

INTRODUCTION TO  
THE CZECH  
CRIMINAL  
PROCEDURE:  
BASIC PRINCIPLES &  
STAGES OF CRIMINAL  
PROCEEDINGS

14<sup>th</sup>  
November  
2018

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# SOURCES

- Act no. 141/1961 Coll., on Criminal Procedure (CODE OF CRIMINAL PROCEDURE)
- Act no. 218/2003 Coll., on Juvenile Justice
- Act no. 418/2011 Coll., on Criminal Liability of Legal Entities and Proceedings against them
- Act no. 104/2013 Coll., on International Cooperation in Judicial Matters

# CZECH CRIMINAL PROCEDURE

- „CONTINENTAL“ model of criminal proceedings
  - obligatory formal preliminary proceedings
- combination of INQUISITORIAL (pre-trial phase) & ACCUSATORIAL (trial phase) model
- inspiration from anglo-american (adversarial) model of criminal proceedings
  - diversions, agreement on guilt and punishment etc.

# BASIC PRINCIPLES

- Principles common for the whole process:
- DUE PROCESS
  - prosecution on legal basis & in legal manner
- PROMPTNESS
  - periods in all stages of criminal proceedings
- ADEQUACY & RESTRAINT of interference with rights
  - only in necessary cases & in necessary extent
- RIGHT TO DEFENCE
  - formal and material defence

# „INITIATION“ PRINCIPLES

- Principle of OFFICIALITY
  - law enforcement authorities have to proceed EX OFFO
  - exceptions: consent of aggrieved party, remedies, ...
- Principle of LEGALITY
  - public prosecutor is OBLIGED to prosecute all crimes
  - exceptions: public prosecutor is authorized not to prosecute in certain cases (Section 172 par. 2)
- ACCUSATORIAL principle
  - court proceedings may be initiated only on the basis of INDICTMENT (or motion for punishment or motion for approval of agreement on guilt and

# PRINCIPLES OF EVIDENCE

- MATERIAL TRUTH
  - establishing the merit of case BEYOND REASONABLE DOUBTS
  - no formal burden of proof of public prosecutor
- PRESUMPTION OF INNOCENCE
  - *in dubio pro reo*
- INVESTIGATIVE principle
  - law enforcement authorities (including court) investigate *ex offio*
  - all circumstances for and against defendant
- FREE EVALUATION of evidence
  - based on inner conviction of judge, not formal rules

# PRINCIPLES TYPICAL FOR COURT PROCEEDINGS

- PUBLICITY
  - public hearings before court vs. non-public pre-trial phase
  - exclusion of public only in certain cases (minors, victims)
- ORALITY
  - oral hearings before court vs. written pre-trial phase
  - questioning of accused, witnesses, experts
- IMMEDIACY
  - only evidence that was performed during court proceedings

# STAGES OF CRIMINAL PROCEEDINGS

- REGULAR course of criminal proceedings:
- PRE-TRIAL PHASE
  - preliminary proceedings
- TRIAL PHASE
  - preliminary hearing of indictment
  - MAIN TRIAL
  - remedial proceedings
  - enforcement proceedings



# DIVERSIONS

- IRREGULAR forms of criminal procedure:
- Conditional discontinuance of crim. prosecution
- Settlement
- Withdrawal from criminal prosecution
- (Criminal order)
- (Agreement on guilt and punishment)

# SPECIAL TYPES OF PROCEEDINGS

- SPECIAL forms of regular course of CP:
- Proceedings in juvenile matters
- Proceedings against legal entities
- Proceedings against fugitive
- (Simplified) proceedings before a single judge

# PRELIMINARY PROCEEDINGS

- obligatory part of the Czech criminal proceedings
- 3 forms of preliminary proceedings:
  - SUMMARY
  - STANDARD
  - EXTENDED

# SUMMARY PRELIMINARY PROCEEDINGS

- In case of minor crimes (sentence of imprisonment up to 5 years) if:
  - (a) suspect is caught *in flagranti* or
  - (b) there is probability of putting suspect before court within 2 weeks.
- ends either with MOTION FOR PUNISHMENT or other decision (suspension of matter, submitting the matter to competent authority, diversion)

# STANDARD AND EXTENDED PRELIMINARY PROCEEDINGS

- 2 phases:
- EXAMINATION
  - phase PRIOR to initiation of criminal prosecution
- INVESTIGATION
  - phase AFTER initiation of criminal prosecution
- EXTENDED preliminary proceedings
  - most serious crimes (competence of regional courts)
  - longer periods
  - no restrictions in questioning witnesses

# EXAMINATION

- phase prior initiation of criminal prosecution
- examination of facts reasonably implying that crime has been committed by a CERTAIN PERSON
- performance of URGENT & NON-REPEATABLE ACTS
- requirement of explanations from potential witnesses or other subjects, requirement of professional statements, taking of biological materials etc.
- surveillance of persons or items, use of agent

# INVESTIGATION

- INITIATION OF CRIMINAL PROSECUTION of concrete person (accused)
- formal preparation of the case for trial phase
- search for sources of evidence
- restricted performance of evidence
- full right to defence
  - right of defence counsel to participate in investigation acts
  - right to study case file and suggest further investigation

# END OF PRELIMINARY PROCEEDINGS

- public prosecutor submits
  - INDICTMENT to the court or
  - motion for approval of AGREEMENT ON GUILT & PUNISHMENT
- public prosecutor TERMINATES criminal prosecution
  - obligatorily or facultatively (principle of opportunity)
- public prosecutor TRANSFERS case to competent authority
- public prosecutor SUSPENDS criminal prosecution



# PRELIMINARY HEARING OF INDICTMENT

- facultative stage of trial phase
- review of the indictment
  - whether results of preliminary proceedings provide sufficient grounds for main trial
  - whether preliminary proceedings were carried out in accordance with the law
- court may either order main trial, or return case to the prosecutor or make other decision

# MAIN TRIAL

- obligatory & most important stage of the Czech criminal proceedings
- core of evidence proceedings
- deciding on guilt and punishment
  - judgement of conviction or judgement of acquittal
- deciding on compensation of damage caused by crime to the aggrieved party

# REGULAR REMEDIAL MEASURES

- remedies against decisions that have not become final yet:
  - APPEAL
    - remedy against judgement decided by superior court
  - COMPLAINT
    - remedy against „resolution“ decided by superior body
  - PROTEST
    - remedy against criminal order
    - single judge of the first instance court order main trial

# EXTRAORDINARY REMEDIAL MEASURES

- EXTRAORDINARY APPEAL (appellate review)
  - remedy against certain decisions of second instance courts
  - only legal and procedural faults
  - can be filed only by the Prosecutor General or convicted
  - decided exclusively by the Supreme Court
- COMPLAINT AGAINST VIOLATION OF LAW
  - remedy against decisions of courts or public prosecutors
  - mainly legal, but also factual and procedural faults
  - can be filed only by the Minister of Justice
  - decided also by the Supreme Court
- RE-TRIAL (renewal of proceedings)
  - factual faults, decided by the first instance court