

Selected Problems of the Czech Criminal Law (and Procedure- - Police, Prosecutor and Court)

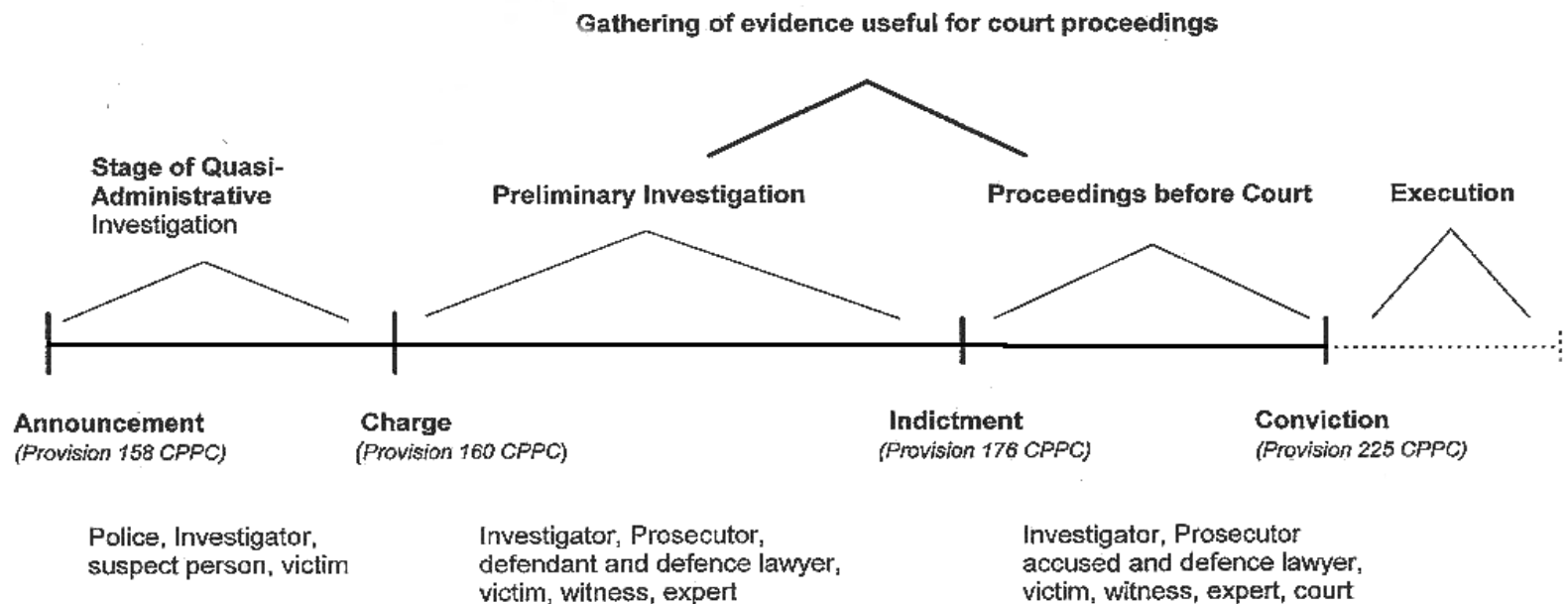


**Prof. Jaroslav Fenyk (Erasmus
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Authorities Active in Criminal Proceedings

- court
- prosecutor
- police bodies

CZECH PENAL PROCEEDINGS



Fundamental question – what system of criminal proceedings the Czech Republic applies?

- Continental
- **Inquisitorial**
- Fair

Preliminary Proceedings

- There are **three different forms of preliminary proceedings:**
 - verification of facts (sections 158 – 159b)
 - investigation (sections 160 – 175)
 - shortened preliminary proceedings (sections 179a – 179f).
 - Special acts for criminal liability of Juvenile (218/2003 Coll.) and liability of legal persons (418/2010 Coll.)
 - Act on Victims , Act on Witness Protection, Act on International Legal Co-operation in Criminal Matters..

Fundamental Principles of the Czech Criminal Procedure Targeting the Role of the Prosecution Service

Legality prosecution (regular lawful procedure, *nullum crimen sine lege*)

- According with article 8 par. 2 of the Charter of Fundamental Rights and Freedoms "nobody may be prosecuted or deprived of their freedoms other than for the reasons and in the manner stipulated by the law". Similar definition is under section 2 par. 1 of Criminal procedure Code. Procedural expression of the principle is presumption of innocence (article 39 of the Charter and section 2 par. 2 of the Criminal Procedure Code - "an individual may not be viewed as guilty until the court passes a legitimate conviction").

Mandatory (legality) prosecution

- According section 2 par. 3 of the Criminal procedure Code a public prosecutor is obligate to prosecute all criminal acts that are made known to him/her, unless a code or an international agreement to which the Czech Republic is bound stipulates something different.

Officiality prosecution

- According with section 2 par. 4 Criminal Procedure Code (police, public prosecutor and court) are to proceed with their official duties unless CPC stipulates something different; they must deal with all criminal matters as fast as possible (**especially custody cases and the cases with freezing of assets**) and with a full inquiry of civil rights guaranteed by the Constitution.

Guilty beyond reasonable doubts (material truth)

- According with section 2 par. 5 of the CPC the authorities responsible for criminal proceedings are to proceed in a manner which will determine the real state of an affair which is beyond reasonable doubts and to the extent that is necessary for their decision. Prevailing circumstances, whether favourable or unfavourable for the accused, can also be just as detrimental in determining a situation even without the parties of submission. Even an accused's confession does not relieve the authorities responsible for legal proceedings of the responsibility to verify all circumstances of the case.

Free evaluation of proofs/ facts

- According with section 2 par. 6 of the Criminal procedure Code the authorities responsible for criminal proceedings evaluate proofs according to their own internal conviction based on diligent consideration, taking into account all the circumstances individually and in total. Courts take decisions on grounds of the direct as well as circumstantial evidence.
- Principle of “free evaluation of evidence” is applied in the criminal proceedings in the Czech Republic. This means that no kind of evidence is being preferred. The entire evidence is weighed by the court in its correlation.

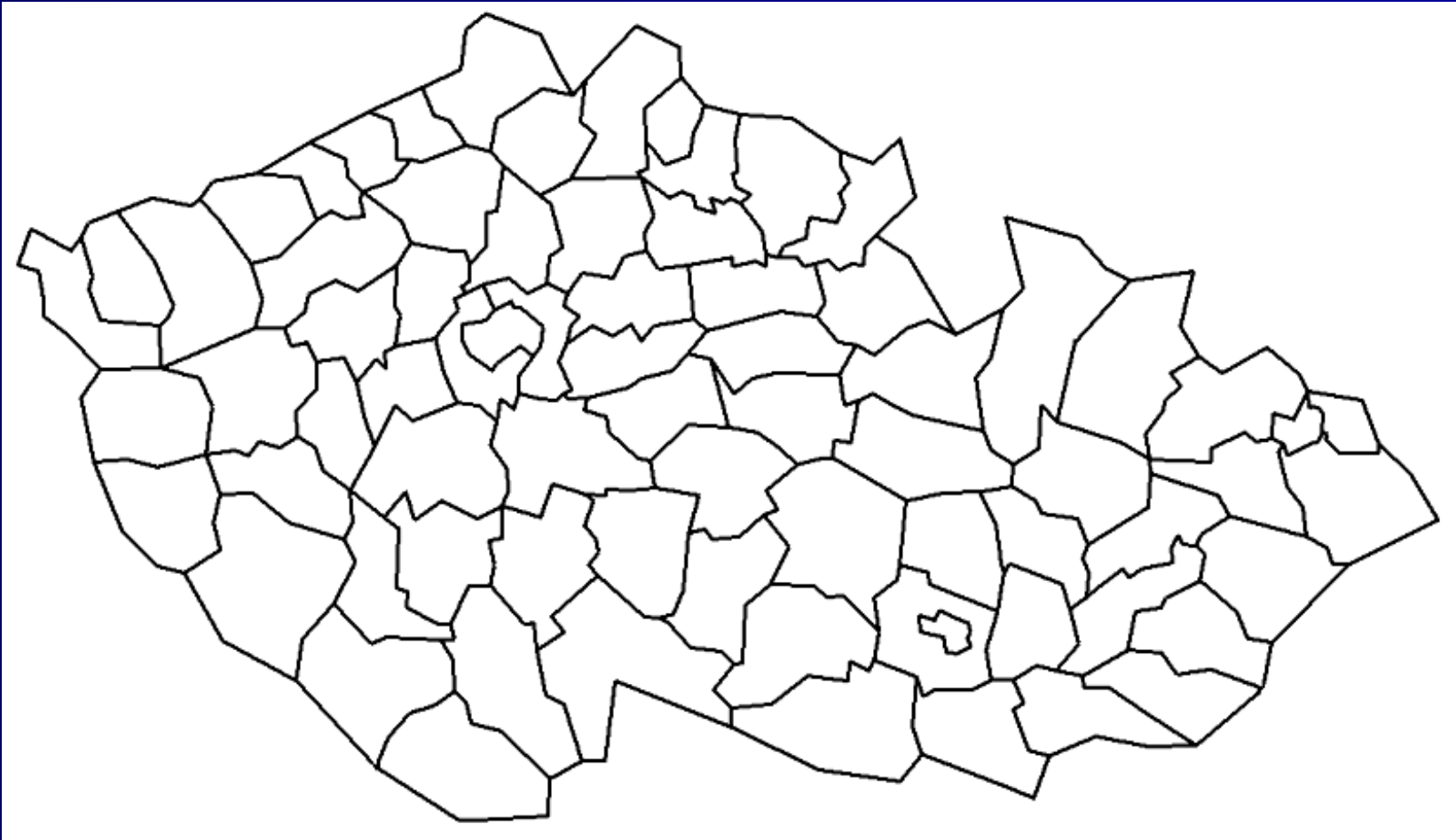
Accusatory procedure

- According with section 2 par. 8 of the CPC trial before court is only possible on the basis of an indictment submitted by a public prosecutor (no private / subsidiary prosecution is allowed).

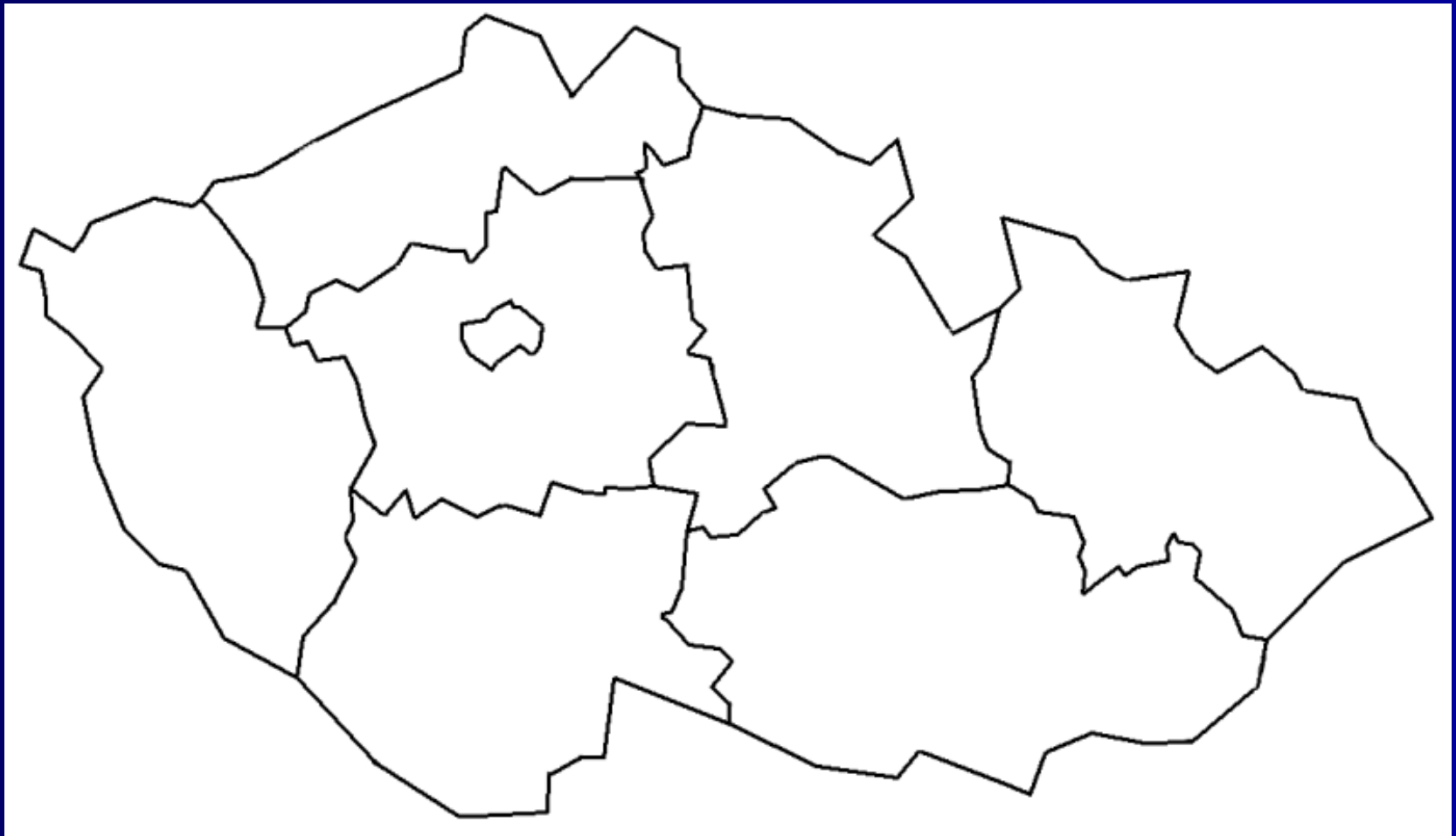
Prosecution Service Organization

- Act. No. 283/1993 Coll. on PPS
- Organisation of PPS is build similar as organisation of courts. It consists from:
 - the **Supreme Public Prosecutor's Office** of the Czech Republic (Brno),
 - **High Public Prosecutor's Offices** (2 – Prague and Olomouc),
 - **Regional Public Prosecutor's Offices** (8),
 - **District Public Prosecutor's Offices** (86).

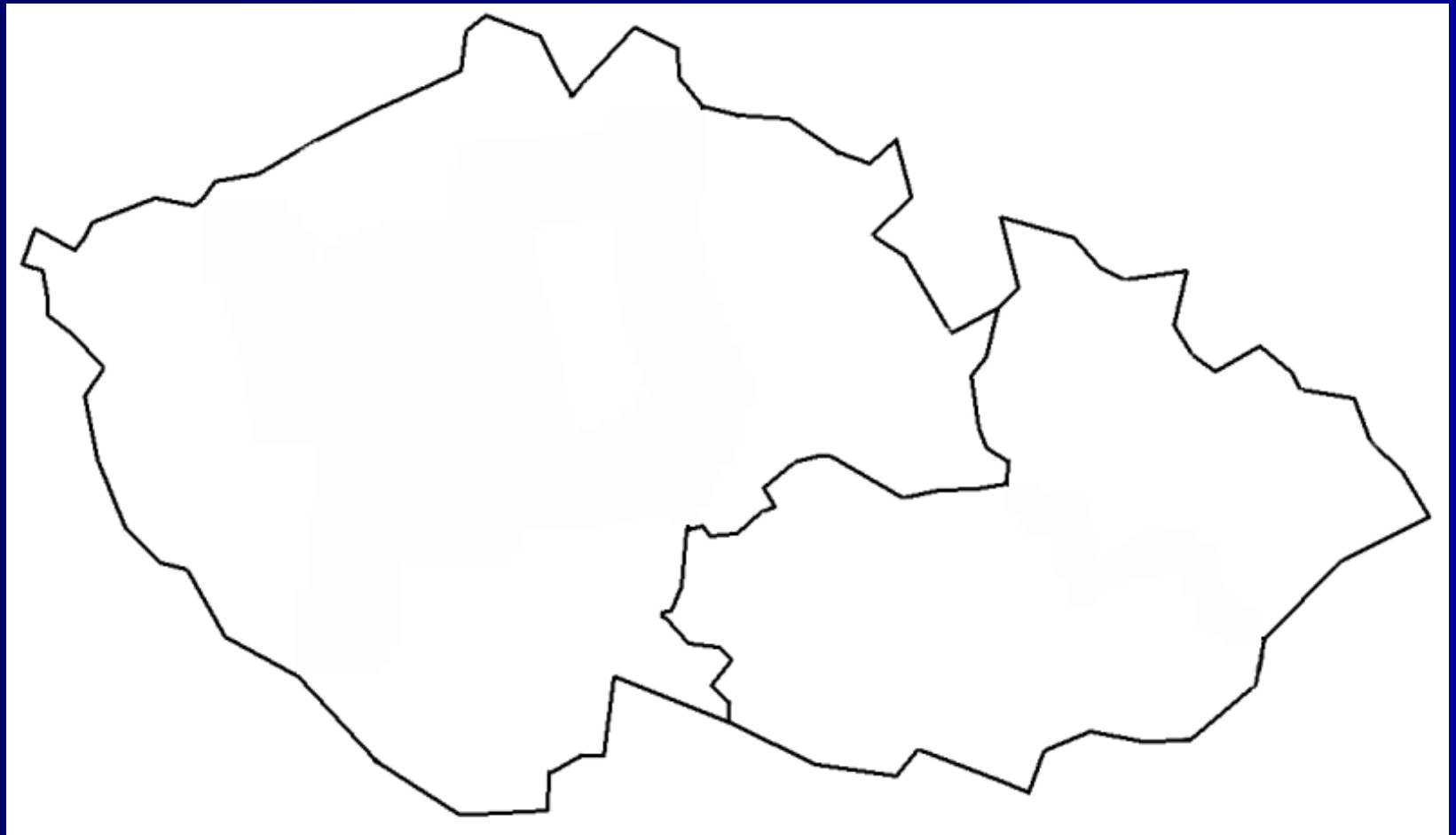
Structure of Courts and Prosecutor's Offices - Districts



Structure of Courts and Prosecutor's Offices - Regions



Structure of Courts and Prosecutor's Offices – Bohemia and Moravia



Police Body in Criminal Procedure

- The expression "Police body" means mainly the Service of the Criminal Police and the Investigation, National Anti-Drugs Task Force, National Task Force against Organised Crime (centralised and decentralised)
- + **General Inspection of Security Forces, and charged** specialised services (custom service, military police, prison service, intelligence service...).
- Public prosecutor (against GISF members)
- Act on Police no. 273/2008 Coll., Acts on GISF, PS, SIS...)

European Public Prosecutor (art. 86 of the Lisbon Treaty, resolution of the Council (EU)2017/1939

- Penal protection of financial interest of the EU
- Supra-national, independent EU body
- Central Office Luxembourg and decentralised national delagated prosecutor
- Co-operation on national level

Relation between the Police and PPS

- - supervision
- - appeal
- - permission
- - original decision of PPS
- - transfer of motions for Judge

Examples



The Coercive Measures (role of Police, PPS and Judge)

- apprehension of a suspect (section 76)
- apprehension of an accused (section 75)
- prohibition of travel abroad (section 77a)
- custody of an accused (section 67)
- order for arrest (section 69)
- international arrest warrant (sections 384 – 387)
- European arrest warrant (sections 403 – 422)
- apprehension, preliminary custody, extradition custody (sections 395 – 397)
- apprehension, preliminary custody, transfer custody (sections 410 – 411)...

- obligation to delivery thing
- seizure of an item
- securing of property
- securing of another property value
- house search and searching of other premises
- person search
- seizure, track, search and replacement the undelivered mail
- interception and a phone calls recording ...
- undercover agent

In Criminal Proceeding Police body under supervision of PPS proves above all

- if was committed the act, which is the crime;
- if the act was committed by the offender;
- the basic circumstances for evaluation of seriousness of an act;
- the basic circumstances for personal situation of the offender;
- the basic circumstances for termination of the effect and amount of damage caused by an act;
- the circumstances, which lead to an act or which enabled the committing of an act.

Only exemplary enumeration of evidence is adapted in Czech Criminal Procedure Code

As evidence are specified by the code the next ones:

- statement of an accused (section 90)
- interrogation of an accused (sections 91 - 95)
- testimony of witnesses (sections 97 - 104)
- expertise (sections 105 - 111)
- items and documents (section 112)
- search of premises, bodies and things, exhumation of death body (sections 113 - 115)
- mental condition examination of an offender and witness (sections 116 - 118).

Special investigation / undercover means

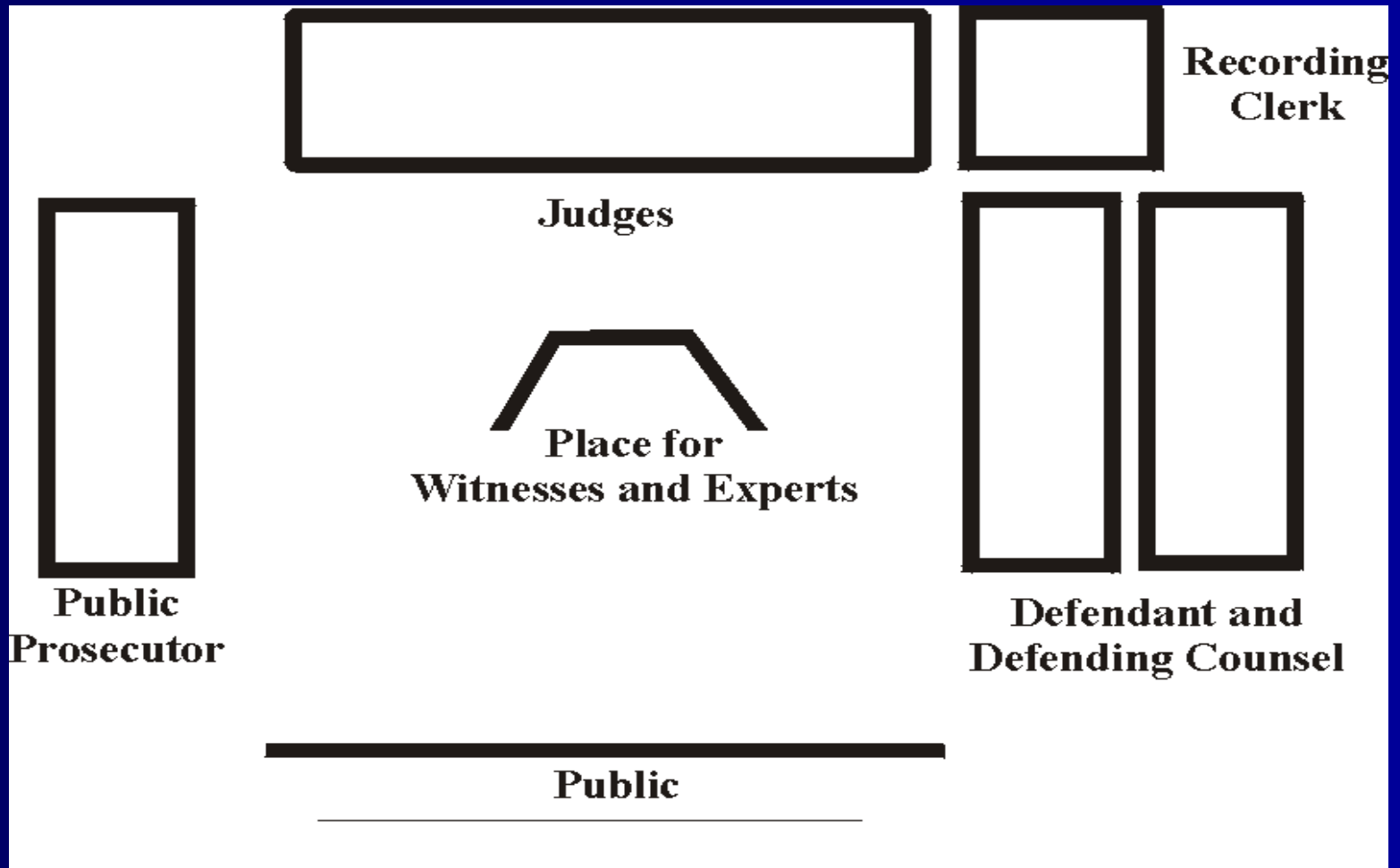
Operational means of searching:

- fictive transfer (section 158c)
- tracking of people and things (section 158d)
- use of covered agent (section 158e).

The role of PPS within Court Proceedings (Trial)

- criminal proceedings before the court is subject to indictment or motion for punishment represented by the public prosecutor
- presentation of the indictment
- examination of an accused
- captious, suggestive or leading questions
- examination of witness, experts, next kinds of evidence
- the closing statements
- judgement

Czech Court Room



The Legal Remedies of the PPS

Regular remedies

- complaint (sections 141 and next)
- appeal (sections 245 and next)
- protest (section 314g).

Extraordinary remedies

- appellate review (sections 265a and next)
- complaint for infringement the law (sections 266 and next)
- re-opening of the criminal proceedings (sections 277 and next).

The International Legal Co-operation in Criminal Matters Act no. 104/2013 Coll. – examples of the PPS role

- extradition proceedings, i. e. extradition of an offender from a foreign country to Czech Republic for the purpose of prosecution or execution of penalty and extradition of an offender from the Czech Republic to a foreign country for the purpose of criminal proceedings or execution of penalty imposed abroad,
- transfer of criminal proceedings to a foreign country based on an international agreement,
- take over of criminal proceedings from a foreign country based on an international agreement,
- handing over of a criminal case (proceedings) to a foreign country in the instances which are not governed by international agreements,

- taking over of a criminal case (proceedings) from a foreign country in the instances which are not governed by international agreements,
- providing or requesting of legal assistance in criminal matters through procedural activities including delivery of documents,
- contacts with foreign consulates in the Czech Republic in criminal matters related to foreigners,
- taking over of offenders from a foreign country in the Czech Republic for the purpose of execution of a penalty imposed abroad (and vice versa) based on an international agreement, convention etc.

The Central Authorities in the Czech Republic:

- the Supreme Public Prosecutor's Office
- the Ministry of Justice

Co-operation within the European Union

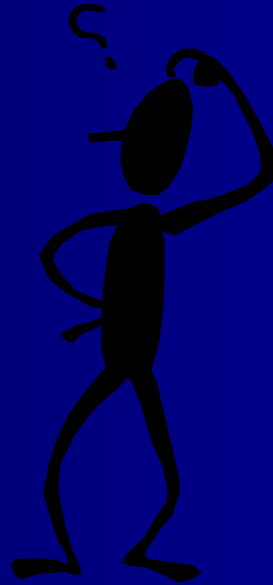
Judicial co-operation:

- Eurojust
- European Judicial Network
- European Arrest Warrant
- European Evidence Warrant
- European Public Prosecutor

Police co-operation:

- Europol

Questions ?



Thank you for your attention.