was brought in, which basically came to form the foundation of criminal law in the Czech Republic for almost 50 years.

This Criminal Code introduced a series of changes to existing criminal law. The 1960 Constitution established local people's courts and Act no. 38/1961 Coll. governed their activity. They were entrusted with passing judgements on less dangerous offences described as "wrongdoings", which were punishable by measures that were primarily educational in nature. Act no. 60/1961 Coll. annulled the existing Criminal Administrative Code, and defined new tasks and powers for the "national committees" (local councils) regarding decisions on misdemeanours and securing 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 violating certain obligations arising from the Act. A new law on execution of prison sentences was also enacted, introducing certain more humane elements in the treatment of convicted persons (Act no. 59/1965 Coll.).

As far as the jurisdiction of local people's courts was concerned, after several years it became evident that these institutions were not meeting the expectations originally held for 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 and at the same time created a new category of criminal offences subject to judicial proceedings, so-called "transgressions" (Jelínek & et al., 2010). The Protective Supervision Act no. 44/1973 Coll. should also 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 oversight of selected categories of released persons, and the original intention of the Act to intensify after-care of the ex-convict remained unfulfilled. The amendment of the Criminal Code effected by Act no. 175/1990 Coll. abolished the Transgressions Act and consequently also the "transgression" category of criminal offences. The previously mentioned Protective Supervision Act no. 44/1973 Coll. was also annulled.

Due to the influence of the social, economic and political changes which took place after the fall of the totalitarian regime in 1989, an urgent need arose to reflect these changes in all areas of law. This occurred through the adoption of a number of partial amendments, which, however, focused chiefly on answering contemporaneous needs caused by the dynamics of crime, and which were only tangential to the conceptual framework of criminal law.[4] Hence the Criminal Code no. 140/1961 Coll. was amended many times during its relatively long existence. Nonetheless, although various distortions of criminal law arising from the Communist ideology and a class concept of criminal law were substantially suppressed or removed, and despite the fact that new alternative sanctions or new elements of criminal offences reflecting the new crime trends were simultaneously provided for, it was no longer possible to postpone a completely new codification of the Czech Republic's criminal law.

Significant modifications both in the conditions of criminal liability and in the area of imposing sanctions on juvenile offenders were enacted in Act no. 218/2003 Coll., the Juvenile Justice Act, which became effective as of January 1, 2004.

As of January 1, 2010 the new *Act no. 40/2009 Coll., the Criminal Code* (hereafter the CC) became effective, which brought in a number of changes to the area of substantive criminal law. This codification is based on recognized and well-proven principles of democratic criminal law (Jelínek & et al., 2010, p. 22n.), including, first and foremost:

- the subsidiary role of criminal law (the *ultima ratio* principle) as a means of last resort for protecting individuals and society,
- that an offender may be found guilty and a criminal sanction may be imposed on them only according to the law (*nullum crimen nulla poena sine lege*),
- the prohibition of retroactive effects of a stricter law,

4 See the Explanatory Memorandum to Act no. 40/2009 Coll.

- the inadmissibility of analogy for extending conditions of criminal liability, sentencing and protective measures, including the terms and conditions for their imposition (prohibition of *analogy in malam partem*),
- individual criminal liability of natural persons 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,[5]
- criminal liability is based on culpability (*nullum crimen sine culpa*),
- the imposition and enforcement of sanctions expresses the adequacy of punishment in relation to the seriousness of the criminal offence and the circumstances of the offender.

These principles are reflected in a number of provisions in the criminal law codes and determine the character of the whole criminal legislation (for more details see Chapter 3 and 4).

The CC has abandoned the material concept of criminal offence,[6] replacing it with a formal-material concept (Šámal, 2009, p. 23). The previous concept of "social dangerousness" has now been substituted by the concept of the "social harmfulness" of an action, relating to the committed act which has affected the interests protected by the Criminal Code and in this sense "harming" them (Šámal & et al., 2012, p. 117). The categorization of criminal offences into felonies (*zločiny*) and transgressions (*přečiny*) has been newly introduced, and this is reflected not only in substantive criminal law, but also in procedural criminal law. It may generally be stated that the new codification is marked by a substantial change in the hierarchy of interests protected by law, which is reflected in the arrangement of the individual sections of the Special Part of the Criminal Code. Criminal law now primarily protects life, health, bodily integrity, personal freedom, inviolability, dignity, esteem, honour, privacy, home and property, as well as other fundamental human rights, freedoms and interests (Šámal, 2009, p. 23). Also enshrined is the new philosophy of imposing criminal sanctions based on the principle of depenalization. Imprisonment is now seen as ultima ratio; in the case of a less serious offence, the court should consider imposing one of the alternative sanctions. A sentence of house arrest and a sentence of prohibition to attend sports, cultural and other social events have been newly introduced. However, at the same time, criminal sanctions have been made more strict e.g. in cases of recidivism or very serious forms of violent crime.

It is worth noting that although the CC has already been repeatedly amended on, these have generally been component changes; worth mentioning are e.g. the option to waive punishment or decrease a sentence below the lower limit in the case of a cooperating accused person (Act no. 193/2012 Coll.), the introduction of the possibility to transform an unsuspended sentence of imprisonment to house arrest, a change in the conditions for conditional release, lowering the terms of imprisonment for *negligence of mandatory support* (especially cases of non-payment of child support) and *obstructing the execution of an official decision and police residence order* (for example obstructing execution of imposed

5 For more details, see Section 8 of Act no. 418/2011 Coll., on Criminal Liability of Legal Entities and Proceedings against Them

6 In the previous legislation this concept was the fundamental and foremost element in determining the character of criminal law.

punishments, administrative punishments, or some other obligations imposed in official decisions or obstructing obligation to temporarily leave the common dwelling in cases of domestic violence imposed by police) (Act no. 390/2012 Coll.), the term terrorist group being newly defined and significant changes in the regulation of elements of crimes associated with terrorism (Act no. 455/2016 Coll.) or the enactment of a new protective measure of forfeiture of a portion of assets (Act no. 55/2017 Coll.), or the reduction in the types of prisons to just high security prisons and maximum security prisons (Act no. 58/2017 Coll.).

A crucial change in criminal substantive law was the introduction of the criminal liability of legal entities by Act no. 418/2011 Coll., which became effective on January 1, 2012. This is a special law in relation to the CC since it specifies conditions of criminal liability and the imposition of sanctions on legal entities.

As of yet, no official translation of the CC into any of the world languages exists. An unofficial translation is available e.g. in the ASPI legal information system.

2.2. Sources of Substantive Criminal Law

For the most part, substantive criminal law is codified in a single Act – *Act no. 40/2009 Coll., the Criminal Code* (CC). also two Acts - Act no. 218/2003 Coll., *on Criminal Liability of Juveniles for Wrongful Acts and on Juvenile Justice and on the Amendment of Certain Acts* (*Juvenile Justice Act*) (hereafter JJA) and Act no. 418/2011 Coll., *on Criminal Liability of Legal Entities and Proceedings against Them* (hereafter Criminal Liability of Legal Entities Act or CLLEA) as a lex specialis to CC.

In terms of domestic legislation, with the exception of Constitutional Acts, in particular the Charter of Fundamental Rights and Freedoms (introduced by the Constitutional Act no. 23/1991 Coll.) and the CC, substantive-law provisions may also be found in other Acts:[7]

At the same time, we need to add that sources of substantive criminal law also include amnesty decisions of the President of the Republic and plenary judgements of the Constitutional Court of the Czech Republic.

The above referred Acts are further specified by secondary legislation (Decrees of the Ministry of Justice etc). Provisions of the CC often refer to non-criminal legislation, the contents of which complete the elements of individual crimes.

Substantive criminal law is also complemented by administrative law legislation, in which sanctions for actions that are less dangerous than criminal offences are defined. These are for the main part *misdemeanours*, laid down in particular in Act no. 250/2016

7 Act no. 184/1964 Coll., which excludes the limitation period 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 World War II), Act no. 169/1999 Coll., on Execution of Imprisonment, Act no. 129/2008 Coll., on Execution of Security Detention and on the Amendment of Certain Acts, 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 against it, the Probation and Mediation Service Act No. 257/2000 Coll. - in each case as amended

Coll., *on Liability for Misdemeanours and Proceedings Thereon* (hereafter LMA) and in Act no. 251/2016 Coll., *on Certain Misdemeanours.* Elements of other misdemeanours and other modifications of liability for misdemeanours and misdemeanour proceedings are further regulated in a number of other Acts. Furthermore, in the area of administrative criminal law we may encounter *administrative disciplinary offences*, *administrative procedural offences* and *administrative offences connected with non-payment of taxes and other similar fees* not covered by the LMA, which are contained in various other legislative acts of administrative law, regulating e.g. disciplinary liability of personnel, disciplinary offences of judges and public prosecutors, administrative proceedings etc.

3.

Foundations of Substantive Criminal Law

3.1. Fundamental Principles of Substantive Criminal Law, Concept and Elements of Criminal Offence

The fundamental principle of substantive criminal law is that only the law shall stipulate which conduct constitutes a crime and what punishment or other sanctions on rights or property may be imposed for its commission – *principle of legality*. It is formulated both in Art. 39 of the Charter, and in Section 12 (1) of the CC. Other general principles are in turn derived from it, e.g. *prohibition of retroactive effects to the detriment of the offender, prohibition of analogy to the detriment of the offender, prohibition of equity law and prohibition of unspecific criminal-law regulations (Šámal et al., 2014, p. 46)*. In the case of natural persons, *the principle of individual liability of natural persons* applies, where individuals are criminally liable only for their own conduct; collective liability or liability for another person's fault is precluded.

In the case of legal entities, *the principle of isolation of criminal liability of legal entities* applies, whereas according to the explanatory report to this Act: "Criminal liability of a legal entity is not precluded solely on the grounds that the natural person who committed the act in question is not criminally liable." Furthermore, the principle of *collective liability of legal entities* arising from Section 9 of the CLLEA and *the principle of parallel individual and collective liability* applies, where criminal liability of a legal entity does not affect criminal liability of natural persons referred to in Section 8 (1) of the CLLEA and criminal liability of such natural persons does not affect criminal liability of the legal entity (Kratochvíl et al., 2012, p. 43). At the same time, the *principle of transfer of criminal liability of a legal entity to all its legal successors* applies. Other important principles of substantive criminal law are referred to below, principles associated with the imposition of sanctions are described in Chapter 4.

According to applicable Czech criminal law, the basis of criminal liability is the commission of a *criminal offence*. The CC divides criminal offences according to the seriousness of punishable conduct into *transgressions* (*přečiny*) and *felonies* (*zločiny*). Transgressions include all negligent criminal offences and those intentional criminal offences for which the Criminal Code stipulates the maximum prison sentence of up to five years. Other criminal offences (i.e. those which the law does not define as transgressions) are felonies. *Particularly serious felonies* are those intentional criminal offences for which the Criminal Code stipulates the maximum prison sentence of at least ten years. A criminal offence committed by a juvenile is called a *wrongdoing* (*provinění*). The definition of a criminal offence can be found in Section 13 (1) of the CC: a criminal offence is an unlawful act which the Criminal Code defines as criminal and which displays the elements listed in this Act. A criminal offence is also understood as *preparation, attempt, organizing, abetting* and *aid*, unless individual provisions of the Criminal Code provide otherwise. Preparation is criminal only for such particularly serious felonies where the CC expressly stipulates it to be the case for the respective criminal offence. Organizing, instigation and aid are criminal only if the perpetrator of the crime to whom the respective criminal participation applies completes the commission of such act or at least attempts to do so – *principle of the accessory nature of accessory*.

As opposed to the previous Criminal Code no. 140/1961 Coll., social dangerousness is not a mandatory condition for the criminality of an act. The new codification is therefore based on the principle of *formal-material concept of criminal offence* (Kratochvíl & et al., 2012).[8] Section 12 (2) of the CC lays down *the principle of subsidiarity of criminal repression*, and the *ultima ratio* principle resulting therefrom. Therefore, the criminal liability of the offender and the penal consequences connected therewith may be applied only in socially harmful cases, when application of liability according to another legal enactment does not suffice. When the level of an act's social harmfulness allows the application of liability according to another legal enactment, the act is not a criminal offence, even though it has the elements of a criminal offence in other respects. In such case, the act is a misdemeanour (*přestupek*) or other administrative minor offence.

For practical reasons, the elements shared by all or most criminal offences are defined in the General Part of the CC so that they need not be repeated in the definitions of all the elements of crimes in the Special Part. The general statutory attributes of a criminal offence are *unlawfulness* and, in the case of natural persons, having reached a certain *age, sanity* and in the case of a juvenile also *intellectual and moral maturity*.

An offender is insane and as such not criminally liable, if due to a mental disorder he could not have recognized the illegal nature of their conduct or control it at the time of committing the act. A similar definition is used for lack of intellectual and moral maturity in the JJA, however, in this case it is not a result of mental disorder, but of the fact that the juvenile has not reached the required degree of intellectual and moral maturity.

In addition to the general attributes, a criminal offence also consists of other characteristics which, however, vary in different criminal offences – *elements of crime*. These elements concern the mandatory object (interest protected by law), *actus reus* (the action, consequence and causality between them), subject (some subject-matters of criminal offences require specific attributes or position of the perpetrator) and *mens rea* (fault). Criminal liability for a criminal offence in the case of the basic subject-matters of criminal offences is constituted by *intentional fault*, unless the CC expressly states that *negligent fault* suffices (Section 13 (2) of the CC). The CC distinguishes two forms of intentional fault: *direct intention* and *indirect intention*. Negligence can be generally defined as follows: by neglecting obligatory caution, the offender has caused an unintended effect. The CC distinguishes *advertent (conscious) negligence* and *inadvertent (unconscious) negligence*. Fault is an obligatory element of a criminal offence. The CC is based on the consistent application of culpable liability. Criminal liability does not arise merely from causing an effect, as there must also be fault. In the case of legal entities, fault of a legal entity is derived from a natural person whose conduct is attributed to the legal entity (Šámal et al., 2014, p. 45). If there is no fault, there is no offence and thus no punishment – this principle is elaborated in more detail in Section 15, 16 and 17 of the CC. It is not possible to impute to an offender anything that is not related to their culpability. The CC also operates with the term *gross negligence*. This is not another form of negligence, it can exist in both above

8 For more detail, see Chapter 2

forms. It conveys a higher level of negligence, where the approach of the offender to the requirement of due care reflects the clear disregard of the perpetrator to the interests protected by the CC.

3.2. Age and its Significance in View of Conditions of Criminal Liability

A necessary condition of criminal liability of a natural person is reaching a certain age. Criminal liability does not apply to a person who has not reached fifteen years of age when committing the offence. The specifics of criminal liability of juveniles are provided for in the JJA. Definition of the term juvenile is laid down in Section 2 (1) (c) of the JJA. *Juveniles* are persons who at the time of committing an offence have reached the age of fifteen but are not over the age of eighteen. They become fully criminally liable at the age of eighteen. At the age of eighteen a person also attains full legal age (Section 30 (1) of the Civil Code, Act no. 89/2012 Coll.) and is granted the right to vote (Art. 18 (3) of the Constitution). Sadly, Czech criminal law does not operate with the category of *young adults*, it uses the term *age close to juvenile age.* According to case law, this category includes persons who have reached the age of 18 and are under the age of 21. The modifications of criminal liability of these persons provided for in the CC are only very subtle. Nonetheless, it is a general mitigating circumstance, which does have an effect on the imposition of punishments, and, also in the case of certain sentences or the conditional waiver of punishment, these persons may also be sentenced to educational measures according to the JJA.

The JJA defines yet another age group of persons, children under the age of 15, who have committed an *act that would otherwise be criminal (čin jinak trestný).* In such cases the child is not criminally liable, but there are mandatory civil law proceedings in which various measures may be imposed on the child. Some are substantially identical to educational and protective measures imposed on juvenile offenders (for more details see Chapter 4). However, they may not be sentenced to punishments or penal measures. Protective education will be mandatorily imposed on a child who has reached the age of 12 but is not over the age of 15, if the child has committed an offence for which the Special Part of the CC allows the imposition of an exceptional sentence of imprisonment.

3.3. Conditions of Criminal Liability of Legal Entities

Criminal liability of legal entities has certain specific features. Legal entities are not criminally liable for criminal offences enumerated in Section 7 of the CLLEA. The state cannot be the perpetrator of a criminal offence. Criminal liability also does not apply to municipalities and regions in the course of exercising their public authority. Criminal liability of legal entities in the Czech Republic is based on the attributability of a criminal offence to a legal entity. A legal entity may be criminally liable for a crime only if it was committed in their interest or within the scope of their activity and provided the act was committed by persons enumerated in Section 8 (1) of the CLLEA (these are in particular: governing bodies, their members, CEO, other persons in managerial positions within the legal entity authorized to act for or on behalf of the legal entity, persons in managerial positions performing governing or control activities, persons exercising decisive influence on the management of such legal entity, if their conduct was at least one of the conditions for creating the consequence which established the criminal liability of the legal entity, or other

persons including employees in the course of performing their work tasks). Commission of a crime may be attributed to a legal entity, if it was committed though the conduct of its bodies or persons referred to in Section 8 (1) (a) to (c) of the CLLEA or through the action of an employee of the legal entity on the basis of a decision, approval or instruction issued by bodies of the legal entity or persons referred to in Section 8 (1) (a) to (c) of CLLEA, or because bodies of the legal entity or such persons failed to adopt such measures as should have been implemented according to another legal enactment or that may be reasonably required of them, in particular if they failed to perform a mandatory or necessary control over the activities of their employees or failed to adopt necessary measures in order to prevent or avert the consequences of the committed crime.

3.4. Grounds for Excluding Unlawfulness

Only an illegal act can be a criminal offence, whereas its unlawfulness must be inferred from the legal system as a whole. Under certain circumstances, an act which has characteristics resembling a criminal offence is not socially harmful, and as such it does not constitute a criminal offence. These are so-called *grounds for excluding unlawfulness (justification defences)*, which are covered in Chapter III of the General Part of the CC. They comprise *necessity defence (krajní nouze)* (Section 28), *self defence* (*nutná obrana*) (Section 29), *consent of the injured party* (Section 30), *admissible risk* (Section 31) and *authorized use of weapon* (Section 32). Criminal law doctrine and practice also include other grounds, such as the *exercise of rights*, *fulfilment of duties*, *performance of occupation and other permitted activities*, *following orders* (Šámal & et al., 2014, p. 234n.).

3.5. Grounds for Expiration of Criminal Liability

Grounds for expiration of criminal liability are distinguished from the above stated circumstances because these reasons arise only after an offence has been committed and before a final decision has been made thereon. These include in particular: *limitation* (lapse of time*), effective remorse,, expiration of criminal liability of the preparation and attempt and individual forms of accessory (Section 20 (3), section 21(3) and Section 24 (3) of the CC), death of the offender, special grounds of expiration of criminal liability referred to in the Special Part of the CC and a pardon granted by the President of the Republic in the form of abolition*. Limitation (*promlčení)* is among the most important grounds, where criminal liability expires by lapse of a time period prescribed by law (Section 34 and 35 of the CC). The statute of limitation provision applies to all criminal offences with the exception of the offences listed in Section 35 of the CC (e.g. crimes against humanity, against peace, and war crimes listed in Chapter XIII of the CC, with the exception of the following crimes: founding, supporting and promoting movement aimed to suppress human rights and freedoms (Section. 403); expressing sympathies for movements aiming to suppress human rights and freedoms (Section 404); denial, questioning, approval and justification of genocide (Section 405)). The limitation period is graded according to the gravity of criminal offence as expressed by the type and term of the sentence imposed for the crime in question, and amounts to either three, five, ten, fifteen or twenty years. In the case of juvenile offenders, limitation periods are significantly shorter.

Certain circumstances may cause an extension of the limitation period, i.e. by staying or discontinuing the course of the limitation period. The reason for *discontinuation* might be the initiation of criminal prosecution for the criminal offence affected by the statute of limitation, or if the offender commits a new criminal offence during the limitation period for which the law stipulates the same or more severe punishment. In such case a new limitation period shall begin. A *stay* of the limitation period means that there is an obstacle (a legal obstacle, as a consequence which the offender may not be put before a court for trial, a period during which the offender resided abroad, and so on) due to which the limitation period does not run. After the obstacle is removed, the limitation period continues, and the time lapsed during the stay of the limitation period is not counted as part of the limitation period.

Criminal liability for the offences explicitly listed in Section 33 of the CC also expires due to effective remorse (*účinná lítost*) on the part of the offender, i.e. if the offender voluntarily prevented the harmful effect of the offence or rectified it, or announced the criminal offence at a time when it was still possible to prevent its harmful effect. The repentance and compensation is specifically regulated in the CLLEA; in the case of juvenile offenders there is another ground for expiration called also effective remorse, stemming from the principle of restorative justice.

3.6. Systematics of the Criminal Code

The Criminal Code is divided into the General and Special Part. The General Part contains provisions that are more or less common to all criminal offences, or at least to certain groups of criminal offences (Šámal & et al., 2012, p. 30). The Special Part contains the attributes of individual crimes which constitute the subject-matter of the criminal offence. These are divided into thirteen Chapters, according to the types of object. The subject-matters of criminal offenses are only contained in the CC. Under current law, the preeminent aim of the system is the protection of life and health, followed by the protection of freedom and rights to the protection of personality and privacy. This is followed by the protection of human dignity in the sexual sphere, protection of the family and children and protection of property. The concluding Chapters contain military offences, crimes against humanity and peace and war crimes.

The structure of the Criminal Code is as follows:

- Part One – General Part
  - Chapter I The Scope of Criminal Laws
  - Chapter II Criminal Liability
  - Chapter III Grounds for Excluding the Unlawfulness of an Act
  - Chapter IV Lapse of Criminal Liability
  - Chapter V Criminal Sanctions
  - Chapter VI Expungement of Convictions
  - Chapter VII Special Provisions on Certain Offenders
  - Chapter VIII Explanatory Provisions
- Part Two – Special Part
  - Chapter I Crimes against Life and Health
  - Chapter II Crimes against Freedom and the Rights to the Protection of Personality,

Privacy and Confidentiality of Correspondence
- Chapter III Crimes against Human Dignity in the Sexual Sphere
- Chapter IV Crimes against Family and Children
- Chapter V Crimes against Property
- Chapter VI Economic Crimes
- Chapter VII Generally Dangerous Crimes
- Chapter VIII Crimes against the Environment
- Chapter IX Crimes against the Czech Republic, Foreign States and International Organizations
- Section X Crimes against Order in Public Matters
- Chapter XI Crimes against Military Conscription
- Chapter XII Military Crimes
- Chapter XIII Crimes against Humanity and Peace, War Crimes

• Part Three – Transitional and Final Provisions

3.7. Selected Subject-Matters of Criminal Offences

As far as the basic subject-matters of selected types of crime are concerned, Czech criminal law differentiates, in the protection of life, the following forms of homicide: murder (*vražda*, Section 140), manslaughter (*zabití*, Section 141), murder of a newborn child by its mother (*vražda novorozeného dítěte matkou*, Section 142), negligent homicide (*usmrcení z nedbalosti*, Section 143), and assisting in suicide (*účast na sebevraždě*, Section 144). The criminal offence of *murder* is defined in Section 140 (1) as being committed by someone who "intentionally kills another person", and the convicted offender "will be sentenced to imprisonment for ten to eighteen years"; *manslaughter* (Section 141) is also intentional killing but with some mitigating factors - strong agitation out of fear, dismay, confusion, or another excusable mind set or as a result of the previous reprehensible conduct of the victim; intentional killing while at the same time intentionally causing general danger (putting persons in danger of death or grievous bodily harm, or a stranger's property in danger of large-scale damage by causing fire, flood, or the adverse effects of explosives, gas, electricity, or other similarly dangerous substances or forces, or they commit another similar dangerous conduct) is the criminal offence of general danger (Section 273 (1), (3) (a), punishable by 12 to 20 years of imprisonment or by an exceptional sentence of imprisonment; intentional killing with the aim of harming the constitutional system of the Czech Republic is the criminal offence of *terror* (Section 312), which is punishable by 15 to 20 years of imprisonment or by an exceptional sentence of imprisonment. Intentional killing may, under certain circumstances, constitute the criminal offence of *terrorist attack* (Section 311), punishable by 12 to 20 years of imprisonment or by an exceptional sentence of imprisonment.

Robbery (*loupež*) is classified as a crime against freedom because a considerable danger of robbery lies primarily in the interference with personal freedom. It is described in Section 173 as follows: "Whoever uses force or threatens to use direct force against another person with the intention of appropriating another person's belonging shall be punished with imprisonment of two to ten years."

Bodily harm (*ublížení na zdraví*) is defined in Section 145 to 148 of the CC. Intentional conduct (Section 145 and 146a of the CC) and negligent conduct (Section 147 and 148 of the CC) are both punishable. According to Section 145 (1), grievous bodily harm (*těžké ublížení na zdraví*) is committed by anyone who "intentionally caused grievous bodily harm to another person", and such offender "will be sentenced to imprisonment for three to ten years". According to Section 148 (1) of the CC, negligent bodily harm is committed by anyone who "through negligence causes bodily harm to another person by breaching an important obligation arising from their employment, profession, position or function or one imposed on them by law", and such offender "will be punished with imprisonment of up to one year or prohibition to undertake professional activities". From view of the actus reus, two levels of bodily harm must be distinguished: *bodily harm* (*ublížení na zdraví*) and *grievous bodily harm* (*těžké ublížení na zdraví*). The courts decides on the appropriate level based on a medical doctor's expert opinion; the reference point is the medical condition prior to the injury, not the state of absolute health.

The crime of *theft* (*krádež*) under Section 205 (1) is committed by someone who misappropriates another person's belonging by taking possession of it and

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

for which the offender will be sentenced to imprisonment of up to two years, prohibition to undertake certain activities or forfeiture of an item. Another subject-matter of theft is laid down in Section 205 (2) and it is fulfilled by someone who misappropriates an item of another person by taking possession of it, if they were convicted or sentenced for such offence in the past three years. In this case the offender may be sentenced to imprisonment for 6 months to 3 years.

In the case of all aforementioned criminal offences, the application of *qualified subject-matters* (*aggravating circumstances*) of crime comes into consideration, i.e. the basic elements of the crime and some other characteristic which typifies the higher degree of harmfulness for society and where the conditions and circumstances forming the prerequisites for application of a higher term of imprisonment are defined. Using theft as an illustration, such characteristic is the amount of damage caused or membership in an organized group; in the case of murder such characteristic is premeditation, where a sentence of 12 to 20 years may be imposed. A sentence of imprisonment for fifteen to twenty years or an exceptional sentence of imprisonment may be imposed when a crime was committed in an especially brutal or tormenting manner, on a child under the age of 15, repeatedly, with the intention to gain material profit for the offender or for another person, with the aim to cover or facilitate another crime, or with another egregious motive etc. In the case of bodily harm, an especially aggravating circumstance is e.g. commission of the crime on another person

for their actual or presumed race, affiliation with an ethnic group, nationality, political or religious beliefs, for being actually or presumably without religious belief, or on a witness, expert or interpreter in relation to the performance of their duties.

4.

Sentencing and the System of Sanctions

4.1. System of Criminal Sanctions and their Imposition

The basic function of criminal law is to protect society from crime, where sanctions may be seen as an instrument of society's self-defence against criminal offences (Novotný, Vanduchová, Šámal, & et al., 2010, p. 39). The CC stipulates two basic categories of criminal sanctions – *punishments* and *protective measures*. Sanctions are always associated with detrimental effects for the person they are imposed on and serve to protect society. At the same time, there are significant differences between these categories – see below.

Imposition of criminal sanctions is governed by the *principle of humanity*, which prohibits imposition of cruel or disproportionate sanctions and ensures their execution must not diminish human dignity. According to Art. 39 of the Charter, punishments are imposed only on the basis of law (*nulla poena sine lege – principle of legality*), which also applies to protective measures (Section 38 (1) of the CC). Another important principle is the *principle of proportionality* of the sanction to the nature and seriousness of the committed crime and circumstances of the offender. At the same time, where imposition of a more moderate sanction suffices, a more severe sanction may not be imposed (*principle of subsidiarity of stricter sanction*). When imposing sanctions, it is also necessary to take into account the interests of persons injured by the criminal offence.

The purpose of punishment is not defined directly in the CC. From the view of criminal law doctrine and practice it consists of (Šámal & et al., 2012, p. 489n.):

- *the retributive element of punishment* – the offender must suffer appropriate retribution for the offence;
- *the special preventive purpose of punishment* – the punishment should result in the social reintegration of the offender, i.e. the punishment should aim at the correction of the offender and their reintegration into society, which they should live in as full-valued member in future;
- *the neutralizing function of punishment* – the punishment should make it impossible or, at least, difficult for the offender to commit further crimes;
- *the corrective effect of punishment* – the offender is given broader corrective and socializing management in order for the punishment to have a more reliable effect;
- *the generally preventive effect of punishment* – potential offenders should be deterred from committing crimes;
- *the restorative and satisfaction function of punishment* – when imposing a punishment, the court must also take into account the interests of persons injured by the offence; i.e. the punishment should encourage the offender to endeavour to compensate the damage (and, if applicable, to provide other forms of reasonable satisfaction) to persons injured by the offence.

The methods used to achieve the intention of the CC are the deterrents of punishment, sentencing and the execution of punishments and protective measures (Novotný, Vanduchová, Šámal, & et al., 2010).

4.2. Punishments

When determining the type of sentence and its term, the court takes into consideration the *nature and seriousness* of the offence, the *personal, family, property and other circumstances* of the offender, their previous way of life, the possibility of their reform and other aspects referred to in Section 39 of the CC. Mitigating and aggravating circumstances also represent one important means by which punishments are judicially individualized and are illustratively listed in the CC (Section 41 and 42).

The commission of crimes may be punished by imposition of punishments, an enumerative list of which is stated in Section 52 of the Criminal Code, namely:

- *imprisonment,*
- *house arrest,*
- *community service,*
- *forfeiture of property,*
- *fine*
- *forfeiture of items,*
- *disqualification (prohibition to undertake certain activities),*
- *residence ban,*
- *prohibition to attend sports, cultural and other social events,*
- *forfeit of honorary titles and distinctions,*
- *demotion of military rank,*
- *banishment.*

Act no. 175/1990 Coll. abolished the *capital punishment* and replaced it by life imprisonment. The inadmissibility of the capital punishment is explicitly stipulated in Article 6 (3) of the Charter of Fundamental Rights and Freedoms. The Czech Republic is also bound by the Convention for the Protection of Human Rights and Fundamental Freedoms, including its Additional Protocol no. 6. The abolition of the capital punishment is in compliance with a number of UN resolutions adopted on this issue, as well as important international documents on the protection of fundamental human rights. By abolishing this punishment, 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 have shown that most respondents are in favour of restoring the capital punishment for the most serious crimes (murder). After 1961, the capital punishment was officially considered an exceptional and temporary measure, and it could be imposed under similar conditions that applied to imposing a sentence of life imprisonment. However, the range of eligible crimes was excessively wide. There were 33 crimes such crimes in total, most of which were military crimes, crimes against humanity and crimes against the Republic. In the 1950s, the capital punishment was used in politically motivated trials, particularly to liquidate political opponents. Under the jurisdiction of the Criminal Code no. 140/1961 Coll., i.e. in the last 29 years before the abolition of the capital punishment, in practice this punishment was exclusively imposed for crimes of murder (in cases of multiple or extraordinarily brutal murders) (Šámal & et al., 2014, p. 371n.).

The *sentence of imprisonment* constitutes a universal kind of punishment because it can be imposed for any criminal offence and on any offender. This punishment is therefore the

only sanction, or at least one of the possible kinds of punishments, for all criminal offences. If the CC stipulates several punishments for an offence, more than one of them may be imposed simultaneously. However, community service and house arrest may not be imposed alongside imprisonment. A sentence of imprisonment is also the most severe form of punishment; therefore it is only considered if all other types of sentences executed outside of prison are insufficient to achieve the purpose of punishment. For criminal offences for which the maximum term of imprisonment does not exceed five years, an unsuspended sentence of imprisonment may only be imposed if, in view of the offender's circumstances, a different punishment would clearly not induce the offender to lead an orderly life.

The essence of the execution of imprisonment lies in the temporary restriction of the offender's freedom of movement and residence by enforced stay in prison, and in the associated restriction of other civil rights and freedoms. Execution of this sentence is regulated by a special law - Act no. 169/1999 Coll., on Execution of Imprisonment.

The duration of imprisonment is determined first, in general, by the maximum limit – the maximum term which may be imposed is twenty years, unless it concerns an extraordinary extension of the sentence of imprisonment, a sentence of imprisonment imposed on the perpetrator of a criminal offence committed for the benefit of an organized crime group, or an exceptional sentence of imprisonment (Section 55 (1) of the CC); and, second, by the various ranges of the imprisonment sentence. The sentence is then generally imposed within the appropriate range (Šámal & et al., p. 351). There is no general rule for the minimum sentence in the CC. Nevertheless, it is defined in the Special Part of the CC in a number of criminal offences.

The Criminal Code recognizes four forms of a sentence of imprisonment:

- *unsuspended sentence of imprisonment,*
- *suspended sentence of imprisonment,*
- *suspended sentence of imprisonment with supervision,*
- *exceptional sentence of imprisonment*.

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

The court may only impose a sentence of *life imprisonment* on an offender who committed a particularly serious felony of murder (Section 140 (3)), or who intentionally caused the death of another person when committing a particularly serious felony of general danger (Section 272 (3)), treason (Section 309), terrorist attack (Section 311 (2)), terror (Section 312), genocide (Section 400), attack against humanity (Section 401), use of forbidden means and

methods of combat (Section 411, (3)), war cruelty (Section 412 (3)), persecution of civilians (Section 413 (3)), or abuse of internationally recognized and national signs and symbols (Art. 415 (3)), under the condition that

a) such especially serious crime is extraordinarily serious due to the especially egregious manner of the commission of the act or especially egregious motive, or to the exceptionally severe and difficult to remediate consequences; and
b) the imposition of such sentence is required for the effective protection of society or there is no hope that the offender could be reformed by a sentence of imprisonment of twenty to thirty years.

Both forms of suspended sentence are detailed in Chapter 5.

The sentence of *house arrest* presents a suitable alternative to a short unsuspended sentence of imprisonment. The court may impose it on the perpetrator of a transgression for up to two years, if

a) in view of the nature and seriousness of the offence, and in view of the character and circumstances of the offender, it may justifiably be assumed that this sentence (imposed with or without another parallel sentence) is sufficient; and
b) the offender gives a written promise to be present at the appointed time in the residence at the stated address, and to cooperate as required in order to allow performance of checks.

House arrest may be imposed both individually and alongside another punishment. However, this punishment may not be combined with imprisonment or with community service.

Its basis is the obligation of each offender to stay at the designated residence or portion thereof over a time period determined by the court for the time of execution of this sentence, unless important reasons prevent them from doing so, in particular the performance of a profession or occupation, or the provision of heath care services from a health services provider as a result or illness or injury. The court will set a time period during which the convict is obliged to stay in the designated residence or a portion thereof on business days and on weekends and public holidays. When determining this period, the court will take into account working hours and the time required to travel to work, care for underage children and the performance of necessary personal matters, so that the convicted person's freedom was adequately restricted while allowing them to secure all necessary needs of the convict and their family. The court may allow the convicted person to attend regular worship or a religious service, also on weekends and public holidays. However, the court may also impose reasonable restrictions or reasonable obligations on the offender for time off from executing the sentence of house arrest, aimed at making the perpetrator lead an orderly life. Generally, an obligation will also be imposed on the perpetrator to respectively compensate or remedy – in accordance with their abilities – the damage or non-material harm caused by the offence, or to surrender any unjust enrichment gained by the criminal offence. An illustrative list of reasonable restrictions and reasonable obligations is given in Section 48 (4) of the CC (see below).

If the convicted person obstructs the execution of this sentence or culpably fails to serve the imposed sentence in the stated time periods, the court may transform the sentence of house arrest (also during the time set for its execution) or remaining portion thereof to a sentence of imprisonment and at the same time decide on its execution. In such case, every commenced day of an unserved sentence of house arrest will be counted as one day of imprisonment.

A sentence of *community service* may be imposed as an individual sentence for a transgression, provided that in view of the nature and seriousness of the offence and of the character and circumstances of the offender the imposition of another sentence is not required. This sentence entails the obligation of the convicted to perform community service in the stipulated extent for socially beneficial purposes, such as maintenance of public areas, cleaning and maintenance of public buildings and roads, or other similar activities for the benefit of the local municipality 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, the support and protection of young people, animal protection, or humanitarian, social, charitable, religious and sports activities or physical education. The work may not be carried out for the gainful purposes of the convicted person. The court may impose community service in the extent of 50 to 300 hours. For the duration of the sentence the court may also impose reasonable restrictions or reasonable obligations listed in Section 48 (4) of the CC to encourage the convicted to lead an orderly life; in addition, the court usually orders them to respectively compensate or remedy – in accordance with their abilities – the damage or non-material harm caused by the offence, or to surrender any unjust enrichment gained by the criminal offence. When imposing this sentence, the court takes into account the attitude of the offender, their medical condition and the possibility of imposing this punishment. The convicted person must perform the community service in person, free of charge and in their free time, and no later than within a year of the date the court imposed this sentence. If, between the conviction and the completion of the community service sentence, the offender does not lead an orderly life, evades the execution of the sentence, violates the agreed conditions of the execution of community service sentence without serious reason, obstructs the execution of the sentence in any other way, or culpably fails to perform the ordered punishment in the stated time, then the court may, even during the time set for execution of the sentence, transform the community service sentence or its remaining portion into a sentence of house arrest, fine or a sentence of imprisonment. Where transformation into a sentence of house arrest or sentence of imprisonment occurs, every commenced hour of unserved sentence of community service will be counted as one day of such sentences.

The court may impose a *fine* if the offender gained or attempted to gain profit for themselves or for another person through an intentional criminal offence. Furthermore, this sentence may be imposed in cases where

a) the CC permits the imposition of this sentence for the criminal offence in question; or,
b) the court imposes it for a transgression and, in view of the nature and seriousness of the offence and the character and circumstances of the offender, it does not concurrently impose a sentence of imprisonment.

A fine is imposed in daily amounts entails no less than 20 and no more than 730 whole daily amounts, with one daily amount being no less than 100 CZK and no more 50,000 CZK. The court determines the number of daily amounts in view of the nature and seriousness of the offence. The court determines the sum of one daily amount in view of the personal and property circumstances of the offender. If, due to the personal and property circumstances of the offender, they cannot be expected to pay the fine immediately, the court may decide that the fine will be paid in reasonable monthly instalments. The court does not impose a fine if it is obvious that it would be unenforceable. The sum collected from a fine devolves to the state. If the court imposes a fine, it also orders a substitute sentence of imprisonment of up to four years in the event the fine is not paid within the set time limit. However, the substitute sentence of imprisonment along with the imposed prison sentence may not exceed the maximum term of imprisonment. If the offender fails to pay the fine within the set time limit, the court may transform it into a sentence of house arrest or a sentence of community service.

4.3. Protective Measures

Protective measures may be imposed not only on criminally liable persons, but also on persons who are not criminally liable (either due to insanity or lack of age). They are imposed by a criminal court or by a juvenile court in civil law proceedings, and they may be imposed as individual sanctions or in addition to punishment. The aim of protective measures is to protect society exclusively by special prevention and therefore their therapeutic, educational or preventive component comes to the fore. Unlike punishments, protective measures are not associated with moral and political condemnation of the offender and their action (Šámal & et al., 2014, p. 413n.). Protective measures are imposed until such time as their purpose is fulfilled, as opposed to punishments, which must always be determined in an exact manner (the only exception is the sentence of banishment). Protective measures are *protective treatment, security detention, confiscation of an item, confiscation of a portion of assets* and *protective education*. Protective education may only be imposed on a juvenile. Protective treatment may not be imposed in addition to preventive detention.

4.4. Sanctions Imposed on Juveniles

The principle of the subsidiarity of criminal repression is particularly emphasized in the case of juveniles. A wrongdoing is punishable by imposing *measures* (*opatření*) stipulated by the *Juvenile Justice Act* no. 218/2003 Coll. (JJA).[9] The principal aim of measures imposed on a juvenile is to create conditions for their social and mental development, taking into account the level of their intellectual and moral maturity, personal character, family upbringing and the environment the juvenile comes from, and also to protect the juvenile against harmful influences and prevent them from future commission of wrongdoings. In particular, the *educational function* of measures comes to the fore. The imposed sanctions and their execution should be aimed in particular towards the renewal of disrupted social relations, inclusion of the juvenile into a family and social environment and prevention of unlawful acts; as such, emphasis is also given to the *restorative justice, reintegration of*

9 With the adoption of this act, restorative justice was for the first time unambiguously preferred over retributive justice.

the juvenile and *prevention of recidivism.* Measures imposed under this Act must consider the circumstances of the person on whom they are imposed, including their age, intellectual and moral maturity, medical condition, as well as their personal, family and social circumstances; the measure must also be proportional to the nature and seriousness of the committed act.

Only *educational* (*výchovná*), *protective* (*ochranná*) or *penal* (*trestní*) measures may be imposed on a juvenile. Educational measures may be imposed on a juvenile in the case of the waiver of a penal measure or conditional waiver of a penal measure. If the nature of the measure allows it, an educational measure may also be imposed on a juvenile along with a protective or punitive measure, or in conjunction with special types of proceedings. With the consent of the juvenile, educational measures may even be imposed in the course of criminal proceedings prior to the final decision of the case. An educational measure may not be imposed for a period longer than the simultaneously imposed probation period (in the case of a suspended sentence), or the period of conditional suspension of a fine. If an educational measure is imposed individually or in parallel with another protective or penal measure, it may be imposed for a maximum period of three years. Educational measures are *supervision of a probation officer* (dohled probačního úředníka), *probation programme* (probační program), *educational obligations* (výchovné povinnosti), *educational restrictions* (výchovná omezení), and *admonition with a warning* (napomenutí s výstrahou).

Protective measures are *protective treatment, security detention, confiscation of an item, confiscation of a portion of assets* and *protective education.* The purpose of these measures is to positively influence the mental, moral and social development of the juvenile, and to protect society from wrongdoings committed by them. Protective education lasts as long as its aim requires, but no longer than until the juvenile reaches eighteen years of age. However, if it is in the interest of the juvenile, the juvenile court may prolong protective education until they reach nineteen years of age.

According to Section 24 (1) of the JJA, the penal measures which a juvenile court may impose on a juvenile for a wrongdoing are as follows:

- *community service,*
- *fine,*
- *fine with a conditional suspension,*
- *forfeiture of items,*
- *disqualification (prohibition to undertake certain activities)*
- *banishment,*
- *house arrest,*
- *prohibition to attend sports, cultural and other social events,*
- *conditional imprisonment suspended for a probation period (suspended sentence),*
- *conditional imprisonment suspended for a probation period with supervision,*
- *unsuspended imprisonment*.

Punitive measures imposed under the JJA and in line with the CC must contribute to creating suitable conditions for the further development of the juvenile, taking into account the circumstances of the case as well as the character and circumstances of the juvenile. The terms of imprisonment set in the CC are reduced by half for juveniles, while

the maximum term which may be imposed may not exceed five years and the minimum term may not exceed one year. An unconditional prison sentence may be imposed on a juvenile only if, in view of the circumstances of the case, the character of the juvenile and the previous measures used, any other punitive measure would evidently not suffice to fulfil the purpose of the JJA. If a juvenile commits an offence for which the CC allows an exceptional sentence of imprisonment and the nature and seriousness of the offence is exceptionally high (because of the particularly egregious manner of commission or particularly egregious motive, or the exceptionally severe and difficult to remediate consequences), the juvenile court may impose a term of imprisonment of five to ten years where it believes that imprisonment within the range stated above would not suffice to achieve the purpose of the punitive measure. Certain modifications are comparable to those with respect to adult offenders in the case of other measures, in particular community service, fine, prohibition to undertake certain activities and banishment.

4.5. Sanctions Imposed on Legal Entities

The following sentences may be imposed on legal entities on the basis of Section 15 (1) of Act no. 418/2011 Coll., on Criminal Liability of Legal Entities, for criminal offences committed by them:

- *dissolution of a legal entity,*
- *forfeiture of property,*
- *fine,*
- *forfeiture of items,*
- *disqualification (prohibition to undertake certain activities),*
- *prohibition to fulfil public contracts or participate in public tenders,*
- *prohibition to accept grants and subsidies,*
- *publishing the judgement.*

Dissolution of legal entity is an exceptional punishment which can only be imposed on a legal entity with its registered office in the Czech Republic and provided its activities consisted completely or in major part in the commission of criminal activity. It cannot be imposed if such imposition is precluded by the nature of the legal entity.

Prohibition to perform a certain activity may be imposed for 1 year up to 20 years. The same applies to prohibition to fulfil public contracts or participate in a public tender.

Fines imposed on legal entities are also determined in daily amounts in sums from 1,000 CZK to 2,000,000 CZK, whereas when determining the sum of the daily amount the court considers the property circumstances of the legal entity.

Protective measure that may be imposed on legal entities are *confiscation of items* and *confiscation of a portion of assets*. These measures may be imposed individually or in parallel with any of the above stated punishments. However, a fine or confiscation of a portion of assets may not be imposed in parallel with forfeiture of property, and the sentence of forfeiture of items may not be imposed in parallel with confiscation of the same items.

When imposing sanctions on legal entities, it is at the same time always necessary to take into account, in addition to the general principles that come into consideration with regard to the nature of the legal entity, whether the legal entity performs activity in the public interest, an activity which has a strategic or difficult to replace significance for the national economy, defence or security. The court will also take into account the actions of the legal entity after committing the act, in particular its endeavours to compensate the damage caused or rectify any harmful effects arising, and consider the effects and consequences that may be expected to follow from the imposed punishment on the entity's future operation, and consider also the consequences to third parties (e.g. injured parties or creditors).

4.6. Waiver of Punishment

Czech criminal law also contains a substantive-law alternative to punishing the offender, which is the concept of *waiver of punishment*. This is an educational instrument, within the frame of which the offender is found guilty, but no punishment is imposed on them. This concept is based on the assumption that the offender's prosecution may itself have the same effects, in view of individual and general prevention, as the imposition of punishment and its execution (Šámal & et al., 2009, p. 543n.).

The court may waive punishment in the case of a transgression the commission of which the offender regrets and demonstrates active endeavours for correction, if the nature and seriousness of the committed transgression and the previous life of the offender give reasonable grounds to believe that a mere hearing of the case will suffice for correction of the offender and protection of society.

The court will waive punishment of an offender labelled as a *cooperating accused person*, if all conditions prescribed by the Code Procedure Code are met and provided the cooperating suspect gave their full and truthful testimony both in pre-trial proceedings and in trial before the court on eligible matters such that they contribute substantially to the clarification of a felony committed by members of an organized group, in connection with an organized group, or for the benefit of an organized criminal group. However, punishment cannot be waived if the crime committed by the accused offender is more serious than the felony to clarification of which they contributed, or if they participated in the commission of the felony to the clarification of which they contributed as organizer or instigator, or if they intentionally caused grievous bodily harm or death by such felony, or if there are grounds for the extraordinary extension of the term of imprisonment.

The court may also opt for waiver of punishment if the perpetrator of a prepared or attempted offence did not recognize that the preparation or attempt could not lead to the completion of the crime in view of the nature or type of the target of the attack which the act was supposed to be committed against, or the nature or type of the means which the act was supposed to be committed with. If the court waives punishment of an offender, they are deemed to have never been convicted.

If the court deems it desirable to monitor the conduct of the offender for a set period of time, it may, under the same conditions, opt for a *conditional waiver of punishment* with

supervision of the offender. In the case of conditional waiver of punishment, the court will set a probation period of up to one year and will also order supervision of the offender. Supervision of the offender involves supervision being performed throughout the whole probation period. The court may impose reasonable restrictions and reasonable obligations on an offender, punishment of whom was conditionally waived, in order to make them lead an orderly life. Generally, an obligation will also be imposed on the perpetrator to respectively compensate or remedy – in accordance with their abilities – the damage or non-material harm caused by the offence, or to surrender any unjust enrichment gained by the criminal offence. According to Section 48 (4) of the CC, these *reasonable restrictions or obligations* may consist particularly in the following:

- undergoing a training course to acquire suitable work skills,
- undergoing an appropriate social training and corrective education programme,
- undergoing drug addiction treatment (this is not protective treatment as defined by the CC),
- undergoing appropriate psychological consultancy programmes,
- avoiding visits to unsuitable environments, sports, cultural and other social events, and contact with specified persons,
- avoiding encroachment upon the rights of other persons or upon their interests protected by law,
- avoiding gambling, playing slot machines and betting,
- avoiding the consumption of alcoholic beverages or other addictive substances,
- paying any outstanding alimony or other debts,
- making a public and personal apology to the injured party, or
- granting reasonable satisfaction to the injured party.

If an offender whose punishment was conditionally waived has led an orderly life during the probation period and complied with the conditions imposed, the court will declare that the offender has proven themselves and the offender is then deemed to have never been convicted. Otherwise, the court will decide to impose the punishment; it may do this even during the probation period. If, within one year of expiration of the probation period and through no fault of the offender, the court does not declare whether the offender has proven themselves, the offender is deemed to have proven themselves.

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

In addition, the court may discharge such an offender while imposing *security detention* even if it cannot be reasonably expected that, in view of the nature of the mental disorder and the possibilities of influencing the offender, the imposed protective treatment will lead to sufficient protection of society, but the court deems that security detention will provide better protection of society than punishment. The duration of security detention

is not limited by law; i.e. it lasts as long as the protection of society requires. However, the court is obliged once every 12 months (once every 6 months with juveniles) to examine whether the reasons for this measure are still relevant.

Similar alternatives to punishment are stipulated in the JJA and are called *waiver of the imposition of punitive measure*.

5.

Suspended Sentence of Imprisonment, Probation

5.1. Suspended Sentence of Imprisonment, Supervision by Probation Officer

A suspended sentence of imprisonment has been over the long term the most often used punishment and an alternative especially to short unsuspended sentences of imprisonment. It is considered an important instrument for rehabilitation of the offender, where the court passes a convicting judgement and imposes a sentence of imprisonment whilst suspending, however, its execution (or better to say remits the punishment), provided the convicted person behaves appropriately in the set probation period and complies with the stated conditions. A suspended sentence is often associated with *supervision* of the convicted, and sometimes with the imposition of certain obligations and restrictions. As far as the legal nature of a suspended sentence is concerned, we may say that, for the main part, it is perceived as alternative punishment to a sentence of imprisonment, though its nature is not so clear in theory and practice; it is sometimes considered a special form of acquittal of execution of the sentence, a special form of term of the sentence, or a special concept fulfilling the purpose of threat by punishment. The CC classifies the suspended sentence as a form of a prison sentence (see Section 52 (2) b)) (Šámal, et al., 2012). On the other hand, the JJA lists it in Section 24 (1) (j) as a separate type of sanction.

The CC lays down the so-called "simple" suspended sentence in such a way that the court may conditionally suspend the execution of a sentence of imprisonment not exceeding three years, if, given the character and circumstances of the offender, in particular with regard to their previous life and the environment in which they live and work, and to the circumstances of the case, it reasonably believes that imposing an unsuspended sentence is not necessary in order to make the offender lead an orderly life. Probation period is one to five years. According to the JJA, the probation period is one to three years in the case of juveniles.

The court may also impose the reasonable restrictions and reasonable obligations referred to in the CC (an illustrative list is referred to in Section 48 (4) of the CC, see Chapter 4.6) on a conditionally sentenced person in order to make them lead an orderly life; generally, an obligation will also be imposed on them to compensate – in accordance with their abilities – the damage or non-material harm caused by the offence, or to surrender any unjust enrichment gained by the criminal offence. The court may also impose educational measures according to the JJA in the case of juveniles and of an offender close to the age of a juvenile.

If the convicted person has lead an orderly life during the probation period and complied with the imposed obligations, the court they have proven themselves; otherwise, it will decide, even in the course of the probation period, that the sentence will be executed. In exceptional cases the court may, in view of the circumstances of the case and the character of the convicted person, uphold the suspended sentence even if the convicted person has given cause for ordering the execution of the sentence and

a) order supervision over the convicted person;
b) reasonably extend the probation period, by not more than two years, however, whereas the maximum limit of the probation period, i.e. 5 years (see Section 82 (1) of the CC) must not be exceeded; or
c) order any reasonable restrictions and reasonable obligations (see above) that have not

been imposed previously, aimed towards making the convicted person lead an orderly life.

If it is declared that a conditionally convicted person has proven themselves or if they are deemed to have proven themselves (i.e. the court does not make the decision within a year from the expiration of the probation period, through no fault of the convicted person), the offender is deemed to have never been convicted.

If it is necessary to monitor and control the offender's conduct more intensively and to provide them with necessary care and assistance during the probation period, the court may, under the aforementioned conditions (see Section 81 (1) of the CC), conditionally suspend a sentence of imprisonment with the maximum term of three years, while concurrently ordering supervision over the offender. Supervision over the offender is carried out by a probation officer. The aim of supervision is to monitor and control the offender's conduct (thus providing for the protection of society and the reduced possibility of re-offending), as well as to give professional guidance and assistance to the offender, with the aim to ensure that they lead an orderly life in future.

It should be noted that the term *probation* is defined in Czech legal doctrine rather broadly – see below, whereas supervision is one of its components. Probation is one of the methods of handling offenders which combines both penological (punishment, restriction) and social (supervision, assistance) aspects. It is the institutionalized supervision of the offender's conduct (Sotolář, Púry, & Šámal, 2000). Criminal law also knows other concepts that may be combined with supervision, in particular conditional release from imprisonment and conditional waiver of punishment with supervision. In the case of juvenile offenders it may be applied in much broader extent.

Supervision under Section 49 (1) of the CC entails regular personal contact between the offender and 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 compliance with the conditions imposed on the offender by the court or stipulated by law. The offender on whom supervision is imposed is obliged:

a) to co-operate with the probation officer in the manner set by the probation officer, and to fulfil the probation (supervision) plan,
b) to appear before the probation officer on dates set by the probation officer,
c) to inform the probation officer of their residence, employment and means of subsistence, of their compliance with the reasonable restrictions and reasonable obligations ordered by the court, and of other circumstances important for supervision, as determined by the probation officer,
d) to allow the probation officer entry into the residence where the offender is staying.

Supervision is a mandatory part of this sanction and is performed throughout the whole probation period.

Unless the presiding judge determines otherwise, the probation officer makes a report at least once every six months informing the presiding judge of the court which imposed

the supervision of how performance of supervision over the offender is progressing, how the offender is complying with the ordered conditions, probation plan and the reasonable restrictions and reasonable obligations, as well as of the offender's circumstances.

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

5.2. Organization of the Probation and Mediation Service and its Role in Criminal Proceedings

The Probation and Mediation Service is structured as an organizational body of the state and is administered by the Ministry of Justice. The Probation and Mediation Service is managed by its director, who is appointed and replaced by the Minister of Justice.

It consists of autonomous Probation and Mediation Service Centres, usually operating in the location of the district court (or circuit and municipal courts with the same jurisdiction status). Where there are two or more district courts in the same municipality, centres may be joined so that their number is less than the number of courts. In addition, the centre may be structured, as required, into departments which focus particularly on accused juvenile persons, accused persons at an age close to juveniles, or users of narcotic and psychotropic substances. The local jurisdiction of the centres to deal with probation and mediation is in line with the local jurisdiction of the court and, in pre-trial proceedings, the public prosecutor in whose district the centre operates. In order to accelerate proceedings and for other important reasons, the presiding judge or the single judge of the relevant court and, in pre-trial proceedings, the public prosecutor may order that the action required is taken by the centre in the district of which the person subject to such action is living. Issues around establishing centres and their internal organization are provided for by the Statute of the Probation and Mediation Service issued by the Ministry of Justice.

The *Probation and Mediation Service Act* no. 257/2000 Coll. specifies the scope and contents of the work of the Probation and Mediation Service. Its jurisdiction is defined in accordance with the provisions of the CC and the Criminal Procedure Code. The Probation and Mediation Service creates prerequisites in order for a case, if it is deemed appropriate, to be tried in one of the special types of criminal proceedings (diversions) – in this respect mediation activities are especially important, or in order for the imposition and execution of a punishment not associated with imprisonment, or for custody to be substituted by an alternative measure. For this purpose, it provides professional guidance and assistance to the accused, monitors and controls their conduct and co-operates with the family and the social environment in which the accused lives, so that they can lead an orderly life in future.

Probation for the purpose of this Act means the organization and implementation of supervision of an accused person, defendant or convicted person, control of the execution of sentences not associated with imprisonment, including the obligations and restrictions imposed, monitoring the conduct of the convicted during the probationary period of conditional release from imprisonment, as well as providing individual assistance to the accused and influencing them to lead an orderly life, to comply with the conditions imposed on them by the court or public prosecutor, and thereby to remedy disrupted legal and social relations.

Mediation means out-of-court intervention in order to settle a dispute between the accused and the injured party, and activities directed at settling conflict performed in relation to criminal proceedings. Mediation may take place only with the express consent of the accused and the injured party.

The probation officer must not perform both probation and mediation actions in the same case.

In accordance with Section 4 of the aforementioned Act, probation and mediation work involves in particular the following:

a) collecting data on the accused, their family and social background,
b) creating the conditions for deciding on the conditional discontinuation of a 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 of damage or surrender of unjust enrichment, or an agreement on an out-of-court settlement or conditions for further procedures of this kind, or punishment not associated with imprisonment,
c) supervision of the accused's conduct in cases when it was decided to replace custody by probation supervision,
d) supervision of the accused's conduct in cases where supervision was imposed, monitoring and control of the accused during the probation period, control of the execution of other punishments not associated with imprisonment, including community service, house arrest (performed up until now by probation officers carrying out spot checks)[10] and monitoring compliance with protective measures,
e) monitoring and control of the accused's conduct during the probation period in cases where a decision on the conditional release of the convicted person from prison was made.

The Probation and Mediation Service also helps rectify the consequences of the crime inflicted on the injured party and other persons affected by the crime. The service provides special care for juvenile accused persons and accused persons at an age close to juveniles. It contributes to protecting the rights of persons harmed by criminal activity and to co-

10 Electronic monitoring (tagging) as another form of control has not yet been implemented in practice, even though its use is already provided for in the legislation. There is a presumption that electronic monitoring system will be operational from 1st January 2018.

ordinating social and therapeutic programmes of work with accused persons, focusing especially on juveniles and users of narcotic and psychotropic substances. The Probation and Mediation Service also participates in crime prevention.

A probation officer may only be a person who is fully legally competent, has a clean criminal record, has finished a university master's degree course in the social sciences and has passed an expert exam.

A very important role in influencing and steering the concepts and methods of the Probation and Mediation Service is played by the Probation and Mediation Council.

6.

Criminal Procedure Legislation and Principles of Criminal Proceedings

6.1. Evolution of Procedural Criminal Law Legislation

The first code of criminal procedure law after 1945 was Act no. 87/1950 Coll., on Criminal Judicial Procedure (Criminal Procedure Code), adopted on July 12, 1950. Until this time, Austrian Act no. 119 of 1873 governed criminal procedure in the Czech state territory. In addition to this Act, the fundamental procedural standards were contained, until 1950, primarily in Austrian Act no. 131 of 1912 on Military Criminal Procedure, in Act no. 48/1931 Coll., on Juvenile Criminal Justice, in the Jury Courts Act, Act no. 232/1946 Coll., in the State Court Act, Act no. 232/1948 Coll., and in the People's Justice Act, Act no. 319/1948 Coll. The Criminal Procedure Code of 1950, created to resemble the USSR's Code of Criminal Procedure, shifted the focus of criminal proceedings to the pre-trial stage of proceedings, weakened the rights of the accused and the position of defence counsel. Adoption of Act no. 64/1956 Coll., on Criminal Judicial Procedure (Criminal Procedure Code) enhanced the supervision by public prosecutors over pre-trial proceedings, created the official position of investigator separate from operational police units, allowed the review of the indictment in preliminary court hearings, extended the rights of the defence counsel and determined legal time limits for the duration of custody and investigation (Karabec, Vlach, Diblíková, & Zeman, 2011).[11]

This Act was replaced by *Act no. 141/1961 Coll., on Criminal Judicial Procedure (Criminal Procedure Code) (hereafter the CPC)*, which after numerous amendments still applies in the Czech Republic.[12]

The CPC of the Czech Republic is divided into five Parts and twenty five Chapters:

- Part One – Joint Provisions
  - Chapter I General Provisions
  - Chapter II Courts and Persons Participating in Proceedings (authority and jurisdiction of courts, assisting persons, exclusion of authorities responsible for criminal proceedings, the accused, defence counsel, the party involved in criminal proceedings,[13] the injured party, authorised representative of the party involved in criminal proceedings and of the injured party)
  - Chapter III General Provisions on Acts in Criminal Proceedings (request, records, submissions, deadlines, service, access to a file, disciplinary fines)
  - Chapter IV Preliminary measures. Detention of Persons and Seizure of Items (custody, apprehension, seizure of items, search of persons, search of a residence, other premises and land, entry into a residence, other premises and onto land, seizure and opening of consignments, their replacement and the surveillance, interception and recording of telecommunications, preliminary measures etc.)
  - Chapter V Rules of Evidence (statement of the accused, witnesses, certain special kinds of evidence, expert witnesses, material and documentary evidence, examination)

11 See the previous version of this paper for more details on this issue.

12 As of August 15, 2017, it has been amended or altered by judgments of the Constitutional Court more than 110 times.

13 The person whose item or a part of property was confiscated or can be confiscated as a protective measure in criminal proceedings.

Chapter VI Decisions (judgement, resolution, legal force and the enforceability of a decision)
Chapter VII Complaints and Proceedings thereon
Chapter VIII Expenses of Criminal Proceedings

- Part Two – Pre-trial Proceedings
  Chapter IX Procedure prior to the Commencement of Criminal Prosecution
  Chapter X Commencement of Criminal Prosecution, Further Procedure thereon and Summary Preliminary Proceedings (commencement of criminal prosecution, investigation, special provisions on the investigation of certain criminal offences, decisions in pre-trial proceedings, supervision by the public prosecutor, indictment, summary preliminary proceedings)
- Part Three – Trial Proceedings
  Chapter XI Basic Provisions
  Chapter XII Preliminary Hearing of Indictment
  Chapter XIII Trial (preparations for trial, presence of the public at the trial, opening of the trial, evidence, closing of the trial, adjourning of the trial, court decisions in the trial, court decisions outside the trial)
  Chapter XIV Public Session
  Chapter XV Closed Session
  Chapter XVI Appeal and Proceedings thereon
  Chapter XVII Extraordinary Appeal
  Chapter XVIII Complaint against the Violation of Law and the Proceedings thereon
  Chapter XIX Retrial
  Chapter XX Special Types of Proceedings (proceedings in juvenile cases, proceedings against a fugitive, conditional discontinuation of criminal prosecution, settlement, proceedings before a single judge, proceedings after the repeal of a decision by judgement of the Constitutional Court, proceedings on the review of an order for interception and recording of telecommunications traffic, proceedings on the approval of an agreement on guilt and punishment)
  Chapter XXI Execution Proceedings (execution of a sentence of imprisonment, execution of community service, execution of certain other punishments, execution of protective treatment and security detention)
  Chapter XXII Expungement of Conviction
- Part Four – Certain Measures Associated with Criminal Proceedings
  Chapter XXIII Granting Pardons and Use of Amnesty
  Chapter XXIV repealed
  Chapter XXV repealed
- Part Five – Transitional and Final Provisions

Contenders for the most important changes to the Criminal Code prior to 1989 probably include the amendment of the Criminal Code no. 57/1967 Coll., which introduced two forms of pre-trial proceedings – fact finding *(vyhledávání)* and investigation (*vyšetřování*), extended the rights of the defence counsel and defined the position of public prosecutor in more detail. Similarly critical was Amendment no. 149/1969 Coll., which introduced proceedings before a single judge and provided for proceedings on a new type of offences – transgressions (Vlček, 1993, p. 65).

In the 1990s, amendments reflected the attempts to remove the elements of totalitarian criminal proceedings and to achieve 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 pre-trial 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 pre-trial proceedings, introduced the *conditional discontinuation of a criminal prosecution* and reintroduced the *penal order.* Amendment no. 152/1995 Coll. governed in greater detail the *concealment of a witness' identity*, introduced *temporary suspension of criminal prosecution*, an *out-of-court settlemen*t procedure, and also the execution of community service.

From the 1990s onwards there has been a broad discussion on the need to draw up brand new codes of criminal law. Unlike substantive criminal law, where re-codification has already taken place, re-codification works in the area of criminal procedural law are still pending (for more detail, see Chapter 10). Nevertheless, it should be noted that some of the most important trends of the re-codification process, such as diminishing the role of pre-trial proceedings and strengthening the position of trial proceedings, differentiating various forms of proceedings according to the seriousness and complexity of the committed offence, reinforcing the contradictory elements of trial proceedings, developing diversions in criminal proceedings, streamlining the regulation of evidence procedure and new regulation of proceedings in the case of juveniles have already been established to a large extent within criminal procedure reform.

Act no. 265/2001 Coll., which came into force on January 1, 2002 presented a significant change and substantially amended and supplemented the CPC. This amendment regulated, among other things, the position of the probation officer in criminal proceedings, the concept of common agents for multiple injured persons and the possibility for injured parties to receive free legal aid. Also, the conditions for taking into custody were made much stricter, its duration was restricted and a new concept of monitored consignment was introduced. A new legislative regulation was introduced to deal with types of evidence not expressly defined or insufficiently regulated by the former CPC (*confrontation, recognition, investigative experiment, crime reconstruction* etc.). Pre-trial proceedings have undergone significant changes. Following abolition of the autonomous investigator's office, a police officer of the Criminal Police and Investigation Department is now in charge of investigations. A new regulation of operative search means was introduced into the CPC (*simulated transfer, surveillance of persons and objects, use of an undercover agent*) and the results of their use were admitted as evidence in criminal proceedings. New time limits were established for completing an investigation. So-called *summary pre-trial proceedings* were introduced as a special form of pre-trial proceedings in less serious and less complicated cases, which form the basis for the so-called *simplified proceedings* before a single judge. The amendment contributed to strengthening the position of the public prosecutor in criminal proceedings, and transferred the focus of evidence procedure to the trial stage of

proceedings. *Extraordinary appeal* (*dovolání*) was added to the list of extraordinary legal remedies. Also, the procedure in proceedings after a decision was cancelled by a judgement of the Constitutional Court was newly regulated.

Other very significant changes in criminal procedural law were introduced after the adoption of three laws which have a status of *lex specialis* in relation to the CPC, meaning the CPC will only be used subsidiarily.

These are:

- *Act no. 218/2013 Coll., on Liability of Juveniles for Unlawful Acts and on Juvenile Justice (hereafter the JJA)*, which became effective as of January 1, 2004 and which lays down the specifics of criminal proceedings in the case of juvenile offenders and the specifics of civil law proceedings involving children under 15 years of age who committed an act that would otherwise be criminal, but are not criminally liable due to their age; prior to the Act, the specifics of criminal proceedings involving juveniles were specified to a very limited extent (compared to the current regulation) in the Code of Criminal Procedure;
- *Act no. 418/2011 Coll., on Criminal Liability of Legal Entities and Proceedings against Them (hereafter the Criminal Liability of Legal Entities Act or CLLEA)*, which became effective as of January 1, 2012, and which lays down the specifics of proceedings against legal entities;
- *Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters (hereafter AJCCM)*, which became effective as of January 1, 2014, and which nowadays comprehensively regulates the issue of legal relations with foreign countries, relations formerly provided for in the Code of Criminal Procedure, namely – the procedure of judicial, central and other authorities in the area of international judicial cooperation in criminal matters and the position of certain entities involved in this area.

Other very important new concepts laid down by CPC amendments include e.g. the introduction of a new diversion – the *conditional suspension of filing a motion for punishment* in pre-trial proceedings, brought in by Act no. 283/2004 Coll., implementation of the regulation of the *European Arrest Warrant* by Act no. 539/2004 Coll., new regulation of the interception of telecommunications traffic, including a notification duty and the possibility to review its legality by the Supreme Court, established by Act no. 177/2008 Coll., increasing the range of cases requiring mandatory representation by defence counsel and e.g. the introduction of the concept of cooperation of the accused (for more detail see Chapter 4 and 5), established by Act no. 41/2009 Coll., introduction of prohibition to travel abroad as means of securing the accused by Act no. 197/2010 Coll., the possibility to waive mandatory representation by defence counsel, the possibility to hear witnesses via a video-conference device and changes in the decision-making process on custody and regulation of custody proceedings by Act no. 459/2009 Coll., the introduction of a new diversion – agreement on guilt and punishment between the accused and public prosecutor (for more detail see Chapter 8) by Act no. 193/2012 Coll., new regulation of the order to arrest a suspect by Act no. 105/2013 Coll., the transposition of the *European Protection Order* into domestic legislation by Act no. 77/2015 Coll., introduction of the possibility to order the control of obligations imposed in the form of electronic monitoring in rela-

tion to the substitution of custody by Act no. 150/2016 Coll., and, finally, the possibility to temporarily suspend prosecution and to decide not to prosecute a suspect in cases of passive bribery, ushered in by Act no. 163/2016 Coll.

A very significant strengthening of the rights of injured parties and other changes in the CPC occurred in relation to the adoption of *Act no. 45/2013 Coll., on Victims of Crime* (for more details see Chapter 8), which became effective on February 25, 2013. These changes to the CPC also occurred in relation to the adoption of the new Criminal Code, namely in connection with introducing the categorization of criminal offences, the transition from the material to the formal concept of criminal offence, new legislation governing security detention and in addition the regulation of house arrest and community service. In relation to the adoption of the new Civil Code, which became effective on January 1, 2014, there have also been subsequent terminological changes in the CPC. The current version of the CPC is not officially published in any foreign language. An unofficial translation is available e.g. in the ASPI legal information system.

6.2. Sources of Procedural Criminal Law

In view of domestic law, we may refer, in addition to the *Constitution of the Czech Republic* (Constitutional Act no. 1/1993 Coll.), which stipulates e.g. some procedural exemptions, constitutional principles of the judicial power, the *Charter of Fundamental Rights and Freedoms* (Resolution of the Czech National Council Presidium no. 2/1993 Coll.), containing some important principles of criminal procedural law, the *CPC, JJA, CLLEA* and *AIJCCM* (Act on International Judicial Cooperation in Criminal Matters), there are plenty of others Acts with criminal procedure provisions.[14]

Sources of criminal procedural law also include *judgements of the plenary session of the Constitutional Court of the Czech Republic and amnesty decisions of the President of the Republic.*

Furthermore, some non-criminal legislation applies in criminal proceedings, e.g. under Section 63 of the CPC, the service of documents is subject to the rules for serving docu-

14 Acts of an organizational nature: Act no. 6/2002 Coll., *on Courts and Judges*, as amended, Act no. 283/1993 Coll., *on the Public Prosecutor's Office*, as amended, Act no. 273/2008 Coll., *on the Police of the Czech Republic*, as amended, Act no. 257/2000 Coll., *on the Probation and Mediation Service*, as amended, Act no. 555/1992 Coll., *on the Prison Service and Judicial Guard*, as amended, Act no. 269/1994 Coll., on the Criminal *Register*, as amended, Act no. 85/1996 Coll., *on Advocacy*, as amended, Act no. 36/1967 Coll., *on Experts Witnesses and Sworn Interpreters*, as amended;
Acts associated with executing decisions in the CPC:
Act no. 293/1993 Coll., *on the Execution of Custody*, as amended, Act no. 169/1999 Coll., *on the Execution of Imprisonment*, as amended, Act no. 129/2008 Coll., *on the Execution of Security Detention*, as amended, Act no. 279/2003 Coll., *on the Execution of Seizure of Assets and Items in Criminal Proceedings*, as amended; and other Acts, e.g.:
Act no. 45/2013 Coll., *on Victims of Crime*, as amended, Act no. 137/2001 Coll., *on Special Protection of Witnesses and other Persons in Relation to Criminal Proceedings*, as amended, Act no. 119/1990 Coll., *on Judicial Rehabilitation* (the purpose of which was to contribute towards rectifying certain unjust matters caused by the operation of the criminal justice system under the Communist regime).

ments applicable in civil law proceedings, unless the CPC contains special provisions. In other parts, the CPC refers to regulations regarding expert witnesses and sworn interpreters, or to rules for the judicial sale of items. Other laws are also related to criminal proceedings, e.g. Act no. 82/1998 Coll., *on Liability for Damage Caused in the Course of Exercising Public Jurisdiction by a Decision or Inappropriate Official Procedure*, which lays down rules for compensating damage caused by decision on custody, punishment or protective measures. However, these regulations cannot be considered direct sources of criminal procedural law.

The area of administrative sanctioning is governed in particular by administrative law legislation. Misdemeanours are dealt with in administrative proceedings, in particular according to *Act no. 250/2016 Coll., on Liability for Misdemeanours and Proceedings thereon*. Certain specific procedural provisions are contained in special laws which include the subject-matters of misdemeanours; *Act no. 500/2004 Coll., the Administrative Procedure Code* is applied in a subsidiary manner. Misdemeanours are decided upon by the competent administrative authorities and punished by administrative sanctions. The decisions of these authorities may be reviewed by courts. The area of administrative sanctioning also covers administrative disciplinary wrongs, administrative wrongs and payment wrongs, where the proceedings thereon are regulated by special laws, e.g. Act no. 7/2002 Coll., on Proceedings in Matters of Judges and Public Prosecutors, which stipulates subsidiary use of the CPC.

6.3. Fundamental Principles of Criminal Proceedings

Section 2 of the CPC establishes a comprehensive system of basic legal ideas on which criminal procedure is built, which serves as the foundation for individual concepts and individual stages of proceedings. 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 public hearing;* criminal proceedings are also based on the fundamental principles of the organization of the judiciary, which are set out in the Constitution. Some other principles expressed in the Criminal Procedure Code are laid down in international documents on human rights.

The most important principle of criminal procedure is the called the *principle of due process.* This is a constitutional principle expressed in Article 8 (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 law." This is followed by Section 2 (1) of the CPC, which states that nobody may be prosecuted as the accused other than for lawful reasons and in a manner stipulated by this law. This is the procedural expression of the principle *nullum crimen sine lege* (Article 39 of the Charter) (Šámal, 1992). Other important principles of Criminal Proceedings set out in Section 2 of the CPC include in particular the *principle of proportionality, principle of speedy trial, the right to a defence counsel, principle of securing the rights of the injured party, the principle of officiality and legality, the accusatory principle, presumption of innocence, the fact-finding principle, the principle of presentation of evidence before deciding judge, principle of oral presentation of evidence, the principle of free consideration of evidence, public hearing* and *principle beyond a reasonable doubt*, *cooperation with citizens' interest associations*. However, the CPC sometimes stipulates somewhat extensive exceptions to their application, e.g. in the

case of the *legality principle* – while the public prosecutor is obliged to prosecute all crimes about which they learn, here the CPC nonetheless allows relatively broad possibilities for applying diversions (see Chapter 8).

There are rather significant diversions from some of these fundamental principles in the JJA which relate to the definition of the purpose of this Act, where the aim of hearing unlawful acts committed by children below the age of fifteen and juveniles is to use a measure which would efficiently contribute to preventing the offender from committing this unlawful act in future, which would help the offender find a social role corresponding to their abilities and mental development, and which would encourage the offender to contribute, according to their possibilities and abilities, to compensating the damage caused by their unlawful act. This is manifested in the specific principles, e.g. in the *principle of protecting the privacy and personality of the juvenile* (closed hearing, prohibition to publish information on the juvenile), the *principle of specialization* (specialized authorities involved in criminal proceedings), the *principle of cooperation* (in particular with the Probation and Mediation Service and the child welfare authorities), the *principle of restorative justice and active participation of the victim* (emphasis is given to the application of concept with restorative elements) and the *principle of timely but adequate reaction to the case* (Šámal & et al., 2013, p. 643). On the other hand, the CLLEA does not stipulate any special principles that would modify criminal proceedings in any significant manner.

7.

Court System and Criminal Justice System

7.1 Evolution of the Judiciary, System of Courts and their Organization

After the end of World War II, the court system was returned to the state as of September 29, 1938, with minor changes. Another reaction to Nazi occupation was Presidential Decree no. 16/1945 Coll. and the National Court by Presidential Decree no. 17/1945 Coll., which introduced extraordinary people's courts to pass judgement on crimes against the state, persons and property committed during the occupation. Jury courts were established by Act no. 232/1946 Coll. (Vlček, 1993, p. 61n.).

In 1948, the State Court was established by Act no. 232/1948 Coll., on the State Court, which was designed to hear anti-state crimes. Other significant changes were introduced by Act no. 319/1948 Coll., on People's Justice, which among other things involved laymen in judicial panel decisions, and Act no. 320/1948 Coll., on the Territorial Organization of Regional and District Courts. The system of courts was divided into District Courts, Regional Courts and the Supreme Court. The Courts and Public Prosecutor's Office Constitutional Act, Act no. 64/1952 Coll. established judicial powers at the constitutional level. Besides the Supreme Court and the Regional and People's Courts, it also recognized military and arbitration courts as so-called Special Courts. Supervision by public prosecutors over the precise implementation and observance of laws and other legislation by all ministries and other authorities, courts, national committees (local government authorities), bodies, institutions and individual citizens was strengthened (Vlček, 1993, p. 62). The subsequent Courts Organization Act no. 66/1952 Coll. regulated the organization of the judiciary in detail.

A significant change was introduced by Act no. 38/1961 Coll., on Local People's Courts, the idea of which, according to legislators, was to increase active participation of the working class in judicial decisions. In criminal proceedings these courts could only hear wrongdoings and less serious crimes, and impose only property sanctions and admonitions. Judges were not required to have any formal legal education (Šámal & et al., 2013, p. 22). Act no. 62/1961 Coll., on the Organization of Courts, laid down 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 presentation of evidence and public judicial proceedings, the principle of *nullum crimen, nulla poena sine lege*, and the right to a defence counsel. This Act was superseded by Act no. 36/1964 Coll., on the Organization of Courts and Election of Judges. Its systematics conformed to the previous Act no. 62/1961 Coll. Amendments made to this act up to 1991 concerned, inter alia, the adaptation of the judicial system to reflect the changes in the constitutional structure of the contemporary Czechoslovak Socialist Republic. Other changes concerned abolition of local people's courts, the manner in which courts were occupied and composed, the periods for which judges were elected to office and the manner of elections in general (Vlček, 1993, p. 64n.).

New legislation concerning the judiciary in response to the fall of the Communist regime and the building of a democratic legal state appeared in Act no. 335/1991 Coll., on Courts and Judges. It distinguished District, Regional and Supreme Courts of the Czech and the Slovak Republic, as well as military courts and the Supreme Court of the Czechoslovak Federative Republic. Focus was shifted to protecting the rights and rightful interests of natural persons and legal entities and society as a whole. Among the funda-

mental principles for the operation of the judiciary was that judges are bound only by law, citizens have the right to judicial protection, and that nobody may be denied their lawful judge. The most important changes occurred in relation to the division of the Czechoslovak Republic into two independent countries – the Czech Republic and Slovak Republic – in 1993. Military Courts were abolished and High Courts were introduced into the court system. The President of the Republic was entrusted with the task of appointing judges.[15]

As of April 1, 2002, *Act no. 6/2002 Coll., on Courts and Judges*, became effective and remains in force to the present day. This Act established the Judicial Academy as the institute for the lifetime education of judges and public prosecutors.

The court system now comprises the *Supreme Court (Nejvyšší soud), High Courts (Vrchní soud), Regional Courts (Krajský soud)* and *District Courts* (*Okresní soud*). The *Supreme Administrative Court* (*Nejvyšší správní soud)* began to operate on January1, 2003 (it does not deal with criminal cases, however). The courts are composed of the chairman of the court, vice-chairmen of the court, presiding judges and other judges. Depending on the field of their activity, judges of the Supreme Court form a criminal division, civil division and commercial division.

Judicial precedents are not a formal source of Czech criminal law. However, decisions made, particularly the decisions of higher courts, do in fact influence decision-making practice. The Supreme Court monitors and assesses final court decisions, and on the basis of these, in the interests of conformity in judicial decision-making, it forms opinions on the decision-making activity of courts. It publishes these opinions together with its own selected decisions and the decisions of other courts in the *Collection of Judicial Decisions and Opinions* (*Sbírka soudních rozhodnutí a stanovisek*). These published decisions and standpoints then become a guide for the interpretation and application of legislation.

The Supreme Court makes its decisions as a panel, composed of the presiding judge alongside two judges, and also in some cases as a great panel of the respective division, generally composed of 9 judges, which occurs when a case is transferred to them by a Supreme Court panel which reached a different opinion than the legal opinion previously expressed in a Supreme Court decision. The High Court makes its decisions in panels composed of a presiding judge and two judges. Likewise the Regional Court decides in panels composed of a presiding judge and two lay judges if it is deciding as a first instance court, or in panels composed of a presiding judge and two judges in other cases. District Courts make their decisions in panels composed of a presiding judge and two judges, or by a single judge. Only a judge may sit as a presiding judge in all these courts.

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. From the above we can clearly infer 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 when

15 For more details on the evolution of legislation concerning the organization of the judiciary after the adoption of Act no. 6/2002 Coll., on Courts and Judges, see (Karabec, Vlach, Diblíková, & Zeman, 2011)

specified criminal cases are tried. In proceedings, they participate in the examination of evidence by questioning the persons examined. Judges and lay judges have equal powers when voting on a verdict, with lay judges voting before presiding judges.

The internal organization of courts is based on court departments, formed from panels of judges or single judges. *Judicial boards* (*soudcovská rada*) are established at the Supreme Court, the High Court and Regional Courts, and they operate as an advisory body for the chairman of the court. A judicial board is also established at a District Court which has more than ten judges.

The provisions on judges and lay judges contain the usual rules for the appointment and status of judges and lay judges, grounds for terminating their office, the status of judicial officials and candidate judges, and also questions associated with their disciplinary liability. Act no. 6/2002 Coll., on Courts and Judges, has not yet been officially published in any foreign language.

At the constitutional level, the basic principles for the organization and operation of the judiciary are set out in Chapter IV of the Constitution of the Czech Republic, which, inter alia, also defines the position of the *Constitutional Court* as the judicial body that protects the enforcement of the Constitution and which holds a position outside the court system. *Act no. 7/2002 Coll., on the Proceedings in Cases of Judges, Public Prosecutors and Certificated Bailiffs* was passed in conjunction with Act no. 6/2002 Coll., on Courts and Judges, and regulates the jurisdiction of disciplinary courts in proceedings concerning cases of judges, public prosecutors and distrainors (bailiffs), the make-up of disciplinary panels of judges, the procedure of the disciplinary court and the parties to proceedings concerning the disciplinary liability of judges and public prosecutors, and proceedings on the competence of judges and public prosecutors to hold their office. Another relevant regulation is *Act no. 121/2008 Coll., on Senior Court Clerks and Senior Clerks of the Public Prosecutor's Office*, as amended. This act regulates the position and scope of activity of senior court clerks; to the defined extent, they are authorized to perform independent actions as part of judicial proceedings or other court activities. Furthermore, this Act also regulates the position and scope of activity of the senior clerks of the public prosecutor's offices; to the extent defined by law, they too are authorized to perform actions in criminal proceedings with which they have been charged (in the non-criminal sphere of competence of the public prosecutor's office) and to participate in other activities of the public prosecutor's office.

7.2. Other Important Entities in the Criminal Justice System

In addition to courts, the operation of the criminal justice system in the Czech Republic is carried out in particular by *public prosecutors* and *police authorities*. A very significant role also pertains to the Probation and Mediation Service, Prison Service of the Czech Republic and to defence counsels.

The police authorities in criminal proceedings are primarily departments of the Police of the Czech Republic, but can also be other bodies (see Chapter 8). The main piece of legislation which regulates the organization and activity of the police is *Act no. 273/2008 Coll.,*

on the Police of the Czech Republic, as amended. It contains provisions on the organization of the police, their tasks and procedures, the authority and duties of police officers, the relationship of the police force to other state authorities, local authorities, individuals and legal entities, and to foreign countries. *Act no. 361/2003 Coll., on the Service of Members of Security Forces*, regulates the details of the service of members of the Czech security forces. A special position is occupied by the Military Police of the Czech Republic, the competence of which is regulated by a separate Act, *Act no. 300/2013 Coll., on the Military Police and on the amendment of certain laws (Military Police Act*), as amended. The Military Police provides police protection to the Ministry of Defence, the armed forces, military buildings and sites, military equipment and other state property under the management of the Ministry of Defence. The Military Police is a part of the Ministry of Defence. In the process of decentralizing public administration after 1989, a *local police system* was established which, as an addition to the Czech Police Force, deals with local public order incidents within the jurisdiction of individual communities. Act no. 553/1991 Coll., as amended, regulates its organization and tasks. The municipal police is not a police authority in criminal proceedings.

The organization and operation of public prosecutors' offices is regulated by *Act no. 283/1993 Coll., on the Public Prosecutor's Office,* as amended, which became effective as of January 1, 1994. The Public Prosecutor's Office is conceived as a system of state offices designed to represent the state in matters of protecting the public interest in cases entrusted to them by law. This Act regulates the position, area of competence, internal relations, organization and administration of the Public Prosecutor's Office, the position of public prosecutors as persons through whom the Public Prosecutor's Office performs its activities, the position of candidate prosecutors, the system of education of public prosecutors and candidate prosecutors, and the competence of the Ministry of Justice in this area. For more details on the organization and operation of the Public Prosecutor's Office, see Chapter 8.

The operation of advocacy – defence in criminal proceedings – is governed primarily by *Act no. 85/1996 Coll., on Advocacy*, as amended. It regulates the terms and conditions under which legal services may be provided, the position of the attorney and the candidate attorney, and the sphere of competence of the Czech Bar Association and the Ministry of Justice. For more details on the position of the defence counsel in criminal proceedings, see Chapter 8.

The main legal enactment stipulating the organization of prisons is *Act no. 555/1992 Coll., on the Prison Service and Judicial Guard of the Czech Republic*, as amended. This act established the Prison Service of the Czech Republic, which handles the execution of custody and imprisonment and, to the defined extent, also the protection of order and safety in the operation of the judiciary and court administration, as well as the work of public prosecutors' offices and the Ministry of Justice. The execution of prison sentences in prisons and special departments of custody prisons is regulated primarily by *Act no. 169/1999 Coll., on the Execution of Imprisonment*, as amended, and related by-laws. The execution of custody in criminal proceedings is regulated by *Act no. 293/1993 Coll., on the Execution of Custody*, as amended, and related by-laws. The execution of security detention is regulated in *Act no. 129/2008 Coll., on the Execution of Security Detention*, as amended.

As of January 1, 2001, *Act no. 257/2000 Coll., on the Probation and Mediation Service, established the Probation and Mediation Service*, which performs probation and mediation activities in cases tried in criminal proceedings. They are an organizational unit of the state whose operation is supervised by the Ministry of Justice. This act regulates the organization and activity of the Probation and Mediation Service, the position of probation officers and assistants, and the execution of state administration in probation matters. For more details on the Probation and Mediation Service, see Chapter 5.

8.

Organization of Criminal Proceedings

8.1. Organization of Detection and Investigation of Criminal Activity

The principal authority responsible for detecting and investigating crimes is the *Police of the Czech Republic* (*Policie České republiky*). *Act no. 273/2008 Coll., on the Police of the Czech Republic*, as amended, specifically lists the fulfilment of tasks according to the Criminal Procedure Code among those tasks performed by the police. The police are under the competence of the Ministry of the Interior, which creates the conditions for the successful implementation of police tasks. The police consist of the Police Presidium, units with state-wide competence, Regional Directorates and units established within the Regional Directorates. The law establishes 14 police Regional Directorates. Their territorial districts are identical to the 14 regions of the Czech Republic.

The police comprise a number of units with state-wide competence. These are:

- Institute of Criminalistics in Prague,
- Airport Service,
- National Anti-Drug Centre of the Criminal Police and Investigation Service,
- Pyrotechnical Service,
- Foreign Police Service Directorate,
- Office for the Documentation and Investigation of the Crimes of Communism of the Criminal Police and Investigation Service,
- Unit of Police Education and Service Preparation,
- National Centre for the Detection of Organized Crime of the Criminal Police and Investigation Service,
- Unit for the Protection of the President of the Czech Republic,
- Security Service of the Police of the Czech Republic,
- Rapid Response Unit,
- Special Activities Department of the Criminal Police and Investigation Service,
- Specific Operations Department of the Criminal Police and Investigation Service.

The *Police Presidium of the Czech Republic* (*Policejní prezídium ČR*) oversees police activities in the course of fulfilling their tasks. It is managed 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 departments are managed by Directors. The Police President appoints and replaces the directors of individual departments. Act no. 361/2003 Coll., on the Service of Members of Security Forces stipulates the qualifications required for a police officer and the job descriptions of the Czech Police Forces.

Investigations are conducted by the *Criminal Police and Investigation Service*, within which there are specialized units dealing with the detection and investigation of certain types of crime. Organized crime is covered by the *National Centre against Organized Crime*, drug crime is handled by the *National Anti-Drug Centre*.

According to *Act no. 341/2011 Coll., on the General Inspection of Security Forces*, the tasks of searching, detection and investigation of matters indicating that a crime has been committed by a member of the Police of the Czech Republic, customs officer, member

of the Prison Service of the Czech Republic or employees of these units, pertain to the competence of the General Inspection of Security Forces of the Czech Republic. In certain special cases, the Criminal Procedure Code also confers the powers of the police to other authorities. *Military Police* (*Vojenská policie*) authorities conduct proceedings in relation to crimes committed by members of the armed forces; *Prison Service* (*Vězeňská služba*) authorities conduct proceedings in relation to crimes committed by members of this service; *Security Intelligence Service* (*Bezpečnostní informační služba*) authorities conduct proceedings in relation to crimes committed by members of this service; the authorized bodies of the Office for Foreign Relations and Information conduct proceedings in relation to crimes committed by this authority, and the *Military Intelligence* (*Vojenské zpravodajství*) authorities conduct proceedings relating to crimes committed by members of this service. Certain *customs authorities* exercise the functions of police authorities in proceedings on crimes committed by a breach of customs regulations on the import, export or transit of goods, a breach of regulations on the placement and purchase of goods in EU member states, if such goods are transported across Czech borders, a breach of tax legislation regulating value added tax and also in cases where customs authorities operate as tax administrators.

The investigation of crimes committed by the Police of the Czech Republic, the Prison Service and members of other security forces, as well as by employees of the Czech Republic appointed to work in such forces, is conducted by the General Inspection of Security Forces (hereafter the GISF). Proceedings on criminal offences committed by members of the GISF, Security Intelligence Service, Office for Foreign Relations and Information, Military Police and employees of the Czech Republic appointed to work for the GISF are conducted by a public prosecutor.

The public prosecutor's competence within the supervision of pre-trial proceedings includes powers to perform any action or conduct the entire investigation personally. The captain of a ship on a long-distance voyage may also conduct an investigation of crimes committed on board the ship. Investigation of crimes committed by members of the armed forces is conducted by the authorized department of the Military Police.

The public prosecutor is entrusted to supervise that legality is maintained throughout pre-trial proceedings. The public prosecutor may charge the police to take actions as such body is authorized to conduct which are required to clarify a case or identify the offender. They are also authorized to withdraw any case from the police or *temporarily suspend the initiation of criminal prosecution*. In performing supervision, the public prosecutor is also authorized to issue binding instructions for the investigation of crimes, request documents from the police for review, participate in action taken by the police, personally take action or conduct an entire investigation and issue a decision in any matter. They may also return a case to the police, instructing them to supplement it and repeal any illegal or unjustified decisions and measures, which they may replace with their own. The person against whom criminal proceedings are being conducted and the injured party have the right at any time during pre-trial proceedings to request the public prosecutor to rectify delays in proceedings or irregularities in police procedure.

As regards cases investigated by a public prosecutor, supervision to ensure that the legality of pre-trial proceedings is maintained is performed by a public prosecutor at the closest superior public prosecutor's office; they also deal with requests to rectify delays in proceedings or irregularities in the public prosecutor's investigation.

As stated previously, apart from the aforementioned exceptions, the detection and particularly the investigation of crimes falls within the competence of the Police of the Czech Republic. However, as far as the detection of crime is concerned, the CPC stipulates an obligation for state authorities to inform the public prosecutor or the police immediately of facts indicating that a criminal offence has been committed. In addition to autonomous authorities such as the intelligence services, various specialized divisions operate within individual ministries focusing specifically on the detection of suspicious activity in relation to the sphere of interest of the ministry in question. The *Financial Analytical Unit* (FAU) is one such example. It is an administrative authority subject to the Ministry of Finance which fulfils the functions of a financial intelligence unit for the Czech Republic. The main tasks are to collect and analyse notifications on suspicious transactions, carry out control activity and conduct proceedings on misdemeanours and administrative wrongs, pursue the legal agenda associated with drafting legislation in the fight against money laundering, financing terrorism and international sanctions, cooperate with foreign authorities and coordinate the implementation of international sanctions. 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.

8.2. Organization of the Public Prosecutor's Office

Act no. 283/1993 Coll., *on the Public Prosecutor's Office*, as amended, regulates the sphere of competence and organization of public prosecutors' offices. The public prosecutors' offices form a system of state offices designed to represent the state in matters of protecting the public interest in cases entrusted to them by law. The public prosecutor's office brings an indictment on behalf of the state in criminal proceedings and has other duties under the CPC. Under the conditions stipulated by law, it also supervises compliance with 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 and participates on the prevention of crime and providing assistance to victims of crime.

The system of public prosecution consists of the *Supreme Public Prosecutor's Office* (*Nejvyšší státní zastupitelství*), the *High Public Prosecutor's Offices* (*Vrchní státní zastupitelství*), the *Regional Public Prosecutor's Offices* (*Krajské státní zastupitelství*) and the *District Public Prosecutor's Offices* (*Okresní státní zastupitelství*); during a state of emergency (before declaring mobilization) there are also higher and lower *Field Public Prosecutor's Offices* (*Polní státní zastupitelství*). The seats of individual public prosecutor's offices and their territorial jurisdiction are the same as the seats and jurisdictions of courts.

The higher level public prosecutor's offices supervise the activities of the lower level public prosecutor's offices in their districts. They also decide on remedies against decisions of the public prosecutor's offices on the level immediately below them. *The Supreme State Prosecutor's Office* is authorized to issue *General Instructions* to unify and direct

the activities of public prosecutor's offices. The higher level public prosecutor's office is authorized to issue instructions related to a specific case to the public prosecutor's office immediately below them in its district. Each public prosecutor's office has its own chief public prosecutor. The *Supreme Public Prosecutor* is responsible to the Minister of Justice, who supervises the activity of the Supreme Public Prosecutor's Office. At the proposal of the Supreme Public Prosecutor, the Minister of Justice appoints a public prosecutor for an indefinite period of time. The government, at the proposal of the Minister of Justice, appoints and replaces the Supreme Public Prosecutor. The Minister of Justice appoints and replaces the other chiefs of the public prosecutors' offices.

As stated previously, in criminal proceedings it is the public prosecutor who files an indictment on behalf of the state and represents the state in the proceedings. To simplify matters, their role can be divided into the role they play in pre-trial proceedings and their role in trial proceedings. In pre-trial proceedings, the public prosecutor is entrusted with supervising that legality is maintained. See the relevant part of Chapter 8.1. defining their competences with respect to the police authority which verifies the facts indicating that a crime has been committed, or is conducting the investigation. The 2001 amendment introduced the use of so-called *operative-search means – simulated transfer, surveillance of persons and objects,* and *use of an undercover agent* – into the CPC. As a consequence, the public prosecutor was entrusted with certain powers to make decisions on whether their use would be permitted.

The public prosecutor has significant powers in connection with the completion of pre-trial proceedings. Above all, they have exclusive authority to *file an indictment* (or *motion for punishment* upon the completion of summary pre-trial proceedings or motion for approving an agreement on the guilt and punishment), which determines the subsequent course of proceedings. This is because prosecution before a court only takes place on the basis of an indictment, and the court merely decides on the offence specified in the indictment.

Criminal prosecution may also be terminated in pre-trial proceedings in other ways than by filing an indictment (motion for punishment or motion for approving an agreement on the guilt and punishment). It is within the public prosecutor's powers to make all such decisions. Provided the enumerative list of conditions stipulated by law is met, the public prosecutor may *terminate a case*, *transfer it to another competent authority*, *discontinue* the prosecution or *suspend* it. In conjunction with the tendency to pursue alternative methods of dealing with criminal cases when appropriate, the public prosecutor is also authorized, in pre-trial proceedings and under conditions stipulated by law, to *conditionally discontinue prosecution*, decide on approving an *out-of-court settlement* and discontinuing criminal prosecution, *waive the criminal prosecution* of juveniles or make other similar decisions in summary pre-trial proceedings. In addition, they may also propose, either in the indictment or separately, the imposition of a *protective measure* (*ochranné opatření*). Certain decisions which terminate proceedings by way of a public prosecutor's resolution are subsequently reviewed, after becoming final, by the Supreme Public Prosecutor's Office, which has the power to repeal them.

The public prosecutor represents the public prosecution in trial proceedings. For other competencies and steps in trial proceedings, see Sub-Chapter 8.6. and 8.10. In cases stipu-

lated by law, the public prosecutor may file a complaint against the decisions of the court; this applies both to procedural decisions and to decisions on merits, but not judgements. Based on the incorrectness of any verdict, the public prosecutor is also authorized to appeal against a judgement, regardless of whether it is to the benefit or detriment of the accused. The public prosecutor's presence in appellate proceedings held in a public session is mandatory.

The Supreme Public Prosecutor may contest a final court judgement on merits by an *extraordinary appeal* (*dovolání*), both to the benefit and to the detriment of the accused. The participation of a public prosecutor from the Supreme State Prosecutor's Office is mandatory in proceedings on an extraordinary appeal held by the Supreme Court. A public prosecutor from the Supreme Public Prosecutor's Office also participates in proceedings held by the Supreme Court on a complaint against the violation of law filed by the Minister of Justice. Finally, a public prosecutor may petition for permission to hold a retrial concerning criminal proceedings that have been finally end effectively concluded. They may, but are not obliged to, participate in proceedings regarding a petition for a new trial. In proceedings on an extraordinary legal remedy, the public prosecutor has the right to provide an opinion on the case or file a petition for the examination of evidence. If the public prosecutor themselves petitioned for an extraordinary legal remedy, they may withdraw the petition.

The public prosecutor has additional competencies and duties during the stage of enforcing a decision, particularly where it is a decision which the public prosecutor issued themselves. Public prosecutors also play an important role in the area of international judicial cooperation in criminal matters, e.g. when requesting the extradition of an accused from a foreign state or in proceedings on the extradition of a person for the purpose of criminal proceedings in a foreign state.

8.3. Organization of the Courts

The system, organization and operation of courts is regulated in particular by *Act no. 6/2002 Coll., on Courts and Judges*, and other associated legislation (see Chapter 7). In view of criminal proceedings, the issue of subject-matter, territorial and functional jurisdiction of the court and determining which cases are to be decided in panels are stipulated by the CPC, with certain deviations or specifications laid down in the JJA, CLLEA and AIJCCM.

A single judge conducts proceedings on crimes for which the law prescribes a sentence of imprisonment with a maximum term of no more than 5 years, other cases are decided by panels (for more information on the composition of panels, see Chapter 7).

As far as determining *material jurisdiction* is concerned, first instance criminal proceedings are conducted by *District Court*; by *Regional Court* on crimes for which the law stipulates a sentence of imprisonment with a minimum term of at least five years, or if the crime is punishable by an exceptional sentence of imprisonment. As a first instance jurisdiction court, it also conducts proceedings on certain other offences as stipulated by law. The immediately higher level court always decides on remedies for decisions of first instance courts.

The *Supreme Court* is competent to decide on *extraordinary legal remedies* (extraordinary appeal, complaint against the violation of law) against final decisions. During proceedings on an extraordinary appeal, the Supreme Court reviews, to the extent and for the reasons stated in the petition for an extraordinary appeal, the legality and justification of that part of the decision against which the extraordinary appeal was filed, as well as the procedure which preceded the contested part of the decision. If appellate review is filed against a guilty verdict, the court always reviews the verdict on punishment 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 a contested decision in proceedings on a complaint against the violation of law.

As far as *territorial jurisdiction* is concerned, proceedings are held by the court in whose district the offence was committed. If the location of the offence cannot be identified or if the offence was committed abroad, then the case is assigned to the court in whose district the accused resides, works or is staying. 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 offence first came to light. Jurisdiction to conduct pre-trial proceedings pertains to the respective District Court in whose district the public prosecutor who filed the petition operates. A special provision exists for proceedings involving juvenile offenders, where proceedings are conducted by the juvenile court in whose district the juvenile resides, and if they have no permanent residence, then by the court in whose district the juvenile is staying or works. If it is not possible to identify any such place or if they are outside the Czech Republic, proceedings are conducted by the juvenile court in whose district the offence was committed; if this place cannot be identified either, proceedings are conducted by the juvenile court in whose district the offence first came to light. A special provision is also contained in the CLLEA, where, if the place of the commission of the offence cannot be identified or if the offence was committed abroad, proceedings are conducted by the court in the district of which the legal entity has its registered office, or, in the case of an accused foreign legal entity, its plant or organizational unit, and if such cannot be identified, by the court in the district of which the offence first came to light.

The issue of subject-matter and territorial jurisdiction is also specifically regulated, with regard to the nature of the case, in the AIJCCM, namely according to individual procedures and types of proceedings.

8.4. Advocacy and Defence Counsel

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

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

Throughout criminal proceedings, the defence counsel is entitled to file petitions on behalf of the accused, make requests, appeal on their behalf or access to file. If the accused is in custody, the defence counsel may talk to them without a third party present. From the commencement of criminal prosecution, the defence counsel is entitled to be present during investigations whose results may be used as evidence in proceedings before the court. The defence counsel may ask questions of any person being interviewed and raise objections against the method of investigation. Upon completion of the investigation, the defence counsel is entitled to read through the investigation file and propose additional evidence. In trial proceedings, the defence counsel is entitled to take part in all actions in which the accused may take part, propose evidence and participate in examination thereof.

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

Czech law provides for a *defence free of charge*. If the accused proves their inability to pay the costs of the defence, the court can decide that the accused is entitled to a free defence or defence for a reduced fee. In such a case, the state pays the cost of the defence in full or in part. It does not matter at which stage of proceedings the claim for a free defence or defence at a reduced fee is made. However, the accused must prove that their financial situation is difficult. In other cases, the principle applies that the state does not bear the costs of the accused for the chosen defence counsel, with the exception of the costs of mandatory defence incurred as a result of a complaint against the violation of law.

An attorney is a person registered in the list of attorneys kept by the *Czech Bar Association* (*Česká advokátní komora*). The preconditions for exercising the profession of attorney are full legal capacity, a university legal education and blamelessness (clean criminal record). An applicant for the profession of attorney must have at least three years' experience working as a candidate attorney, must pass the bar exam and swear the attorney's oath. In cases stipulated by law, the work experience of a candidate attorney and the passing of a bar exam may be replaced by another similar examination or by practical experience in a different field of the legal profession.

8.5. Position of the Victim

The Criminal Procedure Code does not expressly define the *victim* (*oběť*) of crime. It defines the *injured party* (*poškozený*), which means an entity that suffered bodily harm or property, moral or other damage as a result of the crime. An injured party in the sense of the CPC may be both an individual and a legal entity. However, one who feels injured or damaged morally or otherwise by a crime, but where the damage is incurred through no fault of the offender, or is not caused as a result of a crime, is not considered to be an injured party.

The improvement in the position of the injured party in criminal proceedings is one of the priority trends in Czech criminal law, and is reflected in some legislative changes. One important change came about (though not along the legislative route) 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 criticized and, as shown by the Constitutional Court judgement, was contradictory to the constitutional principles of the equality of parties before the court and the right to a fair trial. The rights of the injured party were further improved by the 2001 amendment to the CPC, which obliged *Authorities involved in criminal proceedings* to inform the injured party of their rights, and make it fully possible for the injured party to exercise these rights.

Currently every injured party, regardless of the nature of the case, has the right, even during pre-trial proceedings, to propose additional evidence, inspect documents, attend the trial and the public session on an appeal or on the approval of an agreement on guilt and punishment. In trial proceedings, the injured party and their agent (see below) have the right, with the court's consent, to ask questions of the persons examined and give a closing speech before the end of the session.

The injured party is also entitled to *propose that the court impose on the defendant in the condemning judgement an obligation to compensate them for the damage or non-material harm* incurred as a consequence of the criminal offence, *or to surrender any unjust enrichment* gained by the defendant at their expense. However, if the findings from examination of the evidence do not give grounds for imposing such obligation, or if it would require examination of further evidence that would substantially prolong the criminal proceedings, or if the court acquits the defendant of the charges, the injured party will be referred to civil law proceedings. The court will also refer the injured party to such proceedings with the remaining portion of their claim, if for any reason their claim is granted only partially. As regards the *possibility of the injured party to claim compensation for damage through a private action*, the general rule is that the compensation procedure in criminal proceedings is, in principle, an *adhesive procedure* and that if the criminal court for whatever reason does not grant the claim, this does not affect the injured party's right to take their claim to a civil court. In addition, the injured party does not have to file a claim for compensation in criminal proceedings at all, and may resort solely to civil remedies. However, the CPC

expressly states that a claim for compensation may not be filed in criminal proceedings if a decision on such a claim has already been made in a different type of procedure. The injured party also has the *right to secure their claim* in the actual course of criminal proceedings.

It is at the discretion of the injured party whether they demand enforcement of the obligation to compensate the damage caused by the criminal offence, regardless of whether it was granted in criminal proceedings or outside thereof, and for this purpose the injured party may use the instruments set out in civil law. Notwithstanding, the CPC 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 satisfaction of the injured party's claim for compensation of damage caused by a crime will be obstructed or difficult, the claim may be secured from the assets of the accused up to the probable amount of damage in a procedure stipulated by law. This is decided by the court or in pre-trial proceedings by the public prosecutor. The legally recognized claim may then be satisfied from such seized assets.

The injured party has extensive rights in the area of exercising legal remedies. They are entitled to file a complaint against a decision to terminate or transfer a case, against a decision to discontinue criminal prosecution, against a decision on the approval of an out-of-court settlement or against a decision on conditional discontinuation of criminal prosecution. An injured party that asserted their claim for compensation of damage or non-material harm, or for the surrender of unjust enrichment, may contest a judgement by filing an appeal for the incorrectness or absence of such verdict.

The injured party also has an important role in relation to the possibility of prosecuting certain offenders for certain crimes. The CPC defines a range of crimes for which *the offender may be prosecuted only with the injured party's consent* (provided that the offender and the injured party are related in a specific way). Exceptions to this are cases when such a crime resulted in death, the injured party is not able to give consent because of a certain mental indisposition, the injured party is a person 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 legal remedies against decisions by which proceedings are terminated in various ways without granting the asserted claim, the injured party's right to due trial of the case is also secured by the possibility to request that delays in proceedings or flaws in the procedure of the police or public prosecutor be rectified. This must be dealt with immediately and the injured party must be notified of the result.

It is the right and not the obligation of the injured party to exercise the rights which the CPC provides in connection with their status in the proceedings. They may therefore waive these rights by expressly stating so to the authority involved in criminal proceedings.

The injured party may choose to be represented by an *agent*, who may at the same time be a *confidant of the victim* according to the *Act on Victims of Crime* (see below). An agent is authorized to file petitions on behalf of the injured party, to file applications and remedies

on their behalf, as well as to participate in all actions which the injured party is entitled to attend. Under the conditions stipulated by law, the court may decide that the injured party is entitled to *legal assistance provided by the agent free of charge* or at a reduced fee. If the injured party does not choose an agent in such a case, the court will appoint as agent an attorney registered in the register of providers of assistance to victims of crime for legal assistance according to the Act on Victims of Crime. The costs incurred in retaining such an agent are borne by the state.

If the number of injured parties is exceptionally high and the speedy trial could be obstructed by the individual exercising of their rights, they will exercise their rights in proceedings through a joint agent whom they choose; if they fail to agree upon a particular choice, the court will appoint one.

The term *victim of crime* was used by Act no. 209/1997 Coll., on Financial Assistance Provided to Victims of Crime. An important legislative step in relation to victims of crime was *Act no. 45/2013 Coll., on Victims of Crime*, which aims, in particular, to improve the legal position of victims of crime, as well as to ensure a considerate approach, especially on the part of authorities involved in criminal proceedings. (Jelínek & Pelc, V., 2015, pp. 19-23)

A *Victim* is defined in this Act as a natural person whose health was, or allegedly was, harmed or that has, or allegedly has, suffered property or non-material harm, or at the expense of whom the offender obtained unjust enrichment. Relatives of the victim in direct line, siblings, an adopted child, adoptive parent, spouse or registered partner, a companion or person to whom the victim provided or was obliged to provide support, are also deemed to be victims if they suffered harm as a result of the victim's death caused by a criminal offence.

Based on the Act referred to above, victims of crime are *entitled to professional assistance, information, protection from impending danger, protection of privacy, protection from secondary harm and to financial assistance.*

The law provides stronger protection and certain special rights to the category of *especially vulnerable victims*, which includes e.g. children, elderly persons, medically challenged persons, victims of terrorist attacks or trafficking in human beings, victims of crimes against human dignity in the sexual sphere etc. These are e.g. right to free of charge representation by an agent (must prove that their financial situation is difficult), increased protection during interview and others.

The Act on Victims of Crime also introduced **some new concepts for criminal proceedings.** These include e.g. the concept of the confidant of the victim, someone who accompanies the victim to actions taken in criminal proceedings and who provides explanation in pre-trial proceedings, or the concept of the *statement of the victim on the effects of the crime on their personal life*, which the victim may make at any stage of criminal proceedings. The statement may also be made in writing. Last but not least, a new concept of *preliminary measures* has been introduced in criminal proceedings. These may be imposed on the accused and some of them serve directly to protect the victim. Such preliminary measures include:

- prohibition of contact with the injured party, persons close to them or other persons, in particular witnesses,
- prohibition to enter a common residence shared with the injured party and its immediate surroundings or to stay in such residence,
- prohibition of visits to unsuitable environments, sports, cultural and other social events, and contact with specified persons,
- prohibition to stay in a specifically designated area,
- prohibition to travel abroad,
- prohibition to hold and possess items that may serve to commit a crime,
- prohibition to use, hold or possess alcoholic beverages or other addictive substances,
- prohibition of gambling, playing slot machines and betting,
- prohibition to perform a specifically designated activity the nature of which allows criminal activity to be repeated or continued.

The activities of a number of non-governmental organizations should also be noted in conjunction with assistance provided to victims of crime (for more detail, see Chapter 10).

8.6. Stages of Criminal Proceedings

The initial stage of criminal proceedings in the Czech Republic is *pre-trial proceedings* (*přípravné řízení*). Pre-trial proceedings are understood according to Section 10 (12) of the CPC as the state of proceedings from making a record on initiation of steps in criminal proceedings, or from the performance of the urgent and unrepeatable actions that directly precede it, and if no such action was performed, from the initiation of criminal prosecution, until the time of filing an indictment or a petition for the approval of an agreement on guilt and punishment, transferring the case to another authority, discontinuation of criminal prosecution, or another decision or event having the effects of discontinuation of criminal prosecution prior to filing an indictment, or until another decision terminating pre-trial proceedings, such as conditional discontinuation of criminal prosecution, settlement or waiver of criminal prosecution of juveniles. It includes clarification and the *verification* of matters indicating that a crime has been committed, as well as the *investigation* (Jelínek & et al., 2007, p. 426).

The police authority is responsible for conducting all necessary searches and measures for revealing the circumstances indicating that a criminal offence has been committed and aimed towards identifying the offender. They draw up a *report on the initiation of criminal proceedings*, stating the factual circumstances due to which proceedings have been initiated and how these circumstances came to their knowledge. The police are obliged to verify these facts within two, three or six months, depending on the nature of the offence. The public prosecutor may extend these time limits.

This verification may result in *termination of the case* if there is no suspicion of a criminal offence, if criminal prosecution is inadmissible for reasons stipulated by law, if such prosecution would be ineffective, or if the facts have not been ascertained that would justify the initiation of criminal prosecution of the person in question. If it is required to

deal with the case in another way, then in line with Section 159a (1) of the CPC, the public prosecutor or police authority *transfers the case* to the authority competent to deal with it (e.g. as a misdemeanour).

If the ascertained and well-founded facts indicate that a criminal offence has been committed, and if it is sufficiently and justifiably concluded that a certain person committed the offence, the police will immediately initiate prosecution of this person as the accused (*commencement of criminal prosecution*).

An exception is a case where criminal prosecution is inadmissible or impractical for statutory reasons, which is decided by the public prosecutor or the police, or when the police authority *temporarily suspends criminal prosecution* with the public prosecutor's consent. Prosecution for certain criminal offences enumerated by law may only be initiated, and prosecution already commenced may be only continued, with the consent of the injured party. Therefore, prosecution may not be initiated just to "establish a case", i.e. against a hitherto unknown offender. This prohibition has a number of procedural consequences.

The stage of criminal prosecution up to the completion of pre-trial proceedings is called *investigation* (*vyšetřování*). Czech law does not know the concept of an investigating 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 Article 8.1). The legality of the entire pre-trial proceedings is supervised by the public prosecutor, for which the CPC provides them with a range of competences. The police authority proceeds 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 incriminating or exonerating. The accused may not be forced in any manner to make a statement or confess. The defence of the accused and the evidence proposed by them must be carefully examined, unless it is completely insignificant.

Throughout the criminal proceedings, including the pre-trial proceedings, the accused has the right to comment on all facts they are being charged with and the evidence thereon, but is not obliged to make any statement. They may state the circumstances and evidence for their defence, make petitions, requests and apply legal remedies. They are entitled to choose a defence counsel, to consult them even during the course of investigative actions performed by authorities involved in the criminal proceedings, and to view the file; in pre-trial proceedings they are also entitled to study the file upon conclusion of the investigation.

Upon completion of the investigation, the police authority *submits the file to the public prosecutor* with a recommendation for filing an indictment with a list of proposed evidence, or recommends a different decision (to transfer the case, suspend prosecution, discontinue prosecution, conditionally discontinue 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 criminal prosecution. The public prosecutor must be informed if these deadlines are not observed, and in such cases is obliged to review the case at least once a month.

Criminal prosecution before a court is possible only on the basis of an *indictment, a motion for punishment, or motion for the approval an agreement on guilt and punishment* filed by the public prosecutor. The public prosecutor represents public prosecution in trial proceedings. An indictment may be filed only for an offence for which the criminal prosecution was initiated. The court may only try the offence which is stated in the indictment proposal. The public prosecutor may withdraw the indictment before the court of the first instance retires for its final deliberation; once 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 pre-trial proceedings.

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

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

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

As regards the possibility of holding a trial in the absence of the accused, in general their presence at the trial is essential. Nevertheless, the CPC Code does recognize 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 served to the accused, that the accused was duly summoned to the trial, and that the accused has already been interviewed as part of the proceedings regarding the offence in question. The trial may not be held in the absence of the accused if they are in custody or serving a prison sentence, or if it involves a criminal offence for which the law stipulates a maximum sentence of more than five years (this does not apply if the accused requests that the trial should be held in their absence). In cases of mandatory defence, a trial may not be held without the presence of a defence counsel. The trial also may not be held in the absence of a juvenile offender, unless proceedings against a fugitive are concerned.

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

For the sake of completeness, it should be mentioned that at a public session dealing with an appeal, the presence of the accused is desirable but not essential. The accused must have a defence counsel in all cases when they have to have one at the trial. When the accused is absent because they are 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 they waive their right to be present at such public session.

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

For information on legal *remedies*, see the next sub-chapter. Execution proceedings constitute a separate stage of criminal proceedings. For information on the execution of an unsuspended sentence of imprisonment see Chapter 9.

8.7. Legal Remedies

Czech criminal law distinguishes between regular and extraordinary legal remedies against the decisions of authorities involved in criminal proceedings. Regular remedies (*řádné opravné prostředky*) are complaint (*stížnost*), appeal *(odvolání)* and protest *(odpor)*; extraordinary remedies (*mimořádné opravné prostředky*) include *extraordinary appeal (dovolání)*, *complaint against the violation of law* (*stížnost pro porušení zákona*), and *retrial* (*obnova řízení*). Extraordinary legal remedies may be applied only after the contested decision becomes final. A complaint, appeal or protest may contest a first instance court decision which is not final. It should be mentioned for the sake of completeness that a specific legal remedy exists as part of extradition proceedings, whereby the Minister of Justice may submit a case to the Supreme Court for review should there be any doubts regarding the correctness of a court's final decision.

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

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

An *appeal* is the legal remedy against a *judgement* of a first instance court. An appeal always suspends the enforceability of a judgement. An appeal is made to the court which issued the contested judgement. A decision on the appeal is made by a superior court. Unless the court rejects the appeal for formal reasons, it will review, with regard to the alleged flaws, the legality and substantiation of the contested parts of the judgement and the correctness of the preceding procedure. The court of appeal considers defects which are not included in the appeal only when they affect the correctness of the verdicts contested by the appeal. If the court finds the appeal unjustified, it will *reject* it; otherwise, it will *annul* the contested judgement or 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 case itself* by a judgement. The court may only alter the contested judgement to the disadvantage of the accused based on an appeal filed by the public prosecutor which was filed to the disadvantage of the accused; in a verdict on compensation, the court may also do so upon an appeal filed by the injured party who made a claim regarding compensation. The court of appeal may not pronounce the accused guilty of an offence of which they were acquitted by the contested judgement, or pronounce the accused guilty of a more serious offence than the one the first instance court could have pronounced in the contested judgement.

8.8. Special Kinds of Proceedings

In addition to the aforementioned fundamental procedure of criminal proceedings, the CPC also stipulates certain special kinds of proceedings. The 2001 amendment introduced *summary preliminary proceedings* (*zkrácené přípravné řízení*), followed by *simplified trial proceedings* (*zjednodušené řízení*) before a single judge. Summary preliminary proceedings are held for offences under the jurisdiction of a district court for which the law stipulates a prison sentence with the maximum term of five years if the suspect was caught in the act or immediately thereafter, or if such facts are established which justify commencement of criminal prosecution and it may be expected that the suspect will be brought before a court within two weeks at the latest (from *notification of suspicion*). Summary pre-trial proceedings must be completed within this two-week time limit (the public prosecutor may extend them, but by no more than ten days), and the suspect has the same rights in these proceedings as the accused. If the public prosecutor concludes that the results of the summary pre-trial proceedings warrant committal of the suspect for trial, they file a

motion for punishment to court (*návrh na potrestání*). The single judge at the trial in simplified trial proceedings will hear the accused and thereafter they may decide to refrain from proving those facts which all parties agree on as being indisputable.

Another special type of proceedings are *proceedings on criminal matters of juveniles*, stipulated in the JJA. The specificities of these types of proceedings consist above all in the fact they are held by *specialized juvenile courts*.[16] The JJA expressly stipulates that during the proceedings it is necessary to take into account the age, medical condition and intellectual and moral maturity of the person against whom proceedings are conducted, so that their future development is endangered as little as possible and that the tried acts and causes thereof, as well as the circumstances allowing the commission of such act, are duly clarified and liability therefor was applied according to the above stated Act. The law also acknowledges a special status of an entity with individual procedural rights to the *child welfare authorities* (*orgány sociálně-právní ochrany dětí*). Also, other modifications to the basic type of criminal proceedings are aimed towards emphasizing the educational effect of proceedings on juvenile offenders and to increase protection of their rights (e.g. mandatory defence, protection of privacy consisting in prohibiting publication of their identification data, non-publicity of proceedings and stressing the application of diversions, excluding the possibility of issuing a criminal court order and the impossibility of applying an agreement on guilt and punishment).

Proceedings against a fugitive (*řízení proti uprchlému*) may be conducted against anyone evading criminal proceedings by residing abroad or being in hiding. The accused must always have a defence counsel in such proceedings. The defence counsel has the same rights as the accused. The trial is held even in the absence of the accused, regardless of whether the accused is aware of this. If the proceedings against the fugitive result in a conviction and afterwards the reasons lapse for which proceedings against the fugitive were conducted, a court of first instance will annul such a conviction at the proposal of the convicted person and a new trial will take place. However, a decision in the new proceedings cannot be changed to the detriment of the accused.

Another example of a special type of proceedings are *proceedings after the repeal of a decision by a ruling of the Constitutional Court.* Upon delivery of the ruling of the Constitutional Court which renders a decision of an authority involved in criminal proceedings null and void, this authority will proceed forward from the stage of proceedings which immediately preceded the issue of the repealed decision. This authority is bound by the legal opinion presented by the Constitutional Court, and is obliged to take any steps and additional action ordered by the Constitutional Court.

Another special type of judicial proceedings stipulated by the Criminal Procedure Code are proceedings before a single judge (*řízení před samosoudcem*). A single judge conducts criminal proceedings concerning offences for which the law imposes maximum prison sentences of no more than five years. In addition to the already mentioned simplified proceedings, the specific features of proceedings before a single judge also consist in the

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

fact that a single judge may issue a penal order (*trestní příkaz*) without a trial, provided the facts of the case are reliably substantiated by the evidence produced. A criminal court order may impose only certain types of punishments and the term of punishment only up to certain limits, e.g. a suspended prison sentence of up to one year, a house arrest sentence of up to one year or community service. It may not be issued, for instance, in proceedings against a person who has been legally incapacitated, juveniles younger than eighteen in the time of proceedings or whose legal capacity has been restricted. A criminal court order has the same magnitude as a conviction.

During the 1990s, new kinds of decisions on merits in criminal proceedings were included in the CPC namely *conditional discontinuation of criminal prosecution* (*podmíněné zastavení trestního stíhání*) and *approval of an out-of-court settlement* (*schválení narovnání*). The court and in pre-trial proceedings the public prosecutor may, with the consent of the accused, conditionally discontinue criminal prosecution for a transgression (*přečin*), if the accused pleads guilty, compensates the damage caused, concludes an agreement on compensation with the injured party, or has taken other necessary steps towards such compensation, surrenders unjust enrichment obtained through an offence or concludes an agreement on its surrender with the victim, or takes other appropriate measures for its surrender and given the character of the accused, with regards to their previous life and the circumstances of the case, such a decision can be reasonably deemed as sufficient. The decision will set a probation period between six months and two years, and it may order the accused to make compensation or comply with some reasonable restrictions and obligations aimed at encouraging them to lead an orderly life. In cases where it is substantiated by the nature and seriousness of the committed transgression, the circumstances of its commission, or by the circumstances of the accused, the decision on discontinuation of criminal prosecution may be conditioned by an obligation of the accused to refrain during the probation period from a certain activity in relation to which they committed the transgression, or to deposit a financial sum designated to the state for financial assistance to victims of crime. In such cases, the probation period may be between 2 and 5 years. If the accused fails to lead an orderly life during the probation period or does not comply with all the obligations imposed, the court or public prosecutor will decide to proceed with criminal prosecution.

In proceedings conducted for a transgression, the court and in pre-trial proceedings the public prosecutor may, with the consent of the accused and the injured party, decide to approve an *out-of-court settlement and discontinue the criminal prosecution*. A prerequisite for such decision is that the accused declares that they committed the act for which they are being prosecuted, pays the damage caused to the aggrieved person or takes the necessary steps for its compensation, or otherwise remedies the harm caused by the transgression, surrenders any unjust enrichment gained by the transgression or takes other necessary steps for its surrender, and deposits a financial sum designated to the state for the assistance of victims of crime according to the Act no. 45/2013 Coll., on Victims of Crime, to the account of the court or in pre-trial proceedings the public prosecutor's office. Such deposited sum must not be clearly disproportional to the seriousness of the committed transgression. The another condition is that given the character of the accused, with regards to their previous life and the circumstances of the case, such a decision can be reasonably deemed as sufficient.

Within summary preliminary proceedings the public prosecutor may apply similar diversions, namely *conditional suspension of a motion for punishment* and *termination of the case on the grounds of approving an out-of-court settlement*.

Another special type of court *proceedings are proceedings to review an order to intercept and record telecommunications traffic and an order to secure data on telecommunications traffic* (*řízení o přezkumu příkazu k odposlechu a záznamu telekomunikačního provozu a příkaz k zajištění údajů o telekomunikačním provozu*). Following a petition by the user of a telephone or other telecommunications device, the Supreme Court will review the legality of the order to use this operative-search means in a closed hearing. If, after reviewing the case, the Supreme Court concludes that the order was issued or implemented contrary to the law, it issues a resolution proclaiming a violation of law. No remedy is permitted against such a decision.

Based on experience from other states, a new type of proceedings was introduced with effect as of September 1, 2012, *namely proceedings on the approval of an agreement on guilt and punishment* (*řízení o schválení dohody o vině a trestu*). Within this type of proceedings the public prosecutor may initiate negotiation on an agreement on guilt and punishment in pre-trial proceedings,[17] provided the outcomes of the investigation sufficiently substantiate the conclusion that the act in question constitutes a criminal offence and that it was committed by the accused. The agreement is made and entered into by and between the accused in the presence of the defence counsel and the public prosecutor. Also, the injured party has right to attend the negotiations on an agreement on guilt and punishment and subsequently the public session held on the approval of the agreement proposal. The injured party may assert their claim for monetary compensation of damage or non-material harm caused by the criminal act, or for the surrender of unjust enrichment gained at their expense, no later than during the first negotiations on the agreement on guilt and punishment. The agreement on guilt and punishment is approved by the court in a public session in the form of a condemning judgement.

Proceedings against legal entities also have certain specifics. In particular, there are the following modifications to proceedings. The authority involved in criminal proceedings that initiated the prosecution of a legal entity will notify this fact to the competent public authority or person maintaining the commercial or other record, register or accounts. Furthermore, they will notify the authority granting a licence or authorization for the operation of such legal entity, and the authority responsible for supervision over such legal entity. The purpose of such notification is to make sure the prosecuted legal entity is not transformed[18] or dissolved with the aim of evading criminal prosecution. Without the previous consent of the competent authority involved in criminal proceedings, such actions aimed at winding up, dissolving or transforming the legal entity are null and void. Where the criminal offences of a legal entity and a natural person are connected, they will

17 Agreements on guilt and punishment may not be negotiated in proceedings on an especially serious felony, in proceedings against a fugitive, or in the case of a juvenile under the age of 18.

18 Transformation is understood as the merger or de-merger of legal entity, the transfer of assets to a partner, a change in the legal form of legal entity, or relocation of the registered office of the legal entity to a foreign country.

be prosecuted in joint proceedings, unless important reasons prevent it. If there is reasonable concern that the prosecuted legal entity will repeat the criminal activity for which it is being prosecuted, will complete an attempted crime, or will continue to pursue a crime it prepared or threatened, the court may impose a *security measure* on such legal entity. This measure consists in *temporarily suspending the performance of one or several objects of the company* or *limiting how assets of the accused legal entity may be handled*. When imposing a security measure, the court and in some cases public prosecutor in pre-trial proceedings will, inter alia, consider the consequences it may have on third parties (e.g. employees of the legal entity). The CLLEA also sets out detailed rules determining who is entitled to act on behalf of the legal entity in such proceedings (Section 34 of the CLLEA).

8.9. Custody, other Limitations of Personal Freedom and Seizure of Items

The constitutional basis for restricting the personal freedom of an individual for the purpose of apprehending them 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 *detained* in cases stipulated by law. A *detained person* must be immediately informed of the reasons for their apprehension. Within 48 hours of their arrest, they must be interrogated and committed to a court or released. A judge must conduct the 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 *arrest warrant*. Nobody may be taken into custody except for reasons set out by law, for the period set out by law, and on the basis of a court decision.

The CPC deals with the apprehension of persons for the purpose of criminal proceedings in Chapter IV. 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. These changes were motivated in particular by the endeavour to decrease the relatively high number of persons in custody and to decrease the duration of custody (Zeman, 2008, p. 115).

In urgent cases, the police may, with the consent of the public prosecutor and provided there is a reason for custody (see below), detain a person suspected of committing a criminal offence, even if criminal prosecution of the suspect has not yet been initiated.

The personal freedom of a person caught committing a criminal offence or immediately thereafter may be restricted by anybody if it is necessary in order to ascertain the identity of such person or to prevent their escape, or to secure evidence. However, such person is obliged to immediately hand over the suspect to the police authority.

The detained person has the right to choose a defence counsel, to speak to the defence counsel without the presence of a third party, and to consult them during detention. Furthermore, they are entitled to communicate, at their own expense, via written messages or telephone with a person of their choosing, provided it is technically possible and the circumstances allow it, in particular if it does not endanger the purpose of criminal proceedings or it is not prevented in the interest of protecting the victim. This communication is subject to control. Where the detained person is a foreigner, they are entitled to send a

notification to the embassy of the state of which they are a citizen and to communicate with this embassy. In the case a detained foreigner does not have sufficient funds, communication with the embassy will be secured free of charge.

The police will interview the detained person and write a report thereon, specifying the place, time and details of the detention, stating the personal data of the detained person, as well as the substantial reasons for detention. If suspicion has been dispelled, or if the reasons for apprehension ceased to exist due to other reasons, the detained person must be released without delay. Otherwise, the police hand over the interview report to the public prosecutor, as well as the resolution on the commencement of criminal prosecution and other evidence materials so that the public prosecutor may file a petition for custody. The police must deliver the petition without delay, so that the person detained under this law may be committed to a court no later than 48 hours from first being detained; otherwise, the detained person must be released. On the basis of the evidence materials gathered by the police, the public prosecutor either orders the release of the detained person, or, within 48 hours of first being detained, commits the detainee to a court and proposes taking them into custody. The proposal is accompanied by the evidence materials gathered so far. The judge is obliged to interview this person and decide within 24 hours of the delivery of the public prosecutor's petition either to release the detainee or take them into custody. The chosen or appointed defence counsel is informed of the time and place of the examination in a suitable way and without delay, provided that the defence counsel can be reached and that the detainee requested their presence. The defence counsel and the public prosecutor may take part in the examination and ask the detainee questions, but only after the judge has given them the floor to do so. If the 24-hour period from the delivery of the public prosecutor's custody petition is exceeded, this always constitutes a reason for the decision to release the accused.

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

a) they will escape or go into hiding to evade prosecution or punishment, particularly if their identity cannot be immediately determined, if they have no permanent residence, or if they are liable to receive a severe sentence (*anti-escape custody – vazba útěková*);
b) they will influence so far unquestioned witnesses or co-defendants, or otherwise obstruct the clarification of facts important for prosecution (*collusion custody – vazba koluzní*); or
c) they will commit the offence for which they are prosecuted again, or complete the attempted offence, or commit an offence which they have 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 in fact been committed, that it has all the characteristics of a criminal offence, and that evident reasons exist for the suspicion that the offence was committed by the accused. Moreover, the facts must indicate that, in view of the accused person's circumstances and the nature and seriousness of the offence, it is impossible, at the time when the decision is made, to meet the purpose of custody by any other measure. In other

words, when making a decision on custody, the court is obliged to make a preliminary assessment of the justifiability of the accused person's prosecution. The absence of this obligation was frequently criticized in the past.

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

If any of the reasons for custody exist and the presence of the accused at the examination cannot be secured, the judge will issue an arrest warrant. The police officer who arrested the accused on the basis of such warrant is obliged to commit them to a court within 24 hours. If they fail to do that, the accused must be released. The judge to whom the accused was committed must immediately hear them, decide on custody and inform the accused of the decision within 24 hours, otherwise the accused must be released.

All authorities involved in criminal proceedings are obliged to continuously examine whether the reasons for custody persist or have changed. The accused must be released immediately if the reason for custody expires or if it is evident that, in view of the accused person's circumstances and the circumstances of the case, prosecution will not result in a sentence of imprisonment, and that the accused person's behaviour does not constitute a reason for keeping them in custody. The accused has the *right at any time to apply for release*. The court will decide on such request without undue delay. If the application is rejected, the accused may repeat it no sooner than fourteen days after the decision becomes final, unless new reasons are stated. Custody may last only for the 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 witnesses or co-defendants, or has otherwise obstructed the prosecution. The judge in a preliminary hearing is obliged every three months after the decision to remand in custody becomes final or some other decision on custody becomes final, to decide upon a petition of the public prosecutor whether the accused shall be retained in custody or released from custody. Otherwise the accused must be immediately released from custody. The court is obliged to decide within thirty days of filing the indictment whether the accused should remain in custody or whether they should be released. If the judge 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 criminal proceedings may not exceed either one, two, three or four years, depending on the nature of the offence. One third of the term of custody is allocated to pre-trial proceedings and two thirds to trial proceedings. Once this period expires, the accused must be released immediately. In the case of juvenile offenders, the custody period is substantially shorter. Depending on the seriousness of the wrongdoing, it must not last longer than two or six months. It may be extended in exceptional cases, once in pre-trial proceedings and once in trial proceedings. However, it may not last longer than six months or, in the case of especially serious wrongdoings, eighteen months.

In appropriate cases and provided the conditions set by law are met, there are several *alternatives to anti-escape and preventive custody*. The first alternative is to *accept guar-*

antees given by a citizens' interest association or by a trustworthy person concerning the future behaviour of the accused and an assurance that they will not evade prosecution. The second alternative is to *accept a written promise* by the accused to lead an orderly life, not evade prosecution, meet the obligations and observe the restrictions imposed on them. The third alternative is *supervision of the accused by a probation officer* instead of placement in custody. It could be combine with obligation to stay at the designated residence or portion thereof over a time period determined by the court. Another substitution for custody is the imposition of a *preliminary measure*. In relation to substitution of custody by any of the measures referred to above, the authority deciding on custody may also decide to utilize *electronic monitoring* of compliance with the imposed obligations or restrictions. If the accused does not meet the obligations imposed in connection with this substitution of custody and if the reasons for custody persist, the competent authority will decide to take them into custody. The last alternative to custody is to *accept bail*, the amount of which is determined by the authority deciding on custody. If the accused whose custody was thus substituted evades prosecution or the execution of a sentence, or if they continue to commit offences, the amount of bail is forfeited to the state. The court will then make a new decision on custody. Collusion custody cannot be substituted, with the exception in the case of a juvenile of *placement in the care of a trustworthy person*.

The court decides on the placement of the accused in custody and in pre-trial proceedings it does so upon a petition of public prosecutor. The court, and in pre-trial proceedings the judge upon a petition of the public prosecutor, decides whether the accused should remain in custody. Unless the decision is made in trial or in a public session, custody sessions are always held when a person is taken into custody. A custody session is also held if the accused expressly requests it or if the judge deems a personal hearing of the accused necessary. During pre-trial proceedings, the public prosecutor may decide to release the accused from custody even without a petition. If the public prosecutor does not grant a petition for release from custody, they are obliged to submit it to the court for a decision no later than within five days after its delivery, and to inform the accused in this respect.

The court which issues the convicting judgement must take into consideration the fact that the accused has spent a certain period of time in custody during the criminal proceedings. If criminal proceedings were conducted against the offender while they were in custody and if they were sentenced as a result of these proceedings, the time spent in custody is deducted from the sentence, provided this is possible in view of the type of sentence 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 term. Custody in this case means each of the aforementioned ways of restricting personal freedom for the purpose of detaining the suspect or the accused for criminal proceedings.

For the sake of completeness it should be noted that there are also other types of custody in the Czech Republic. One of them is *banishment custody*, which is imposed under statutory conditions on a person finally and effectively sentenced to banishment. Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters provides for *extradition custody*, which is imposed under statutory conditions on a person whose ex-

tradition was decided by the Minister of Justice. In relation to surrendering the requested person to foreign states, the said Act provides for a possibility take such persons into *preliminary or surrender custody* under the statutory conditions.

In addition to rules for detaining persons in criminal proceedings, there are a number of other securing concepts designed for the seizure of items and evidence for the purposes criminal proceedings, e.g. *the surrender or removal of items from possession, seizure of instruments and proceeds from crime and equivalent values, house search, personal search, entry into a residence, other premises and onto land, interception of consignments, monitored consignments, opening of consignments, replacement of consignments, interception and recording of telecommunications traffic, securing data on telecommunications traffic*.

8.10. Evidence

The whole of Chapter V of the Criminal Procedure Code deals with the rules of evidence, and the individual means of evidence are also specified in the provisions relating to individual stages of criminal proceedings. The fundamental principles governing the Czech law of evidence (Musil & et al., 2003, p. 380n.) are those of *presumption of innocence, the fact-finding principle, the principle of presentation of evidence before deciding judge, principle of oral presentation of evidence, the principle of free consideration of evidence and principle beyond a reasonable doubt*. The accused person's plea of guilty does not relieve the authorities involved in criminal proceedings from the duty to review all the relevant circumstances of the case. In pre-trial proceedings, the authorities involved in 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 trial proceedings, the public prosecutor and the accused may propose and examine evidence in support of their positions. Each of the parties involved may seek out evidence, submit it or propose its examination. The fact that the authority involved in criminal proceedings did not seek out or request evidence does not constitute a reason for rejecting such evidence. The public prosecutor is obliged to try and prove the accused person's guilt. This, however, does not relieve the court of the obligation to supplement additional evidence to the extent required for the court's decision.

Everything which may contribute to clarifying a case may serve as evidence, *particularly the statement of the accused and the testimony of witnesses, expert opinions, objects, items and documents important for criminal proceedings, and inspection*. The CPC contains rules on how to conduct and document the interview of the accused and witnesses, the conditions and rules for the use of expert reports and expert opinions, and the rules for inspection. The special rules of evidence stipulated thereby include *confrontation, recognition, investigative experiment, crime reconstruction, and on-site inspection*. Any violation of the stipulated rules during the evidence procedure may result in the invalidation of such evidence and the impossibility of its use in further proceedings. The CPC 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 who used such coercion or threat of coercion.

The 2001 amendment to the CPC transferred the examination of evidence primarily to the stage of trial proceedings, thereby significantly enhancing the active role of the prosecution and the defence (Musil & et al., 2003, p. 374n.). The basic rule remains that evidence before a court is examined by the presiding judge, while the public prosecutor, the accused, their defence counsel, party involved in the proceedings and child welfare authority may, with the presiding judge's consent, ask questions of the persons examined. However, the public prosecutor, the accused and their defence counsel may in such case request 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 such parties' petition or was obtained and submitted by them.

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

9.

Prison System and After-care

9.1. Organization of the Prison System and the Position of the Prison Service of the Czech Republic

The prison system is administered by the Prison Service of the Czech Republic (the status and tasks of the Prison Service are defined by Act no. 555/1992 Coll., on the Prison Service and Judicial Guard of the Czech Republic, as amended). The Prison Service is an armed force and administrative authority. The Prison Service is a department of the Ministry of Justice. The Prison Service of the Czech Republic is managed by the Director General, who is appointed and replaced by the Minister of Justice. The Director General is responsible to the Minister of Justice for the work of the Prison Service. The basic organizational units of the Prison Service are the *General Directorate, custody prisons* (for the execution of custody), *prisons* (for the execution of sentences of imprisonment), *security detention facilities and the Vocational School and the Prison Service Academy*. Individual prisons, i.e. facilities for the execution of custody and imprisonment, are established and abolished by the Minister of Justice. Each prison and security detention facility, as well as the Vocational School and the Prison Service Academy are managed by a director who is appointed and recalled by the Director General of the Prison Service. The theoretical and practical vocational training of staff working in the prison system is provided by the Vocational School and the Prison Service Academy.

Under the relevant legislation, the Prison Service is responsible for the execution of custody and prison sentences. By using *treatment programmes*, it influences the persons serving a term of imprisonment to make sure the punishment served will have a positive effect on their way of life after their release. The treatment programme is elaborated on the basis of a comprehensive report on the convicted person and aims to minimize the identified risks. It consists of work, education, special education and interest related activities and areas of establishing external relations. The Prison Service is also engaged in economic activity within the scope required for the inmates to be assigned work when serving a sentence (or even when in custody). In addition, the Prison Service administers and guards security detention facilities, keeps records of persons in custody, persons in security detention and prison inmates in the Czech Republic. In the professional point of view, the fulfilment of the purpose of security detention is secured by expert employees – psychological therapists, special needs educators and other experts.

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

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

9.2. Execution of a Sentence of Imprisonment and Custody

The execution of prison sentences is regulated by Act no. 169/1999 Coll.,*on Execution of Imprisonment (Imprisonment Act)*. Its purpose is to influence the convicted person by means provided for by law in order to limit the risk of recidivism and instead lead a self-sufficient life in compliance with the law after their release, to protect the society from perpetrators of criminal offences and to prevent them from further commission of crimes. Under Section 2 of this Act, a sentence may only be executed in a manner which respects the personal dignity of the convicted person and limits the harmful effects of imprisonment; however, this must not endanger the required protection of society. Prison inmates must be treated in a manner which safeguards their health and, if the term of the sentence so permits, such attitudes and skills should be encouraged which will help the convicted return to society and be able to live a self-sufficient life in compliance with the law.

A convicted person may be admitted to prison only on the basis of a written *punishment execution order* from a judge. Upon admission for execution of a prison sentence, the convicted person must be provably acquainted with their rights and duties under the aforementioned law and other implementing regulations (the *Prison Sentence Rules* issued by the Ministry of Justice[19] and the internal rules of individual prisons).

Inmates are placed in cells so that men are always separated from women and inmates with contagious diseases or inmates suspected of having contagious diseases are placed in separate cells. In addition, juvenile prisoners are usually separated from adult inmates, repeat offenders from those serving a sentence for the first time, and those convicted of intentional crimes from those convicted of negligent crimes. Other groups which are placed separately include inmates with mental or behavioural disorders, inmates on whom protective treatment or security detention has been imposed, and some other groups of inmates requiring special treatment. Of course, in practice these prisoner placement rules are met depending on the accommodation space available in each prison. As the accommodation capacity of prisons is not sufficient and prisons are overcrowded, it becomes very difficult to meet all the statutory requirements. It is worth noting that criminal measures of juveniles not older than 19 years of age are always executed separately, either in special prisons or special prison wards for juveniles; there are currently three such wards.

Prisons are establishments for the collective accommodation of prisoners. The "one cell – one inmate" system cannot be applied as yet in view of the structural design of the premises, because the interior lay-out in most prisons was dimensioned for the traditional placement of inmates in groups. Certain specifics apply to the execution of life imprisonment sentences, where according to the law inmates are generally placed in single cells. A long-term problem is also the overall lack of space for inmates, for their leisure activities and for the needs of the prison staff.

The rights of convicted persons are guaranteed by the Act on Execution of Imprisonment and the extent thereof is based on the principles laid down by the *European Prison Rules* and other international documents (e.g. Standard Minimum Rules for the Treatment

19 Decree no. 345/1999 Coll., on the Rules of Execution of Imprisonment.

of Prisoners, Standards of Minimum Rules for the Administration of Juvenile Justice, European Rules for Juvenile Offenders Subject to Sanctions or Measures, European Convention on the Protection of Human Rights and Basic Freedoms, UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment etc.)

Convicted persons are *obliged to work during the execution of their sentence*. Prisons create conditions for assigning work to inmates either in their own workshops and manufacturing centres, or in external companies. The inmate's written consent is required in order for them to work for an entity other than the prison (e.g. for a private firm). The convicted person may withdraw their consent by making a statement to the Prison Service. Withdrawal of consent may not be considered as a refusal to work, i.e. a disciplinary offence. This consent is not required if the convicted person is employed by the Czech Republic, a region, municipality, voluntary association of municipalities or an entity which was established by them and where they have a majority share in assets or voting rights, or where they exercise a decisive influence on its administration or operation.

The working conditions of prisoners are subject to the same regulations as those applying to the rest of the working population. Prisoners are entitled to a wage depending on the work performed. Government Regulation no. 365/1999 Coll., as amended, sets out in detail the conditions for the remuneration of convicted persons who are assigned work while serving a prison sentence. The rules for wage deductions from this remuneration are stipulated in detail by the Dergee no. 10/2000 Coll. The wage of convicted persons is subject to deductions for income tax, social security insurance and the contribution to the state unemployment policy, and to healthcare insurance. Deductions are made from the net wages to pay child support if the convicted person is obliged to do so, as well as deductions for covering the costs of imprisonment and custody, deductions for the execution of any decision of the court or state administration authority and payment of other debts of the convicted person. The total sum of deductions may not exceed 78% of the net wage. The remaining portion of the wage is divided into pocket money (20%) and a deposit (2%) and is deposited into a personal account managed by the prison. Pocket money may be decreased as a result of imposition of a disciplinary measure. A long-term problem is the lack of work opportunities for convicted persons. The current employment rate of convicts is 56.26%, as of August 15, 2017. This includes only convicts employed for financial remuneration; convicts working in the prison or attending education or training programmes, brigade work etc. are excluded. Compared to previous years, there has been an increase in the employment rate, e.g. in 2016 there were 50.38% employed convicts and in 2015 only 44.93% (as of December 31 of each year).[20]

Convicted persons are provided with regular meals under the conditions and with properties corresponding to the requirement of sustaining good health, whereas the medical condition of individual persons, their age and the demandingness of the work performed is taken into account. In the extent allowed by the prison operation, the cultural and religious traditions of individual convicts are also considered.

20 For more information, see data published by the General Directorate of the Prison Service, available at http://vscr.cz/informacni-servis/rychla-fakta/aktualni-pocty-zamestnanych-veznu/

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

Prisoners are issued with prison clothes which must be suitable for the weather conditions and sufficient to protect their health. Convicts are entitled to *medical services* in the extent and under the conditions provided for by *Act on Medical Services*, provided in Prison Service medical facilities. If the medical conditions of a convicted person requires immediate medical attention and it cannot be provided in such facilities, the Prison Service is obliged to call the emergency medical service and to follow their instructions. Where immediate medical attention cannot be provided at a prison medical facility, the execution of the convicted person's sentence may be *suspended for medical reasons* for the time necessary for their hospitalization or treatment outside the prison facility. The prison will notify without undue delay the person designated by the convict, or a person close to them, about the illness of the convict or their injury requiring hospitalization. They will not do so if the convict does not wish it. At their own request and if prison conditions allow it, female inmates can keep their children, usually up to the age of three, if the court has not placed such a child in the custody of another person. Before deciding on such matter, the director of the prison requests the opinion of a medical doctor, a clinical psychologist and a child welfare authority, whether this would be in the best interests of the child.

Convicts are entitled to receive and send *correspondence* at their own expense and in general without limitation. However, the Prison Service is entitled to check correspondence for security reasons. Checking correspondence between a convicted person and their attorney or between a convicted person and the state authorities (this also applies to foreign embassies or international organizations) is inadmissible. The convicted person has the right to *use a telephone* to contact a close person at a time set by internal prison rules using a telephone designated for this purpose by the prison. This right may only be restricted in justified cases, in particular due to the safety or protection of the rights of other persons. Furthermore, they are entitled to use the telephone at a time set by the prison to contact their defence counsel or attorney. Within the scope of the correction of the convicted person, or for another serious reason, they may be allowed to use the telephone to contact a person other than a close person.

Prisoners have the right to receive *visits* from persons close to them for a total time of three hours in one calendar month. Visits generally take place in a room designated for this purpose at a time set by the director of the respective prison. Within the scope of correction of the convicted person, or for other serious reasons, they may be allowed to receive a visit of persons other than close persons.

In exceptional cases, the prison director may permit visits in rooms not controlled by Prison Service authorities. In this way, the convicted person may be allowed e.g. undisturbed personal contact with a close person during the course of the visit. In addition, the prison director may allow the convicted person to *leave the prison* in connection with a visit, if it may be justifiably assumed that this will not undermine the purpose of the prison sentence.

Convicts are also ensured the *right to attend religious services* and other similar services serving humanitarian purposes. Prisons therefore allow (usually at weekends and on public holidays) joint religious ceremonies to be held for prisoners. Attendance at these religious ceremonies is of course voluntary. The conditions under which officials of registered churches and religious communities may co-operate with prisons to provide religious services are stipulated in the applicable legislation.

Prisons also allow the competent authorities (and non-governmental and charity organizations) to provide convicts with social services or other forms of charity to help prepare them for their future independent life when released.

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

An inmate can also buy food and personal articles in the prison shop once a week. Purchases are usually made by direct cashless transfer from the part of the money the convicted person can freely spend. If a convicted person receives a transfer of money, it is deposited to their account which is opened and maintained by the prison.

Each convict has the *right to receive* twice a year a *shipment* containing food and personal articles weighing up to 5 kg. These shipments are subject to control by Prison Service officers. This regulation of receiving shipments has been the subject of broad discussion, in particular regarding whether there should be any limitation at all concerning shipments (besides checking their contents). According to the explanatory report to the draft of the Act on the Execution of Imprisonment, the reason for limiting the number of shipments was that such shipments are not necessary to supplement the nourishment or personal articles of inmates, because such items may be bought in prison shops, and that frequently sent shipments would only serve for smuggling in forbidden items, in particular addictive substances. On the other hand, this right may be limited by the amount the convicted person may freely spend. (Kalvodová, 2012, p. 75).

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

An important provision of the Act on Execution of Imprisonment is Section 26, on the *protection of the rights of convicted persons*. In order to exercise their rights and justified interests, convicted persons may file *complaints and applications* to the authorities competent to handle 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 convicted persons serving their sentences.

If, during the execution of a prison sentence, it becomes apparent that a prisoner is being successfully re-*socialized, their sentence may be suspended* for up to 20 days during a calendar year as a reward. A prisoner may have their sentence suspended for up to 10 days for serious family reasons, and a sentence may also be suspended for a necessary period of time for serious medical reasons. *Suspension of the execution of a sentence of imprisonm*ent is decided by the prison director. In some cases, the suspension is decided by court – for the necessary period in the case of a serious illness, or in the case of a pregnant wife and mother of a child under 1 year of age. The period of suspension is counted into the term of the sentence (however, if an inmate injures themselves intentionally and emergency treatment has to be provided outside the prison medical facility, the period of suspension is not counted into the term of the sentence).

As regards *convicted juvenile*s, an individualized approach to treatment is increasingly applied in order to prevent as much as possible the negative effects of isolating juveniles from society during their imprisonment. Convicted juveniles should be treated in a manner that develops their mental, emotional and social maturity. Emphasis is placed on the acceptance and awareness of personal responsibility for the crime they committed. The educational and work activities of convicted juveniles should be directed at obtaining the knowledge and skills which would help them find employment once they are released from prison.

Accused persons who have not yet been finally and effectively convicted and who are held in prisons are subject to a *custodial regime*. Conditions for the execution of custody are stipulated by *Act no. 293/1993 Coll., on the Execution of Custody, specified by Decree no. 109/1994 Coll.* The fundamental principle of the execution 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 the execution of custody, the accused may only be subject to such restrictions as necessary to achieve the purpose of custody, to observe prison rules and for security (to prevent escape etc.). The human dignity of the accused may not be abused, nor may they be subjected to physical or mental coercion. *Foreigners* must be informed of their right to contact the diplomatic bodies of the country of which they are citizens immediately after being taken into custody, 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 executed. The public prosecutor is entitled to visit at any time all places where prison sentences are served, inspect prison documents, talk to convicts 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 on site orders for compliance with the legislation applicable to prison sentences. The public prosecutor may also order the immediate release of a person illegally subjected to imprisonment or held in custody.

The supervision of the public prosecutor does not override the obligation of the Prison Service authorities to perform their own control activities. The control and supervision activities directly involve the Ministry of Justice through the *Department of Complaints and Controls of the Prison Service and the Probation and Mediation Service*.

Another entity that has, among other things, certain control powers is the *advisory committee (poradní komise)*. Their task is to apply the knowledge, forms and methods of handling convicts which facilitate achieving the purpose of executing the punishment and also protecting the rights of convicted persons. The committee is established by the prison director, who assembles experts especially active in working with the perpetrators of crimes and persons with socially pathological or similar high-risk behaviour. These experts may participate in the fulfilment of the purpose of punishment or in the inclusion of the convict within society after release from prison, or in securing such convicts treatment. Employees of the Prison Service may not be members of the committee. Members of the committee are appointed with their consent by the Minister of Justice upon a petition of the prison director. Each year the chairman of the committee submits a summary report for the previous year on the operation of the committee to the General Directorate of the Prison Service.

9.3. Types and Sorts of Prisons

The execution of prison sentences is differentiated between - *high security prisons* or *maximum security prisons*.[21] According to the explanatory report,[22] the purpose of decreasing the number of types of prisons is to: "Allow adequate differentiation of convicted persons serving a sentence of imprisonment according to the assessment of the personality characteristics of convicts and their criminal activity from the point of view of the penitentiary, while taking into account risks and security issues, and thus enable the development and implementation of standardized programmes and specialized treatment in individual prisons to be better organized."

The court generally chooses a maximum security prison for an offender on whom an exceptional sentence has been imposed (Section 54), or a prison sentence for a criminal offence committed for the benefit of an organized criminal group (Section 108), or who was sentenced to imprisonment of at least eight years for a particularly serious crime (Section 14 (3)), or who was sentenced for an intentional criminal offence and has escaped or tried to escape from custody, from prison or from security detention in the last five years. In the case of convicted persons placed in this type of prison, the possibility to suspend the execution of the sentence or to leave the prison in relation to a visit is precluded.

The court generally chooses a high security prison for an offender regarding whom the conditions for placement in maximum security prison are not met. High security prisons are further divided into *wards* with *low security, medium security and high security*. In addition to types of prisons for adults, there are also special *prisons for juvenile offenders,* or more precisely, *special wards of prisons for juvenile offenders*. Placement of a convict into a specific ward of a high security prison is decided by the prison director; in their decision they will consider the evaluation of the level of internal and external risks drawn

21 Until September 30, 2017 there were 4 types of prisons: *with surveillance, with supervision, with high security and with maximum security.*

22 Explanatory report to the draft Act no. 58/2017 Coll.

up by the expert committee. Convicted persons are entitled to file a petition for placement in a lower security ward within 3 days after the decision on placement; such petition is decided by the court.

A decision to transfer a prisoner to another type of prison during the execution of a sentence is made by the court, which will take into account their behaviour and fulfilment of duties. The prison director is obliged to petition the court to transfer a convicted person to a different type of prison if the director believes that the transfer will better contribute to achieving the purpose of punishment. The convicted person themselves may also file a petition to the court proposing transfer to a different type of prison.

If a convicted person escapes or attempts to escape from custody or prison, they will be prosecuted for the crime of obstructing the execution of an official decision and police residence order (Section 337 (3) b) of the CC) and may be sentenced to imprisonment for up to 5 years or a fine.

There are approximately 35 prisons in the Czech Republic (including custody prisons), in two of these there are also institutions for the execution of security detention. Three prisons have a capacity exceeding 1000 inmates, the capacity of a large number of prisons is between 300 and 600 inmates, and there is also a comparably high number of prisons with capacity between 600 and 1000 inmates. Czech prisons have been dealing long-term with the issue of insufficient accommodation capacity, with the exception of the year 2013 and the following year, when the number of inmates fell significantly due to a proclamation of amnesty of the President. As of August 7, 2017, the capacity of Czech prisons and detention institutions amounts to 2,296 places for the execution of custody, 82.3% of which are occupied, 85 places for the execution of security detention, 89.4% are occupied and 18,553 places for the execution of imprisonment, with occupancy of 111.6%.[23]

Some prisons housed in historical buildings are today antiquated and in certain other cases the prisons are not fully suitable, since they were created by re-purposing former boarding houses for the workers of various industrial plants or former military buildings etc.

Foreigners account for about 6% of convicted persons serving a term of imprisonment in Czech prisons. About 28% of accused persons held in custody are foreigners (as of December 31, 2016).[24] The largest numbers of foreigners serving a prison sentence are from Slovakia, Ukraine and Vietnam.

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 August 1, 1992).[25] Convicted persons may also be extradited on the

23 For more details, see data published by the General Directorate of the Prison Service, available at: http://vscr.cz/informacni-servis/rychla-fakta/

24 For more information, see the Prison Service statistical almanac of 2016, available at: http://vscr.cz/wp-content/uploads/2017/06/Statistick%C3%A1-ro%C4%8Denka-2016.pdf

25 See Act no. 553/1992 Coll.

basis of bilateral agreements on legal assistance, which the Czech Republic has concluded with a number of countries. The AIJCCM will apply in a subsidiary manner. The AIJCCM contains specific regulation of the issue of surrendering persons between EU member states and also issues regarding recognizing decisions on the execution of imprisonment and implementing the relevant EU legislation.

9.4. Conditional Release from Imprisonment, Pardon and After-care

Statutory conditions for the application of conditional release are stipulated in the CC and the specifics of proceedings can be found in the CPC. The JJA contains only minor modifications in the case of juvenile offenders.

The statutory prerequisites of *conditional release* include the obligation to serve a certain portion of the sentence. This varies according to the seriousness of the crime and also in some cases according to certain characteristics of the offender. In general, it is one half of the imposed sentence or sentence mitigated by an amnesty of the President. In the case of listed especially serious felonies, it is two thirds; in the case of life imprisonment, at least 20 years. In the case of offenders who did not commit an especially serious felony and who are serving their first sentence, it is one third. Perpetrators of transgressions may be conditionally released even before serving the stipulated time, if the convicted person has proven by their exceptional behaviour that further imprisonment is not necessary and has filed a petition, or if the prison director has agreed therewith. Regarding juveniles, this is also possible in the case of felonies, provided a petition was filed by the public prosecutor or prison director.

Other conditions applicable for all convicted persons is their rehabilitation, shown in particular during imprisonment by their behaviour and compliance with their obligations, and also that they can be expected to lead an orderly life in future, or shown by the acceptance of a guarantee for completion of the accused person's rehabilitation. In the case of perpetrators of felonies, there are also other conditions: whether they began serving their sentence on time voluntarily, whether they compensated the damage or other harm caused, either in full or in part, what attitude they exhibited regarding protective treatment and if they undertook it before starting to serve the sentence of imprisonment or during its course.

In the case of offenders of exhaustively listed especially serious felonies, and offenders sentenced to an exceptional sentence of imprisonment there is another aspect: namely, whether with regard to the circumstances of the offence and the nature of the offender's character, there is any danger of repeating the committed felony or a similar especially serious felony for which the offender was convicted.

The trial period in the case of a transgression is no more than 3 years and in the case of felonies 1 to 7 years. In the case of juveniles, there is a difference only in relation to felonies, where the trial period may be set to 5 years at most.

In the case of conditional release, the court may at the same time impose *supervision by a probation officer*, if it considers it necessary to monitor the convicted person during the trial period more intensely. The court may impose *reasonable restrictions and obligations*

on the convict, such as undergoing anti-drug addiction treatment, undergoing training to acquire work skills or an appropriate social training and corrective education programme, avoiding visits to unsuitable environments, sports, cultural and other social events and contact with specified persons etc. The court may also impose an *obligation to stay at home at stated times*. All these measures may be combined with supervision. The number of persons conditionally released with supervision amounted to approximately 47% of all conditionally released persons in 2016, whereas in the long term this ratio is increasing.[26] Supervision in these cases is performed by probation officer.

In relation to the conditional release of a convict sentenced to life imprisonment, opinions vary. On one hand, some people point out that conditional release is actually counterproductive to the purpose of life imprisonment, while others point out that even life prisoners should be given a certain hope of release, which may positively motivate their behaviour in prison (Rozum, Jarkovská & Kotulan, 2004, p. 45).

If the convicted person has lead an orderly life in the probation period and complied with the imposed obligations, the court will declare they have proven themselves; otherwise, it will decide, even in the course of the probation period, that the remaining portion of the sentence will be executed.

Under Art. 69 g) of the Constitution, only the President of the Republic may grant a *pardon* (Section 62 g) of the Constitution. The granting of a pardon means *waiving or reducing a sentence imposed by the court, waiving criminal prosecution, or expungement of 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 handle the proceeding on an application for a pardon on their own, or if they deem it appropriate, request the Minister of Justice for an investigation and opinion. However, the Minister themselves may not decide on a pardon; if the Minister believes that there are reasons for granting pardon, they will submit an application to the President explaining their opinion. The President decides in which cases the Minister of Justice may deal themselves with the application for a pardon 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 a positive recommendation from the Minister of Justice, or that the President should only be allowed to grant a pardon after the completion of criminal proceedings and having taken into consideration its results etc.

The President may grant a *general pardon* (*amnesty*) under the Constitution by a decision which requires the counter-signature of the Prime Minister or a member of the government authorized by the Prime Minister in order to be valid. Therefore, in the event of an amnesty, it is the government which assumes co-responsibility for the President's decision.

In the Czech Republic, general pardons (amnesties) are granted quite frequently. This usually occurs with the election of the head of state or on the occasion of important state

26 In 2008 it was around 28%; Statistical overview of court agenda, CLAV – Ministry of Justice of the Czech Republic.

anniversaries or other events of importance, e.g. after the fall of the totalitarian regime, as of January 1, 1990 there was a broad amnesty of the President of the Republic, which resulted in the release of approximately 22 thousand prisoners.[27] 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 organizations could not fully cope with the problems that arose (Marešová, 1990, p. 26n.). Similar problems also surfaced in relation to the most recent amnesty of the President of the Republic announced as of January 1, 2013, even though it was not as wide-ranging, resulting in the release of 6,471 persons (status as of December 31, 2013).[28]

After-care of released prisoners is entrusted to social worker called social curator (sociální kurátor), who operate within the local municipalities with extended competence. In the case of juveniles there are specialized social curators for juveniles operating within the child welfare authorities. Upon release from prison, convicted persons are instructed to contact their social curator, who will help them return to the community outside (accommodation, employment and so on). A shortcoming of the system is that contact with the social curator is voluntary for released persons, and many of them do not take advantage of this option, despite not being able to cope with their social situation on their own. Prior to release from prison, inmates should be prepared for their return to the community outside, and the social workers of the Prison Service provide them with the necessary assistance. The transition is facilitated in particular by so-called *exit wards*. Various non-governmental and charity organizations, churches, foundations etc. also participate in the provision of after-care for released persons. However, in practice, the absence of a comprehensive system of after-care and the lack of coordination in this area represent a long-term problem (Kalvodová, 2016, p. 133). There are also problems with insufficient preparation of convicts for their release while they are still serving the sentence, and a lack of targeted programmes for conditionally released persons (Tomášek, Faridová, Kostelníková, Přesličková, Rozum, & Zhřívalová, 2017, p. 127n.).

In future, there could be at least a partial improvement of the situation: since 2017 there have been 10 probation and re-socialization programmes for adults newly accredited by the Ministry of Justice,[29] whereas some of these are directly aimed at conditionally released persons, or as the case may be, convicted person serving a sentence of imprisonment who apply for conditional release. These programmes are aimed in particular at employment, dealing with debts, accommodation or addiction.

The above stated problems are also reflected in the Prison Service document Concept of Prisons until 2025 (Koncepce vězeňství do roku 2025, 2017),[30] which emphasizes the

27 Other amnesties were declared in 1993, 1998 and 2013.

28 Prison Service statistical almanac of 2013. Available at: http://vscr.cz/informacni-servis/statistiky/statisticke-rocenky-vezenske-sluzby/

29 For more information see: http://portal.justice.cz/Justice2/MS/ms.aspx?o=23&j=33&k=6687&d=354022

30 This is a policy document approved by the Czech Government and binding upon the competent Ministries to fulfil the objectives set out therein.

fact that execution of a prison sentence should not be regarded in isolation, rather that it is imperative to create a comprehensive and interconnected system of after-care, interlinked with general crime prevention and the functions of the state social system.

10.

Criminal Justice Reform

10.1. Reform of Substantive and Procedural Criminal Law

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

After 1989 it was necessary to make significant changes to the *Criminal Code, Act no. 140/1961 Coll., to the Code of Criminal Procedure, Act no. 141/1961 Coll.*, as well as to other legal regulations. These legislative changes may be characterized 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, however, very few changes of a more profound nature occurred. The result was a Criminal Code which found it difficult to reflect the changing realities of society, which inadequately ensured the protection of freedoms and rights of the individual, and which contributed to the stability of society only to a limited extent. It was therefore generally acknowledged that it was necessary to proceed with a 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 auspices of the Ministry of Justice, which set up a reform work commission comprising judges and public prosecutors, civil servants at the Ministry of Justice and the Ministry of the Interior, and further agencies and institutions, including criminal law theorists. In 1995, the Minister of Justice officially appointed a twenty-member commission for the re-codification of criminal substantive and procedural law. This period of re-codification work may be summed up as a discussion stage on the objectives and form of the proposed changes, and the method of their implementation and introduction into practice. These discussions entailed clarifying whether and to what extent to incorporate into the Czech criminal justice system, which is based on continental (inquisitive) procedure, some elements of the adversarial system and other approaches applied particularly in the Anglo-Saxon countries. The prevailing opinion was that we basically needed to build upon the previous continental concept of criminal proceedings, and reform it when necessary.

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

At the beginning of 2000, an international scholarly conference was held to discuss the proposed *Concept of the New Codification of Criminal Law of the Czech Republic*, as drawn up by the commission (Šámal & Karabec, 2000). The Draft Concept was also presented for

comments to domestic and foreign experts.[31] The Concept was published together with other papers presented at the conference in academic press (Koncepce nové kodifikace trestního práva hmotného České republiky, 2000).

After approximately 10 years, the debate was successfully concluded 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 established.

The Concept became the foundation for drafting the principles of the new codification of criminal substantive law of the Czech Republic, which was approved by the Czech government on condition that the wording of the new Criminal Code be prepared and presented to the government, and then submitted for discussion to the legislative bodies.

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

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

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

- the introduction of the *formal concept of a criminal offence* (to replace the previously applied *material concept*),
- the binary categorization of indictable offences into *felonies* (*zločiny*) and *transgressions* (*přečiny*); i.e. the earlier concept of a single category of offence has been abandoned. This categorization also forms the foundation for various types of criminal procedure: simplified proceedings, diversions and alternative approaches are much more commonly applied with transgressions,
- circumstances precluding unlawfulness have been extended to include "consent of the injured party". However, this circumstance does not apply to cases of euthanasia,
- "admissible risk in production and research" has been included among the circum-

31 An external review was submitted by Prof. Dr. jur. Hans-Heinrich Jescheck, Emeritus Director of the Max-Planck Institute for Foreign and International Criminal Law in Freiburg (Germany).

stances precluding unlawfulness,
- the introduction of criminal liability for legal entities is being prepared,
- a 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.

At the same time, since 1997 and in compliance with the recommendations of important international documents[32] and foreign practical experience, work on the preparation of a special act has been under way which would bring significant changes to the approach to *juvenile d*elinquents, including implementation of the concept of restorative justice, both in the area of substantive criminal substantive law and procedural criminal law. It also introduced significant changes to the possibilities of reacting in civil-law proceedings to acts committed by children which would be criminal were it not for their lack of criminal liability for want of age. Originally, the draft of this Act also contained considerable modifications for the category of *young adults*, which, however, were not carried through to the end of the legislative process (Šámal, Válková, Sotolář, Hrušáková, & Šámalová, 2011, p. XIIIn.). The *Juvenile Justice Act* was adopted in 2003 and became effective as of January 1, 2004.

However, the new Criminal Code was only adopted much later in 2009 after a rather prolonged and complicated legislative process (Šámal, 2006, p. Vn.).[33] It became effective as of January 1, 2010. Substantive criminal law reform was completed with the introduction of the criminal liability of legal entities by Act no. 418/2011 Coll., on Criminal Liability of Legal Entities and Proceedings against Them, which became effective as of January 1, 2012,

The *new codification of criminal procedural law* was developed in parallel with the concept of criminal substantive law. However, the urgency of some of the problems of criminal procedure, particularly the need to speed up and simplify criminal proceedings, demanded that certain procedural issues be dealt with in a fundamental manner as soon as possible without waiting for the overall new codification of the CPC. This occurred with Act no. 265/2001 Coll., effective as of January 1, 2002, which fundamentally amended the existing Criminal Procedure Code. This amendment implemented a range of expected codification aims, and is therefore perceived as the initial stage of the overall new codification of criminal procedural law (See Chapter 6).

Until the present day, the Czech Government has received only white papers on the Act on Criminal Judicial Proceedings (Criminal Procedure Code), namely in 1999, 2004 and 2008 (Věcný záměr z roku 2008, 2017).[34] As of 2014, a Commission for the New Criminal

32 E.g. the *United Nations Standard Minimum Rules for the Administration Of Juvenile Justice (The Beijing Rules), United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines),* Recommendation of the Council of Europe (87)20, concerning social reaction to juvenile delinquency, Recommendation of the Council of Europe (2003)20, concerning new ways of dealing with juvenile delinquency and the role of juvenile justice.

33 The first Government draft of the Criminal Code submitted to Parliament in 2006 was not passed. However, the Criminal Code adopted later had only very minor differences compared to the previous version.

34 More information is available at: https://www.vlada.cz/cz/urad-vlady/poskytovani-informaci/poskytnute-informace-na-zadost/informace-k-rekodifikaci-trestniho-radu--149685/

Procedure Code has been established at the Ministry of Justice, which in November 2014 approved the *Bases and Principles of the New Criminal Procedure Code* (Východiska a principy nového trestního řádu, 2017), which stems from the approved white papers of 2004 and 2008. According to the submission report (Materiál čj. 44/15, 2017) for this document, the new Criminal Procedure Code should meet in particular the following main objectives:

- speeding up criminal proceedings in all stages so that the course of proceedings up to passing the final decision is completed in the shortest possible time,
- strengthening the importance of the trial stage of proceedings to the prejudice of pre-trial proceedings, whilst keeping in view the requirement that the person against whom criminal proceedings are conducted is not prosecuted or put on trial clearly without grounds,
- significantly increasing the activity of parties to the proceedings, since criminal proceedings should be newly of an adversarial nature,
- strengthening the position of the public prosecutor in the course of performing supervision in pre-trial proceedings,
- introducing the procedural liability of the public prosecutor for failure to produce evidence in the necessary extent for proving the guilt of the accused in trial proceedings (however, the public prosecutor will continue to represent the public interest in criminal proceedings),
- duly protecting the rights of the injured party, in particular allowing the effective assertion of their procedural rights through a *private or subsidiary action* and achieving compensation of damage or non-material harm and the surrender of unjust enrichment in criminal proceedings; furthermore, to effectively protect the rights of underage injured persons and increase the protection of the rights of injured parties in relation to listed crimes that severely encroach on their personal integrity, in particular their right to privacy and safety,
- introducing and regulating remedial procedures consisting of all types of legal remedies, including complaints, extending the possibilities of reconsideration, in proceedings on an appeal balancing the elements of cassation and appellation and limiting the possibilities of returning the case to public prosecutor for supplementation of investigation, as well as the possibility of returning the case by the court of appeal to the first instance court only to cases where the facts of the case are insufficiently clarified or in the case of serious procedural flaws,
- within the framework of extraordinary legal remedies, to conceive the complaint against the violation of law in such a way that it is factually a part of proceedings on a cassation complaint or extraordinary appeal, and extending the possibilities of filing a petition for a retrial.

At the same time, it is worth noting that even though some concepts proposed in these principles have already been implemented into Czech criminal procedural law by amendments to the currently applicable CPC (see Chapter 6), it is clear that the need to adopt a new Criminal Procedure Code is very compelling. Currently, the Committee for the new Criminal Procedure Code, which has undergone partial personnel changes, is working on the draft of a paragraphed version of the new CPC.

In relation to criminal justice reform, we might also mention the discussion on reforming the organization of the public prosecution system. In preceding parliamentary term[35] there was a Government *draft of the new Act on Public Prosecutor's Office in the Chamber of Deputies of the Czech Republic* (Sněmovní tisk č. 789/0 - Vládní návrh zákona o státním zastupitelství, 2017), where one of the main and often discussed changes is, in the words of the explanatory report the: "abolition of the High Public Prosecutor's Offices and establishment of a state-wide Special Public Prosecutor's Office focused in particular on the most serious forms of economic crime and corruption; this should make the enforcement of the legal powers of the public prosecutor's office and the concentration and interconnection of expert knowledge more effective, and as a result, engender a more professional and active approach by public prosecutors, in particular in complex cases. Other changes include e.g. introducing terms of office for chief public prosecutors, mandatory selection proceedings, and the possibility to only remove chief public prosecutors during disciplinary proceedings, the aim being to increase their independence, eliminate the risk of possible external influence – in particular on the part of the executive – and ensure the transparency of their selection."

10.2. Criminal Justice and Sanctions Policy in Context of Criminal Law Reform

The findings of criminological research and experience from foreign states indicate that alternative punishments, and in particular various forms of diversions with restorative elements in criminal proceedings, may serve as an effective tool for simplifying and accelerating criminal proceedings, while also allowing for the interests of the victims of the committed crimes to be better taken into account and effectively securing compensation of the damage or harm caused by the criminal offence. However, the indisputable significance of such punishments lies, above all, in the appropriate differentiation and individualization of the imposed sanctions with regard to the offender's circumstances and the gravity of the crime committed.

On the other side of the coin, criminological and penological findings indicate that a sentence of imprisonment cannot always be expected to fulfil the purpose of punishment. Also, in the Czech Republic prisons are becoming overcrowded, the deterrent effect of a prison sentence is insufficient, and nor do prison sentences result in the reform and resocialization of prisoners. While not overlooking other influencing factors, this problem is documented, among other things, by the high ratio of persons sentenced to unsuspended sentences of imprisonment who have already had previous experience with this form of punishment. Between 2013 and 2015 the ratio oscillated between 66% and 71% (Rozum, Tomášek, Vlach & Háková, 2016, p. 56).

It is obvious that

- in the case of therapeutic and re-education programmes, their positive effects are limited by the prison environment itself, because its very nature is detrimental to such effects;
- the low effectiveness of specific programmes may also be affected by being applied to unsuitably selected individuals (Bonta, Wallace-Capreta, & Rooney, 2000, p. 312n.);

35 (7th parliamentary term 2013-2017).

- it should be accepted that there are certain groups of perpetrators – recidivists, who are resistant to criminal-law interventions intended to have educational effects and prevent repeated failures (Válková & et al., 2012, p. 404).

Specialized literature also points to the negative influences associated with the execution of unsuspended sentence of imprisonment, such as *prisonization* and other factors that make the reintegration of convicted persons after their release substantially more difficult (Suchý, 1991, p. 35n.).

That is why, since the second half of the 1990s, new alternative punishments have been gradually introduced into Czech legislation; these have included, in particular, community service, sanctions with an element of supervision, and diversions in criminal proceedings with restorative elements, the objectives of which have been to substantially carry through into practice changes in sanctions policy and to enforce the principle that an unsuspended sentence may only be truly applied *ultima ratio*. In order to achieve these expected results, it has been necessary to adopt appropriate legislative provisions. The experience and legislation of EU member states has undoubtedly provided great inspiration in this respect. In addition, the recommendations and resolutions of the respective bodies of the Council of Europe, aiming at the wide-ranging introduction of community sanctions and measures, have been – and will continue to be – of considerable assistance. A significant break-through in the Czech Republic was the introduction of a broad catalogue of sanctions emphasizing the educational and restorative elements within punishments for juvenile offenders in 2014.

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

For instance, the findings of a criminological survey focused on the introduction of community service in the Czech Republic (Vůjtěch & et al., 1998, p. 23n.)[36] showed that this form of punishment was initially difficult to implement mainly for the following reasons:

- people engaged in theoretical issues and those engaged in the field 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 working in the justice system whether alternatives to imprisonment would have a sufficient deterrent effect and whether, in actual fact, they would constitute a true punishment for the offender;
- an established system of prisons was available to enforce traditional sentences of im-

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

prisonment, whereas enforcing alternative sanctions was initially insufficiently provided for in terms of organization or institutions.

A similar difficulty has been seen in the case of sanctions associated with supervision (in particular suspended sentence of imprisonment with supervision and conditional waiver of punishment with supervision), which were introduced into law before the Probation and Mediation Service was established, or before it had sufficiently developed. At the same time, we should add that there has been a gradual increase in the use of these alternatives in relation to improvements in their execution by the Probation and Mediation Service and as cooperation with courts and public prosecutors has become better established. This applies in particular to the sentence of community service, the share of which in the structure of sanctions between years 2002 and 2010 was higher than unsuspended sentence of imprisonment (Hulmáková, 2016, p. 38); for more information on the development of sentences imposed in the Czech Republic, see the statistical data in Chapter 11. Gradually, there has also been a broader application of *diversions,* specifically the conditional discontinuation of criminal prosecution; the application of out of court settlement has not been overly successful in practice, partly since it places very strict requirements on the accused and also because of the complexity of its realization (Rozum, Kotulan & Vůjtěch, 1999, p. 101n.). The policy of sanctions applied in practice to juvenile offenders has undergone very significant change, whereas alternative punishments have been used for a long time and sanctions with elements of supervision and diversions are used to a much broader extent compared to adult offenders (Hulmáková, 2013, p. 62n.).

In general, we can say that in the context of application into practice, the idea that it is necessary to develop and apply alternative punishments to imprisonment has become accepted.

A certain role in the promotion of alternatives has been played by economic factors, since the increasing costs of criminal justice and prisons lay a heavy burden on the state budget. This trend could be summarized by saying that, in the criminal policy of the Czech Republic, the view is gaining ground that the purpose of alternative sanctions to imprisonment is not just to alleviate criminal repression, i.e. to have a more lenient attitude to crime. On the contrary, the appropriate application of alternative sanctions and diversions will enable, through the suppression of crime, to focus resources on the most serious offences and the most dangerous offenders. This objective, i.e. in part depenalization and the reduction of the prison population for less serious types of crime, was also declared within the context of the recodification of the criminal substantive law. It was also manifest by the introduction of new alternative punishments, especially by the sentence of house arrest in the CC.

Nonetheless, there have been some problems associated with the application of alternative punishments, some of which remain to this day. In general, it has been pointed out that prioritizing the fastest possible closure of cases has led to a situation where courts sometimes prefer imposing alternative sanctions because this represents the simplest option – especially conditional sentence of imprisonment. Courts very seldom utilize the possibility to individualize a sentence by imposing reasonable restrictions and obligations (Šámal, 2014, p. 199n.). Compared to other states, fines are also used very rarely (Scheinost

& et al., 2015, p. 84). In the case of alternative punishments, the courts sometimes impose unsuitable or insufficiently individualized alternative sanctions, in particular when deciding by penal order, which may increase the risk of transformations to unsuspended sentences of imprisonment (Hulmáková, 2015, p. 254n.). It has also been observed that the number of imposed supervisions is increasing long term, one result of which is to push up the number of probation officers (Tomášek, Diblíková & Scheinost, 2016, p. 23n.) and may lead to formal performance of supervision.

Neither did the CC bring any improvement in this respect; on the contrary, there has been an rise in the imposition of unsuspended sentences of imprisonment and their share in the structure of imposed sentences has increased, in particular with regard to the stricter punishments for certain very frequently committed transgressions – theft, negligence of mandatory support and obstructing the execution of an official decision and police residence order,[37] also in the case of certain crimes, the sanction of recidivism was made more severe (Hulmáková & Rozum, 2012, p. 258). In this respect, a discussion on the de-criminalization of the offence of negligence of mandatory support arises, and the need to mitigate sanctions that can be imposed for recidivism in the case of theft. We have also witnessed a decrease in the share of community service. House arrest was and still is imposed only in a few cases, especially because electronic control is still not fully available.[38] Nevertheless, other limits on the part of offenders have also been highlighted which may prevent its broader application, e.g. unstable housing arrangements and irregular working hours (Scheinost & et al., 2015, p. 85).

As far as diversions in criminal proceedings with restorative elements are concerned, there has been a slight decrease in their use since 2009, which is associated in particular with extending the possibility to conduct summary preliminary proceedings (Hulmáková & Rozum, 2012, p. 259).

In describing the current criminal and sanctions policy of the Czech Republic, we should state that even though recorded crime is declining long term, the numbers of imprisoned individuals are gradually increasing (except for 2013, which was affected by the amnesty). In the European context, the Czech Republic has a very high ratio of prisoners to the overall population,[39] more so when we consider that current legislation offers a relatively broad list of alternative sanctions used by courts in practice, even repeatedly in the case of a single offender. In addition to problems of legislation and problems associated with the application of alternative punishments, the current situation is also made more difficult by the fact that the number of recidivists in the criminal justice system is rising long term (Rozum, Tomášek, Vlach, & Háková, 2016, p. 34n.). As such, it is necessary to focus more intensely within the sanctions policy on the search for a more effective approach to this category of offenders, including resolving problems in after-care (see Chapter 9).

37 Some of these changes were already repealed by CC amendments. For more information see Chapter 2.1.

38 The Ministry of Justice has just selected a provider of the electronic monitoring system. More information is available at: http://portal.justice.cz/Justice2/MS/ms.aspx?j=33&o=23&k=2375&d=355066

39 INSTITUTE FOR CRIMINAL POLICY RESEARCH. *Research Highest to Lowest – Prison Population Rate.* [online] World Prison Brief [quoted on 2017-04-05] Available at: http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=14

In relation to the introduction of legal liability of legal entities, it was presumed that it would take a relatively long time, as in the case of alternative punishments, before the sanctioning of legal entities would be implemented in practice. Surprisingly, it seems that the number of prosecuted and sentenced legal entities is comparably high, even in comparison to foreign states (Gřivna, 2016, p. 71). For more information, see the statistical data on sanctions imposed on legal entities in Chapter 11.

10.3. Influence of Criminal Law Reform on the Position of Victims of Crime

The reform of criminal law has also gradually worked its way towards strengthening the position and rights of victims of crime. Emphasis on the improving the victim's position is seen both in the gradual *strengthening of the rights of injured parties* (see Chapter 6 and 8) and in the introduction and development of sanctions and diversions with restorative elements by the adoption of the Act on Financial Assistance to Victims of Crime, Act no. 45/2013 Coll., which became effective as of March 25, 2013.[40] The Act not only introduced the definition of the terms victim, *especially vulnerable victim* and *secondary victimization*, it also enacted a broad catalogue of their rights, including psychological and legal counselling and the right to financial assistance.[41] For more detail, see Chapter 8.

It should be noted that non-governmental organizations are also actively involved in this field, such as *White Circle of Safety (Bílý kruh bezpečí)*, which focuses on all-round aid and support for crime victims, including advice and psychological and social assistance. Non-governmental and charity organizations also provide important help to victims of domestic violence, which often escalates into crime. Nevertheless, the Act on Victims of Crime may help ensure a standard quality of care and better availability of such services to victims in future, including the right to free of charge services in the extent specified by law. This is because the law stipulates conditions for the accreditation of entities providing assistance to victims of crime and at the same time the Ministry of Justice will provide financial support to such entities in the form of grants from the Ministry, which may help services for victims of crime function more stably and develop.

Additional reinforcement of the rights of injured parties should, providing the approved white paper and policy positions continue to apply, occur within the recodification of the CPC, e.g. in relation to the introduction of the concept of private or subsidiary actions.

10.4. Digitalization of the Justice System in the Czech Republic

Gradual implementation of the *electronic justice* project is being carried out. An important milestone was without a doubt the 2009 introduction of electronic data mailboxes, enabling inter alia electronic communication with authorities involved in criminal proceedings. Currently, the *Collection of Laws and International Treaties* is available in

40 This Act primarily implemented the Council Framework Decision 2001/220/JHA of March 15, 2001 on the position of victims in criminal proceedings and the Council Directive 2004/80/EC of April 29, 2004 on compensation of victims of crime (or its draft).

41 Replace in this respect Act no. 209/1997 Coll., on Provision of Financial Assistance to Victims of Crime, which also enacted the same right.

electronic form on the website of the Ministry of the Interior.[42] There is also the possibility to search case law of the Supreme Court,[43] High courts and Regional Courts,[44] as well as other information on specific proceedings[45] and scheduled hearings.[46] In future, there should also be electronic criminal proceedings available.[47]

42 Available at: http://aplikace.mvcr.cz/sbirka-zakonu/

43 http://www.nsoud.cz/JudikaturaNS_new/ns_web.nsf/WebSpreadSearch

44 http://www.nsoud.cz/Judikaturans_new/judikatura_vks.nsf/uvod

45 http://infosoud.justice.cz/public/search.jsp

46 http://infojednani.justice.cz/InfoSoud/public/searchJednani.jsp

47 More information is available at: http://www.reformajustice.cz/ejustice/trestni-rizeni.html

11.

Statistical Data and Results of Research on Crime and Criminal Justice

11.1. Selected Statistical Data on Registered Crime, Criminal Justice and Sanctions Policy

This section contains statistical data on selected indicators of crime and the prison population in timelines from 2000 to 2016. The relevant crime indicators were monitored for crime in general as well as the specific crimes of murder, robbery, intentional bodily harm and theft. Also, data on the sentences imposed has been included, as well as on the term of imposed sentences of imprisonment. Data on the prison population are given for the overall number of convicted persons, as well as for convicted juveniles, always as of December 31 of the respective year. Data on the number of crimes identified and cleared up was obtained from the *statistics of the Police of the Czech Republic*, and data on the number of prosecuted, indicted 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 – Overall criminal offences

Year	Offences registered	Offences cleared up	Clear-up rate in %	Persons prosecuted	Persons indicted	Persons convicted
2000	391,469	172,245	44.00%	110,808	86,074	63,211
2001	358,577	166,827	46.52%	110,461	84,855	60,182
2002	372,341	151,492	40.69%	110,800	93,881	65,098
2003	357,740	135,581	37.90%	110,997	95,920	66,131
2004	351,629	134,444	38.23%	108,061	94,430	68,443
2005	344,060	135,281	39.32%	108,250	95,767	67,561
2006	336,446	133,695	39.74%	110,484	97,880	69,445
2007	357,391	138,852	38.85%	113,910	101,240	75,728
2008	343,799	127,906	37.20%	110,505	98,446	75,761
2009	332,829	127,604	38.34%	113,408	102,667	73,685
2010	313,387	117,685	37.55%	101,326	92,807	70,651
2011	317,177	122,238	38.54%	102,955	94,618	70,160
2012	304,528	120,168	39.46%	103,416	95,189	71,471
2013	325,366	129,181	39.70%	105,858	98,034	77,976
2014	288,660	126,237	43.73%	103,591	96,227	72,825
2015	247,628	112,139	45.29%	91,451	84,327	65,569
2016	218,432	101,773	46.59%	84,834	78,137	61,423

Note: As of 2002, the number of criminal prosecuted persons also includes persons for whom summary pre-trial proceedings were conducted, and indicted persons also include persons against whom a motion for punishment was filed and, as of the introduction of the concept of agreement on guilt and punishment, the number also includes petitions for the approval of an agreement on guilt and punishment.

Table 2 – Crimes of murder (including attempted murder)

Year	Offences registered	Offences cleared up	Clear-up rate in %	Persons prosecuted	Persons indicted	Persons convicted
2000	279	228	81.72%	240	201	163
2001	234	208	88.89%	224	186	144
2002	234	210	89.74%	226	200	152
2003	232	199	85.78%	203	171	173
2004	227	205	90.31%	218	196	143
2005	186	161	86.56%	211	191	153
2006	231	196	84.85%	161	146	121
2007	196	174	88.78%	204	182	118
2008	202	174	86.14%	177	163	133
2009	181	157	86.74%	177	161	111
2010	173	156	90.17%	180	160	105
2011	173	184	106.36%	172	154	120
2012	188	175	93.09%	181	159	107
2013	182	165	90.66%	177	159	121
2014	160	135	84.38%	167	159	132
2015	155	135	87.10%	160	143	113
2016	137	127	92.70%	169	155	97

Table 3 – Crimes of robbery

Year	Offences registered	Offences cleared up	Clear-up rate in %	Persons prosecuted	Persons indicted	Persons convicted
2000	4,644	1,928	41.52%	2,294	1,999	1,427
2001	4,372	1,953	44.67%	2,326	1,999	1,287
2002	5,434	2,562	47.15%	2,651	2,487	1,441
2003	5,468	2,519	46.07%	3,086	2,917	1,587
2004	6,107	2,808	45.98%	2,908	2,796	1,695
2005	5,550	2,612	47.06%	2,837	2,687	1,608
2006	4,783	2,357	49.28%	2,505	2,397	1,532
2007	4,668	2,201	47.15%	2,187	2,108	1,411
2008	4,515	2,299	50.92%	2,251	2,169	1,291
2009	4,687	2,430	51.85%	2,479	2,408	1,350
2010	4,019	2,186	54.39%	2,143	2,074	1,501
2011	3,761	2,060	54.77%	2,115	2,053	1,353
2012	3,283	1,897	57.78%	1,948	1,896	1,384
2013	2,961	1,858	62.75%	1,941	1,889	1,388
2014	2,500	1,638	65.52%	1,673	1,644	1,106
2015	2,022	1,054	52.13%	1,571	1,540	1,017
2016	1,649	1,004	60.89%	1,386	1,355	921

Table 4 – Crimes of bodily harm (intentional only)

Year	Offences registered	Offences cleared up	Clear-up rate in %	Persons prosecuted	Persons indicted	Persons convicted
2000	7,194	6,466	89.88%	5,754	4,740	2,804
2001	7,056	6,347	89.95%	5,645	4,675	2,852
2002	7,321	6,034	82.42%	5,853	5,242	3,046
2003	6,853	5,694	83.09%	5,660	5,051	3,033
2004	7,180	5,998	83.54%	5,803	5,192	3,273
2005	6,439	5,387	83.66%	5,333	4,834	3,062
2006	5,765	4,713	81.75%	4,673	4,189	2,685
2007	6,175	4,554	73.75%	4,334	3,913	2,360
2008	5,397	3,677	68.13%	4,030	3,624	2,161
2009	4,756	3,346	70.35%	4,263	3,903	1,887
2010	4,786	3,451	72.11%	3,906	3,655	2,672
2011	5,264	3,752	71.28%	4,221	3,955	2,661
2012	5,240	3,895	74.33%	4,640	4,329	3,117
2013	5,378	3,892	72.37%	4,440	4,123	3,257
2014	5,199	3,737	71.88%	4,391	4,115	2,907
2015	5,229	3,679	70.36%	4,180	3,885	2,850
2016	5,055	3,622	71.65%	4,239	3,962	2,991

Table 5 – Crimes of theft

Year	Offences registered	Offences cleared up	Clear-up rate in %	Persons prosecuted	Persons indicted	Persons convicted
2000	253,195	56,724	22.40%	32,813	27,610	16,515
2001	227,805	56,985	25.01%	33,651	28,000	16,227
2002	236,671	47,531	20.08%	30,386	27,848	15,707
2003	235,555	43,982	18.67%	30,977	28,769	15,313
2004	226,834	41,810	18.43%	29,136	27,072	15,301
2005	212,080	39,697	18.72%	28,378	26,502	14,776
2006	204,639	36,533	17.85%	26,843	25,077	14,480
2007	209,132	35,066	16.77%	25,353	23,603	13,637
2008	200,673	33,119	16.50%	25,356	23,866	13,377
2009	193,217	33,411	17.29%	25,671	24,155	12,999
2010	185,069	32,715	17.68%	25,344	23,864	15,582
2011	183,946	34,222	18.60%	26,833	25,384	16,122
2012	174,921	34,800	19.89%	28,524	27,104	17,872
2013	187,957	37,907	20.17%	27,697	27,025	19,183
2014	153,012	35,159	22.98%	27,322	26,370	17,588
2015	119,269	26,920	22.57%	20,669	19,817	14053
2016	99,564	23,904	24.01%	18,238	17,499	12268

Note: effective as of January 1, 2002, the legislation was changed: the threshold of damage caused, which is one possible element of the crime of theft, was increased (from 2000 CZK to 5000 CZK).

Table 6 – Sentences

Year	Total number of persons convicted	unsus-pended sentence	sus-pended sentence	fine	communi-ty service	house arrest	waiver of punishment
2000	63,211	14,114	35,617	3,571	7,084	-	2,071
2001	60,182	12,533	32,817	3,324	8,835	-	2,084
2002	65,098	9,659	34,942	3,500	13,424	-	2,408
2003	66,131	9,797	35,676	2,941	13,592	-	2,535
2004	68,443	10,192	36,162	2,913	13,031	-	2,817
2005	67,561	10,253	37,302	2,682	12,512	-	2,872
2006	69,445	9,997	41,864	2,685	12,273	-	2,723
2007	75,728	9,871	43,548	4,558	12,496	-	2,868
2008	75,761	10,255	42,157	5,307	11,193	-	2,684
2009	73,685	10,687	41,686	5,280	11,804	-	2,494
2010	70,651	11,818	44,403	3,462	7,420	114	2,051
2011	70,160	11,733	45,783	3,078	6,514	228	1,639
2012	71,471	11,602	45,675	2,847	8,094	398	1,693
2013	77,976	8,579	57,465	2,491	6,746	177	1,352
2014	72,825	9,568	50,203	2,569	7,962	159	1,376
2015	65,569	9461	43802	2343	7702	130	1182
2016	61,423	9429	39251	3192	7143	106	1055

The community service sentence was incorporated in the Criminal Code as of January 1, 1996. The changes in the number of the convicted persons on whom it was imposed clearly show the initial hesitation and mistrust on the part of courts, compounded by the initially inadequate wording of the legislation and the absence of implementing regulations. Between 2000 and 2009 this sentence was imposed on average on 17% of convicts. However, after the new Criminal Code came into force, community service is now being imposed on approximately 10% of convicts. The low number of sentences of house arrest, introduced to the system of punishments as of January 1, 2010, is largely attributable to the absence of electronic monitoring to execute the sentence.

Table 7 – Sentences of imprisonment

Year	Imprisonment	Up to 1 year	From 1 to 5 years	From 5 to 15 years	From 15 to 25 years	Life
2000	14,114	9,365	4,125	603	15	2
2001	12,533	8,407	3,563	547	15	1
2002	9,659	5,827	3,291	535	2	4
2003	9,797	5,925	3,298	551	22	1
2004	10,192	6,118	3,516	539	13	6
2005	10,253	6,429	3,264	542	14	4
2006	9,997	6,320	3,126	535	14	2
2007	9,871	6,549	2,833	485	4	0
2008	10,255	6,923	2,859	466	8	2
2009	10,419	7,144	2,781	488	3	3
2010	11,818	7,685	3,631	487	15	1
2011	11,733	6,944	4,265	485	39	1
2012	11,602	6,680	4,388	505	29	5
2013	8,579	4,694	3,332	511	42	2
2014	9,568	5,664	3,333	520	51	1
2015	9,461	5,710	3,284	486	51	4
2016	9,429	5,547	3,380	528	30	0

Table 8 – Persons convicted and serving a sentence of imprisonment

Year	Male	Female	Total
2000	14,966	605	15,571
2001	14,190	547	14,737
2002	12,321	508	12,829
2003	13,298	570	13,868
2004	14,437	637	15,074
2005	15,336	741	16,077
2006	15,376	803	16,179
2007	15,792	855	16,647
2008	17,209	891	18,100
2009	18,367	1,007	19,374
2010	18,320	1,129	19,449
2011	19,234	1,307	20,541
2012	19,129	1,300	20,129
2013	13,491	810	14,301
2014	15,411	1,022	16,433
2015	17,568	1,282	18,850
2016	19,019	1,482	20,501

Table 9 – Juveniles convicted and serving a sentence of imprisonment

Year	Male	Female	Total
2000	107	3	110
2001	84	3	87
2002	80	1	81
2003	90	4	94
2004	96	6	102
2005	120	4	124
2006	109	2	111
2007	133	1	134
2008	148	4	152
2009	166	8	174
2010	142	9	151
2011	150	9	159
2012	134	6	140
2013	77	4	81
2014	77	5	82
2015	90	2	92
2016	67	6	73

Table 10 – Ratio of juveniles convicted to total persons convicted

Year	Total number of persons convicted	Juveniles	%
2000	63,211	4,252	6.7%
2001	60,182	3,805	6.3%
2002	65,098	3,854	5.9%
2003	66,131	3,512	5.3%
2004	68,443	3,235	4.7%
2005	67,561	3,080	4.6%
2006	69,445	2,773	4.0%
2007	75,728	2,949	3.9%
2008	75,761	2,906	3.8%
2009	73,685	2,728	3.7%
2010	70,651	2,389	3.4%
2011	70,160	2,203	3.1%
2012	71,471	2,186	3.1%
2013	77,976	1,983	2.5%
2014	72,825	1,593	2.2%
2015	65,569	1,403	2.1%
2016	61,423	1,312	2.1%

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

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

Table 11 – Number of prosecuted, indicted and convicted legal entities[48]

	prosecuted	indicted	Convicted
2012	4	4	0
2013	28	22	2
2014	127	120	33
2015	232	216	62
2016	245	220	90

Note: Prosecuted persons include persons for whom summary pre-trial proceedings were conducted, and indicted persons also include persons against whom a motion for punishment or petition for the approval of an agreement on guilt and punishment was filed.

The chart above clearly indicates that the number of prosecuted, indicted and convicted entities is gradually growing. The most often imposed sentence is a fine and *disqualification* (prohibition to undertake certain activity).

11.2. Selected ICSP Research on the Functioning of the Criminal Justice System

The Institute for Criminology and Social Prevention (ICSP) has carried out a number of research studies focusing on issues of criminal justice. These have examined, in particular, the issue around introducing alternative sanctions imposed instead of imprisonment and the issue of diversions in criminal proceedings. Other studies have included the Institute Research Study on Conditional Discontinuation of Criminal Prosecution (1996); the Institute Research Study on Community Service (1998); the Institute Research Study on the Institute of Settlement (1999); the Research Study on Short Imprisonment Sentences (2000); the Research of Newly Introduced Elements of Probation into Criminal Law (2000).

These research studies have shown that there is a certain inertia in the operation of courts and the whole justice system as well as mistrust in the newly introduced substantive and criminal law concepts and the tendency to rely on established procedures. This natural conservatism is easier to overcome if the new legal concepts are duly implemented in the legislation and application thereof is appropriately facilitated at the organizational level.

A comprehensive research study on how the transformation of criminal legislation has influenced the state of crime and enhanced the efficiency of the judicial system (2001) drew attention, inter alia, to the fact that some de-penalizing and de-criminalizing measures rely on some form of co-operation from society, particularly local communities. Hence

48 Statistical data of the Ministry of Justice – CSLAV

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. The research emphasized the need to draft critical documents defining the objectives of criminal policy over a longer time horizon. In this connection, a note should also be made of the research study on the probable development of selected types of crime (2001). An other research study dealt with selected problems of sanction policy, focusing particularly on imprisonment sentences and their alternatives or the concept of preventive detention (2005).

Research on the impact of selected provisions of the so-called large amendment to the Code of Criminal Procedure on the course of criminal proceedings (2008) dealt with legal regulation of summary pre-trial proceedings and simplified trial proceedings, changes in the legal regulation of the position of the public prosecutor in criminal proceedings, as well as with the changes in the area of custody proceedings.

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

In the area of legal regulation of criminal sanctions, the adoption of the new Criminal Code no. 40/2009 Coll. introduced a number of changes. The research project *Theoretical and Criminal-Political Aspects of Criminal Law Reform in the Area of Criminal Sanctions*, carried out between years 2012–2015, aimed at discovering whether and to what extent the new Criminal Code is meeting the legislator's expectations in the area of changes to sanctions. Within this extensive research, the new legal regulation of criminal sanctions was analysed and evaluated in the context of the sanction policy applied in the Czech Republic after 1989. The research examined its impact on the application practice of selected criminal justice concepts and rules, the nature and structure of the imposed sanctions (with emphasis on alternative sanctions) and thereby also on the composition of the prison population, and the activities of the Prison Service and the Probation and Mediation Service. The results of this research were released in the form of expert studies published by the ICSP. These include the study Criminal Sanctions and their Reflection in Practice, the Press and Public Opinion (2013), Sanction Policy from the View of Practice (2014), Criminal Sanctions – Their Application, Impact on Recidivism and Media Image in the Television News (2015), Sanction Policy and Its Application (2015). Significant projects from recent years in this area also include e.g. a research project examining probation as an efficient tool for studying recidivism (2016) or the effectiveness of criminal policy from the view of recidivism (2016).

The results of the above referred and other ICSP research studies, including summaries in English, are freely accessible on the Institute for Criminology and Social Prevention website.[49]

49 Available at: http://www.ok.cz/iksp/p_stud.html

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Autors:	Simona Diblíková
	Jana Hulmáková
	Zdeněk Karabec
	Jiří Vlach
	Petr Zeman
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