

Defence

Formal defense - a defendant's right to have defense counsel and consult with him

X

Material defense - the right to defend himself

Defender in criminal proceeding

- who is it?
 - only lawyer
 - graduate of the Faculty of Law (5y)
 - 3 years practice in advocate office (as a clerk)
 - advocate exam
 - Czech barr association
 - Advocate – self-employed (bussinesman)
 - or employed advocate
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Defender

- advocate can be represent by clerk

(not complicated things, not about offence where
bottom limit of punishment is more than 5y)

- or by another advocate

Elected advocate x appointed advocate x destined
by CBA

Appointed advocate

§ 36 Criminal Procedure Code

- Young offender (15 – 18 y old)
 - Offender who is in prison, custody etc.
 - Runaway offender
 - Serious crime (imprisonment for longer than 5 years)
 - Can't read, write... defend himself
 - Etc.
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When can't represent

- a) lawyer, against whom the criminal prosecution is also in the same case (the accused = advocate)
 - b) lawyer who would be a witness in that case, is interested party or served an expert report or is active as a translator
 - c) has a conflict of interest
- will be barred from defending
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Defence

- More than one defenders for one acused person
- More acused can have one defender (have to be the same aim, not conflict of interests between them)
- gown

Gown



The rights and duties of an advocate

- § 41TŘ
 - Always, however, so as to not worsen the situation of the client
 - bound by the instructions of the client
 - advocate position is not the same as the accused
 - The obligation of confidentiality
/have also employee of advocate/
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The rights and duties of an advocate

Obligated to provide the necessary legal assistance to the accused and effectively defend him/her

Can for client submit an application and use remedies, can inspect files and participate in investigations

Can ask question to witnesses

Right to „closing speech“ and accused person has the right to „last word“



Elected defender

- Power of attorney
- More than one (depends of money :-))

Can be elected by legal representative, relative in the direct line of descent, sibling, adoptive parent, adoptive child, spouse, partner...

Elected defender has priority over appointed defender



Destinated defender

The Criminal Procedure Code does not recognize this term

- In fact is it representation by power of attorney**
- Ask CBA for defender if no one want to represent him/her and CBA destinate advocate to help him/her**



Appointed defender

- § 36, 36a TŘ
 - necessary defence for:
 - always for young offender
 - is limited to personal liberty (custody, in prison...)
 - is incompetent
 - runaway
 - serious offence HL of punishment more than 5y
 - etc.
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- paid by state, secondary by accused person
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