

Structure of Criminal Proceedings

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Outline of today's lecture

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- Basic info (language, § vs. section, TR vs. CPC, COCP)
- Structure of Criminal Proceedings
- Questions

Code of Criminal Procedure

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Czech Criminal Procedure is formed as Act no. 141/1961 Coll., => Criminal Procedure Code, also known as Code of Criminal Procedure

CPC and COCP are the same, the only difference is in translation

Did you know?

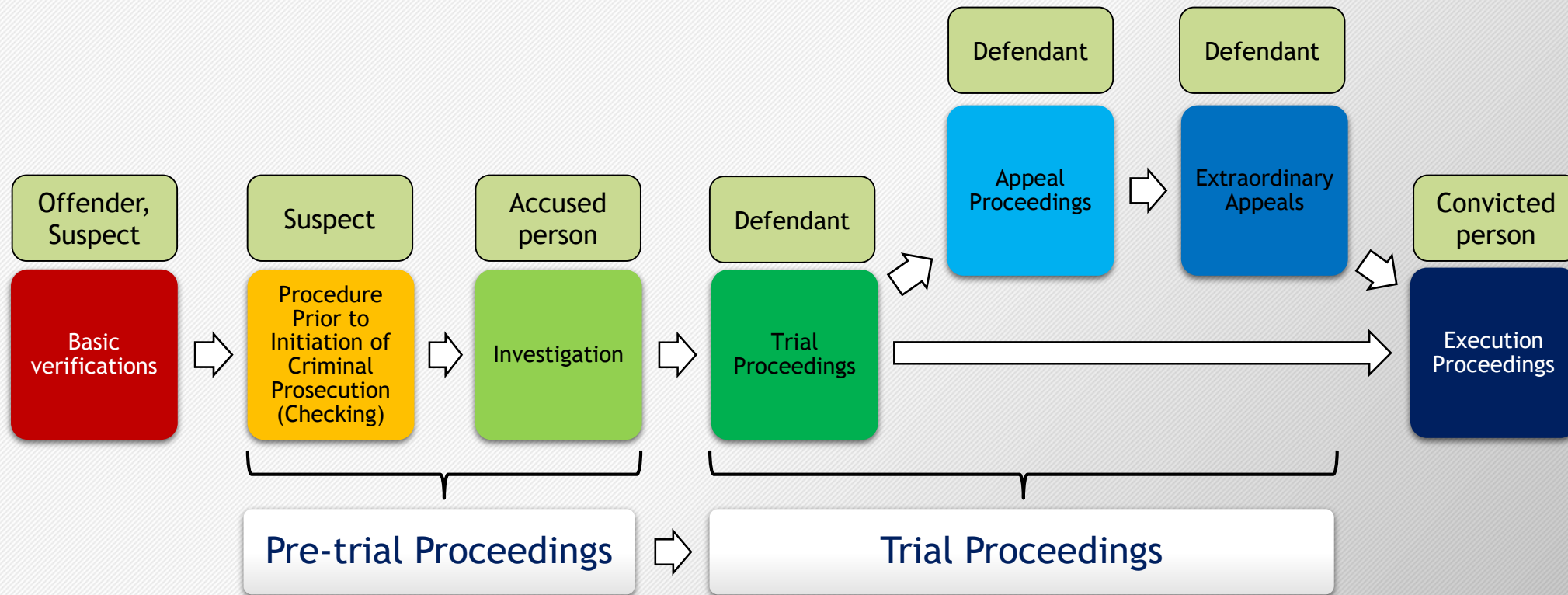
CPC is almost sixty years alive. Wow.

Don't worry. The lawmakers are working on it.

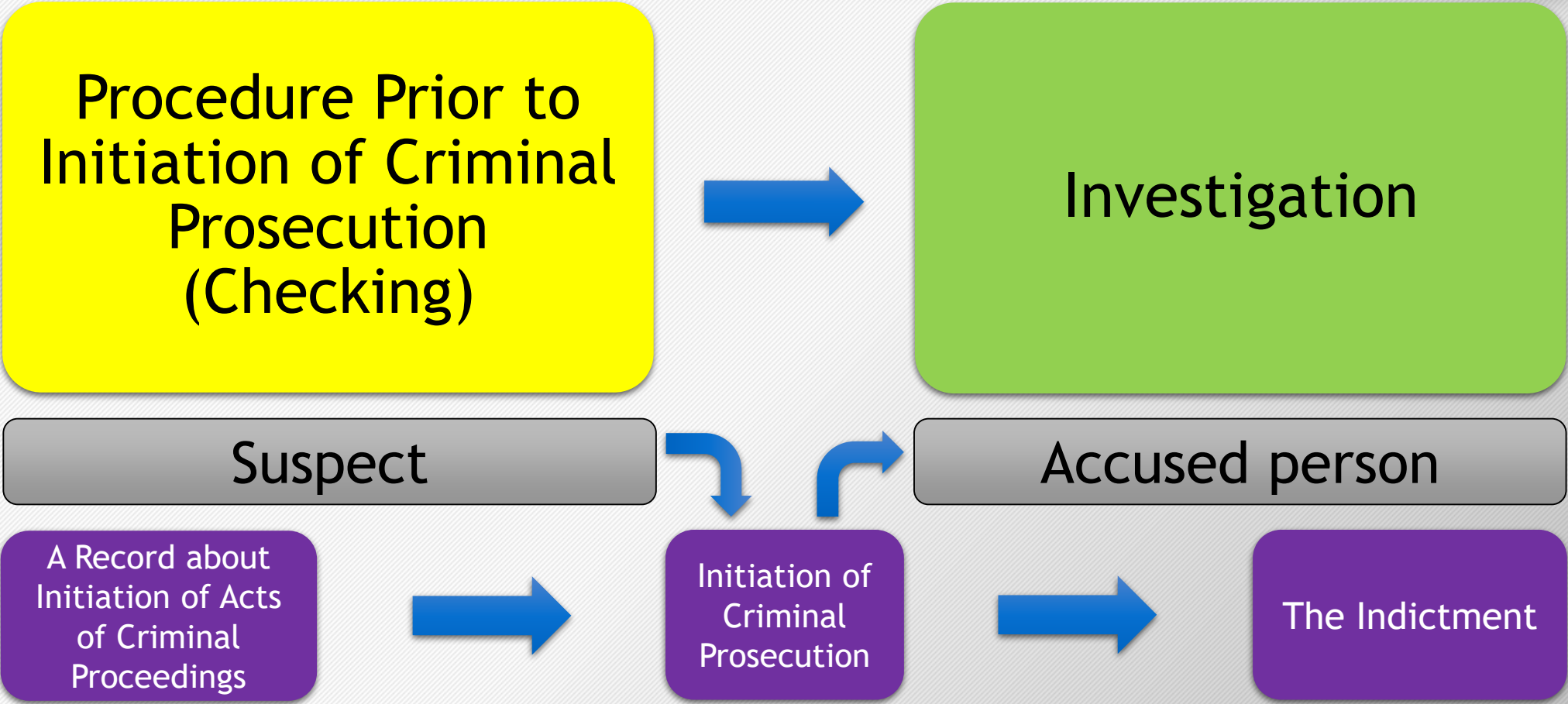
Since 2001.

Structure of Criminal Proceedings

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Structure of Pre-trial (preliminary) Proceedings



Relationship between the Pre-trial Proceedings and the Trial Proceedings

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until 31/12/2001

trial as a focal point of evidence and a relatively strong pre-trial proceedings
pre-trial proceedings included adequate production of evidence which was only repeated within the trial

since 1/1/2002

pre-trial proceedings should not replace the trial; its goal is to provide only such a pieces of evidence which would be impossible to be produced during the trial only (or in later stages of proceedings, due to their destruction or loss)

e. g. an urgent and non-repeatable actions (crime scene search, body search, house search, etc.)

Checking = procedure prior to initiation of criminal prosecution

- its aim is to make all necessary investigations and take measures to reveal the facts indicating that a criminal offence has been committed and aimed towards identifying the offender
- checking is carried out by the **police authority**
- **police authority shall be:** Units of the police of the Czech Republic, General Inspection of Security Forces, Authorized bodies of the Prison Service of the Czech Republic, Authorized customs authorities, Authorized bodies of the Military police, Authorized bodies of the Security Information Service, Authorized bodies of the Office for Foreign Relations and Information, Authorized bodies of Military Intelligence, Authorized bodies of the General Inspection of Security Forces

Investigation

- if the matters of facts ascertained and justified in the course of verification according to Section 158 indicate that a criminal offence was committed, and if the conclusion that it was committed by a certain person is sufficiently substantiated, then the police authority will immediately decide to initiate the criminal prosecution of this person as the accused
- participation of the accused and the defense counsel in the investigation, e. g. the police authority may permit the presence of the accused person in investigative actions and allow him to ask questions to the interviewed witnesses. They proceed in such a manner especially if the accused person does not have a defense counsel and if the action consists in questioning a witness, who has the right to refuse to testify.

The Trial Proceedings

- the main task is to clarify the question of a guilt of the accused person
- if the accused person is found guilty, there is also a decision about his/her punishment for the committed crime
- the trial is conducted by the **presiding judge**
- held in the permanent presence of **all members of the court panel**, as well as the **court reporter** and **public prosecutor**
- the presence of the **defendant** and his/her **defense counsel** is desirable, but not necessary, e. g. when he/she is not in custody and deliberately avoids the trial or doesn't want to participate

The Trial Proceedings - basic stages

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- the presiding judge initiates the trial
- checks who is presented
- public prosecutor presentates the indictment
- evidence is being carried out (hearing of defendant, the aggrieved person, witnesses)
- closing arguments of the public prosecutor and defendant
- the right of the last word of defendant before judgement
- the presiding judge presentates the judgement
- instruction about the right of appeal
- the presiding judge closes the trial

Appeal Proceedings

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- is **not obligatory**, only if public prosecutor or defendat uses this right
- the objective of this proceedings is to determine if the decision made at the trial was just and correct and if the previous proceedings were legal
- **regular remedial measures** - may content a first instance decision which is not final
- **extraordinary remedial measures** - may be used only after the decision comes into legal force

Appeal Proceedings II

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- appeal is a **legal remedial measure** against a judgement of a first-instance court
- is **decided by higher court**

- **the court of appeal may not:**
 - find the defendant guilty of an offence for which he/she has been acquitted by the contested judgement
 - find the defendant guilty for a more serious offence than he/she could have already been convicted by the court of first instance

- the **appeal always suspends the enforceability** of a judgement until its decided by higher court

Regular remedial measures

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- complaint - a legal remedial measure against a resolution of the bodies conducting criminal prosecution
- is decided by public prosecutor or by a pre-trial judge
- public prosecutor deals with complaints against the police authority, e. g. the complaint against the resolution to initiate a criminal prosecution
- pre-trial judge deals with only few possible complaints against decisions of public prosecutor or police authority, e. g. some of the preliminary measures, or the decision of public prosecutor not to release the accused person from the custody

Regular remedial measures II

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- **protest** - a legal remedial measure against a criminal order
- the single judge may decide to issue the criminal order without hearing the case at a trial
- if a protest is brought the criminal order is vacated and the single judge will order the trial

Extraordinary Appeals

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- **appellate review** - if there are legal mistakes of the decision on merit, e. g. the case was decided by the court having no jurisdiction or there was a obligatory need of defense counsel and the defendant didn't have him
- **re-opening of the procedure** - if there are factual mistakes, e. g. a new facts of the case which appeared after the decision came into force (a new witness)
- **complaint against a breach of law** - if there are legal/factual mistakes, e. g. a doubts about the correctness of the courts final decision
 - only the Minister of Justice may file this remedial measure

Execution Proceeding

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- enforcement proceedings becomes a separate procedural stage only in the case of sentencing judgment
- convicted person voluntarily default obligation from the conviction judgment

Thanks for your attention