| Chapter 2 |

Czech Republic: National Regulations in the Shadow of a Common Past

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ABSTRACT

This chapter deals with Czech criminal law and its changes after 1989, when the so-called Velvet Revolution took place. The Velvet Revolution initiated a series of democratic social and economic reforms in Czechoslovakia and has subsequently been reflected in Czech legislation. The reform of the criminal branch of law began in 1990. We can distinguish two phases of this reform. The first is the phase of amendments, and the second is the phase of recodification. These changes were implemented through individual amendments or through a complete recodification. Recodification was implemented in 2009 only for the Criminal Code, while criminal proceedings are still regulated by the 1961 Act, which cannot be considered ideal. In this chapter, the reader will be introduced to the basic principles and background of substantive criminal law and criminal procedure law (e.g., criminal liability, criminal sanctions, and the basic principles and subjects of criminal proceedings as well as their stages). Aspects of so-called prison law, which is closely related to criminal sanctions, and aspects of cooperation between judicial authorities will also be discussed.

KEYWORDS

Czech Republic, criminal law and criminal liability, stages of criminal proceedings, prison law, international judicial cooperation

1. Criminal science in the Czech Republic during the regime change

The democratic social and economic reforms that were introduced in Czechoslovakia after the "Velvet Revolution" in November 1989 has been subsequently reflected in Czechoslovak and, since 1993, Czech legislation. Regarding *criminal law*, the reform of this branch of law began in 1990. We can distinguish two phases of the reform. The first is the phase of *amendments*, and the second is the phase of *recodification*.

Numerous amendments to the Criminal Code and Criminal Procedure Code, reflecting the fact that the Czech Republic became a Member State of the European

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Union in 2004, have been accepted since the beginning of the 1990s.[1] At the same time the recodification of Criminal Substantive Law was initiated, and the concept of three criminal laws was introduced. According to this concept, three bills were prepared: the Act on the Liability of the Youth for Wrongful Acts and on Justice in Matters of the Youth (in short, the Juvenile Justice Act), the new Criminal Code, and the Criminal Liability of Legal Entities Act.

The *Juvenile Justice Act No. 218/2003 Coll*. has been in effect since January 1, 2004. This act provides coherent legal regulation of criminal liability and punishment of juveniles (persons between 15 and 18 years of age) together with the legal regulation of criminal proceedings in cases involving juveniles. This act is related to the matters of minors (children under 15) as well. This law extended the application of the new principle of restorative justice to Czech criminal law.[2]

The process of adoption of the new *Criminal Code* was complicated. The bill from 2005 was accepted by the Chamber of Deputies of the Parliament of the Czech Republic in 2006. Subsequently, the Senate (the second chamber of the Parliament of the Czech Republic) sent it back to the Chamber of Deputies with unacceptable changes, and ultimately, the Chamber of Deputies rejected the bill. The new *Criminal Code* bill has been created over the next two years and was open to public discussion. It was accepted by the Parliament of the Czech Republic in February 2009 and subsequently signed by the president of the Czech Republic. The new *Criminal Code* was published in the Collection of Laws of the Czech Republic under the *No. 40/2009 Coll*. and came into effect on January 1, 2010.[3]

In view of the trends in continental legal systems, the concept of recodification has assumed the introduction of corporate criminal liability, which is a significant change in the existing theoretical concept of criminal liability. *The Act No. 418/2011 Coll. on the Criminal Liability of Legal Entities and on Proceedings against Them* (the Criminal Liability of Legal Entities Act) came into effect on January 1, 2012. This act does regulate not only criminal liability and the system of criminal sanctions but also the specifics of criminal proceedings in cases of legal entities. By passing the act, the Czech Republic joined all other EU member states that had introduced the criminal liability of legal entities. The Czech Republic decided to adopt genuine criminal liability – a model that constitutes a major interference (or even a breakthrough) in principles traditionally present in continental criminal law, both at the level of guilt (the principles of individual and subjective liability) and at the level of punishment. Inevitably, this also affects the field of Criminal Procedure, that is, the criminal proceedings.[4]

At present, the Criminal Procedural Law is also the target of recodification. The current Code of Criminal Procedure, No. 141/1961 Coll., is effective since January 1, 1962. It has been amended numerous times since 1990. The bill outlining the new Code

1 For the most important amendments, see Fryšták, Kalvodová and Provazník, 2015, pp. 9–11.
2 For details, see Žatecká, 2008, pp. 307–308.
3 Regarding the most important changes, see Kalvodová, 2012.
4 See also Kalvodová, 2013.

of Criminal Procedure was prepared by a special commission under the auspices of the Ministry of Justice.

2. The main sources of criminal law

Czech Criminal Law is not based on custom or court decisions. The conditions for criminal liability, punishment, and protective measures as well as for imposing them must be stipulated by law.

As previously mentioned, *Criminal Substantive Law* in the Czech Republic is, for the most part, codified in three acts. *The Criminal Code No. 40//2009 Coll*., as amended (hereinafter "CC"), is the main source of the criminal law regulation. In addition, there is a special legal regulation relating to children and juveniles in the Czech Republic, *The Act on the Liability of Youth for Wrongful Acts and on Justice in Matters of Youth, No. 218/2003 Coll.,* as amended (hereinafter "JJA"), and a special legal regulation relating to legal entities, *Act No. 418/2011 Coll. on the Criminal Liability of Legal Entities and on Proceedings against Them*, as amended (hereinafter "CLLA").

Regarding *the Criminal Law Procedural*, first, it is necessary to mention the *Code of Criminal Procedure,* No. 141/1961 Coll., (hereinafter "CPC"), which provides general legal regulation of criminal proceedings. Moreover, there is also a special legal regulation in the two acts mentioned above – Juvenile Justice Act and the Criminal Liability of Legal Entities Act. The Act on International Judicial Cooperation in Criminal Matters, No. 103/2018 Coll., is also a highly important source.

Criminal rules and criminal procedural rules are also found in other criminal statutes, specifically the following:

- The Act on Serving Terms of Imprisonment, No. 169/1999 Coll. (The Prison Act, hereinafter "PA")
- The Act on Serving Terms of Protective Detention, No. 129/2008 Coll.
- The Act on Probation and Mediation Service, No. 257/2000 Coll.
- The Judicial Rehabilitation Act, No. 119/1990 Coll.
- The Act on Serving of Custody, No. 293/1993 Coll.
- The Act on the Police of the Czech Republic, No. 273/1998 Coll.
- The Public Prosecutor's Office Act, No. 283/1992 Coll,
- The Act on Courts and Judges, No. 2/2002 Coll.
- The Act on International Judicial Cooperation in Criminal Matters, No. 104/2013 Coll.

The Constitution of the Czech Republic (Constitutional Act No. 1/1993 Coll.) and the Charter of Fundamentals Rights and Freedoms (Resolution of the Presidium of the Czech National Council No. 2/1993 Coll.) are also very important sources of criminal law regulation, both substantive and procedural.

According to Article 10 of the Constitution of the Czech Republic, the ratified international agreements, whose ratification has been approved by Parliament and

that are binding in the Czech Republic, shall constitute a part of legal order. Should an international agreement create a provision contrary to a law, the international agreement shall be applied.

3. Selected subjects of criminal proceedings

Subjects of criminal proceedings[5] include anybody who is accorded certain procedural rights and obligations within criminal proceedings. The law assigns some subjects the status of a party to the proceedings, which is a narrower term. Each procedural party is a subject; however, not every subject has the status of being a party to the proceedings. A party is, for example, the prosecuting attorney of the person accused.

The court, the state prosecutor's office, and the police authority are identified as "the investigative, prosecuting and adjudicating bodies" or "the bodies involved in the criminal proceedings."

3.1. Courts

In criminal proceedings, courts decide on guilt and punishment, as well as other matters, such as damages. The court system has four levels: district, regional, high, and supreme courts. In criminal proceedings, a case may be adjudicated by a single judge or a bench of three judges, consisting of either the presiding judge and assessors (so-called lay judges) in the case of first-instance district and regional courts or three professional judges in the case of regional courts serving as courts of appeal, as well as the high courts and the Supreme court.

Regarding the courts, the issue of subject-matter and local jurisdiction needs to be raised as well. The district courts are the first-instance courts in cases in which the first-instance competence does not belong to regional courts. Regional courts are the courts of first instance in criminal matters concerning offenses for which the Criminal Code specifies punishments with the lower limit of at least five years of imprisonment or the exceptional punishment. However, regional courts also deal with several offenses for which the lower limit of punishment is lower than five years of imprisonment – this concerns, for instance, the offenses of unauthorized removal of tissues and organs, offenses committed by means of investment instruments, the offense of the breach of regulations regarding economic rules, and the offense of sabotage.

The basic rule for determining the local jurisdiction is based on where a criminal offense is committed. If local jurisdiction cannot be determined in this way, then the proceedings are held by the court within the jurisdiction of which the defendant resides, works, or stays. Where that is not sufficient for determining the local jurisdiction, the competence belongs to the court within the jurisdiction of which the offense came to be known.

5 Section 12 of the CPC.

In the case of a juvenile offender, the proceedings shall be held by the youth court of the district in which the juvenile resides or, if the juvenile has no fixed place of residence, by the court of the district in which the juvenile works. If no such place can be ascertained or if the location is outside the territory of the Czech Republic, the proceedings shall be held by the youth court of the district in which the offense was committed; if the place of the offense cannot be ascertained, the proceedings shall be held by the youth court of the district in which the offense was revealed.

3.2. State prosecuting attorney's office

The state prosecuting attorney's office is a state authority that performs criminal prosecution within criminal proceedings, thereby meeting the principle of legality. It is a body of public prosecution and is closely related to the accusatorial principle, which is manifested by the fact that a criminal prosecution before the court is possible only on the basis of an indictment, a motion for punishment, or a motion for approval of a plea bargain.

The system of the state prosecuting attorney's offices has four levels: district, regional, high and supreme prosecuting attorney's offices. Their subject-matter and local jurisdiction is delimited in the same way as in the case of courts. State prosecuting attorney's offices are not, in the exercise of their competence, subservient to the Ministry of Justice. The mutual relations among the individual prosecuting attorney's offices are regulated in such a way that the higher prosecuting attorney's offices always exercise control (supervision) over lower prosecuting attorney's offices.

In relation to the system of state prosecution in the Czech Republic, it is worth mentioning the amendment to the Criminal Procedure Code made by Act No. 315/2019 Coll., effective from December 1, 2019, whose purpose was to adapt the Council Regulation (EU) 2017/1939 of October 12, 2017, on the establishment of the European Public Prosecutor's Office in Czech criminal proceedings.

Its primary activity is investigating and prosecuting (co-)perpetrators of crimes threatening or damaging the EU's financial interests and bringing them to justice.

The European supreme prosecutor, European prosecutor, and European empowered prosecutor have the same powers and duties as those provided by Czech law to a prosecuting attorney in Czech criminal proceedings.

3.3. Police authorities

Police authorities are understood to be, above all, the various units of the Police of the Czech Republic and, with respect to the proceedings concerning criminal offenses committed by the members of the Czech Republic's security forces, the unit of the General Inspection of Security Forces. The same position is also held by the following: the authorized bodies of the military police in the proceedings concerning criminal offenses committed by members of the armed forces; the authorized bodies of the Prison Service of the Czech Republic in the proceedings concerning criminal offenses committed by members of the Prison Service; the authorized bodies of the Security Intelligence Service in the proceedings concerning criminal offenses committed by

members of the Security Intelligence Service; and the authorized bodies of the Office for Foreign Relations and Information in the proceedings concerning criminal offenses committed by members of the Office for Foreign Relations and Information. The position of police authority is also held by authorized customs bodies in the proceedings concerning criminal offenses committed by violating customs regulations and regulations regarding the importation, exportation, and transit of goods – this authority also applies when the offenses are committed by members of the armed forces or armed units and services – and in the proceedings concerning breaches of legal regulation when placing and obtaining goods in member states of the European Communities, where such goods are transported across the national border of the Czech Republic. Moreover, it applies in cases of violations of tax regulations when customs authorities act as the tax administrators under the Act on the Administration of Taxes and Charges. Unless provided otherwise by the Criminal Procedure Code, these authorities may perform all acts in criminal proceedings that constitute the powers of police authority. The criteria for determining the subject-matter and local jurisdictions of the police authority are derived from the courts' jurisdiction. The subject matter jurisdiction in the case of police authority may also be regulated by internal acts of regulation.

In the case of the Police of the Czech Republic, for instance, the subject matter relevant in police authority is modified by internal acts of regulation. The most frequent entity appearing in the function of police authority is the Police of the Czech Republic.

3.4. The Probation and Mediation Service

The Probation and Mediation Service carries out probation and mediation in cases for which the criminal proceedings are pending.

Probation is the organization and exercise of supervision of the accused, defendant, or convicted person, control of the enforcement of alternative sentences in which some obligations or restrictions have been imposed, monitoring of the behavior of the convicted person during the probationary period of the conditional release from imprisonment, and individual assistance to the accused person and influence on them in terms of leading a proper life. Therefore, it is imposed when the state prosecuting attorney or judge considers it expedient to monitor and control the offender's behavior for a certain period.

In the context of probation, it creates the conditions for a criminal case to be heard in one of the special types of criminal proceedings, for a detention to be replaced by another measure, or for a non-custodial sentence to be imposed and carried out. Thus, it provides the accused with professional guidance and assistance, allows the monitoring and the control of their behavior, and facilitates the cooperation with the family and social environment in which they live and work with the aim of them leading a proper life in the future.

Mediation is an out-of-court settlement of a dispute between the accused and the victim. Mediation enables the accused to express an apology to the victim and atone for the consequences of the crime committed. For the victim, mediation increases the likelihood of prompt compensation by the accused.

4. Main substantive criminal law items

4.1. Fundamental principles of criminal law

Criminal Substantive Law can be defined as a branch of law regulating through its norms primarily the legal relations between those committing crimes and the state with the view of providing just and sufficient protection of the justified interest and relations in society (both individual and public) against wrongdoings by means of punishment and protective measures. The basic function of the criminal law is the protective function. Other functions of the criminal law should also be mentioned, such as the regulative, preventive and repressive functions.

The above-mentioned functions of criminal law represent a framework for the application of its fundamental principles, which form the necessary basis of the creation, interpretation and application of the rules of criminal law. Some principles of criminal law are laid down in the Constitution of the Czech Republic and the Charter of Fundamentals Rights and Freedoms.

Criminal law is based primarily on the following principles:

The principle of legality – nullum crimen, nulla poena sine lege – "only the law shall determine which acts constitute a crime and what penalties or other detriments to rights or property may be imposed on them"[6].

The principle of subsidiarity of criminal repression– the subsidiary role of criminal law (the principle of ultima ratio, ultimum remedium) as a means of the last resort for protecting a society. The criminal liability of the offender and the criminal consequences associated with it may only be applied in socially harmful cases in which the application of liability under another legal regulation is insufficient[7].

The ban of the retroactive jurisdiction in malam partem – the retroactive jurisdiction of a stricter law is not permitted – "the question whether an act is punishable or not shall be considered and penalties shall be imposed in accordance with the law in force at the time when the act was committed. A subsequent law shall be applied if it is more favorable for the offender"[8].

The ban of the analogy in malam partem – the extension of the conditions of criminal lability, sentencing, and protective measures as well as the terms and conditions for their enforcement is not permitted.

The principle of individual criminal liability of the natural person for their own actions.

The principle of liability for the guilt – guilt consists of blameful fulfillment of the characteristics of the body of the crime; the wrongdoer's act must be either intentional[9] or negligent[10].

6 See Charter of Fundamental Rights and Freedoms. Cf. Article 39 Section 12/1 of the Criminal Code (hereinafter referred to as CC).
7 Section 12/2 of the CC.
8 Charter of Fundamental Rights and Freedoms, Article 4/6 Section 16/1 of the CC.
9 Section 15 of the CC.
10 Section 16 of the CC.

The principle of adequacy of punishment – a sanction must be adequate in relation to the nature and seriousness of the criminal offense committed and the offender's personal situation[11]. Where the imposition of a less severe sanction is sufficient, a more severe sanction may not be imposed upon the offender[12] . In line with this principle, unconditional imprisonment has the status of *ultima ratio*; thus, alternative sanctions should primarily be imposed.

The principle of considering the interests of the injured party – in imposing criminal sanctions, the interest protected by the law of such persons aggrieved by the criminal offense shall be taken into account[13]. This principle can be considered an element of the concept of restorative justice.

The ne bis in dem principle – a circumstance that is a legal feature of a criminal offense must not be regarded as aggravating or mitigating[14].

4.2. Criminal liability and obstacles to criminal liability

Criminal liability as such lays in a subsequent reaction of the State to the criminal offense committed in the form of a punishment. The crucial institute of criminal lability is a *criminal offense* as its basis.

A criminal offense is defined in Section 13/1 of the CC. According to this provision, the criminal offense is an illegal act identified as punishable by criminal law and which presents the characteristics set out under such law. Moreover, there is also increasing definition in Section 111 of the CC. According to this section, a criminal offense refers to an act that is judicially punishable and, unless the individual provision of the CC stipulates otherwise, the preparation of that criminal offense, an attempted criminal offense, organization, instigation and aid.

Criminal offense is based on *binary categorization*. According to Section 14/2 of the CC, criminal offenses are divided into minor offenses and crimes. *Minor offenses* refer to all negligent criminal offenses and intentional offenses for which the criminal code stipulates a maximum term of imprisonment of five years. *Crimes* refer to all criminal offenses that are not considered minor offenses. In addition, the CC includes a category for particularly serious crimes. Particularly serious crimes are those for which the Criminal Code stipulates a maximum term of imprisonment of no less than 10 years. The binary categorization should lead to the differentiation of criminal sanctions and will also extend the possibility of imposing the alternative punishments. This categorization will also form the foundation for various types of criminal procedures, such as diversions.

The criminal offenses may occur in three stages: a preparation of the criminal offense, an attempt of the criminal offense, a completion of the criminal offense.

11 Section 38/1 of the CC.
12 Section 38/2 of the CC.
13 Section 38/3 of the CC.
14 Section 39/5 of the CC.

According to the Section 20/1 of the CC, a conduct that is based on the creation of conditions for committing of a particularly serious crime, especially its organization, acquisition, or adaptation of the means or instrument for its commission, in association, unlawful assembly, in the instigating or aiding of such a crime shall be considered *preparation* only if the criminal code expressly stipulates it for the relevant criminal offense and an attempt or completion of a particularly serious crime did not occur.

Attempted criminal offense is defined as any conduct that leads immediately to the completion of a criminal offense and that the offender committed with intention of the committing of a criminal offense even if the completion did not occur[15].

Both preparation and attempted criminal offenses are punishable pursuant to the criminal penalty set out for the particularly serious crime or criminal offense to which they lead unless the criminal code stipulates otherwise[16].

Completed criminal offense refers to fulfillment of all the elements of the criminal offense, including the age and sanity of the offender, protected interests (object), acting, consequences, and causality (on the objective side) and culpability (on the subjective side).

The minimum *age* of criminal liability is defined as 15 years of age. According to Section 25 of the CC, a person who has not reached 15 years of age at the time a criminal offense is committed shall not be held criminally liable. A person gains a criminal liability the day after their 15th birthday. Persons between 15 and 18 years of age are regarded as "juveniles" and fall within a milder system of criminal liability. A person gains a full criminal liability the day after their 18th birthday.

The criminal capacity of an offender also depends on their mental condition. *Sanity* is required as a prerequisite for criminal liability. If, due to their mental disorder, an offender is unable to recognize the danger of their actions or to control them, they shall not be held criminally liable for their act[17].

A diametrically opposite case may serve as an example if the offender themselves is to be blamed for their insanity, referred to as *culpable insanity*, which is regulated by Section 360 of the CC.

Section 360 of the CC describes *three cases of culpable insanity*:

1. *Drunkenness* – this provision is favorable to the offender and takes into consideration their physical condition at the time the crime was committed. They are not fully criminally liable, and their criminal liability is thus reduced.[18]

2. *Actio libera in causa dolosa* – ALIC dolosa – the offender induces within themselves a state of insanity with the intent to commit a crime; they remain fully liable and without limitations for the crime thus committed.[19]

15 Section 21/1 of the CC.
16 Sections 20/2, 21/2 of the CC.
17 Insanity, cf. Section 26 of the CC.
18 Section 360/1 of the CC.
19 Section 360/2 of the CC.

3. *Action libera in causa culposa* – ALIC culposa – the offender induces within themselves a state of insanity and commits a crime via negligence caused by them having induced within themselves a state of insanity; they are also fully criminally liable for the crime thus committed.[20]

The offender´s *acting* is the core of the crime. Its essence is a manifestation of the will of the offender. We distinguish two forms of acting: the act of commission, in which the will is manifested in a physical performance, and the act of omission, in which the will is manifested as an omittance. Not all omissions may be classified as a type of acting (conduct). According to Section 112 of the CC, *the conduct shall also include an act of omission if the offender was obliged to perform with respect to the other law, an official decision or contract, the circumstances, or their situation*. This means that the offender has to be bound by a special duty to perform.

The designation of *special offender* can be required when certain criminal offenses are committed. For example, only a Czech citizen can commit the crime of High Treason[21], only a public official can commit a crime pursuant to Section 329 of the CC (Abuse of Powers by a Public Official), and only a mother of a newborn baby can be the perpetrator of a crime pursuant to Section 142 of the CC (Infanticide).

The *consequence* of a criminal offense can be defined as the violation or endangering of an interest protected by the criminal code.

There is no criminal liability without the *causal relationship* between the offender´s acting and the consequence. The Czech theory and practice is based on the so-called Theory of Necessary Condition (conditio sine qua non). In the sense of this theory, the act of an offender is the cause of a consequence if the consequence would not occur without the act or if it would have occurred substantially different.[22]

In some cases, additional objective elements may be required, such as the manner in which the criminal offense was committed or the place and the time at which it was committed.

There is also no criminal liability without *culpability* (the principle of liability for guilt). According to Section 13/2, the intention is required as a regular condition of punishability, unless the Criminal Code expressly provides that the negligence is sufficient for committing a crime. We distinguish two forms of culpability, intent[23] and negligence[24], which are further divided into direct and indirect intent and willful and unwillful negligence. Both forms of negligence can reach a degree of gross negligence. According to Section 16 Paragraph 2, a criminal offense is committed out of gross negligence if an offender`s approach to the requirement for due diligence attest to the evident irresponsibility of the offender in the interest protected by criminal law.[25]

20 Section 360/2 of the CC.
21 Section 309 of the CC.
22 Diblíková, 2002, p. 14.
23 Section 15 of the CC.
24 Section 16 of the CC.
25 Penal Code, 2011, p. 5.

As previously mentioned, the commission of a criminal offense requires intentional culpability as a standard condition. However, according to Section 17 of the CC, circumstances that qualify the application of a more severe penalty shall be taken into account

a) if it is a more severe consequence and even if the offender caused it due to negligence, except for cases in which criminal law requires intentional fault
b) if it is another fact and even if the offender was unaware of such a fact, although they should have been aware of it considering the circumstances and personal situation, except for cases in which criminal law requires that the offender was aware such a fact.[26]

In addition to fault (guilt), other characteristics such as motive or goal may be required.

Regarding the *organization, instigation, and aid*, they are three forms of *participation* in a completed or attempted criminal offense[27]. The participation is based on the principle of accessory, which refers to the following:

An *Organizer* is a person who intentionally organizes or directs the committing of a crime.

An *Instigator i*s a person who intentionally instigates another person's commission of a crime.

An *Aider* is a person who intentionally grants another person assistance in committing a criminal offense, particularly by providing the means for committing the criminal offense in question, removing obstacles, giving advice, strengthening the person's intent, or promising help after the commission of a criminal offense.

It is also necessary to mention *special legal regulation in matters of juveniles*. A criminal offense committed by a juvenile is called a *transgression*[28]. It is not divided into minor offenses and crimes. In addition to age and sanity, a particular level of intellectual and moral maturity is required as a prerequisite for a juvenile to be held criminally liable. The criminal liability of juveniles is a relative type of liability, meaning that not everyone who has reached the age of 15 and is sane can be considered criminally liable. According to Section 5/1 of the Juvenile Justice Act (JJA), a juvenile who, at the time of committing the action, did not command the necessary level of intellectual and moral maturity to be able to recognize its illegality or to control their conduct shall not be held criminally liable for the action.

Regarding *legal entities*, the Act on Criminal Liability of Legal Persons (hereinafter referred to as "CLLE") provides that a criminal offense committed by a legal person is an illegal act committed in its interest or in the course of its activities by one of the persons listed in Section 8/1 of the CLLE, for example, a statutory body or its member, a person in a managerial position who performs directing or controlling

26 Penal Code, 2011, p. 6.
27 Section 24 of the CC.
28 Section 6/1 of the JJA.

activities, a person who influences the management of a legal entity, or an employee in the performance of work tasks.[29] The liability of a legal entity is conditioned by the imputability of the actions of said persons to the legal entity[30]. According to Section 8/3, not finding a concrete natural person who acted in way mentioned in Section 8/1 and 2 does not influence the criminal liability of the legal entity. A legal person shall be released from criminal liability if the legal person has made every effort that may be required of it to prevent the commission of an offense. A legal entity may commit all criminal offenses specified in the criminal code, except for those that are exhaustively stipulated in Section 7 of the CLLC. It is also necessary to mention that when exercising a public authority, the Czech Republic, as the state and local self-governing unit, is expressly excluded from criminal liability[31].

A criminal offense may only be an illegal act. There are circumstances excluding illegality in the criminal code – *extreme distress*, *necessary defense*, *consent of a victim*, *admissible risk*, and *the justified use of a weapon*.[32] In addition, the criminal code regulates the reason for a lapse of criminal liability – *effective repentance*[33] and its special cases[34] as well as *limitation of criminal liability*[35].

4.3. The system of criminal law sanctions

We can distinguish three relatively separate sanction systems in relation to the three possible groups of offenders in Czech criminal law: adults, juveniles and legal entities.

The system of criminal sanctions for adults and legal entities is based on the concept of dualism of sanctions and consists of punishments and protective measures.

Punishment can be imposed by a criminal court on a perpetrator of a criminal offense.

Protective measures can be imposed by a criminal court either in criminal or in civil procedure on a perpetrator of a criminal offense or an act otherwise classified as criminal (for example, if the offender is insane or a person under 15).

Punishment may only be imposed in accordance with the law (the principle of legality). Section 52/1 of the CC stipulates numerous types of punishment for adult offenders: a sentence of imprisonment; house arrest; community service; forfeiture of property; a pecuniary penalty; forfeiture of an item; prohibition from undertaking activities; prohibition from breeding and possessing animals; prohibition from residence; prohibition from entry to sporting, cultural, and other social events; deprivation of titles of honor and awards; deprivation of a military rank; banishment.

There are three forms of sentences of imprisonment in the Criminal Code: an unconditional prison sentence, a conditional prison sentence, and a conditional

29 For more, see Fryšták et al., 2016, pp. 24–26.
30 Section 8/2 of the CLLE.
31 Section 6/1 of the CLLC.
32 See Sections 28–32 of the CC.
33 Section 33 of the CC.
34 Sections 197, 242, 362 of the CC.
35 Section 34 of the CC.

prison sentence with supervision. Exceptional punishment is a special type of prison sentence. It has two forms: a prison sentence for over 20 to 30 years and a life prison sentence.

Protective measures are protective treatment, security detention, confiscation of an item, confiscation of a portion of property, and protective education[36]. The imposition of protective education is governed by the JJA. Protective treatment may not be imposed in addition to a security detention.

The enumeration of punishments for legal entities is listed in Section 15/1 of the CCLE. The following punishments may be imposed upon a legal entity that commits criminal offenses: winding-up (dissolution) of the company; forfeiture of property; pecuniary punishment; forfeiture of an item; prohibition from undertaking activities; prohibition from breeding and possessing animals; prohibition from the performance of public contracts or participation in public tender; a ban on the acceptance of subsidies; the publication of the judgment.

Regarding protective measures, a confiscation of an item and a confiscation of a portion of property may be imposed on legal entities[37].

It is evident that legal entities may be subject to the same sanctions as natural persons (i.e., a pecuniary punishment, prohibition from undertaking activities, confiscation of property, or confiscation of an item) or to sanctions that are quite specific.[38] The sanctions may be imposed individually or simultaneously. The only exception that is explicitly banned[39] is the concurrent imposition of a pecuniary punishment and the forfeiture of property.

The system of criminal sanctions for juveniles is based on the concept of the monism of sanctions. It consists of a united system of measures: educational, protective, and criminal[40].

The *educational measures* are as follows: a) supervision of a probation officer; b) probation program; c) educational duties; d) upbringing restrictions; e) admonition with warning.

Educational measures can be imposed on a juvenile against whom the proceedings are conducted after their approval during these proceedings prior to the court deciding on their guilt. These measures will manage the juvenile's way of life and thus support and safeguard their upbringing.

Protective measures refer to protective treatment, security detention, confiscation of an item and protective upbringing. Their purpose is to positively influence the mental, ethical, and social development of the juvenile and to protect the society from wrongdoings committed by juveniles.

The *criminal measures* are as follows: community service activities; financial measures; financial measures with conditional suspension of sentence; forfeiture

36 Section 98 of the CC.
37 Section 15/2 of the CCLE.
38 Kalvodová, 2013, p. 2262.
39 Section 15/3 of the CCLE.
40 Section 10/1 of the JJA.

of an item; prohibition from undertaking activities; prohibition from breeding and possessing animals; banishment; house arrest; prohibition from entry to sporting, cultural, and other social events; imprisonment conditionally suspended for a probationary period (conditional sentence); imprisonment conditionally suspended for a probationary period under supervision; unconditional imprisonment.

Criminal measures can be used only if special procedures and measures, particularly those that restore violated social relations and contribute to the prevention of unlawful actions, are unlikely to result in achieving the purpose of the JJA[41]. The JJA also stipulates certain special conditions and different levels of penalties for imposing criminal measures on juveniles compared with adult offenders.[42]

4.4. Trends related to the special part of the Criminal Code

The special part of the Czech Criminal Code contains 13 chapters. Most of them are separated into divisions. The systematic arrangement of the special part is based on the typical relations and interests being protected. Priority is given to the protection of the fundamental human rights and freedoms of an individual over the collective interests of society and the state.

The special part of the Criminal Code, both previous and current, has also undergone many changes as a result of political, social, and economic changes since the early 1990s. On one hand, a number of criminal acts have been abolished, such as Instigation, Subversion of the Republic, Leaving the Country, Speculation, and Dishonoring the Socialist State, the extended protection of socialist proprietorship based on the ruling ideology of the Communist party. On the other hand, many new criminal offenses have been gradually introduced into the Criminal Code in response to the new social phenomena and changes, including those regarding the protection of life and health, human sexual dignity, children, the environment, economic and property criminal offenses, and combating terrorism and organized crime.

Of the many changes that have been implemented, we emphasize those outlined below.

Criminal offenses against life and health (Chapter I) were expanded and segmented into five divisions: Criminal Offenses against Life, Criminal Offenses against Health, Criminal offenses Endangering Life and Health, Criminal Offenses against Pregnancy of a Women, Criminal Offenses Relating to the Unauthorized Handling of Human Tissues and Organs, and Human Embryos and the Human Genome. Two types of crime referred to as qualified (i.e., more severely punished) crimes related to murder were introduced into the Criminal Code,[43] and another new criminal offense, Manslaughter in Section 141, was introduced as a so-called privileged (i.e., less severely punished) murder-related crime.

41 Section 10/2 of the JJA.
42 For further details, see Fryšták, Kalvodová and Provazník, 2015, pp. 87 et seq.
43 Sections 140 Paragraphs 2 and 3.

The criminal offenses of Sexual Coercion, Prostitution Endangering the Moral Development of Children, Participation in Pornographic Performances, and the Establishment of Illicit Contact with a Child were introduced in Chapter III, which regulates the Crimes against Human Dignity in the Sexual Field. The substance of the crime of rape has also been extended.

Moreover, *the criminal law protection of the environment* has been extended. Criminal acts against the environment have been included in a separate chapter, Chapter VIII. The most recent criminal offense is the Breeding of Animals in Unsuitable Conditions in Section 302a of the CC, introduced by the amendment to Criminal Code No.114/2020 Coll. This amendment tightened the criminal penalty for animal cruelty.

The area of economics and property criminal offenses includes in Chapters VI and V, for example, Misuse of Information in Business Relations (Insider Trading), Unlicensed Operation of a Lottery or Similar Game of Chance, Fraudulent Manipulation of Public Tender and Public Auction, special types of fraud such as Insurance Fraud, Credit Fraud, Subsidy Fraud, Money Laundering and Damage to Financial Interests of the European Union.

Finally, it is necessary to mention the amendment to Criminal Code No. 333/2020 Coll., which introduced *new limits on the amount of damage* for the purposes of the criminal code. The basic damage limit (damage that is not negligible) was increased from CZK 5,000 to CZK 10,000, which led to a significant decriminalization, especially of property and economic criminal offenses.

5. Main rules of criminal procedure

5.1. General principles of criminal proceedings

The fundamental principles of criminal procedure[44] are certain specific legal principles and guiding legal ideas that govern criminal proceedings. The principles are either common to the entire criminal procedure (e.g., the principle of due process of law, a speedy trial, or the guarantee of the right to a defense) or specific to the initiation of criminal proceedings (e.g., the principle of formality, legality, or impeachment) or to the taking of evidence (e.g., the principle of search or free evaluation of evidence). The principles may not be enforced with the same intensity throughout the proceedings. They are most strongly manifested at the most important stage of criminal proceedings, namely the main trial.

a) The principle of legality

Nobody may be prosecuted for any reason other than lawful ones or in any other way than the one provided for by the Criminal Procedure Code. This principle is an implementation of the general principle of the legality of the exercise of state power,

44 Section 2 of the CPC.

consisting in the fact that state power serves all citizens and may be exercised only in cases that are within the limits and in the manner prescribed by law. This is a guarantee that citizens will not be prosecuted without a reason to.

b) The principle of the presumption of innocence

Until a defendant in criminal proceedings is found guilty under the final and conclusive court judgment, they cannot be viewed as guilty. The investigative, prosecuting and adjudicating bodies must treat the accused person as innocent until the final and conclusive judgment of conviction issued by a court.

The principle of presumption of innocence is related to the principle of in dubio pro reo (the benefit of the doubt). This means that when there are doubts regarding the guilt of the defendant and those doubts cannot be removed by further evidence, the decision must be in favor of the defendant. Moreover, the defendant cannot be convicted unless their guilt is proved. Furthermore, the defendant is not obliged to prove their innocence or any other fact that is important for the criminal proceedings. No conclusions concerning the defendant's guilt can be drawn from the defendant's activity or passivity.

c) Principles of legality and officiality

Under the legality principle, a state prosecuting attorney is obliged to prosecute all criminal offenses that come to their attention unless provided otherwise by law or a declared international treaty that is binding upon the Czech Republic. The opposing principle is the opportunity principle, under which the criminal proceedings are initiated, continued, or concluded only when such a course of action is opportune (i.e., purposeful). The principle of opportunity involves, among other factors, criminal prosecution with the consent of the injured party. The principle of opportunity is not explicit within the Czech criminal proceedings, despite that it is manifested in it.

d) Principle of speed

Criminal cases must be dealt with as soon as possible and without undue delay; in particular, custodial matters and matters in which property has been seized, if it is necessary due to the nature and value of the seized property, shall be handled with great speed.

One specific manifestation of this principle is the existence of periods of time for keeping a person in custody, handing over a detained person to a court and observing the length of examination and investigation.

e) Principle of the inadmissibility of petitions

The content of complaints that interfere with the performance of the duties of investigative, prosecuting and adjudicating bodies shall not be taken into account. This principle is based on the rule that a petition cannot interfere with the independence of the court. Therefore, it is not permissible to interfere with the rights and obligations of the law enforcement authorities to ensure their independence.

f) Principle to search

The investigative, prosecuting and adjudicating bodies investigate, even without being motioned to do so by the parties, with equal care and considering all circumstances for the benefit and to the detriment of the person who is prosecuted. They proceed so out of their official duty. The principle to search follows from the principle of officiality with respect to the evidentiary proceedings. The Criminal Prosecution Code provides the parties the possibility to make suggestions about the search and production of evidence during the evidentiary proceedings (principle of equality of arms). The defendant may thus, for instance, propose that certain evidence is to be produced, for example, clarification of a fact that is relevant with a respect to guilt and that may serve as evidence for the defendant's benefit.

g) Principle of the discretionary weighing of evidence

The investigative, prosecuting, and adjudicating bodies assess the evidence according to their own internal conviction based on careful consideration of all circumstances. They weigh all of the evidence individually and in aggregate. The assessment of evidence is a cognitive activity of the bodies involved in criminal proceedings, and the discretionary weighing of evidence is built on their internal conviction. There should be no outside interference in the process of evaluating evidence and the competent authority should not feel obliged to respect any view of the evaluation of evidence other than its own.

The internal conviction is expressed in the written version of the judgment, specifically in the justification of judgment. In this document, the court shall briefly explain which facts it has taken as proven, on which evidence it has based its findings of fact, and what considerations it has followed in assessing the evidence adduced, in particular whether they are contradictory. The reasoning must also show how the court dealt with the defense and why it did not comply with requests for further evidence.

h) Principle of cooperation with citizen associations

The investigative, prosecuting and adjudicating bodies cooperate with citizen associations, drawing on their educational potential. These associations may participate in the education of persons who have been conditionally discharged under supervision, persons whose criminal prosecution was conditionally discontinued, conditionally sentenced persons, persons conditionally sentenced to a term of imprisonment under supervision and persons released on parole. They also help to form suitable conditions to enable the convicted persons to live a proper life after their release. The Criminal Procedure Code also includes the possibility that, in certain cases, a citizen association may provide a guarantee to prevent a person from being taken into custody. The citizen association thus assumes a guarantee for the further behavior of the accused.

i) Accusatorial principle

Criminal prosecution before the court is possible only on the basis of a charge, a motion for punishment, or a motion for approval of a plea agreement brought by a

state prosecuting attorney who leads the public prosecution in the proceedings before the court. The accusatorial principle consists in the fact that a court may deal with a matter only on the basis of a charge brought by the prosecuting attorney. The charge is, in essence, the only motion that can initiate judicial proceedings. Thus, the court may not deal with a case on its own, and there is no one apart from the state prosecuting attorney who may file the motion (bring the charge) on the basis of which a court can become active in the matter.

j) Principle of publicity

Criminal matters are heard in open court so that citizens can participate and follow the proceedings. In the case of juveniles, criminal proceedings are closed to the public.

During the main trial, the public may be excluded only in cases expressly stated by the Criminal Procedure Code. The reasons for excluding the public include the cases of a threat of disclosure of classified facts protected under a special law, a threat to the undisturbed course of the hearing, a threat to morality, or cases in which the exclusion is for the sake of safety or some other crucial interest of witnesses. When the public is not excluded, the court may deny access to the main trial to minor persons and those who might disturb the proceedings (e.g., drunk, or aggressive persons). The court may also perform measures necessary to prevent the overcrowding of the courtroom. Persons who disturb the peace may be compelled to leave. The judgment must always be pronounced publicly.

k) Principle of orality

Proceedings before the court are oral. Evidence from witnesses, experts and the accused is generally obtained by questioning these persons. However, in certain cases, the Code of Criminal Procedure allows for the evidence provided by these persons to be taken by reading out the record of their previous testimony (an exception to the principle of orality) if they deviate from their original testimony or refuse to testify or if witnesses refuse to testify in court. However, an interview cannot be replaced by a written communication; such a communication is documentary evidence.

l) Principle of immediacy

When deciding at the main trial (in both open and closed sessions), the court may take into account only the evidence that is produced during the hearing. The principle of immediacy gives rise to two procedural rules. The first is the rule of the impossibility of changing the composition of the court. For this reason, a substitute judge is sometimes appointed in complex cases. The second rule – the rule of the impossibility to discontinue a court trial – aims to ensure that the court decides on the basis of findings and perceptions obtained in the proceedings in question. However, this does not infer the impossibility of adjourning the trial.

The doctrine also states the requirement that the court draw evidence from a source as close as possible to the fact being established (e.g., to hear directly from

the person who personally witnessed a particular event, not from the person to whom the person confided what they witnessed). Such a requirement is entirely appropriate, though it is not specifically mentioned in the statutory expression of the principle.

m) Principle of obtaining the right to a defense

One who is criminally prosecuted must be informed of the right allowing them to assert their full defense as well as their right to choose their defense counsel. All of the bodies involved in criminal proceedings are obliged to enable such criminally prosecuted persons to exercise these rights. In certain cases, the Criminal Procedure Code provides for the obligation to have defense counsel regardless of whether the defendant wishes to. This concerns the situation in which, during the pre-trial proceedings, the defendant is retained in custody, is serving a term of imprisonment, is deprived of legal capacity or is of a limited legal capacity, or there are doubts as to the defendant's physical or mental defects such that the defendant is unable to properly defend themselves. If the defendant fails to choose counsel or counsel is not chosen by the defendant's spouse, partner, or sibling, counsel is appointed by the court. A juvenile must always have a defense counsel.

n) Principle of establishing the facts without reasonable doubt

The investigative, prosecuting and adjudicating bodies act in harmony with their rights and obligations provided for in the Criminal Procedure Code and in cooperation with the parties to establish the facts of the case that are beyond reasonable doubt and to the extent necessary for making their decisions. The defendant's confession does not remove the obligation of the bodies involved in criminal proceedings to review all material circumstances of the case because a defendant may also use lying as a strategy for their defense. During the pre-trial proceedings, the bodies involved in criminal proceedings carefully assess – in the manner stated in the Criminal Procedure Code and even without the parties being motioned to do so – all the circumstances for the benefit and to the detriment of the person against whom the proceedings are led. During the court proceedings, to support their position, the state prosecuting attorney and the defendant may propose and produce evidence. The prosecuting attorney has the expressed statutory obligation to prove the defendant's guilt. This, however, does not extinguish the court's obligation to supplement the evidence produced to the extent necessary for the court's decision.

o) Principles of evidence

The production of evidence reflects the fundamental principles of criminal proceedings, for example, the principle to search, the principle of the presumption of innocence, the principle of establishing the facts without reasonable doubt, the principle of discretionary weighing of evidence, and the principles of orality and immediacy.

p) The right to be instructed

The person against whom criminal proceedings are conducted must be instructed in every stage of the proceedings about their rights enabling them to fully exercise their defense and that they may choose defense counsel; all authorities involved in criminal proceedings are obliged to enable full exercise of the person's rights such that the person concerned can effectively exercise their rights.

q) The right to use one's mother language

The investigative, prosecuting and adjudicating bodies in criminal proceedings conduct the proceedings and the issue decisions in the Czech language. Any person who declares that they do not speak Czech is entitled to use their mother language or a language they declare they understand before the authorities involved in criminal proceedings. If the content of a statement or a written document needs to be translated or if the accused declares that they do not speak the language of the proceedings, they shall be assigned an interpreter.

In principle, it is sufficient that the person concerned declares that they do not know the Czech language; they are not obliged to prove their ignorance in any way, and the competent law enforcement authority is not called upon to examine the person's level of knowledge of the Czech language. On the other hand, this does not exclude the possibility that the prosecuting authority may refuse to allow the use of another language by a person who clearly knows the Czech language.

r) The rights of the injured party

The investigative, prosecuting and adjudicating bodies shall afford the victim the full exercise of their rights, which must be made known to them in a manner appropriate and intelligible under the law to enable them to obtain the satisfaction of their claims; they shall conduct the proceedings with due regard for the victim and with an inquiry into the person's personality.

Although criminal proceedings can provide a degree of satisfaction for the victim, they can also often be a traumatic experience linked to the need to relive in some way the harm to which the offense has exposed them.

5.2. Stages of criminal proceedings

The stages of criminal proceedings refer to the progress of criminal proceedings along a timeline. They can be divided into the pre-trial stage, which includes pre-trial proceedings, and the trial stage, which includes the preliminary hearing of the charges, the main trial, remedial proceedings and enforcement proceedings. The pre-trial stage is intended to enable a qualified preparation of a given criminal case in such way, that it can stand in the proceedings before the court.

The trial stage of the proceedings follows the pre-trial stage when the state prosecutor files a charge (or a motion for punishment or for approval of a plea agreement), which must be dealt with by the court.

The trial stage is the core of criminal proceedings and its main aim is to arrive at a final and conclusive decision on the merits of the case and to ensure its enforcement. At this stage, the most important issues, that is guilt and punishment, are decided and the decisions already taken by the court are reviewed.

A criminal case does not have to go through all of the stages of the criminal proceedings. For example, a preliminary hearing for the charge may not be ordered in a particular case because there are no legal grounds for it. Moreover, the case may be decided during the pre-trial proceedings, in which case the main trial will not take place at all. Similarly, a decision in favor of the defendant may be given on appeal, and there is no reason for an enforcement procedure because no sentence has been imposed by the judgment.

5.2.1. Pre-trial proceedings

The Czech criminal procedure is characterized by the pre-trial stage of criminal proceedings[45], represented by preparatory proceedings. This identifies the stage of criminal proceedings that begins with the writing of the entry on the commencement of acts in criminal proceedings or the immediately preceding performance of exigent and unrepeatable acts. Where no such acts are performed, preparatory proceedings are understood to refer to the stage from the commencement of criminal prosecution to the bringing of the charges, the transfer of the case to some other authority, the discontinuance of criminal proceedings or issuance of a decision, or the occurrence of some other fact that effects the discontinuation of criminal prosecution prior to bringing the charges. These proceedings include the clarification and review of facts indicating that a crime has been committed as well as the investigation.

The aim of pre-trial proceedings is to verify the suspicion that a crime has been committed and obtain relevant information for bringing charges. If there is no reason for bringing the charges, then the proceedings serve as a source for some other decision taken by the prosecuting attorney in the same matter. They should aim to obtain and document only evidence that cannot be obtained during the main trial or that can, if obtained at a later stage of the proceedings, become corrupt or lost. The pre-trial proceedings thus cannot replace the court's activities.

The proceedings are divided into the steps taken before the commencement of criminal prosecution[46] and those that are taken after the commencement of criminal prosecution[47].

5.2.1.1 Steps before the commencement of criminal prosecution

This stage is referred to as a verification. It is an activity performed by a police authority and has mostly a non-procedural nature. The purpose of the verification is

45 Section 157 of the CPC.
46 Sections 158 et seq. of the CPC.
47 Sections 161 et seq. of the CPC.

to obtain information primarily by searching and then to assess the information and decide whether the criminal proceedings should be continued.

5.2.1.2 Steps after the commencement of criminal prosecution

This stage is referred to as investigation. It forms an obligatory part of criminal prosecution before the bringing of the charges, the transfer of the case to some other authority, or the discontinuance of criminal proceedings and includes the approval of a settlement and a conditional stoppage of criminal prosecution before the charges are brought. The investigation has a solely procedural nature. While it is being carried out, the full right to defense is respected, for example, through the participation of the defense counsel (or the selected or appointed counsel) in the individual acts of investigation. The investigation typically follows the verification, except in such cases in which the police authority has such information at its disposal that makes it possible for criminal prosecution to be initiated without delay, for example, when the offender is caught immediately during the commission of the crime. The purpose of the investigation is to establish whether there are facts based on which the accused can be brought before court and the case can be decided during the trial stage. The investigation results in the decision by the police authority regarding whether to submit a request to the prosecuting attorney to have the case heard by the court, or to avoid a judicial hearing of the case.

5.2.1.3 Summary pre-trial proceedings

Since January 1, 2002, the Criminal Procedure Code has allowed simpler criminal cases to be dealt with in so-called summary pre-trial proceedings[48] and then in simplified proceedings before the court.

The offense must be one of those that is being tried in the first instance by a district court and for which the statutory penalty does not exceed five years. Moreover, the suspect must have been caught in the act or immediately after the act, or it must be expected that the suspect can be brought to trial within 14 days at the latest.

The prosecution of the accused is not commenced by an order, but it is sufficient if the suspect is informed by the start of the interrogation at the latest of the offense of which they are suspected and what the offense is believed to be. The formal commencement of criminal proceedings is only the subsequent filing of a petition for punishment with the court.

In the summary pre-trial proceedings, the police questions the suspect and, in a simple form, obtains the evidence necessary to decide on guilt and punishment. The case must then be submitted to the prosecuting attorney within 14 days (this period may be extended by the prosecuting attorney but for no more than 10 days).

If the prosecuting attorney finds grounds for referring the suspect to court, they shall file a motion for punishment with the court. As with the charge, the motion for punishment must be in writing but does not need to contain reasons. If

48 Sections 179 et seq. of the CPC.

the prosecuting attorney does not find grounds for referring the suspect to court, they may postpone, suspend, or refer the case to another (e.g., misdemeanor) authority.

If summary pre-trial proceedings have been held, the proceedings before the court are also simplified. The simplification consists primarily in the fact that if the accused and the public prosecutor declare at the main hearing that they consider the facts stated in the motion for punishment to be undisputed, there is no need to conduct further evidence. Otherwise, however, the court may proceed as in "classical" proceedings; that is, it may also issue a penalty order, discontinue the case, suspend it, refer it to another authority, or approve a settlement.

If the case has been the subject of a summary pre-trial and a simplified trial, this has no effect on the enforcement procedure, which is the same as in "classical" proceedings.

5.2.2. Trial stage[49]

5.2.2.1 Preliminary hearing of charges

This is a separate and optional phase of criminal proceedings that follows the pre-trial proceedings.

The task of this already judicial stage of the proceedings is for the court to assess whether the charge (or the proposal for punishment or for approval of a plea bargain) submitted by the state prosecutor to the court provides a reliable basis for further proceedings, whether the pre-trial proceedings were conducted in accordance with the law, and whether the results of the proceedings sufficiently justify bringing the accused before the court.

The purpose of the preliminary hearing is, inter alia, to prevent a criminal case from being tried before a court even if the charges do not allow it, for example, if the provisions ensuring the accused's right to a defense have been violated.[50]

5.2.2.2 Main trial

The main trial[51] is obligatory and the most important stage in the entire criminal proceedings. The aim is to decide on guilt and punishment with respect to the charges brought. The case should be decided in a period of time as short as possible, ideally without adjournment. During the main trial, the court establishes, in the presence of the parties, whether the facts stated in the charges do exist and whether a decision regarding the guilt and the punishment of the accused person may be made on the basis of such facts.

The main trial is held in front of either a single judge or a bench of three judges. A single judge hears cases concerning crimes with a maximum punishment of five

49 Sections 180 et seq. of the CPC.
50 Sections 185 et seq. of the CPC.
51 Sections 196 et seq. of the CPC.

years of imprisonment. In other cases, the matter is adjudicated by a bench. The main trial is held during the constant presence of the single judge or all members of the bench, a clerk taking records (the recorder), and the defense counsel.

The main trial may be held in the absence of the defendant only if the court believes that the case can be reliably decided and the purpose of the criminal proceedings attained even without the defendant's presence, provided that the charges were duly served to the defendant and the defendant was duly and in time summoned to the main trial; the defendant was questioned about the act that forms the subject of the charge by some of the bodies involved in the criminal proceedings, the provision on the commencement of criminal prosecution was followed, and the accused person was informed of the option to inspect the case files and submit proposals to supplement the investigation. The main trial may not be held in the absence of the defendant if the defendant is in custody or serving a term of imprisonment or in the case of criminal offenses punishable under the Criminal Code for which the term of imprisonment has an upper limit of more than five years. The above-mentioned does not apply if the defendant requests that the main trial may be held in their absence. In cases of compulsory defense, the main trial may not be held without the presence of the defense counsel.

As a rule, the main trial is held in open court unless the public or a specific individual is excluded.

The public may be excluded from the main trial, for example, if the public hearing of the case would endanger confidential information protected by a special act, morality, the smooth course of proceedings, or the safety or other important interests of the witnesses. Juveniles and individuals who disrupt order in the courtroom may be excluded from the main trial.

5.2.2.3 Remedial measures and proceedings on remedial measures

The immediate purpose of remedial proceedings is to rectify a particular decision that is faulty. The broader purpose is the review of the decision-making process of the first-instance authorities and the unification of the decision-making practice of bodies involved in criminal proceedings. As far as its general purpose is concerned, remedial proceedings represent one of the tools for maintaining the fundamental principles of criminal proceedings. The proceedings on remedial measure are characterized by the principles outlined below.

a) Appellative and cassation principles

When applying the appellative principle, the authority dealing with a remedial measure will, in case of finding a fault in the challenged decision, cancel the decision, rectify the faults, and issue a new, faultless decision. In contrast, the cassation principle means that the authority dealing with a remedial measure will, in case of finding a fault in the challenged decision, cancel the decision and return the case to the first-instance body to be adjudicated.

b) Principle of beneficium cohaesionis

This is the rule of the so-called benefit in correlation, which means that the authority deciding the remedial measure must also apply the decision with respect to a person who did not file the remedial measure as long as the reason justifying the decision for the benefit of the person who had filed the remedial measure is of benefit to such a person as well.

c) Principle of the prohibition of reformation in peius

This principle prohibits the alteration of a decision to the detriment of the person who seeks the remedial measure or for whose benefit the remedial measure was filed.

d) Principle of devolution

The principle of devolution means that the remedial measure is decided by a different authority – one that is usually superior to the authority that issued the challenged decision. In Czech criminal proceedings, the remedial measures are, by rule, decided by bodies that have a higher instance or a procedural function.

Superiority in terms of instance is typical of the courts. The complaints against a resolution of the police authority are decided by the prosecuting attorney.

e) Principle of suspension

The principle of suspension means that the remedial measure has the effect of suspending the enforcement of the decision. The remedial measures have this suspensory effect when the absence of such an effect would cause irreparable damage.

5.2.2.3.1 Regular remedial measures

The regular remedial measures[52] are directed against decisions that have not yet become final and conclusive. They include appeal, complaint against a resolution and protest.

5.2.2.3.2 Extraordinary remedial measures

These constitute an exception to the principle under which decisions in criminal proceedings are unchangeable and binding. The institute of extraordinary remedial measures[53] is a significant interference in the legal force of decisions, the stability of legal relations and, eventually, the principle of legal certainty as well. For these reasons, the extraordinary remedial measures should be applied only in the case of illegal decisions and when such illegality is so significant and serious that it questions the purpose of criminal proceedings. Extraordinary remedial measures include appellate review, complaint for a breach of law and re-trial.

52 Sections 141 et seq., Sections 245 et seq. of the CPC.
53 Sections 265 et seq. of the CPC.

5.2.3. Enforcement proceedings

During the criminal proceedings, investigative, prosecuting and adjudicating bodies issue various decisions that create rights or impose specific obligations. What almost all such decisions have in common is that they need to be factually executed so that they are not simply formal acts with no direct enforceability. However, the enforcement of a decision (e.g., enforcement proceedings[54], also known as proceedings to compel the enforcement of judgment) does not have to follow each individual decision of investigative, prosecuting and adjudicating bodies because the nature of some of the decisions makes enforcement impossible, such as a decision not to proceed with a case when the verification stage is completed.

The enforcement of a decision includes an element of state coercion. Where the content of the decision (as specified in the statement) is made voluntarily (e.g., the person upon whom the duty to surrender something that is important for criminal proceedings is imposed does in fact surrender that thing), the actual enforcement of the decision is not necessary. The purpose of enforcement proceedings is to implement the content of the decisions made by the investigative, prosecuting and adjudicating bodies. The enforcement proceedings constitute an independent procedural stage in criminal proceedings only in cases of enforcement of judicial decisions and primarily where judgments of conviction are concerned. In that case, the enforcement proceedings represent the culmination of the criminal process.

Decisions are enforced – or ordered to be enforced – by the authority that makes the decision. In judicial proceedings, a decision made by a panel of judges is enforced or ordered to be enforced by the presiding judge. The decisions relating to the execution of sentences and protective measures are typically enforced by courts that decide as first-instance courts. The measures necessary for the execution of sentences and protective measures as well as the collection of costs of the criminal proceedings, which primarily concerns informing other bodies and persons that are instrumental in cooperating in the enforcement of the abovementioned decisions, are typically made by the presiding judge of the panel on the first-instance court.

5.3. Possibilities for diversion

5.3.1. Agreement on guilt and punishment / plea bargaining

Plea bargaining[55] is available for all crimes; however, it is not possible in a fugitive proceeding.

If the outcomes of the investigation sufficiently substantiate a conclusion that the act has occurred, that this act is a criminal offense, and that it was committed by the accused person, the prosecuting attorney may initiate negotiations on an agreement

54 Sections 315 et seq. of the CPC.
55 Sections 175, and 314 et seq. of the CPC.

on the guilt and punishment upon a motion brought by the accused person and even without such a motion.

One condition of negotiating the agreement on guilt and punishment is a declaration from the accused person that they have committed the act that they are being prosecuted for, if there are no reasonable doubts regarding the truthfulness of their declaration in consideration of the evidence obtained thus far as well as other outcomes of the pre-trial proceedings. The agreement on guilt and punishment is negotiated by the prosecuting attorney with the accused person in the presence of their defense counsel only under the obligation to have defense counsel.

However, this does not preclude the head of trial chamber, after ordering the main trial and delivering the charge to the accused, from asking the accused whether they are interested in entering into a plea bargain with the prosecuting attorney. Therefore, it is possible for the prosecuting attorney to negotiate a plea bargain with the accused after the charge has been handed down. If a plea bargain has not been reached, the main trial will continue with evidence.

5.3.2. Conditional discontinuation of criminal prosecution

A decision of conditional discontinuance[56] of criminal prosecution may be issued if the following conditions are met: the proceedings concern a misdemeanor (i.e., all negligence and intentional offenses with a maximum penalty of up to five years); the consent of the accused and their confession, compensation of the damage by the accused if caused by the act, the conclusion of a compensation agreement with the victim, or other measures necessary to compensate for the damage; the release of the unjust enrichment obtained by the offense; and when, in view of the defendant's personality, taking into account their previous life and the circumstances of the case, such a decision can reasonably be considered sufficient.

If justified by the nature and gravity of the offense committed, the circumstances of its commission, or the circumstances of the accused, the accused may be required, in addition to complying with the above conditions, to refrain from certain activities in connection with which they committed the offense during the probationary period or to deposit a sum of money intended for financial assistance to the victims of their crime on the account of the court and, in pre-trial proceedings, on the account of the prosecuting attorney's office. In such a case, the probationary period may last up to five years.

This procedural institute may be used by the court and, in pre-trial proceedings, by the public prosecutor, subject to the fulfillment of the statutory conditions and with the prior consent of the accused.

The decision on the conditional discontinuance of criminal prosecution shall specify the period for which the criminal prosecution is conditionally discontinued. This probationary period shall range from six months to two or five years.

56 Sections 307 et seq. of the CPC.

5.3.3. Settlement

The court, or the prosecutor attorney in the pre-trial proceedings, may decide on the approval of settlement[57] if the accused is prosecuted for a misdemeanor (when the law calls for the imprisonment with a maximum sentence of five years).

The purpose of a settlement is, above all, to ensure that the accused consistently atones for all the harmful consequences the offense has caused the victim, and this interest is given greater weight than the interest in punishing the offender. A certain element of criminal repression is contained in the fact that the accused is ordered to make a further pecuniary contribution over and above the amount of the damage when that contribution serves a useful purpose.

The condition for approving the settlement is that the offender declares that they committed the act for which they are being prosecuted, will compensate the victim for damages caused by the crime, or will undertake the necessary steps to redress it, possibly otherwise rectify damage caused by the crime and pay to the account of the court a financial sum intended for a fund for crime victims.

5.3.4. Criminal order

The issuance of a criminal order[58] is a summary written procedure that does not involve taking evidence and does not include the parties' participation. The criminal warrant is issued in proceedings before a single judge. It can be characterized as a means of simplifying and expediting criminal proceedings in cases of lesser factual and legal complexity in which the purpose of the criminal proceedings can be achieved without a formal main trial. The Code of Criminal Procedure attributes the nature of a conviction to this form of decision. The effects of the pronouncement of the judgment are triggered by the delivery of the criminal order to the accused.

The basic prerequisite for the issue of a criminal order is that the facts are reliably established by the established evidence. If a protest is filed within eight days of service of the criminal order, the criminal order warrant shall be revoked and a main trial shall be ordered.

5.3.5. Conditional cessation of prosecution

A conditional cessation of prosecution[59] is a form of warning given to a suspect before their case is brought to court for prosecution should they fail to learn, fail to comply with the conditions imposed, or reoffend.

For this institution to apply, restitution for the damage, if any, caused by the act must be paid before the relevant decision is made.

The suspect is placed on a probation for a period of six months to two years. The suspect is also ordered to exercise a reasonable restraint and lead a proper life during the period of the probation. If the suspect leads a proper life during the probationary

57 Sections 309 et seq. of the CPC.
58 Sections 314e et seq. of the CPC.
59 Sections 179g et seq. of the CPC.

period, fulfills the obligation to make reparations and complies with the other restrictions imposed, the prosecuting attorney which imposed the conditional suspension of prosecution shall decide they proved themselves.

If necessary, even during the probationary period, the police authority, which has thus far conducted the summary preparatory proceedings, shall be ordered to initiate and proceed with the prosecution.

5.3.6. Withdrawal from juvenile prosecution

The Juvenile Justice Act added to the already existing types of diversion for juveniles also the institute of withdrawal from juvenile prosecution.[60] This type of diversion consists in the fact that, provided that the conditions imposed by the law are met, the prosecuting attorney may withdraw from the criminal prosecution during the pre-trial proceedings and from juvenile court during the main trial and, at the same time, discontinue the criminal prosecution due to the absence of public interest in further prosecution of the juvenile.

A decision to withdraw from prosecution may be issued for offenses in which the maximum term of imprisonment does not exceed three years, there is no public interest in the further prosecution of the juvenile, prosecution is not expedient and punishment is not necessary to deter the juvenile from committing further offenses.

In particular, the prosecution may be waived if the juvenile has already successfully completed an appropriate probation program; has fully, or at least partially compensated the victim for the damage caused by the offense, and the victim has agreed to such compensation; or has been given a warning, and such a solution can be considered sufficient for the purpose of the proceedings.

6. Prison law in the Czech Republic

6.1. General principles and the aim of penitentiary law

According to Section 55/3 of the CC, the term of imprisonment shall be served in prisons in accordance with another act, referring to Prison Act No. 169/1999 Coll., as amended (hereinafter referred to as "PA"). The service of a term of imprisonment is also governed by the Criminal Code, Criminal Procedure Code and Prison Rules.

The purpose of serving a prison sentence is to act on convicts in such a way as to reduce the risk of recidivism and allow them to lead self-sufficient lives in accordance with the law after release, to protect society from criminals and to prevent them from committing further criminal activities[61].

The main principles of serving a prison sentence are set out in Section 2 of the PA. According to this provision, a punishment can only be carried out such way that it respects the dignity of the convict and reduces the harmful effects of imprisonment.

60 Sections 70 et seq. of the JJA.
61 Section 1/2 of the PA.

Convicts must be treated in such a way as to preserve their health and to support the development of abilities and skills that will help them return to society and enable them to lead a self-sufficient life in accordance with the law.

Other principles are also applied, such as the principle of legality, the principle of humanity, the prohibition of torture and degradation of human dignity, the principle of the equal rights of convicts and the sentence of imprisonment in principle without delay and without interruption.

6.2. The Czech prison system

The prison system is a system of state institutions. The Prison Service of the Czech Republic, established by Act No. 555/1992 Coll. as amended, administers the prison system. The Prison Service is a department of the Ministry of Justice. The Minister of Justice manages the Prison Service through a Director General, who is responsible for the operation of the Prison Service.

A term of imprisonment is served in one of the two basic types (categories) of prisons: *guarded prisons* and *high security prisons*[62]. These categories are distinguished according to the method of external guarding and security. In addition to these basic types of prisons, there are special prisons designed for juveniles.

When imposing a sentence of imprisonment, the court shall concurrently specify the type of prison in which the sentence will be served. The essential criteria for its decision are the seriousness of the crime and the criminal record of the offender[63]. While the offender is serving their prison sentence, the court may also change the type of prison. Its decision depends on the convict's behavior while serving their imprisonment term[64].

A *guarded prison* is divided into three wards according to security level:

- with a low level of security
- with a medium level of security
- with a high level of security.

The director of prison decides on the placement of a convict in a specific ward, taking into account the recommendation of the expert commission[65]. The basic criterion for the placement of a convict is the degree of the external and internal risks. The prison director may decide to change the placement of the convicted person on the basis of a change in the degree of such risk [66].

Regarding the matter of ensuring the external security, in the low- and medium-security wards of guarded prisons, armed guards are not used to prevent the escape of the convicts. In juvenile prisons, high-security wards and high-security prisons, armed guards are used to prevent such escape.

62 Section 56/1 of the CC, Section 8 Paragraph 1 of the PA.
63 Section 56/2, 3 of the CC.
64 Section 57 of the CC.
65 Section 12a/2 of the PA.
66 Section 11a of the Prison Rules.

The convicts are typically locked in cells during an eight-hour sleeping period. The director of the prison may extend this period for reasons of security and order.

The differences between the types of prisons and among the wards of guarded prisons in terms of ensuring of internal security are reflected in the following rules:

Low-security wards of guarded prisons: a) Free movement inside the institution without limitations is permitted. b) As a rule, work is allocated outside the institution; a tutor is provided at least once per week. c) Free movement outside the institution after work with no supervision (sport, culture) is possible. d) As a rule, visits without surveillance are allowed.

Medium-security wards of guarded prisons: a) As a rule, movement inside the institution occurs under the supervision of an employee of the Prison Service; free movement can be permitted. b) Work is allocated outside of the institution; an employee of the Prison Service conducts a check at least once per hour. c) Movement outside the institution after work (sports, culture) is possible under supervision. d) As a rule, visits with no surveillance are allowed.

High-security wards of guarded prisons: a) Organized movement inside the institution must be under the supervision of an employee of the Prison Service; free movement cannot be permitted. b) As a rule, the convicts work either inside the prison or outside the prison at guarded workplaces and an employee of the Prison Service supervises once every 45 minutes. c) Movement outside the institution after work (sports, culture) is possible under supervision. d) As a rule, visits with surveillance are allowed.

High-security prison: a) Organized movement inside the institution is permitted under the supervision of a guard. b) The convicts work at workplaces inside the prison or in their cells; supervision is performed once every 30 minutes. c) Free movement is not permitted. d) As a rule, visits with surveillance are allowed.

Prisons for juveniles: a) Organized movement inside the institution is permitted under the supervision of an employee of the Prison Service. b) As a rule, the convicts work inside the prison, but work outside the prison can be permitted; supervision is performed once every 30 minutes. c) Movement outside the institution after work (sports, culture) is possible under supervision. d) As a rule, visits with surveillance are allowed.

6.3. Treatment of convicts (educational, reintegration, and resocialization tools)

The Prison Act guarantees the *rights* of prisoners. Basic social rights include regular meals, a bed and a place for personal belongings, eight hours a day for sleeping, time for personal ablution and cleaning, at least one hour for walking, adequate spare time, and medical treatment. The prisoners are provided with prison clothes suitable for the weather conditions and sufficient to protect their health. Visits, correspondence, use of the phone and spiritual and social services are also granted. The prisoners have the right to receive visiting relatives for a total of three hours in one calendar month.

The convicts can read books, newspapers and magazines, they can play games and so on. They are entitled to order daily newspapers, magazines and books at their

own expense and may borrow various publications, including legal regulations. They also have the right to buy food and personal belongings in the prison shop. Each prisoner has the right to receive a parcel containing food and personal articles weighing up to 5 kg once every six months.

When discussing the rights of convicts, it is necessary to mention the Section 26 of the PA, which reads as follows: "*In order to his rights and justified interest, the prisoner may file complaints and applications to the authorities responsible for dealing with such cases. A prison director is obliged to ensure that such application and complaints are immediately delivered to the appropriate recipients*." Prison Service staff are obliged to safeguard the rights of prisoners serving their sentence.[67]

The Prison Act also sets out obligations for convicts. According to Section 38, the convicts must maintain order and discipline. For example, drinking alcohol and using drugs, gambling and tattooing oneself or others are prohibited. The prisoners are obliged to work if the prison has work for them to do. The prisons create conditions for assigning work to prisoners in their own workshops, in manufacturing centers, or in companies outside the prison. The written consent of the prisoners is required so that the prison can order them to work for a company that is not run by the State (that is, for a private firm).

To achieve the purpose of serving the sentence, the prison shall establish a treatment program for each convicted person. The treatment program is divided into work activities, educational activities, special educational activities, hobby activities and the area of creating external relations. Based on a comprehensive report on the convict, the prison chooses a program that seems appropriate for that convict, particularly in terms of minimizing the identified risks.

An important part of the resocialization of the convicts is the exit section, in which convicts are placed six months before the expected end of their sentence. The director of the prison places the convicts in the exit section based on the recommendation of the professional staff. The main purpose of this section is to prepare convicts for life after release from prison.

7. Cooperation among the Member States of the European Union – the Act on International Judicial Cooperation

The forms of cooperation among the Member States of the European Union are regulated by Act No. 104/2013 Coll. on International Judicial Cooperation, which entered into force on January 1, 2014.

Certain general principles apply to the implementation of international judicial cooperation in criminal matters. The first is the principle of reciprocity. This principle means that the requested State shall provide cooperation to the same extent as the requesting State would have provided it to the requested State. Another important

67 Diblíková, 2002, p. 123.

principle is the principle of the protection of public order or the protection of the interests of the State (Section 5 of the Act on International Judicial Cooperation in Criminal Matters). According to this principle, the requested state is not obliged to comply with the request if doing so would violate a provision of the requested state's legal order that must be insisted upon without reservation. Other principles then apply to the particular types of international judicial cooperation in criminal matters, such as the extradition proceedings.

Such forms of cooperation include the following: the European Arrest Warrant, the European freezing order, the EU asset or evidence seizure order, etc.; specific types of legal aid; cross-border persecution; cross-border surveillance; covert investigations; cross-border interception; temporary transfer abroad for the purpose of carrying out procedural acts; temporary transfer from abroad for the same purpose; seizure and transfer of items; seizure of other property and seizure of property; preliminary seizure of property; joint investigation team; interrogation by videophone and telephone; provision of criminal record information; use of data from the Schengen Information System.

In relation to international judicial cooperation in criminal matters, one should also mention the European Judicial Network (EJN), whose aim is primarily to help improve judicial cooperation among the Member States of the European Union, particularly in the fight against serious crime (organized crime, corruption, illegal drug trafficking, or terrorism), by promoting informal direct contact between judicial authorities and authorities responsible for judicial cooperation and the prosecution of serious crime within the Member States.

In addition, one should mention the European AntiFraud Office (OLAF), which is responsible for protecting the financial and economic interests of the European Union, combating fraud and corruption, conducting administrative investigations and cooperating with the competent authorities of the EU Member States in investigations, and of EUROJUST, whose task is to contribute to the proper coordination and facilitation of judicial cooperation among the competent national authorities in the investigation and prosecution of serious crime, particularly organized crime, affecting two or more Member States.

The contact point for the EJN, OLAF, and EUROJUST is the designated state prosecuting attorneys of the Supreme State Prosecutor's Office.

8. Conclusion

In conclusion, we summarize this paper by stating that Czech criminal law, both substantive and procedural, has undergone considerable development since the early 1990s. At present, almost 33 years after November 1989, the criminal law is still developing. While the recodification of the substantive criminal law has been completed with the adoption of three key criminal codes, the recodification of the procedural criminal law is still in the process of preparation.

The most significant changes to the Criminal Code of 2009, in comparison with the previous Criminal Code, are as follows:

- The explicit definition of some basic principles of criminal law
- The introduction of a formal concept of a criminal act with the material corrective of the principle of the subsidiarity of criminal repression
- The binary categorization of criminal offenses into crimes and minor offenses, which should lead to the differentiation of criminal sanctions and will also extend the possibility of imposing alternative punishments; this new categorization will also form the foundation for various type of criminal procedure, such as diversions
- Emphasizing the philosophy of the imprisonment as an ultima ratio and the idea of alternative punishments as well as the extension of the system of alternative punishment (house arrest; prohibition of entry to sporting, cultural, and other social events)
- Stricter punishment in cases of the most serious crimes – the maximum term of imprisonment as a regular sentence was increased from 15 to 20 years; the principle of aggravation in cases of pluralistic criminal activity (concurrence and recidivism) was extended as well
- A new systematic arrangement of the special part of the Criminal Code such that priority is given to the protection of fundamental human rights and freedoms of an individual over the collective interests of society and the state, as mentioned above.[68]

In general, the new Criminal Code considers the development of legal theory and practice, reflects the main changes in other legal areas and focuses on establishing the most appropriate system for the protection of society against criminal offenses.

The criminal liability of legal entities has brought a new dimension to criminal law. As already stated above, the criminal liability of legal entities creates a significant interference with the fundamental principles of criminal law, namely with the principle of individual liability of the natural persons for their own actions, the principle of liability for guilt, and the principle of the personality of punishment.

The adoption of the Juvenile Justice Act was a highly positive step. The law follows the legislation of 1931, which was very progressive at the time. It takes into account the specifics of juvenile delinquents and provides a wide space for the application of elements of restorative justice.

It can be concluded that the reform of criminal law has been successfully completed with the adoption of these codes. Further development of criminal law is linked to the development of society as a whole. The legislature should be judicious in any changes to the legislation and consistently respect the principle of criminal law as the ultima ratio.

68 Fryšták, Kalvodová and Provazník, 2015, pp. 18–19; see also Kalvodová, 2012, pp. 259–263.

The current legislation on criminal procedural law contained in the Criminal Procedure Code dates back to the early 1960s. Although it has been amended numerous times, its current form does not correspond with the needs of criminal procedure in the early 21st century. Therefore, a new legislation on criminal procedure is necessary.

The Criminal Procedure Code received its first major revision soon after 1989, in the context of fundamental social changes, when the most serious shortcomings of the Criminal Procedure Code, which could not stand up under the new conditions of a democratic state governed by the rule of law and a market economy, were removed. However, under the pressure of the immediate demands of practice, it was not possible to proceed to the recodification of the criminal procedural law, and therefore, more, or fewer amendments were made to the Criminal Procedure Code.

However, a considerable number of problems persist to this day that hinder the effective conduct of criminal proceedings. These problems are primarily the complexity and lengthiness of criminal proceedings. This, coupled with the high demands on the formal aspects of proof, renders the criminal justice system unable to cope with some very serious forms of crime and leads it to struggling even with ordinary crime.

In March 2014, the Working Commission on the New Criminal Procedure Code, composed of experts in criminal procedural law, initiated its work. The Commission is composed of practitioners, specifically, judges, state prosecuting attorneys, defense counsel and representatives of the Ministry of the Interior and the Police of the Czech Republic as well as experts from the academic sphere, to ensure that different views on criminal procedure are represented in the Commission and that the best possible result can be achieved on the basis of discussion, which is to lead to modern and comprehensive regulation of criminal procedure.

The new legislation will be drafted using the approved substantive plans of 2004 and 2008 to create a modern code of criminal procedure organically linked to the existing Criminal Code, with which it forms conceptual unity. The work on the new Criminal Procedure Code has not yet finished.

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