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## 2 CRIMINAL PROCEDURE

### 2.1 The Concept of Criminal Procedure

Criminal Procedure – as a branch of public law – forms a part of the Czech legal system. It is closely related to Criminal Substantive Law, which tends to be described as material criminal law. Criminal Procedure is considered as formal criminal law that protects both the interests of the society and the constitutional order of the Czech Republic. It is provided for in the **Act No. 141/1961 Coll., on Criminal Procedure** (also known as Code of Criminal Procedure), as amended.

The issue of criminal proceedings against juveniles and proceedings affecting minors under the age of fifteen is regulated in the Act No. 218/2003 Coll., on Liability of Youth for Wrongful Acts and on Justice Matters of Youth, as amended (hereinafter “the Act on Juvenile Justice”).

The issue of criminal proceedings against legal entities is regulated in the Act No. 418/2011 Coll., on Criminal Liability of Legal Entities and Proceedings against them (hereinafter “the Act on Criminal Liability of Legal Entities”).

International cooperation in criminal matters regulated in the Act No. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters, with effect as of January 1, 2013, completely replaced the legal regulation of legal relations with foreign countries in the Code of Criminal Procedure (hereinafter “the Act on International Judicial Cooperation”). That issue will be covered in a special chapter.

Criminal Procedure regulates the procedural relations arising in criminal proceedings. These are, above all, the relations between the investigative, prosecuting and adjudicating bodies on the one hand and the individual that is criminally prosecuted on the other hand. By contrast, Criminal Substantive Law lays down the conditions of criminality by specifying the elements that constitute criminal acts and punishments or protective measures to be applied where such acts are committed.

## 2.2 Sources of Criminal Procedure

The fundamental and general source of Criminal Procedure is the Code of Criminal Procedure. The code consists of five parts. The first part consists of the common provisions applicable for all stages of criminal proceedings. It specifies the basic principles regulating criminal procedure, the definitions of key terms, the subjects of criminal proceedings, the steps in criminal proceedings, evidence proceedings and decision making, the complaint procedure and the costs of criminal proceedings. The second part deals with pre-trial proceedings, commencement of criminal prosecution and further steps in the criminal prosecution. The third part focuses on the court trial, which involves the preliminary hearing of the indictment brought by the state prosecuting attorney, the main trial, public and closed hearing, appeal proceedings as the regular remedial measure, proceedings on extraordinary remedies (i.e., appellate review, re-trial, complaint against the violation of law), some special forms of proceedings, enforcement proceedings and the effacement of conviction from one's criminal records. The fourth part regulates the award of pardon and amnesty.

Other national sources include the above-mentioned Act on International Judicial Cooperation, Act on Juvenile Justice; Act on Criminal Liability of Legal Entities; Constitutional Act No. 1/1993 – the Constitution of the Czech Republic, as amended; the Resolution of the Presidium of the Czech National Council No. 2/1993 Coll., on the incorporation of the Charter of Fundamental Rights and Freedoms into the constitutional order of the Czech Republic, as amended; the amnesty decisions of the president of the Czech Republic, plenary findings of the Constitutional Court; and the Senate's statutory measures. As regards the international sources, the following need to be mentioned: the European Convention on Mutual Assistance in Criminal Matters and the International Covenant on Civil and Political Rights (ICCPR). Due to the membership of the Czech Republic in the European Union, the sources of Criminal Procedure also include the Framework Decision of the Council of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States, which replaces the European Convention on extradition. Other international

sources of Criminal Procedure include resolutions, recommendations, positions, and bilateral and multilateral international treaties. By contrast, decisions of general courts do not constitute the sources of Criminal Procedure.

### **2.3 The Concept of Criminal Proceedings**

Criminal proceedings are defined in the Code of Criminal Procedure as a sequence of steps taken by the investigative, prosecuting and adjudicating bodies in order to duly find out whether a criminal offence was committed and who the offender is, to punish the offender with the statutory punishment and/or to impose the offender the protective measure, to execute the final and conclusive judgment or arrange that such a judgment is executed. Criminal proceedings must contribute towards enhancing legality, preventing and stopping criminal activities, and educating citizens to be strictly law-abiding and respectful of the rules of civic co-existence as well as honestly performing their obligations towards the state and the society. Citizens have the obligation and the right to assist in the efforts aimed at meeting the purposes of the said act.

### **2.4 Basic Principles of Criminal Proceedings**

The basic principles of criminal proceedings are certain specific legal principles and leading legal ideas that regulate criminal proceedings. The principles need not be asserted with an equal intensity throughout the proceedings. They are strongest in the most important stage of criminal proceedings, namely the main trial.

#### ***The principle of due process***

Nobody may be prosecuted for any other than lawful reasons and in any other way than provided for by the Code of Criminal Procedure. This is a guarantee that citizens will not be prosecuted without a reason. The Code of Criminal Procedure contains a whole range of guarantees that make sure that the principle of due process is observed. Thus, for instance, the system of remedial measures guarantees that possible mistakes made by the investigative, prosecuting and adjudicating bodies can be rectified.