

Czech Criminal Justice System



Jaroslav Fenyk

Criminal Procedure in the Czech Republic

- Common Rules and Institutions of Criminal Procedure

Fundamental Principles of the Czech Criminal Procedure

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 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 this code 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

- According with section 2 par. 5 of the Criminal procedure Code 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 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 Criminal Procedure Code trial before court is only possible on the basis of an indictment submitted by a public prosecutor (no private prosecution as applied).

Public session, oral and immediacy principles

- According with section 2 par. 10 of the Criminal procedure Code criminal matters are heard publicly so that the public may attend and watch the hearing. The public may be ruled out of court during trial and open sessions only in cases where this code expressly specifies it. Public can be excluded of the trial if a public hearing of a case would threaten a secrecy which is protected by a law act, a morality or untroubled running of the trial or security or another important interest of witnesses. The public can be excluded only for a part of the trial.

- According with section 2 par. 11 of the Criminal Procedure Code proceedings before court are oral; the evidence from testimony of witnesses, experts and the accused are conducted in a manner where the court itself conducts the hearing.
- According with section 2 par. 12 of the Criminal Procedure Code while rendering a decision in a trial, as well as in a public hearings, custody and closed sessions, the court may only take into consideration evidence which was presented during these proceedings.

Defence rights

- The individual, against whom the criminal proceeding is taken, must be informed about laws enabling him/her the full application of defence and the possibility to choose an attorney; all authorities responsible for criminal proceedings are obligated to enable the accused with the full application of his/her rights
- Everyone is authorised to use their mother tongue in front of the authorities responsible for criminal proceedings. The authorities responsible for criminal proceedings conduct their affairs and execute their decisions in the Czech language.

Right to use mother language

- Everyone is entitled to use his mother language before the authorities involved in criminal proceedings. These authorities run the proceedings and issue their decisions in the Czech language. If it is necessary to interpret the content of a statement or a written document or if the accused declares that he has no command of the language in which the proceedings are conducted, an interpreter shall be called in. The interpreter may at the same time be the recording clerk.

Authorities Active in Criminal Proceedings

- court
- prosecutor
- police bodies

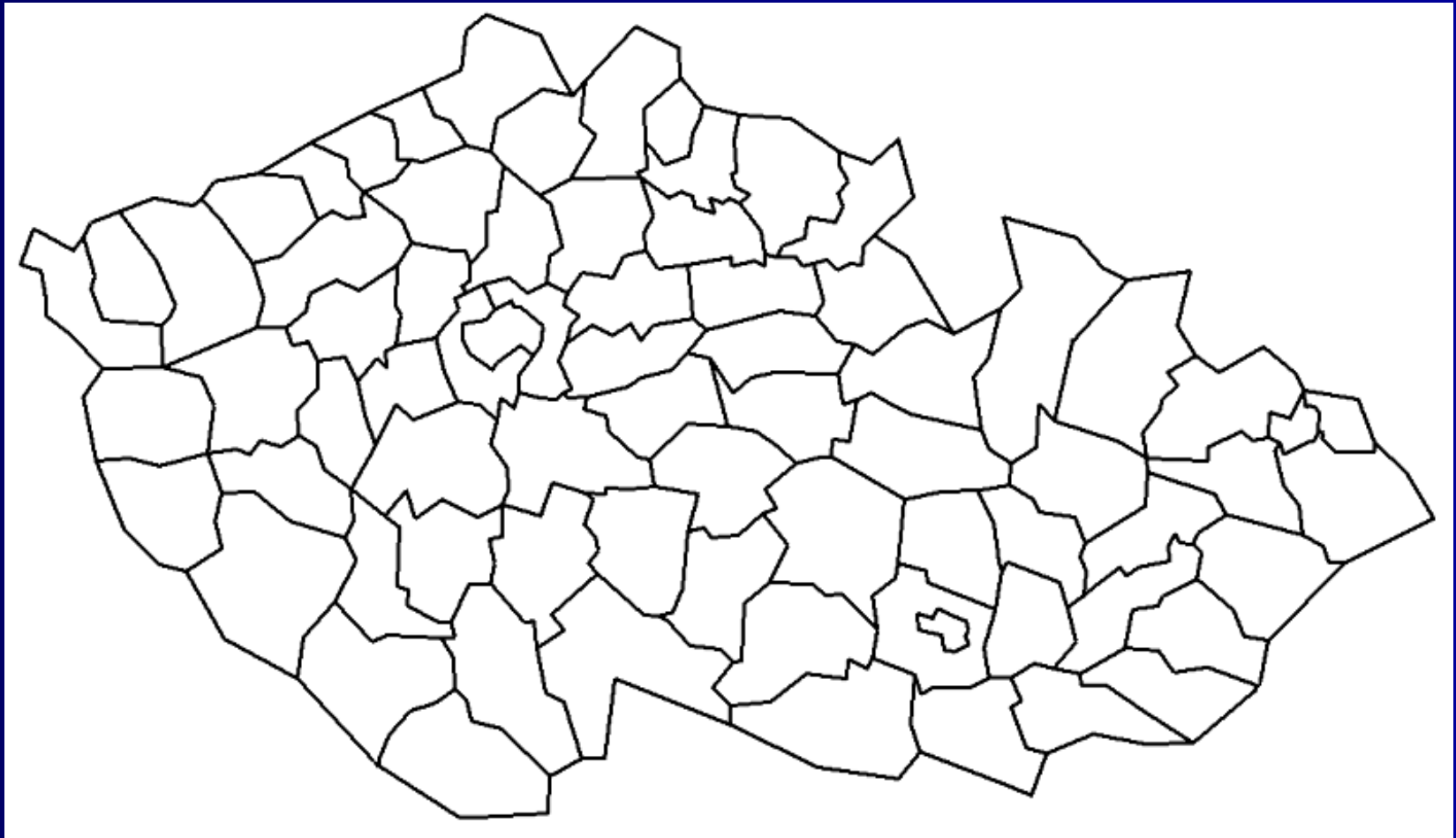
Criminal Courts System

- The system of criminal courts works on four levels in the Czech Republic. It is constituted of:
 - **District Courts (86),**
 - **Regional Courts (8),**
 - **High Courts (2) and**
 - **the Supreme Court.**

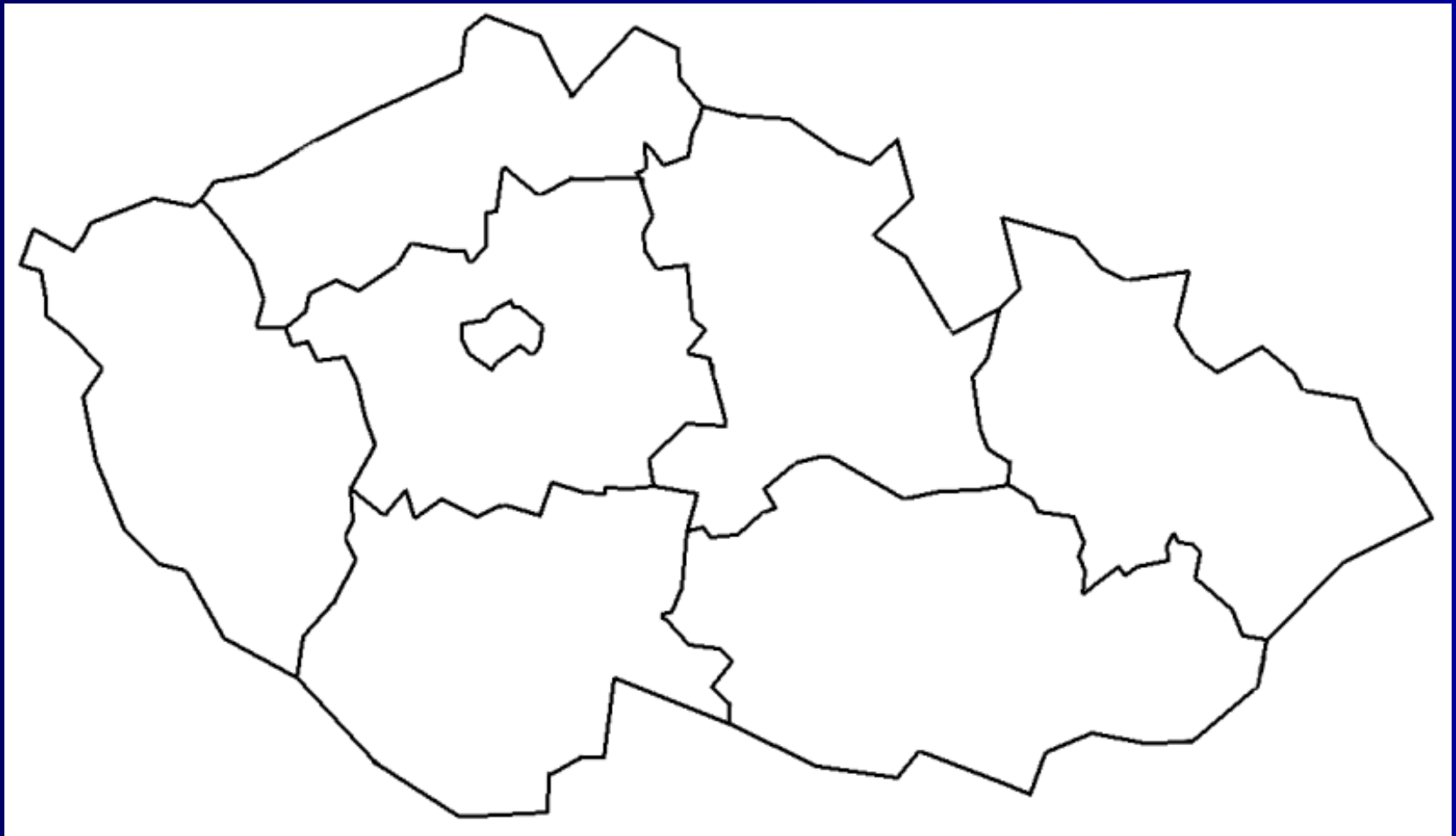
Prosecution Service

- The system of public prosecution is build similar as a system 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).

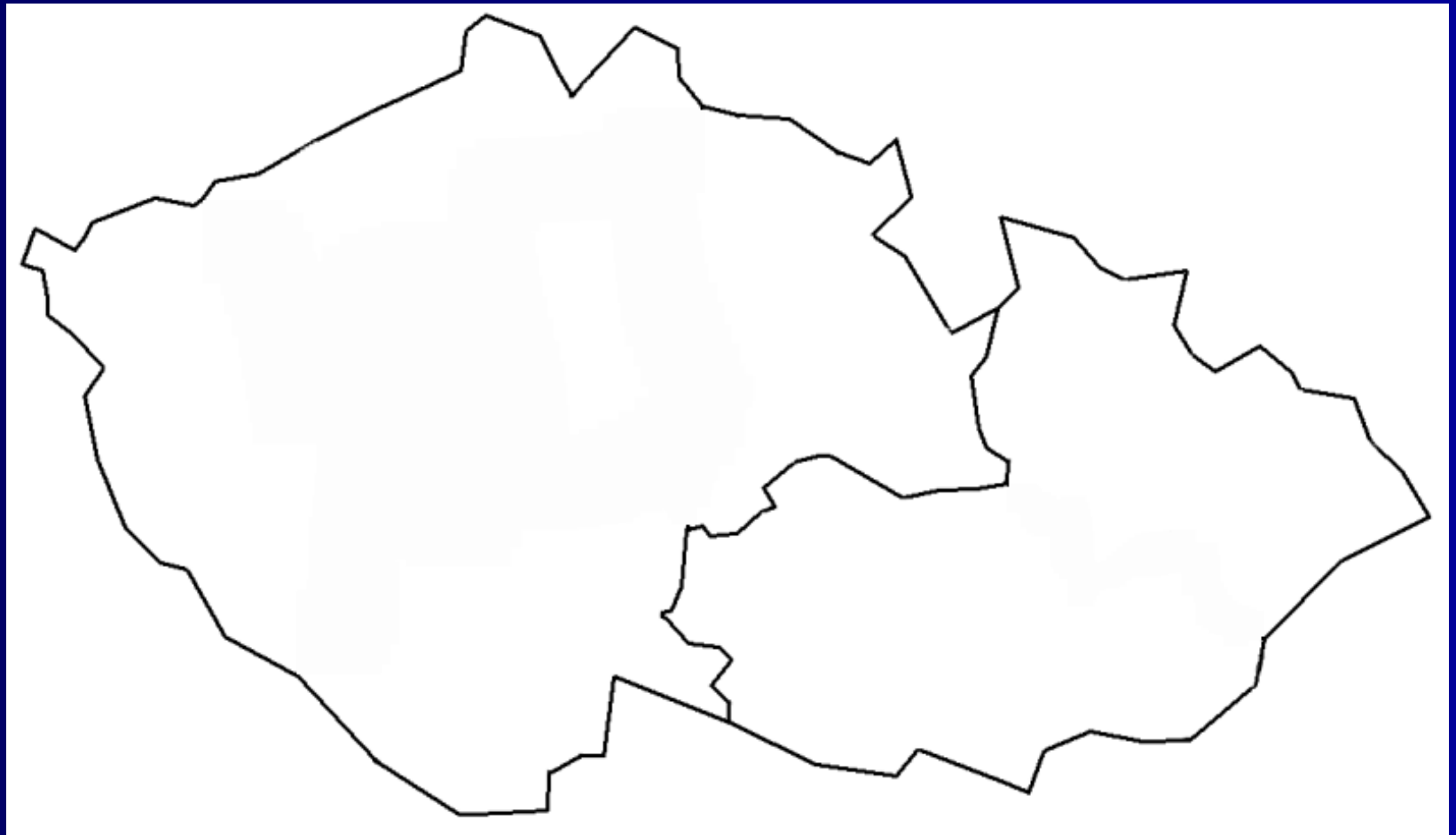
Structure of Courts and Prosecutor's Offices - Districts



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" means generally the Service of the Criminal Police and the Investigation, the Traffic Police, the Security Service, the Aliens and Border Police, the Task Force, the Railway Police and the Airport Service
- Within the criminal procedure acts specialised units of Police and other kinds of services (custom service, military police, prison service, criminal police, inspection of minister of interior, etc).
- Investigation of policemen and intelligence service staff is lead by public prosecutor.
- **+ General Inspection of Security Forces**

Accused

- An accused is a person, who has been informed by written notification on reasonable suspicion from crime committing (section 160, par. 1 of the Czech Criminal Procedure Code).
- According with the art.10 of the Czech Constitution (application of international treaties - ECHR), Charter of fundamental rights and freedoms (art. 37 par.2) as well as the Czech Criminal Procedure Code (section 33), the accused has the right to be given the time and opportunity to prepare a defence by either being able to defend himself or retain a defence lawyer. Accused must be informed on his right to be silent and to not testify.

The Criminal Procedure Code stipulates for both of investigation and proceedings before the court next rights of an offender (section 33, 65):

- to plead all the charges against him and the evidence therein, however is not obliged to testify
- to indicate the circumstances and evidence for his/her defence,
- make proposals and deliver the proposals and appeals (remedies),
- to choose a defence lawyer and consult with him/her during the actions managed by the police, prosecutor or court as well,
- can not consult the answer after the question was asked. He/she can demand the presents of the defence lawyer during the interrogation and he can ask the presence of defence lawyer at other acts of preliminary proceedings.

- In the custody or in the prison an offender can talk to defence lawyer without the presence of third party.
- Accused who has not sufficient means for covering of burdens of defence has right for free defence or for the defence with reduced fees.
- The all institutions active in criminal proceedings (police, public prosecutor and court) should always instruct an accused on his rights and provide him full possibility for their application.
- Section 215 states the principle that the accused and the defence have equal rights to question witnesses and to ask the court to can interrogate them.

The Defence Lawyer

- The right to a defence is one of the fundamental elements of the Czech criminal proceedings. It is guaranteed by the Constitution (art. 10 implementing ECHR) and by the Charter of Fundamental Rights and Freedoms.
- The accused has the right to be given the time and the opportunity to prepare a defence by either being able to defend himself or retain a defence lawyer. The suspect and later the accused has the right to legal aid within criminal proceedings.

- An defence lawyer is a person entered in the list of attorneys kept at the Czech Bar Association. An applicant for the attorney s profession must have law faculty degree, at least three years experience working as a candidate attorney, must pass the Bar examination and swear an oath to the Bar.
- There is a difference between a chosen defence lawyer selected by the accused or selected for him by one of the persons closely related to him listed in the law, and an assigned defence lawyer.

The defence lawyer has the rights and is obliged:

- to provide to defendant necessary legal aid,
- practically use the means and ways of defence under law for protection of his/her interest, namely to take care on to be appropriately and at the time clarified the facts for or against the defendant herewith to the good decision in the case.
- since the preliminary proceedings to make on behalf his client proposals, requests and appeals,

- to inspect the official file, and be present investigative acts according to the criminal procedure code. He/she is authorised to
 - communicate to defendant who is in custody
 - be present all acts which can be present defendant before the court. The defence lawyer has the right
 - ask for the copy or transcript of written protocol of any acts of criminal proceedings within all stages of criminal process.
 - to file petitions on behalf of the accused, file applications, appeal on his behalf or inspect documents.
- if the accused is in custody, he may talk with him without a third party present.

- from the commencement of prosecution, he is entitled to be present during investigations the results of which may be used as evidence in proceedings before the court.
- to ask questions of any person examined and raise objections against the method of investigation.
- upon completion of the investigation, he is entitled to read through the investigation file and propose additional evidence.
- in proceedings before the court he is entitled to take part in all actions in which the accused may take part, put forward evidence and participate in its examination.

Injured Party

- An injured party may be both a natural person as well as a corporate body.
- The injured party in criminal proceedings according to the law has the position of a party. Without a declaration of the injured party about the fact that he/she is joining with its specific claim the criminal proceedings, or without a qualified motion of the injured party, the court in the criminal proceedings can not decide on compensation for damages.
- Injured party = person, who was caused damage to health, damage on property or person, at whose expenses the offender enriched.

- Injured party has no right to start the prosecution but may take back consent with criminal prosecution by express declaration,
- Damage means property damage, or **immaterial damage (damage to health, moral as well as other injury)**
- Adhesion procedure and two kinds of injured parties
- Freezing of the assets in favore of injured party
- Law on material aid for crime victim
- Protection of witness/ victim

The Coercive Measures

- 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 (section 78)
- seizure of an item (section 79)
- securing funds in bank account (sections 79a – 79b)
- securing of booked securities (section 79c)
- securing of property (section 79d)
- securing of another property value (section 79e)
- securing of alternative property value (section 79f)
- house search and searching of other premises (section 82, 83a)
- person search (section 83b)
- entry to a houses, other premises and lands (section 83c)
- seizure, track, search and replacement the undelivered mail (section 86, 87, 87a, 87b),
- interception and a phone calls recording (section 88).

The Rules of Evidence

- There are the fundamental principles governing the evidence procedure:
 - material truth
 - official duty to find an evidence
 - accusatory procedure
 - presumption of innocence
 - immediacy and oral deposition
 - free assessment of evidence.
 - adequacy
 - discretion

In criminal proceeding is necessary to prove in fundamental extent 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).

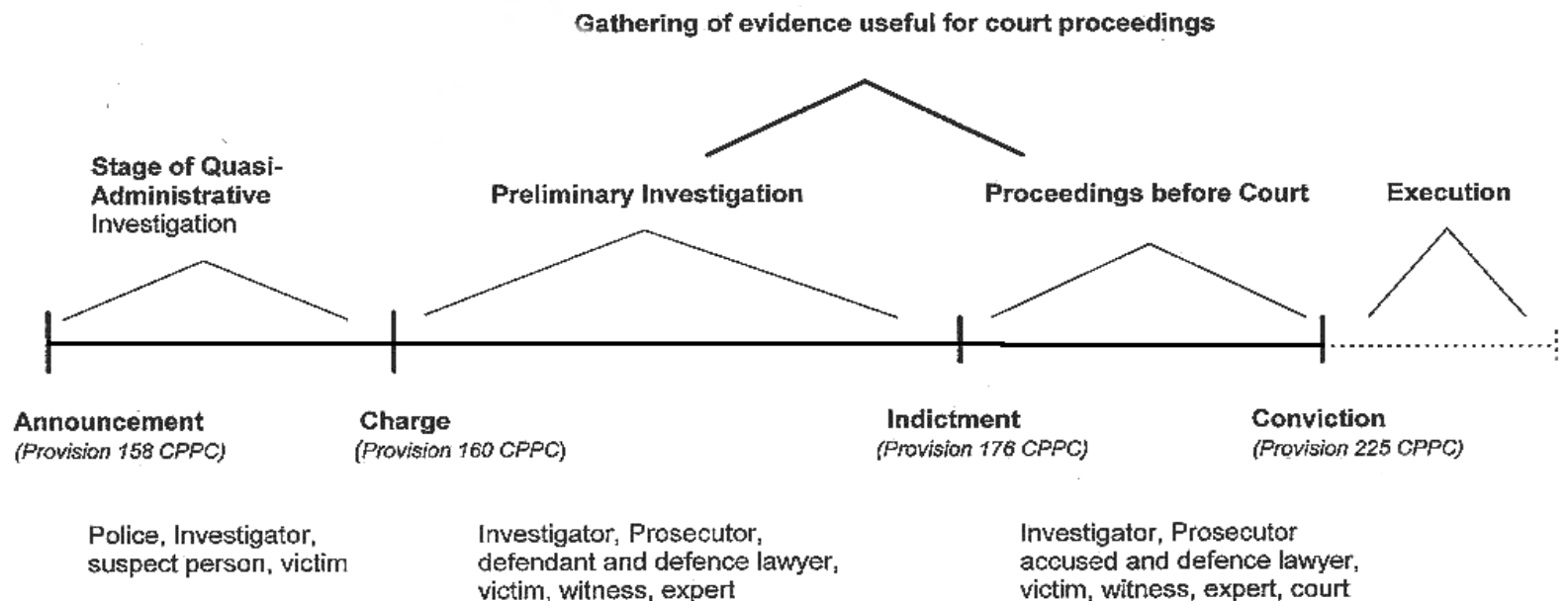
Special investigation methods

Operational means of searching:

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

Czech Criminal Proceedings

CZECH PENAL PROCEEDINGS



Stages of Criminal Proceedings

- preliminary proceedings
- proceedings before court (trial)
- execution of sentence

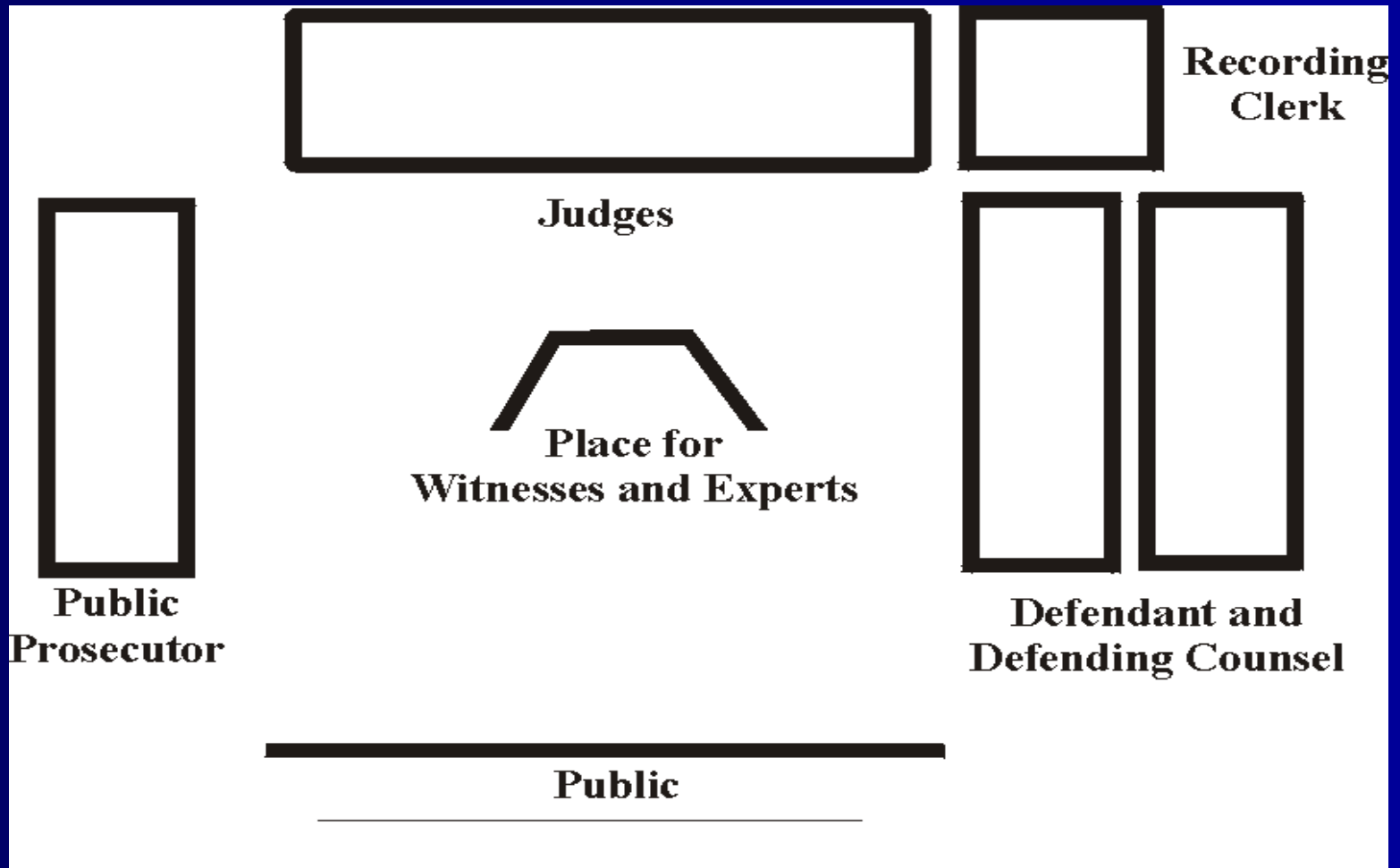
Preliminary Proceedings

- There are **three different forms of preliminary proceedings:**
 - verification of facts (sections 158 – 159b)
 - investigation (sections 160 – 175)
 - shortened preliminary proceedings (sections 179a – 179f).

The 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 execution

The penalties are:

- imprisonment (sections 320-334 of CPP, resp. sections 76-77 law no. 218/2003 Coll.),
- house arrest (sections 334a – 334h)
- community service (sections 335 – 340b)
- fines (sections 341-344)
- confiscation of assets (sections 345- 349)
- confiscation of item (section 349b)
- prohibition of activity (section 350)
- prohibition of residence (section 350a)
- renvoi (section 350b)
- Prohibition of entry on sport, cultural and other social events (section 350i – 350j)

The protective measures are:

- protective treatment (sections 351-353)
- Security detention (sections 354 – 357)
- protective education (section 22 Law on Juvenile)
- seizure of an item (section 358)

The Legal Remedies

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.

- 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.
- co-operation within the European Union (the European Arrest Warrant esp.)

The Central Authorities in the Czech Republic:

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

The reasons for denial of legal assistance

- the request relates to an offense under military law that would not be an offense under ordinary criminal law applicable generally;
- the request relates to a political offense;
- the execution of the request is likely to prejudice the sovereignty, security, order public, or similar essential interests of the Requested State; or

Co-operation within the European Union

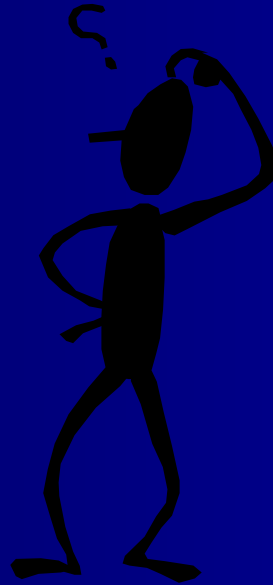
Judicial co-operation:

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

Police co-operation:

- Europol

Questions ?



Thank you for your attention.