

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

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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

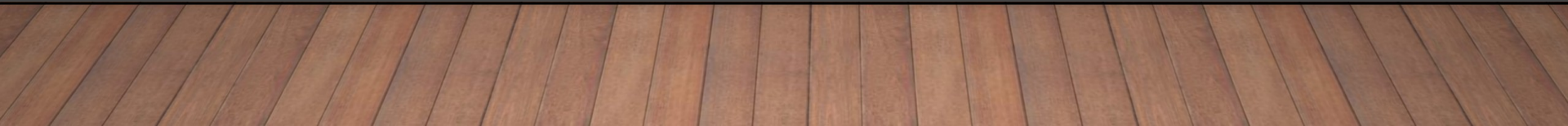
CZECH CRIMINAL PROCEDURE

- reformed type of European continental proceedings
 - obligatory formal preliminary proceedings
- combination of INQUISITORIAL (pre-trial phase) & ACCUSATORIAL (trial phase) model
 - pre-trial phase dominated by public prosecutor assisted by police
 - trial phase initiated by public prosecutor and consequent confrontation of parties (prosecution vs. defense) led by judge

CZECH CRIMINAL PROCEDURE

- inspiration from Angloamerican (adversarial) model of criminal proceedings
 - diversions, agreement on guilt and punishment etc.
 - but these elements are adjusted to continental model of criminal proceedings and its principles
- major differences
 - Czech professional judges vs. Angloamerican jury
 - Czech active judge vs. Angloamerican passive judge
 - no formal burden of proof of public prosecutor in CR

BASIC PRINCIPLES OF CRIMINAL PROCEEDINGS



BASIC PRINCIPLES

- principles common for the whole process:
- DUE PROCESS
 - prosecution on legal basis & in legal manner
- PROMPTNESS (principle of speed)
 - periods in all stages of criminal proceedings
- ADEQUACY & RESTRAINT of interference with rights
 - only in necessary cases & in necessary extent
- RIGHT TO DEFENSE
 - formal and material defense

„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 punishment)

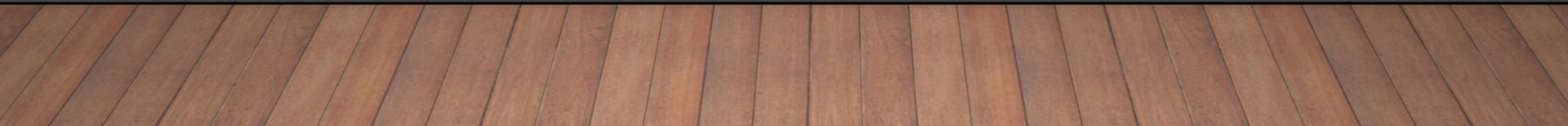
PRINCIPLES OF EVIDENCE

- MATERIAL TRUTH
 - establishing the merit of case BEYOND REASONABLE DOUBTS
 - mere confession of defendant is not sufficient
- INVESTIGATIVE principle
 - law enforcement authorities (including court) investigate *ex offa*
 - all circumstances for and against defendant
- PRESUMPTION OF INNOCENCE
 - *in dubio pro reo*
- 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 (juveniles, 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
 - evidence that is closest to the source of evidence (but hearsay evidence is not excluded)

STAGES OF CRIMINAL 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

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
- initiation of criminal prosecution
 - moment when a suspect finds out he/she is accused of committing crime(s)
 - delivery of resolution on initiation of criminal prosecution to a suspect (when he/she becomes an ACCUSED)

EXTENDED PRELIMINARY PROCEEDINGS

- most serious crimes
 - competence of regional courts as 1st instance courts
 - 5 years as minimum lower sentence of imprisonment
- longer periods
 - 6 months for examination
 - 6 months for investigation
- no restrictions in questioning witnesses that are typical for standard preliminary proceedings

EXAMINATION

- phase PRIOR to initiation of criminal prosecution
 - initial information about crime
 - crime complaint
 - results of police work
- police write record on the commencement of acts of criminal proceedings
- verification of facts implying that alleged CRIME was committed & that it was committed by CERTAIN person

EXAMINATION

- performance of URGENT & NON-REPEATABLE ACTS
 - questioning of children, witnesses in danger of life
 - conservation of marks on the crime scene, taking of biological materials, etc.
- requirement of explanations from potential witnesses or other subjects, requirement of expert opinions
 - questioning of witnesses in presence of judge
- wire-tapping, house search
- 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 STANDARD / EXTENDED 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 (if the act does not constitute a crime, but e.g. contravention)
- public prosecutor SUSPENDS criminal prosecution
 - e. g. if accused can not understand meaning of criminal prosecution due to mental illness

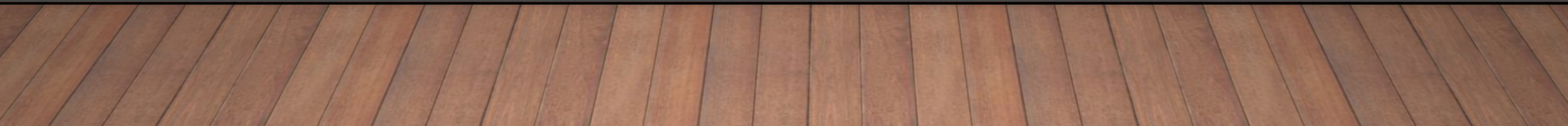
PRELIMINARY
HEARING OF
INDICTMENT



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



MAIN TRIAL

- obligatory & most important stage of the Czech criminal proceedings
- core of evidence proceedings
- deciding on guilt and punishment on the basis of indictment & act specified there
- deciding on compensation of damage caused by crime to the aggrieved party

ADJUDICATING BODY

- single judge
 - crimes with sentence of imprisonment up to 5 years
- bench of three judges (1 professional + 2 lay judges)
 - other crimes dealt by the 1st instance courts
- bench of three professional judges
 - 2nd instance courts (regional, high), Supreme Court
- senate of nine professional judges
 - Supreme Court in legally ambiguous questions

COMMENCEMENT OF THE MAIN TRIAL

- main trial is opened by (presiding) judge who announces the case and check presence & identity of summoned persons
- public prosecutor reads an indictment
- aggrieved party may demand compensation of damages caused by crime

EVIDENCE IN THE MAIN TRIAL

- evidence proceedings is led by judge
 - parties (prosecutor, defense) or other subjects (aggrieved person, parents of juvenile, ...) may pose questions
 - defendant has right to confront evidence
- questioning of defendant
- questioning of witnesses
- other evidence (expert opinions, paper evidence, ...)
- main trial may be adjourned to complete evidence

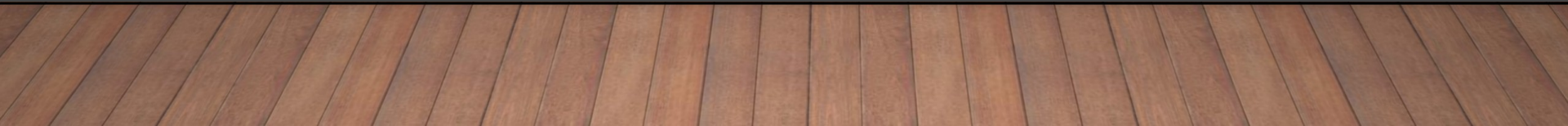
CONCLUSION OF THE MAIN TRIAL

- closing speeches
 - public prosecutor
 - aggrieved party
 - defense counsel
 - defendant
- last word of defendant
- judge (bench) leaves courtroom for final deliberation

DECISION IN THE MAIN TRIAL

- JUDGEMENT
 - of conviction
 - of acquittal (*in dubio pro reo*)
- discontinuance of criminal prosecution
- suspension of criminal prosecution
- transfer of case to competent authority
- judge may return the case to public prosecutor
 - if circumstances of the case significantly changed so that further investigation has to be carried out

REMEDIAL PROCEEDINGS



REMEDIAL MEASURES

- **ORDINARY** remedial measures
 - remedies against decisions that have not become final yet
 - review of decisions of 1st instance law enf. authorities
 - appeal, complaint, protest (3)
- **EXTRAORDINARY** remedial measures
 - remedies against final decisions (in legal force)
 - unification of the decision-making practice
 - extraordinary appeal, complaint against violation of law, re-trial (3)

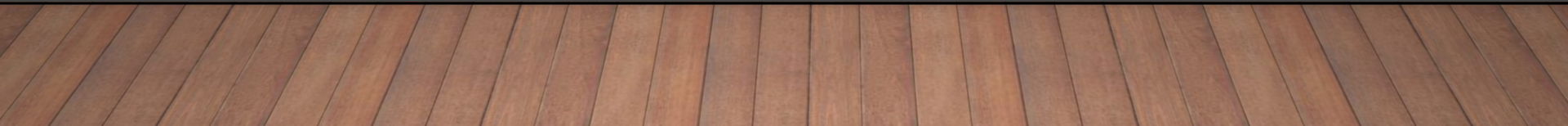
PRINCIPLES OF REMEDIAL PROCEEDINGS

- principle of *beneficium cohaesionis*
 - decision for benefit of person who did not file remedy
- principle of prohibition of *reformationis in peius*
 - if the remedy is filed only for benefit of defendant, the result of remedial proc. cannot be against him/her
- principle of devolution
 - superior body decides about remedy
 - decentralized remedies (appeal, complaint)
 - centralized remedies (when Supreme Court decides)

PRINCIPLES OF REMEDIAL PROCEEDINGS

- principle of suspension
 - effect of suspending enforcement of decision
 - appeal, some complaints (if CCP states so)
 - in case of extraordinary remedies, presiding judge (or Minister of Justice in case of complaints against violation of law) may suspend enforcement of decision
- principle of limited review (only complaints)
 - reviewing body is not bound by the extent of remedy
- appellation and cassation principles

ORDINARY
REMEDIAL
MEASURES



APPEAL

- remedy against JUDGEMENT of the first instance court
- decided by superior court (devolution principle)
- can be filed by prosecutor, defendant or his relatives within 8 days from delivery of judgment
- appellation principle with elements of cassation

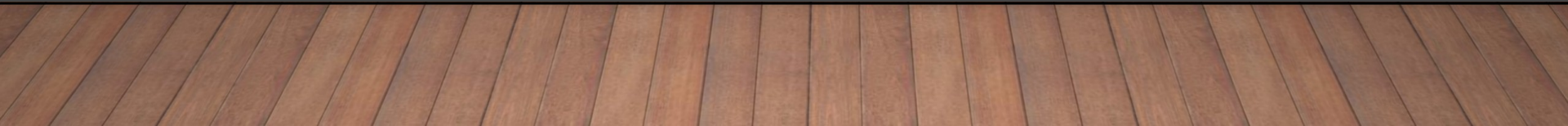
COMPLAINT

- remedy against „RESOLUTION“
 - procedural decision of courts, public prosecutors or police authority
 - e.g. resolution on initiation of criminal prosecution
- decided by superior body
- complete revision of protested resolution and prior proceedings in relation to person that filed complaint (limited restriction)

PROTEST

- remedy against „CRIMINAL ORDER“
 - decision made by single judge on the basis of file
- may be filed within 8 days by public prosecutor or defendant
- single judge of the same 1st instance court automatically order main trial
- principle of prohibition of *reformationis in peius* does not apply here (punishment may be harsher)

EXTRAORDINARY
REMEDIAL
MEASURES



EXTRAORDINARY APPEAL

- remedy against certain decisions of second instance courts
- only legal and procedural faults
- can be filed only by the General Prosecutor or defendant
- decided exclusively by the Supreme Court

COMPLAINT AGAINST VIOLATION OF LAW

- remedy against final decisions of courts or public prosecutors that violated the law
- mainly legal, but also factual and procedural faults
- can be filed only by the Minister of Justice
- decided also by the Supreme Court
- challenged decision can not be cancelled to detriment of defendant

RE-TRIAL (RENEWAL OF PROCEEDINGS)

- when new evidence or facts appears after legal force of original decision
- this new evidence or facts could have significant impact on original decision
- motion for re-trial can be brought by public prosecutor, convicted or his relatives
- decided by the first instance court

THANK YOU FOR YOUR
ATTENTION 😊

