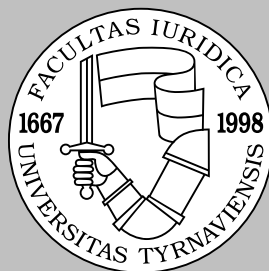


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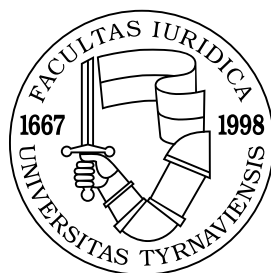


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Adrián Jalč

SLOVAK PROCEDURAL CRIMINAL LAW



Slovak Procedural Criminal Law

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PREFACE

This publication is intended primarily for the students of the Law Faculty but is also intended for foreign students looking to increase their knowledge and more generally for those interested in criminal law.

Slovak criminal law has undergone numerous legislative modifications since 1989. The most significant milestones were the adoption of Act No. 300/2005 Coll. (Criminal Code) and of Act No. 301/2005 Coll. (Code of Criminal Procedure) completing the process of recodification of criminal law. The recodification involved introduction of new elements in Slovak criminal law required both by practice and by legislative developments.

Trnava, December 2012

Title I: Historical development of criminal proceedings in Slovakia

1.1 Criminal proceeding in the High Middle Ages

The process started *ex offio* usually in the case of punishing the habitual criminals by palatine congregation and later by decision of the court "Sedria" (*Act no 7/1514*). *Opus Tripartitum* enabled to use torture when leading the process against non aristocratic offender in case of robbery, killing a man, arson and other public crimes. The hearing was oral during the inevitable attendance of litigants. The main parties of the dispute were accuser (*actor*) and defendant (*incauturus*). An individual convicted of infamy infidelity or a person affected by ecclesiastical curse did not have legal capacity. Limited legal capacity had *servile*, who could sue only with approval and acting via his superior.

The first one introduced at the court was accuser who lodged a complaint. Then was brought the defendant accompanied by his family members (collective responsibility) friends, or eye-witnesses. He had to stand in front of the judge until he did not release him. Otherwise he lost the dispute or he had to pay the fee. During the first proceeding was acting of the parties not restricted with an attempt for out of court settlement. In case of not agreeing with conciliation the judge set a new hearing date, where parties presented their evidence or proposals for the evidence. On the second hearing were held the preliminary evidence with judicial means of proof such as examining, written documents (deed) and testimony.

Main purpose of the preliminary evidence was not to determine the issue of fact, but witnesses should support the party in the dispute and create the good background for it. Act as a witness was allowed only to married man, who was Christian without criminal record. Serf was not allowed to witness against the noble and ordinary person was not able to witness against priest. The value of testimony depended on social status of the witness. The highest value had oath of the magnates. Parties of the dispute were allowed to have from three to one hundred witnesses according to the importance of the dispute. When being suspicious from perjury individual was summoned to ordeal (God's judgment).

Eye witnesses prevailed and only seldom occurred one who had to prove subject-matter or other legal act (contract or testamentary witnesses). In case of not settling the case out of the court was judge entitled to determine a condition to which were parties of the dispute bind to fulfill. Party which fulfilled the condition

was entitled to ask the judge to settle the dispute out of court. Final judgment reflected attitude of the one party against the other. Not judge but party itself decided the dispute by fulfilling the condition given by judge. As the critical conditions were considered ordeals, battle and oath.

Institute of ordeals replaced law of Hungarian Slavs. The basic idea was to decide the most difficult cases according to the God's will. Church created its own form of exam – via cross and church wafer. Most frequent tests were so called tests via fire or water. Ordeals were held in the church in the presence of three witnesses and competing party. Battle was performed by sword, dart and dagger. Battle was firstly prohibited in the 15th century for non nobles and later also for nobility. Witnesses, parties of the dispute could make an oath according to the decision of the court in the church while maintaining the very strict formalities.

At that time it was not possible to appeal. Only exception was in the case of "denegata iustitia" and exception against consciously false decision of the court.

Development of the criminal proceedings was influenced by strengthening of the feudal relations. Main difference was in the requirements for the new evidence, especially documents, witnesses and written form of certain documents for example court decision. Hungarian criminal law was not unified which led to many confusions in practice.

In the beginning of the 18th century old Austrian criminal standard spread into the system of Hungarian customary law. Latin translation of the Penal Code of 1656 which came into force in Lower Austria (Constitutio Criminalis Ferdinanda) became part of the Corpus Iuris Hungarici. The basis of the Act was German penal code Constitutio Criminalis Carolina of 1532 which introduced the principle of leading the process according to the official frame and inquisitorial criminal proceeding. At that time was introduced the new formal theory which allowed to use torture as the proper evidence. Accused was tortured by the time he did not admit that he committed the crime. His admission was considered to be the evidence of the highest power. Since the period of nobles uprisings the torture could not apply to nobles with only exception of insult of God majesty, treason and other political crimes. The cornerstone of this theory was presumption of guilt (Constitutio Criminalis Theresiana), according to which was accused considered guilty until he proved his innocence. General Court of Criminal Procedure of 1788 removed the last remnants of the accusatorial process, introduced inquisitorial principle, secret proceeding held in written form. Laic part of the process was removed and criminal court had to consist of professional lawyers. It was possible to punish accused for disobedience as well as person who pretended to be insane, commits and obvious lie or refuse to testify. Defendant could not be sentenced if he was convicted only by indirect evidence.

After the death of Josef II his legislation expired and Acts no. 10/1790 and 55/1790 introduced only temporary and transitional provisions. In 1795 was drafted and submitted to the parliament new draft code of criminal procedure called Codex de delictis eorumque poenis. The draft had two parts: first dealt with criminal procedure (de forma procedurae) and second with substantial law.

The draft was based on Josephine criminal process and it was combination of

inquisitional system with accusative components. According to this draft, pre-trial was followed by written accusing process which was based on the exchange of the pre-trial folders. This was followed by accusation, proving and finally by decision. Mandatory plea was required. Torture was excluded and rest of the proving was the same as in the Josephine Code. Important step forward was the principle of equality of the parties. There should be no difference between noble and non nobles. Everybody accused has the same right to be heard. Due to the political reasons could not this criminal act take effect.

Act no. 8/1827 established the commission which worked over the draft from 1795. New draft was completed in 1830 however it was a big step backwards. Principle of equality of the parties was abolished and social differences were becoming more obvious. This Act was based on the Principles from Austrian Code of Criminal Procedure of 1803, which included inquisitional procedure. According to this Code, police was responsible for hearing, main proceeding was lead in the written form and judgment of death required approval of monarch. This draft of the Act was not approved.

In 1844 was proposed new draft for the whole criminal system. It was based on the liberal opinions of the French *Code d instruction criminelle* and English procedural law. The draft had roots in the principle of equality of the parties, accusatory principle and proceeding could start only when the complaint was lodged to the jury and proposed evidence was approved. Then main proceeding could start and jury was responsible to decided about the guilt. It was possible to make complaint regarding the defect of form to the court which was specially entitled to it. This proposal was under consideration more times but never entered into force.

1.2 Criminal proceeding in 19th century and first half of the 20th century

After the state courts were established in 1872 started the change in the legislation of criminal proceedings. The Act about criminal proceeding entered into force and was published under number XXXIII/1896. This act limited possibilities of pre-trial detention and right of police to custody, but on the other hand it broadened the possibility to appeal.

This Act limited police officer to detain accused on a preliminary basis but on the other hand police officer was entitled to deliver the accused into the custody. This Act enabled to take an appeal. Authorities acting in criminal proceeding were bound to inform the state authorities if was the accused suspicious from committing public crimes. They had to provide him all the information regarding the crime and forward all the things which could serve as evidence and secure them.

An individual could take an action to the court by submitting it to the state councils, police officers or courts, which could be forwarded to the appropriate state authority if needed. Proposal was amended if necessary. At the later stage of the criminal proceedings in certain cases it was possible that attorney refused to represent client in court or that individual brought a new action against the party. Public

prosecutor could refuse to sue only in case when he was convinced that crime was not actionable, or evidence was not reachable by appropriate means.

In general, preparatory proceedings cover the time span between investigation and evidentiary process.

The purpose of evidentiary process was to identify the information that is required for better orientation of the accuser in the case. State authorities were responsible for searching proceedings. When dealing with private case of individual, responsible for searching procedure was the head of police office. State authority had right to require from all the offices explanations and reports regarding. State authorities were entitled to require explanations and reports from the police offices and administration of justice regarding the whole searching proceeding or only the certain parts of it. Police was bound to follow the procedure when being asked by another authority mainly with aim to reveal the body of crime, search for the perpetrator and participants of the crime and safe-keeping of incriminating evidence. During the searching procedure should be clarified not only mitigating but also engraving circumstances of the case.

Suspect had right in order to protect himself accomplish certain searching acts. District courts could command and execute these acts. Typical feature of this proceeding was its written form and inquisitorial elements. Only the state authority was entitled to approve the police officers to lead the searching procedure. It was rare for judge to lead the searching act. Searching was stopped when :

- crime was not committed;
- due to lack of authority, petition required for further proceeding or actor did not bring an action or retraced it.
- It was not possible to reach successful result of the dispute due to lack of the evidence or difficulties when procuring the evidence.

Police officer was in preliminary criminal proceedings entitled to:

1. Ascertain subject matter of the crime, procurement of the most important evidence by searching the premises, examination of suspect and witnesses.
2. Procurement of other material evidence for instance, search the premises or people and withholding the evidence.
3. Ensure that other steps such as arrest, (preliminary detention, searching for the suspect etc.) are followed.

Judiciary and police authorities were obliged to:

1. Ascertain and clarify subject matter of all the committed crimes punishable ex offa regardless of which way was subject matter approximated and search for the perpetrator of the crimes.
2. Inform court and state authority who is the perpetrator.

When was criminal issue transferred to judicial authorities they released binding instructions for the police officers. In case of danger of default police authorities could lead the searching proceedings without consent of the court. Main purpose of the investigation was to clarify the case and reveal information useful when deciding whether continue or stop main proceedings. Searching proceeding was obligatory when was committed crime punishable by capital punishment, crime when was perpetrator sentenced for more than 5 years imprisonment. This doesn't apply

when accused admitted crime he committed and his confession was in accordance with knowledge gained through searching proceedings. In case of other crimes searching proceeding could be held optionally if:

- a) It was proposed by public prosecutor.
- b) Accusation was represented solely by a private plaintiff.
- c) Accused was referring to the circumstances important for ensuring adequate defense of the accused.
- d) If considered as an appropriate by senate an appeal could be refused to the individual in some cases.

Examining judge decided in the first instance whether to order investigation on the proposal of public prosecutor, private prosecutor or accused. In case that during the investigation shall the plea be broadened to other crime or to some other person, examining judge had to undertake an appropriate action and forward the folders to accused.

Main task of the senate was to supervise the proceeding. Its regulations were binding for examining judge. In case that judge had concerns regarding certain searching act, he could ask the senate for further instructions. Parties could lodge the complaints which were not limited by statute of limitation. Anytime during the investigation could parties submit proposals regarding investigation to examining judge. Accuser and private prosecutor were entitled to inspection of the investigative documents. Rights of defense counsel were in this part of the proceeding highly restricted. Defense counsel was not allowed to take part in examination of witnesses, accused, and he was not entitled to inspection of the documents.

Criminal proceedings could end in this part when published decision about arrest of inquest or closure of inquiry.

Arrest of inquest could be considered only in the following cases:

- a) Accuser took the action back (public prosecutor could do so anytime by beginning of meeting in camera hold by purpose of delivering judgment.) and aggrieved party did not continue in proceeding.
- b) In other cases when senate or judge should decide.

Investigation was complete after the investigative judge considered it to be completed or it should not go further. Within 15 days he was obliged to inform parties about the decision he made. Private prosecutor was obliged to file an action or bill of completion of investigation to examining judge. Otherwise it was presumed he that took the action back. If the bills for completion of investigation were not appropriate according to judge and he could not accommodate them decision was made by the senate.

When indictment was filled by public prosecutor the case passed to the court which had to deal with it. Courts consisted of jury. It was possible to plead against the court of first instance or take an action if proceeding was against the law or not in accordance with law. Disadvantage of courts consisting of jury was that jury consisted of members who were elected from the list of electors in municipality. Only people who had certain asset were allowed to vote. It means that poor inhabitants were excluded.

By 31.12.1949 there were valid different Acts dealing with criminal proceeding

in Czechoslovakia. Main source of legislation was for Czech part of the country Austrian criminal Code (Act No. 119/1873 Coll.) Slovak part of Czechoslovakia preferred Old Hungarian article XXXIII/1896 dealing with trial proceeding. It was later amended by acts valid in the whole area of Czechoslovakia, for instance No. 1/1920 Coll, No. 8/1924 Coll, No. 107/1927 Coll. Proceeding in front of military circuit courts was regulated by Acts No. 131/1912 Coll, 33/1912 Coll.

Between 1918 and 1938 there were many attempts to create unified Criminal Code for whole Czechoslovakia. In 1928 and 1937 were processed bills of the new Code of Criminal Procedure, neither of them came into force. Important change brought Act No. 48/1931 Coll. about criminal courts for juveniles, which was dealing in very complex way with question of youthful offenders.

1.3 Criminal proceeding after 1945

After Second World War Czechoslovakia returned back to legal system from 1938. As radical changes were considered presidential decrees which influenced mainly criminal procedural law and were later approved by National assembly. It was Decree No. 138/1945 Coll. on punishment of war criminals and traitors, decree No. 17/1945 Coll. on establishment of National Court, decree No. 138/1945 Coll. on punishment of certain crimes against national defamation. Those were special legal acts which introduced new ways of criminal proceedings. It was reflex ion of after-war situation in our country.

In February 1948 was power in the country in hands of communist party, which was immediately reflected also in the legal system. Various Acts such as Act No. 231/1948 Coll. on protection of popular-democratic system, Act No. 232/1948 Coll. on State Court came into force. They were the cornerstone for the later political abuse of the criminal proceedings.

In Constitution of Czechoslovakia from 9.5.1948 can be seen popular character of the state where is the huge importance given to protection of popular-democratic system. Constitution was amended by various Constitutional Acts, for example Act No. 54/1952 Coll. on courts and prosecution, Act No. 65/1952 Coll. on public prosecutor, Act No. 66/1952 on organization of the courts by which were cancelled administrative courts and state authorities and was established prosecution according to the soviet example. De facto it was the beginning of the liquidation of judicial independence.

In 1948-1950 there was so called „legal two years“ which introduced the new Code of Criminal Procedure (Act No. 87/1950 Coll.) Advantage of the new legal Act was unification of the legal system for the whole area of Czechoslovakia. This Code of Criminal Procedure put big importance on preliminary proceeding and court proceeding became shorter, strictly formal part of the criminal proceeding. When were police authorities on duty they used non procedural means which were not recognized by legal system and they influenced criminal proceeding in negative way. Rights of accused and defense were restricted.

In half of 50s was political situation calm and criminal repression refused. New

Code of Criminal Procedure entered into force (Act No. 64/1956 Coll) which introduced new institute of investigator who was separated from police authorities. Public prosecutor had more important position in preliminary proceeding. It was possible to review the indictment in preliminary proceedings, new terms fixed by law for investigation and custody were introduced, rights of the accused were broadened.

In the beginning of 60s was communist party convinced that socialism was winner in the state. New Constitution was adopted in 1960 (Act No. 100/1960 Coll) Czechoslovak republic was declared a socialistic state and new role of communist party was established. As a result of this was new Act No 38/1961 Coll. on municipal popular courts. These courts were entitled to deal with less important crimes and offences. Municipal popular courts could issue economic sanctions and admonitions. Proceeding in front of them was very informal. Criminal law reacted on the new situation in the society and in 1961 and new Acts (Act No. 140/1961 Coll. Penal Code, Act No. 141/1961 Coll. Code of Criminal Proceeding) were passed.

Code of Criminal Procedure of 1961 was valid in our country by 31.12.2005 and since then it came through several changes. Main changes were in the area of preliminary proceeding with an attempt to restrict proving and unify the process in order to make criminal proceeding faster. During this period were established different forms of proceeding and conditions for custody became more strict. Into the Code of Criminal Procedure were incorporated new technological means, which results can be used as an evidence.

Code of Criminal Procedure was amended more than 30 times after 1989. It was a result of changes in social and political area in Slovakia. Since 1990 legal capacities had been working on the new recodification of Code of Criminal Procedure which was finally successfully introduced by passing the new Code of Criminal Procedure (Act No. 301/2005 Coll.) In force since January 1st 2006.

Title II: Criminal procedure and its fundamental principles

The Constitution is particularly important for establishing principles of criminal procedure in a democratic society, since it regulates criminal procedure, which, given its nature, affects the fundamental rights and freedoms of individuals. The Constitution of the Slovak Republic establishes, in particular, the following constitutional principles:

- a) when adopting decisions, judges are bound by the Constitution, Constitutional Acts, international treaties being part of the Slovak legal order and by Acts [Article 144(1) of the Constitution],
- b) judicial power is exercised by independent and impartial courts [Article 141(1) of the Constitution],
- c) no one (no accused) may be withdrawn from his statutory judge [Article 48(1) of the Constitution],
- d) right to judicial protection of rights [Article 46(1) of the Constitution],
- e) equality before the law and equality of parties to court proceedings [Articles 12 and 47(3) of the Constitution],
- f) no one may be convicted for the same offence twice [Article 50(5) of the Constitution],
- g) criminal prosecution must comply with the due process principle [Article 17(2) of the Constitution],
- h) presumption of innocence in criminal proceedings [Article 50(2) of the Constitution],
- i) right to legal aid, defence and right to remain silent [Articles 47(2) and 50(3) and (4) of the Constitution],
- j) oral and public trial [Articles 48(2) and 142(2) and (3) of the Constitution],
- k) right to an interpreter [Article 47(4) of the Constitution],
- l) only courts may decide on guilt and sentencing (Article 50 of the Constitution).

The fundamental constitutional principles are specified in relevant provisions of the Code of Criminal Procedure. The following categories of fundamental principles are usually distinguished:

- principles pertaining to criminal procedure as such (principle of due process, principle of proportionality, principle of defence, principle of fair trial, principle of double jeopardy, principle of cooperation with citizen interest associations),
- principles of commencement of criminal proceedings (principle of official

proceedings, principle of legality, principle of opportunity, accusatory principle),

- principles of evidentiary process (principle of presumption of innocence, principle of investigation, principle of direct proceedings, principle of oral proceedings, principle of discretionary evaluation of evidence, principle of adversarial proceedings).

The following principles are rather independent:

- principle of establishment of facts,
- principle of public proceedings.

In accordance with their purpose, these principles are applied differently at different stages of a criminal proceeding although their effect is particularly significant in court proceedings and during trial, which is a part of court proceedings.

The principle of proportionality is expressed in Article 13(4) of the Constitution as a general rule of interpretation with respect to restricting fundamental rights and freedoms. Sometimes, it is referred to as the principle of restraint. Under this principle, the competent authorities must ensure that their interferences with the fundamental rights and freedoms of individuals are as limited as possible. With respect to an accused person, this principle is a specific application of the principles of due process and of the presumption of innocence. However, it has also a more general scope because it is not limited to the accused. In fact, it pertains to anyone affected by criminal proceedings in any way (e.g. witnesses, experts, injured parties). Therefore, this principle is governed not only by Section 2(2) of the Code of Criminal Procedure providing that interferences with fundamental rights and freedoms of individuals in cases provided by the law shall not go beyond what is necessary for achieving the objective of criminal procedure, while respecting dignity of individuals and their privacy. It is implied also in certain institutions interfering with rights and legitimate interests of individuals (e.g. interception and recording of telecommunication services, use of operational investigation instruments).

The requirement of absolute protection of rights and freedoms guaranteed by the Constitution and by international treaties on human rights and fundamental freedoms is guaranteed also, with respect to the accused, by Section 2(1) of the Code of Criminal Procedure providing that no one shall be prosecuted as an accused save for reasons provided by law and in the way prescribed by the Code of Criminal Procedure.

The principle of proportionality applies to all judicial authorities and authorities acting in criminal proceedings. In Title III of the Code of Criminal Procedure, it is specified with respect to performance of acts of criminal procedure. Consequently, when performing acts of criminal procedure, the court, authorities acting in criminal proceedings and persons entitled to perform acts of criminal procedure must treat the persons involved in the act in the way required by the objective of criminal proceedings; always respect their dignity and their rights and freedoms guaranteed by the Constitution. The law specifies when and under what circumstances specific acts are to be performed, because, in practice, acts in criminal proceedings were sometimes performed at an inappropriate time or in an inappropriate place, which was contrary to the objective of criminal proceedings and to respecting the dignity

and privacy of the persons concerned.

Obviously, the principle of proportionality is relevant also with respect to the use of operational investigation instruments and technical instruments. It is given effect in two ways:

- a) a requirement that the instruments referred to above be used only in case of precisely defined criminal offences and
- b) only if a judicial authority or an authority acting in criminal proceedings determines that there is a reasonable basis for assuming that facts relevant to the criminal proceeding will be detected.

Criminal procedure must respect the rights guaranteed by the Constitution. However, with respect to the accused, it is very difficult, while preserving his personal integrity, to ascertain true facts pursuant to Section 2(5) of the Code of Criminal Procedure which provides that authorities acting in criminal proceedings proceed so as to ascertain the facts beyond a reasonable doubt to the extent necessary for their decision. If the right to personal integrity of the accused were to be given absolute preference, criminal prosecution could not be commenced at all. Therefore, the principle of proportionality applies in this case as a corrective instrument allowing criminal prosecution and performance of security acts (especially custody). In principle, the more serious the interference with personal integrity, the more important it is for courts and authorities acting in criminal proceedings to duly justify such interference. For instance, when deciding on custody, the principle of proportionality is taken into account in making the decision on the grounds for custody under Section 79 of the Code of Criminal Procedure. Moreover, there are guarantees and restrictions making custody optional and exceptional (restrictions concerning remand in custody of a juvenile under Section 339, substitution of custody with bail, recognizance or supervision under Section 80, bond under Section 81). If custody appears to be too severe a security act in respect of the sentence expected, it may not be used. Accordingly, the accused should not be remanded in custody unless a prison sentence is likely to be imposed in his case

The principle of due process is the constitutional principle listed as the first principle in the Code of Criminal Procedure. Pursuant to Section 2(1) of the Code of Criminal Procedure “no one shall be prosecuted as an accused save for reasons provided by the law and in a manner prescribed by the present Code.” Section 2(1) is based on Article 17(2) of the Constitution providing that “no one shall be prosecuted or deprived of liberty save for reasons and by means set forth in the law”, which is a constitutional expression of the principle of due process, laying down an exception to the constitutional right to inviolability of a person. This principle complements the basic procedural principle “*nullum crimen sine lege*” (no criminal offence without a law) and is sometimes referred to as the “principle of prosecution only for statutory reasons”.

Criminal prosecution may be initiated only if there is a sufficiently substantiated basis for concluding that a criminal offence was committed and other statutory conditions allowing criminal proceedings to be initiated are satisfied, as well. The means of criminal prosecution are regulated by the Code of Criminal Procedure, which ensures a full and objective clarification of all facts necessary for deciding a

criminal case. Therefore, strict adherence to the Code of Criminal Procedure is an important prerequisite of correct establishment of facts beyond reasonable doubt.

By allowing criminal prosecution only in cases where a statutory basis exists, the principle of due process excludes unjustified prosecution of individuals and guarantees that interferences with the rights of persons prosecuted on justified grounds are not disproportionate.

As far as the interrelation between the principles of due process and of correct establishment of facts beyond reasonable doubt is concerned, it must be emphasized that the establishment of facts may never supersede the principle of due process, because it would be a violation of the law for the sake of establishing a relevant fact.

Therefore, criminal proceedings must be conducted in accordance with the law. The competent authorities must act in accordance with the law, as well. Thus, establishment of facts in criminal proceedings cannot be an absolute objective, because criminal proceedings are based on the principle of the rule of law. This relationship is expressed also in certain provisions of the Code of Criminal Procedure. For instance, Section 119(4) provides that "evidence obtained by illegal use of force or by a threat of such force shall not be used in proceedings unless it is used as evidence against a person having used such force or threat of force." Consequently, if apart from the evidence (e.g. a confession) obtained by force, there was no other conclusive evidence proving the indicted person's guilt in the case at hand, even if such evidence established the truth, it could not be used and the indicted would have to be acquitted of the charges because:

- it would not have been proven that the act for which the indicted was prosecuted had occurred, or
- it would not have been proven that the act had been committed by the indicted.

Substantial defects of evidence (e.g. a home search without a warrant issued by the presiding judge or, during preparatory proceedings, by a judge for preparatory proceedings, interception and recording of telecommunication services without the authorization of the competent court) result, owing to the principle of due process, in the evidence being, because of a substantial procedural defect, absolutely void. Such evidence cannot be used in the proceedings at all. The Code of Criminal Procedure contains detailed rules relative to procedures to be followed by competent authorities and requires them to observe these rules in order to achieve the objective of criminal procedure.

The Code of Criminal Procedure contains guarantees requiring that this principle be put into practice, e.g. supervision by prosecutor of preparatory proceedings, preliminary hearing of the indictment and appellate proceedings.

The principle of fair trial is enshrined in Section 2(7) of the Code of Criminal Procedure providing that everyone shall have the right to a fair hearing of his criminal case within a reasonable time by an independent and impartial court in his presence and to express his opinion on the evidence introduced.

In the Slovak Code of Criminal Procedure, the principle of equality of arms is transformed into the principle of equality of parties. It is based on Article 47(3) of the

Constitution and expressed in Section 2(14) of the Code of Criminal Procedure providing that parties are equal in the proceedings. This principle has two meanings.

First, all indicted persons must be tried in accordance with the Code of Criminal Procedure, by courts having the same territorial and subject-matter jurisdiction, without any discrimination or privilege. Nonetheless, the principle of equality does not preclude special courts provided that indicted persons are guaranteed the same rights before such courts. Today, the problem of inequality before a court *per se* is no longer of primary importance; the problem is ensuring equality of all individuals despite unequal economic and social situations. In particular, good legal assistance should be provided to all indicted, not only to those who are wealthy.

Second, with respect to the right to a fair trial, equality means equality of parties to proceedings in different and opposite procedural positions. However, this equality is not absolute or arithmetical. Equality is a relative concept, mainly because the difference in procedural and factual position of parties to criminal proceedings resulting from different functions and facilities cannot be eliminated. The position of the prosecutor, backed by the state authorities and the coercive power of the State, compared with the position of the accused, appears to be unequal. In effect, absolute equality between the parties during the criminal proceedings is not, in practice, feasible. This unequal position is, to a certain extent, compensated by additional guarantees for the accused, who is the weaker party. In particular, it is *favor defensionis* (favour of defence), which is reflected, for instance, in the burden of proof lying with the prosecution and in the rights of the accused listed in Section 34 of the Code of Criminal Procedure. The rights of the accused must be, in principle, observed also during preparatory proceedings. Consequently, the defence must be allowed to procure, secure, propose and submit defence evidence already during preparatory proceedings. During court proceedings, equality of parties is ensured, in particular, by the rule that if the prosecutor is entitled to assist during a specific act, the accused and his counsel are entitled to assist during this act also and to intervene on this occasion. However, if, at a certain stage of criminal proceedings, neither the accused nor the prosecutor is entitled to be present (e.g. at a closed hearing), the principle of equality of parties is not violated.

The presence of the accused during court proceedings is derived from the principle of adversarial proceedings and is regarded as a fundamental element of a fair trial. Unlike the common-law system, where an *in absentia* conviction is, in principle, not possible and exceptions to this rule are very limited, in the continental system, a case may be heard in the absence of the accused provided that certain conditions are met. Consequently, under certain conditions, the Slovak Code of Criminal Procedure allows a court hearing in the absence of the accused in the following cases:

- a) if the accused has been duly informed of the proceedings, but has not presented himself without proffering an excuse,
- b) if the Code of Criminal Procedure allows a hearing in the absence of the accused against his will (e.g. certain appellate rulings),
- c) *in contumaciam* proceedings (proceedings against an absconder under Section 358).

The right to be present in court proceedings does not mean only physical pres-

ence of the accused, but also his right to watch the proceedings and to take an active part in the proceedings, within the limits defined by the Code of Criminal Procedure, thereby exerting a real influence on such criminal proceedings.

The right to a fair trial includes also the right of the accused to justification of judicial decisions. He is entitled to present his motions, arguments and objections and must be given a proper response indicating the way the court has dealt with them. The extent of this duty may, however, vary with the nature of the decisions and the circumstances of the case. Justification of decisions is also a prerequisite for the accused being able to make a request for relief available to him in an effective manner, including the right to appeal a judgment. The requirement of justification of judicial decisions follows from the requirement of public control of the administration of justice, because independent and impartial decisions of courts cannot be guaranteed otherwise.

Section 2(7) of the Code of Criminal Procedure enshrines also the right to a fair trial by an independent and impartial court within a *reasonable time*. The requirement of a trial within a reasonable time is stressed in order to prevent excessively long criminal proceedings. However, this principle cannot be applied without establishing the facts beyond reasonable doubt or contrary to the principle of official proceedings. The principle of appropriate length of proceedings pertains both to preparatory proceedings and court proceedings. It is specified by specific time limits binding the authorities concerned [e.g. Section 203(2) provides that summary investigation is limited to two months following the accusation, Section 209(2) provides the duration for investigation of crimes], as well as by general guidelines contained in the Code of Criminal Procedure [e.g. Section 253(3) provides that the presiding judge must make sure that the trial is not delayed by speeches and statements irrelevant to the case before the court and that the trial focuses on an effective clarification of the case to the extent necessary for adopting a just decision]. The principles of criminal procedure in the Code of Criminal Procedure emphasize also an expeditious hearing of custody cases, which is a specific application of the right to a speedy trial. Cases where the accused is held in custody must be given preferential and prompt treatment by the authorities acting in criminal proceedings and by the courts. The requirement of expeditious treatment of criminal proceedings is emphasized not only in the Code of Criminal Procedure, but also in international instruments. For instance, Article 5(3) of the European Convention on Human Rights and Fundamental Freedoms provides that everyone arrested or detained shall be entitled to trial within a reasonable time or to release pending trial.

The question of proportionality of length of proceedings depends, for the reasons mentioned above, on judicial discretion taking into account the case at hand. The criteria determining the appropriate length of proceedings must be assessed in light of the circumstances of the particular case and with respect to criteria determining the length of proceedings (complexity and seriousness of a criminal case, proceedings of the accused, of authorities acting in criminal proceedings and of courts).

Therefore, it may be concluded that the principle of fair trial overlaps with several other principles of criminal proceedings and applies, in principle, to all aspects

of the criminal process.

The principle of double jeopardy is formulated in Article 14(7) of the International Covenant on Civil and Political Rights and in Article 4 of the Supplementing Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms which provides that “no one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there was a fundamental defect in the previous proceedings which could have had an impact on the outcome of the case.” Based on these international instruments, Article 50(5) of the Constitution provides that no one shall be subject to criminal prosecution for an offence for which he has already been definitively convicted or acquitted. This principle does not preclude application of extraordinary requests for relief in accordance with the law. This provision is set forth in Section 2(8) of the Code of Criminal Procedure.

According to Slovak theory and practice of criminal law, the term “criminal offence” or “offence” corresponds to an act consisting of external manifestations of will, which are the cause of the criminal offence in question. One act may satisfy the characteristics of one, but also of a number of concurring criminal offences. According to Slovak theory and practice, acts are identical if the action or result, which is the essence of an act, is at least partly identical. The principle of double jeopardy is a consequence of a final judgment (cf. Sections 183 and 184). A judgment (or order) is final if:

- a) no appeal (or complaint) is permitted by the law,
- b) an appeal (or complaint) is permitted by the law, but
 1. it has not been filed within the statutory time limit,
 2. the persons entitled to file an appeal (or complaint) have expressly waived their right to file it or have expressly withdrawn it, or
 3. the appeal (or complaint) filed was rejected.

The rule that no one shall be subject to criminal prosecution again for the same act is set forth in Section 9(1)(e) of the Code of Criminal Procedure. It does not pertain only to a final judgment of conviction or acquittal, but also to final orders of termination of criminal prosecution, conditional termination of criminal prosecution, provided that the accused has passed probation, orders approving a settlement and terminating criminal prosecution, unless these decisions are annulled in specific proceedings. In all the cases mentioned above, where an obstacle of *res judicata* (“matter judged”) exists, criminal prosecution of the accused for the same act may continue only if the final decision in question is annulled in specific proceedings. Specific proceedings include proceedings concerning extraordinary requests for relief, i.e. annulment of final decisions during preparatory proceedings (Sections 363 to 367), higher appeal (Sections 368 to 392) and reopening of proceedings (Sections 393 to 405). Specific proceedings include also proceedings under special legislation (e.g. Act No. 119/1990 Coll. on Judicial Rehabilitation, Act No. 38/1993 Coll. on Organ-

ization of the Constitutional Court of the Slovak Republic, on Procedure Before this Court and on Position of Judges).

The principle of cooperation between authorities acting in criminal proceedings and the courts and citizen interest associations is expressed generally in Section 2(13) of the Code of Criminal Procedure. In Section 4, this principle is extended to cooperation with trustworthy persons. Unlike other principles, this principle cannot be found in Constitutional Acts. However, this does not mean that it is a non-standard principle. To the contrary, it follows from democratic principles constituting the basis of criminal procedure.

Citizen interest associations include citizen associations, trade unions, groups of colleagues, churches and religious communities recognized by the State, but not political parties or movements. A trustworthy person is a person capable of exerting a positive influence on the behaviour of the accused. Trustworthiness is assessed by the court and, during preparatory proceedings, by the prosecutor.

The essence of this principle consists in authorities acting in criminal proceedings and courts cooperating with citizen interest associations and trustworthy persons. This cooperation should advance the educational purpose of criminal proceedings and impede and prevent criminal activity. This cooperation has proven to be useful in practice especially in cases of individuals abusing alcohol, narcotic drugs and psychotropic substances. Therefore, the focus of this cooperation is in the area of prevention, in educational influence on the accused and the convicted and in establishing conditions for achieving the convict's reform.

This objective is furthered by a number of procedural institutions:

- citizen interest associations may offer a guarantee of the reform of the accused if there is an assumption that the accused will be reformed by their influence. In this case, the guarantee application must state the specific ways of influencing the accused. If the court receives such an application, it may hear the case at the trial in the presence of representatives of the citizen interest association and, if the court accepts the guarantee, it takes it into consideration in the sentencing. The court may, in particular, if allowed by the Criminal Code, grant a conditional suspension of execution of sentence or impose a sentence not connected with imprisonment or refrain from imposing a sentence;
- citizen interest associations or trustworthy persons may offer a guarantee for achieving the convict's reform and apply for his conditional release from prison or for a conditional waiver of execution of the remainder of a sentence of prohibition of a certain activity or of a prohibition of residence. The guarantee application must state specific ways of influencing the convict. In order to obtain information necessary for making such application, citizen interest associations and trustworthy persons may inquire about the state of the convict's reform;
- citizen interest associations or trustworthy persons may propose that custody of an accused be replaced with their guarantee and make requests for clemency or expungement of conviction in favour of a convict.

Citizen interest associations or trustworthy persons may make petitions on their

own motion or at the request of authorities acting in criminal proceedings or courts.

A representative of a citizen interest association is entitled to be present at the trial in a district court or in a regional court and to communicate the opinion of the association concerning the criminal case before the court, the personality of the perpetrator and the possibilities of his reform to the court.

Citizen interest associations or trustworthy persons having assumed a guarantee for the reform of the accused or of the convict have a duty to exert influence on the person in question.

In recent years, citizen interest associations have participated in criminal proceedings only rarely. Under the totalitarian regime, experience with this institution was tainted by ideological terminology and formalism of application. However, experience in countries with a long democratic tradition shows that various forms of involvement of citizen interest associations in resolving criminal cases has positive results. Therefore, cooperation with trustworthy persons was introduced in Slovak law. Foreign experience shows also that trustworthy persons can be used in probationary services.

The principle of adversarial proceedings applies, in particular, to court proceedings. It is regulated by Section 2(18) of the Code of Criminal Procedure providing that the evidentiary process is directed by the court, usually leaving the examination of the indicted, witnesses, the injured party and experts to the parties, the first party to proceed being the one having proposed or procured the evidence being introduced. In accordance with the principle of adversarial proceedings, the party not having proposed the evidence has the right of cross-examination, by which it can execute the evidence and verify its credibility. The court is entitled to intervene in the evidentiary process during the trial. It can pose questions if it deems it necessary for adopting a just decision in accordance with the law. This type of examination, i.e. examination by the parties, the court, the injured party and the involved party is called cross-examination [see Section 272(1)]. During examination, one of the parties may object to examination by another party. A party may, in particular, raise objections as to the admissibility of a question posed by one or more of the examining persons, to the way of posing a question and its relevance to the case before the court. If an objection is raised during the trial, the presiding judge may decide to sustain it, in which case the examined person does not have to answer the question and the question is revoked. If the objection concerns the presiding judge, the entire panel of judges decides. Thus, the adversarial procedure does not apply only to issues concerning the merits, but also to the procedural issues to be resolved in the course of the criminal proceedings.

Elements of adversarial procedure are present also in preparatory proceedings. They are concerned with executing evidence in accordance with the law and with the effective exercise of rights of the parties concerning the evidentiary process at this stage of proceedings. In this way, formal repetition of evidence at a later stage of the proceedings is avoided. For instance, instead of examining a witness at the trial, deposition minutes or an essential part thereof may be read out, provided that the prosecutor and the accused agree and the court does not deem a personal examination to be necessary. Such examination is performed only during preparatory

proceedings. The parties to proceedings will agree to such procedure only if the examination was performed in accordance with the law and they are satisfied that examination in court is not necessary. The prerequisites of adversarial procedure are contained in several provisions of the Code of Criminal Procedure [e.g. Section 2(14) guarantees equality of parties in court proceedings]. Therefore, for this principle to be fully implemented during court proceedings, many conditions must be satisfied.

Adversarial procedure guarantees that from the very commencement of proceedings against him, the accused is entitled to comment on the charges and corresponding evidence and to remain silent. He can put forward facts, propose, submit and procure evidence for his defence, make motions, applications and requests for relief. In court proceedings, he is entitled to examine witnesses proposed by him and to ask them questions. From the commencement of proceedings in the court of first instance, he may put forward any evidence that is known to him and that he proposes to be executed.

Accordingly, adversarial procedure does not apply only to the evidentiary process or examination of witnesses, but to all aspects of the criminal process and to all procedural acts. Adversarial procedure with respect to argumentation applies to the entire criminal proceedings, but it is primarily concerned with the trial (the right to make motions and to comment on the motions of the other party, the right to contest the legitimacy of acts directed against the accused, the right to be heard as to the grounds in support of the defence, the right to a final speech and to a final word, etc.). Adversarial procedure with respect to the evidentiary process means not only the right to submit one's own evidence and to make motions concerning the evidentiary process, but also the right to discuss and challenge evidence and arguments of the other party. The principle of adversarial proceedings necessarily implies also that if the prosecutor is entitled to be present at a specific court hearing, the accused is entitled to be present, as well.

The principle of observance of the right to defence is enshrined in Article 50(3) of the Constitution. In the Code of Criminal Procedure, this principle is set forth in Section 2(9) which provides that any person against whom criminal proceedings are brought shall have the right to defence. Consequently, this right applies not only to an accused, an indicted and a convict but also to any person suspected of a criminal offence. Any such person is entitled to be given the time and means to prepare his defence and to defend himself in person or through his counsel. The principle of observance of the right to defence with respect to a person against whom criminal proceedings are brought reflects the requirement that criminal proceedings must guarantee full protection of legitimate interests and rights of any such person.

The purposes of the principles of observance of the right to defence and of establishment of facts beyond reasonable doubt are mutually conditional and closely intertwined. The principle of observance of the right to defence furthers the objective pursued by the principle of establishment of facts beyond reasonable doubt, because it precludes action biased unilaterally against the person against whom criminal proceedings have been brought and allows the court to arrive at a fair decision. The principle of observance of the right to defence advances the establishment of facts beyond reasonable doubt to the benefit of the accused (suspect).

Defence in person is characterized by unilateral actions of the accused (suspect) in his favour. However, unlike defence by a counsel, it is a right, not a duty. Pursuant to Section 44(1) of the Code of Criminal Procedure, counsel is *obligated* to provide necessary legal assistance to the accused; in order to defend the accused's interests. Defence counsel must make appropriate use of the means and forms of defence, in particular ensure that circumstances exonerating the accused or mitigating his guilt are clarified in the proceedings in a due and timely fashion. In contrast, from the commencement of proceedings against him, the accused is *entitled* to comment on the charges and corresponding evidence, but he is entitled also to remain silent. From the commencement of proceedings in the court of first instance, he *may* put forward any evidence that is known to him and that he proposes to be executed. Consequently, the right to defence of the person against whom the criminal proceedings are brought constitutes the entirety of his rights of defence against the accusation made by the authorities acting in such criminal proceedings. The right to defence applies to the entire criminal proceedings and includes:

- a) the right of defence in person, e.g. the right of the accused to defend himself during criminal proceedings in person (material defence);
- b) the right of the accused to demand that the authorities acting in criminal proceedings clarify, with equal diligence, not only the facts against him, but also facts in his favour [see Sections 2(10) and 201(4)];
- c) the right to choose a counsel and to confer with him (formal defence). The Code of Criminal Procedure distinguishes mandatory, chosen, appointed and surrogate defence. Mandatory defence is compulsory in the cases enumerated in Sections 37 and 38 of the Code of Criminal Procedure (e.g. if the accused is in custody, serving a prison sentence or monitored in a medical facility; if he is deprived of legal capacity or his legal capacity is limited; in case of proceedings concerning a particularly serious crime, proceedings against a juvenile or an absconder). The accused may choose a counsel at any time during criminal proceedings and, in the same case, he can choose multiple counsels [see Section 39(4)]. If the accused fails to choose a counsel himself, one will be appointed for him. A public counsel may be appointed also in cases where defence is not mandatory, if the accused fails to choose a counsel himself and requests that a counsel be appointed for him, provided that he does not have sufficient funds to cover the defence costs, which must be proven when the court rules on costs of criminal proceedings. A surrogate counsel may be appointed if there is a justified concern that a trial or a public hearing may be frustrated by the absence of the chosen counsel or of the appointed counsel. In this way, absence of counsel (e.g. due to a long-term illness) liable to delay criminal proceedings is avoided;
- d) the right of the accused and of his counsel to take part in procedural acts [see Sections 34(1) and 213(1) and (2)].

The principle of observance of the right to defence is not only a prerequisite of the principle of establishment of facts beyond reasonable doubt, but also a prerequisite of achieving the objective of criminal proceedings, which is a fair decision. Therefore, a violation of the principles of the right to defence is sanctioned by in-

validating procedural acts suffering from such a defect [see Sections 244(1)(h) and 321(1)(a)].

Consequently, the right to defence is implemented by many specific institutions regulated in the Code of Criminal Procedure pursuing the objectives of criminal proceedings, while respecting the rights and legitimate interests of the person against whom criminal proceedings have been brought.

The essence of *the principle of official proceedings* is to leave no criminal offence unpunished and to observe uniform rules of prosecution as provided by the law. The duty of authorities acting in criminal proceedings and courts to act by virtue of office (*ex officio*) is set forth in Section 2(6) of the Code of Criminal Procedure. Other provisions of the Code of Criminal Procedure specify this principle in the form of specific obligations of the authorities acting in criminal proceedings and the courts according to the different stages of criminal proceedings (e.g. in proceedings prior to court proceedings, police officers carry out investigation or summary investigation in order to ascertain, as expeditiously as possible, the facts for clarification of the act to the extent necessary for assessing the case and detecting the perpetrator of the criminal offence; during court proceedings, once an indictment or an application for a guilt and sentence agreement has been filed, only the court rules on issues connected with further proceedings and is obligated, without waiting for further motions, to adopt any decisions and measures stipulated in the Code of Criminal Procedure necessary for closing the case and for enforcing its decision. Before criminal prosecution commences, the Police Corps must, by virtue of its office, detect criminal offences and ascertain the perpetrators. Police officers are obligated to perform a police act if a criminal offence is being committed or if there is a justified suspicion of a criminal offence being committed (see Act No. 171/1993 Coll. on the Police Corps).

It is not contrary to the principle of official proceedings that certain stages of criminal proceedings or certain acts may be commenced only on application or request by another state authority, since these internal boundaries result from the division of powers between state authorities. In particular, this is the case when the court decides, during preparatory proceedings, on certain interferences with fundamental rights and freedoms upon application by the prosecutor [e.g. interception and recording of telecommunication services under Section 115(2); a criminal case may not be heard by a court unless the prosecutor lodges an indictment or a motion for imposing a sentence (accusatory principle); the Ministry of Justice must apply to the competent court for recognition of a foreign decision (Section 518)].

1. If statutory prerequisites for performing a certain act are met, the authority acting in criminal proceedings or the court must perform it without waiting for a motion by a party. However, this does not mean that the Code of Criminal Procedure does not allow for initiative of other entities, individuals, state authorities and other authorities (e.g. when they report a criminal offence). Nevertheless, if such external initiative is absent, the competent authorities may not remain passive. In general, the public interest in criminal sanctioning prevails over private interests of individuals. However, exceptions to the principle of official proceedings are provided by the law with respect

to criminal prosecution for criminal offences listed in Section 211(1) of the Code of Criminal Procedure, which may be commenced and, if commenced, continued only with the consent of the injured party. The principle of official proceedings does not apply to proceedings concerning requests for relief which are commenced on the basis of a request for relief being filed. Similarly, the court will rule on a claim of an injured party only if the injured person files a claim. Decisions on expenses incurred by witnesses, costs of expert evidence, remuneration of counsels and similar claims must also be based on applications made by the entitled person. An application is required also in the case of decisions on:

- expungement of conviction (Section 469),
- suspension of enforcement of a pecuniary penalty [Section 430(1)(a)],
- any doubts concerning the enforcement of forfeiture of property [Section 424(1)].
- waiver of enforcement of the remainder of home detention [Section 435(3)].

There are also cases where proceedings may be commenced either on application by an entitled person or without such an application (e.g. proceedings concerning a conditional waiver of enforcement of the remainder of a sentence of prohibition of certain activities pursuant to Part IV of the Code of Criminal Procedure). However, the *ex officio* procedure is, in such cases, limited and the court will decide primarily upon application.

The principle of legality and the principle of investigation with respect to evidence are derived from the principle of official proceedings. Consequently, the fundamental difference between civil and criminal proceedings is that civil proceedings are rarely commenced by virtue of office but primarily upon application of a party, which determines further proceedings.

The principle of legality means that no authority may grant authorization or give instructions for prosecution of criminal offences or specific perpetrators. Consequently, prosecutors must prosecute all criminal offences, provided that statutory conditions are met. Statutory conditions of commencement of criminal proceedings are not met e.g. where a person is exempted from the jurisdiction of authorities acting in criminal proceedings and courts, where criminal prosecution is impermissible, or where the injured party has not given his consent to criminal prosecution as required by Section 211 of the Code of Criminal Procedure.

The opposite of the principle of legality is the *principle of opportunity* (expedience), which means that the prosecutor is allowed not to prosecute a perpetrator of a criminal offence, even though statutory conditions are met if criminal proceedings do not appear to be expedient in the particular case. Provided that requisite conditions are met, the following decisions may be adopted:

- a) criminal prosecution may be terminated for reasons enumerated in Section 215(2) and (3),
- b) criminal prosecution may be terminated conditionally under Section 216,
- c) criminal prosecution of a collaborating accused may be terminated conditionally under Section 218,
- d) settlement may be approved under Section 220.

A specific case is an order of suspension of accusation (Section 205), because it is a temporary decision including the opportunity element.

Elements of opportunity have been reinforced in recent years in criminal proceedings not only in Slovakia, but also in other European countries. Such cases are called "derogations" in criminal proceedings. They are intended to accelerate and to simplify criminal proceedings, to favour the injured party and to reform the accused. With a view to making criminal proceedings shorter and more effective, the guilt and sentence agreement was introduced in the Slovak Code of Criminal Procedure (Section 232), which is similar to plea bargaining in Anglo-Saxon criminal procedure. When the prosecutor cannot adopt any of the decisions listed above, he may try to conclude such an agreement, mainly because of the simplified court proceedings relative to such agreements (Section 331). For the accused, such an agreement is a benefit, both because he knows the sentence to be imposed and because such a sentence should be less severe than the sentence that could be imposed otherwise, since the accused collaborated with the authorities acting in criminal proceedings and the court and, as a result, the higher costs of ordinary court proceedings were saved.

The accusatory principle guarantees legality and fairness of criminal proceedings, because it requires that, first, the prosecutor, having examined the results of the preparatory proceedings, under his own authority, decides whether the action of the accused constitutes a criminal offence and, if he concludes that it constitutes a criminal offence, he lodges an indictment that will be examined by the court. Therefore, the accused runs no risk of the court being biased and not objective, because the court accepts the indicted as a party to proceedings who has the right to defend himself in an active and, in principle, equal manner (as well as by means of his counsel) at the trial, and, in this way, to contribute to a fair decision. For these reasons, the accusatory principle is an important aspect of independent and impartial decision-making of courts.

Accordingly, court proceedings may not commence unless the prosecutor lodges an application or an indictment. This reflects the principle *nemo iudex sine actore* (no judge without a plaintiff). Since the indictment is independent of the court, the court may not commence proceedings on its own motion and no one except the prosecutor may file an indictment which is necessary for a case to be heard in a court. In this respect, the prosecutor is the master of the dispute (*dominus litis*) because the Slovak Code of Criminal Procedure does not allow private actions in criminal matters.

The accusatory principle contained in the Code of Criminal Procedure covers these aspects of the proceedings:

- a) the court proceedings may be commenced only if the prosecutor lodges an application for a guilt and sentence agreement or an indictment. An application for a guilt and sentence agreement or an indictment may be filed against the accused only for the act he has been accused of. In this respect, it must be noted that the court is not bound by the legal qualification of the act as stated in the indictment. Thus, it may, if necessary, modify the legal qualification of the act of the accused. For instance, it may qualify the act

- qualified by the original indictment as a crime of murder pursuant to Section 145(1) of the Criminal Code as a crime of killing pursuant to Section 147(1) of the Criminal Code;
- b) the prosecutor may withdraw the indictment prior to commencement of trial. The application for a guilt and sentence agreement may be withdrawn prior to commencement of the public hearing. In such cases, the case is remanded for preparatory proceedings. The prosecutor's right to dispose of the indictment is limited, since he does not have the right to add to the indictment during the trial. If it is determined at the trial that the accused has committed another act constituting a criminal offence, the prosecutor may make a motion to remand the case for joint proceedings and the court may remand the case to the prosecutor for further investigation;
 - c) certain court decisions issued during preparatory proceedings can be issued only on the basis of an application made by the prosecutor, e.g. a motion to remand the accused in custody pursuant to Section 72 of the Code of Criminal Procedure;
 - d) the accusatory principle affects the nature of court proceedings, in particular the evidentiary process at the trial, where the parties to proceedings play an active part and intervene throughout the evidentiary process. For this reason, the parties to proceedings not only propose evidence, but also execute most of the evidence at the trial themselves;
 - e) the prosecutor must be present at the trial. He must be present at a public hearing only if the public hearing is based on his application. However, the prosecutor will always participate in a public hearing concerning an appeal or an extraordinary request for relief.

The prosecutor and the indicted have an equal procedural position in court. Both parties have the right to cross-examine persons examined by the other party and to object to how examination is conducted by the other party. The court directs the trial, making sure that criminal proceedings are held in accordance with the law. In principle, if the parties are sufficiently active, the court intervenes in the evidentiary process only to the extent necessary to reach a fair decision.

The principle of presumption is enshrined in many international instruments, e.g. in Article 11(1) of the Universal Declaration of Human Rights and in Article 6(2) of the European Convention on Human Rights and Fundamental Freedoms. It is expressed also in Article 50(2) of the Constitution of the Slovak Republic.

This principle must be defined with reference to the principle of establishment of facts beyond reasonable doubt requiring the authorities acting in criminal proceedings to ascertain facts both against the accused and in his favour. It reflects the requirement that the authorities acting in criminal proceedings must, fully and without doubt, prove the guilt of the accused and a judgment of conviction may be rendered only if all doubts concerning the guilt of the indicted have been resolved. Therefore, the principle of presumption of innocence is important for establishing the facts. From the commencement of criminal prosecution until the final judgment, the indicted is deemed to be innocent.

The subjective conviction of the authorities acting in criminal proceedings of

the guilt of the accused, which is reflected by issuing an order of accusation (Section 206), is not contrary to the principle of presumption of innocence. In effect, for the accused to be convicted, the authorities acting in the criminal proceedings must prove the subjective conviction of guilt. The Code of Criminal Procedure allows the authorities acting in criminal proceedings to interfere with the fundamental rights and freedoms of the accused in this case, but only within the limits and in the manner provided by law. The principle of presumption of innocence is an important guarantee of the civil rights of the accused. It reflects the principle that only courts may decide on guilt and sentence with respect to a criminal offence [Article 50(1) of the Constitution]. Therefore, a final judgment of conviction rebuts the presumption of innocence and a final judgment of acquittal or a final order of termination of criminal prosecution [for reasons stipulated in Section 215(1) of the Code of Criminal Procedure] confirms the presumption of innocence.

The following procedural rules are derived from the presumption of innocence:

- a) the *in dubio pro reo* (when in doubt, in favour of the accused) rule, which means that if there are doubts as to the guilt of the accused that cannot not be eliminated on the basis of available evidence, the ruling must be in favour of the accused. This rule does not apply to legal doubts, because the *iura novit curia* (the court knows the law) principle applies. Thus, this principle applies only to issues of fact and does not cover issues of law, which must be decided by the authorities acting in criminal proceedings and the court having resolved all doubts;
- b) the rule that guilt not proven is equal to innocence proven. No distinction may be made between a person proven innocent and a person whose guilt has not been proven beyond reasonable doubt and who could only possibly be the offender. In case of justified doubts concerning the accused, criminal prosecution will be terminated [Section 215(1)(c) of the Code of Criminal Procedure], or, in the court proceedings, the indicted will be acquitted [Section 285(c) of the Code of Criminal Procedure]. It may be argued that the presumption of innocence limits the principle of discretionary evaluation of evidence. However, the presumption of innocence is not applied until evidence has been evaluated and only if facts are not established beyond reasonable doubt;
- c) the duty of the authorities acting in criminal proceedings to prove guilt. The guilt of the accused must be proven by the authorities acting in criminal proceedings. The accused is not obligated to prove any fact in his favour relevant for the decision. It is a right of the accused to prove his innocence. If the accused fails to cooperate with the authorities acting in criminal proceedings or to corroborate his statements with evidence, it does not automatically mean that his statements are false. Even if the accused invokes his right to remain silent, the conclusion that he is guilty is not justified. Nonetheless, it must be pointed out that, “[h]e who is silent certainly does not confess, but neither does he deny”.¹ Therefore, the authorities acting in criminal proceed-

¹ Paulus, Dig. L, 17, 142

ings must, by virtue of office, prove all facts relevant for the decision, including the facts in favour of the accused, whether the accused has proposed that such evidence be executed or not;

- d) the requirement of proportionality guaranteeing that, during criminal proceedings, only such restrictions as are necessary for attaining the objective of criminal proceedings will be imposed on the accused.

The principle of investigation specifies the principle of official proceedings with respect to the evidentiary process. It reflects the official duty of the authorities acting in criminal proceedings to collect and to execute evidence on their own motion in order to establish the facts beyond reasonable doubt, to the extent necessary for their decision. The authorities acting in criminal proceedings must detect all relevant facts, both those against the accused and those in his favour, even in the absence of motions by the parties and execute the evidence in both ways so that the court can arrive at a fair decision. The duty of the authorities acting in criminal proceedings to collect and to execute evidence both against the accused and in his favour from the commencement of preparatory proceedings is based also on procedural economy. In fact, only an indictment corroborated by conclusive evidence may be upheld by the court. If exonerating evidence is discovered at an early stage of the proceedings, unnecessary court proceedings can be avoided. The court is entitled also to execute evidence not proposed by the parties. The court will do so in particular in cases where it is satisfied that the evidence will be relevant for the decision on the merits.

The parties are entitled to procure evidence, as well. The law takes this initiative into account both during the proceedings prior to court proceedings and during the court proceedings. In this way, the objectivity of the evidentiary process is ensured, because facts both against the accused and in his favour must be proven. The State does not have an interest in a criminal prosecution at all costs, but only in a prosecution of a perpetrator according to the rules of fair trial. In this respect, it must be noted that during the criminal proceedings the accused is in a weaker position than the authorities acting in the criminal proceeding, in particular with respect to the facilities of seeking and producing evidence. Therefore, the legislator has introduced many procedural institutions intended to reinforce the position of the accused and to guarantee his procedural rights. These institutions include the duty to give the accused an opportunity to comment on the charges in detail, to describe the facts contained in the charges, to put forward facts mitigating or rebutting the charges and to put forward relevant evidence [Section 122(2)]. Once the investigation or the summary investigation is closed, the accused and his counsel must be advised of their right to study the file and to make motions to supplement the investigation or the summary investigation [Section 208(1)]. The parties may present evidence, e.g. expert opinions [Section 119(3)]. The injured party and the involved party must be advised also of their rights, including the right to propose evidence [Sections 45(1)(2), 46(1) and 49]. In the indictment, the prosecutor must indicate the evidence that he proposes to be executed at the trial and a list of material evidence must be submitted to the court along with the indictment [Section 235(d)]. The persons who must receive a copy of the indictment must receive also a notice requesting them to

communicate to the court and to the other parties, without any delay, their proposals for introducing evidence at the trial [Section 240(3) and (4)]. The weaker position of the accused is compensated for also by the fact that evidence in his favour must be executed by the authorities acting in criminal proceedings and by the court on their own motion. This reflects the interest of society in detecting criminal offences and in a fair sentence being imposed on the offender.

The prosecutor implements the principle of investigation in particular within his authority of supervision over the proceedings prior to preparatory proceedings and over the preparatory proceedings (Section 230). He is entitled also to perform the entire investigation or summary investigation or individual procedural acts. However, mostly he gives binding instructions to police authorities or remands the case to the police authorities to supplement the file.

Once an indictment or an application for a guilt and sentence agreement has been filed, the court must, without waiting for further motions, adopt all decisions and measures necessary for closing the case and enforcing the decision. In order to accelerate the criminal proceedings, the law requires that, where possible, deficiencies of evidence be eliminated by the court itself. Even at the end of a trial, if the court, on the basis of final speeches or during final deliberations, comes to the conclusion that a certain circumstance must be clarified, it orders that the evidentiary process be supplemented and the trial continues. In the appellate proceedings and in the proceedings concerning extraordinary requests for relief, the principle of investigation is applied only to the limited extent of the evidentiary process performed at these stages of criminal proceedings.

The principle of direct proceedings requires that the court decide only on the basis of the evidence before the court, ascertaining decisive facts from sources as close as possible to such facts, which are the most reliable sources for establishing facts. The principle of direct proceedings is defined in this sense in Section 2(19) of the Code of Criminal Procedure. An exception to this principle is when the indictment is filed after the proceedings concerning a guilt and sentence agreement. In such case, the court can base its decision on facts not heard and on evidence not introduced at the trial.

The principle of direct proceedings allows the court to acquaint itself with the evidence first hand. Furthermore, it allows the parties to present their views directly to the court and to eliminate any inconsistencies or doubts. Accordingly, the court can form its own direct and correct opinion regarding all of the relevant facts as well as a comprehensive view of the case before it. If the court is to evaluate the evidence introduced, the evidence must be seen directly by the court so that the court may understand the internal structure, relationships and links between the different pieces of evidence (e.g. in the case of testimony, it is not sufficient to listen to the witness, but also to watch his body language, facial expressions, obvious signs of nervousness; examination and cross-examination should determine the reason for such signs). Therefore, pursuant to Sections 278(2) and 297 of the Code of Criminal Procedure, the court may base its decision only on the facts heard at the trial or at the public hearing and on the written evidence introduced during the trial or at the public hearing, except for proceedings concerning a guilt and sentence agreement

or admission of guilt during proceedings concerning a guilt and sentence agreement. Accordingly, the court will not be satisfied with a deposition made during the preparatory proceedings unless the witness testifies in person before the court or such evidence is introduced in court in a different manner compatible with the law. The court must establish the essential facts from the source closest to such facts because the more remote the source from the fact to be established, the greater the risk of inaccuracy. Therefore, the court may not be satisfied with hearsay evidence if the original witness having perceived directly the facts to be proven may be examined. However, it must be objectively possible to satisfy this requirement. For instance, the principle of direct proceedings is not violated if minutes containing testimony of a witness who is dead or missing are read out or if a document that has been burnt is described.

An exception to the principle of direct proceedings is an admission of guilt in proceedings concerning a guilt and sentence agreement. In this case, the court takes into account also facts not heard at the trial [Section 232(4)].

The principle of direct proceedings requires that a trial, a public hearing and a closed hearing be held in the permanent presence of all members of the panel, and, if possible, without any interruptions, in order to ensure a single presentation of the proceedings held [Sections 247(5) and 255(2)]. Consequently, each judge must participate in the court proceedings from beginning to end (*rule of unchanged court composition*). The observance of this rule is guaranteed by a surrogate judge present throughout the trial in the event that an obstacle impeding the court proceedings with the same court composition occurs (Section 246).

The court should decide on the basis of its own impressions, in particular on the basis of evidence submitted to the court (*rule of uninterrupted court proceedings*). An exception to this rule is the possibility of adjourning trial. If the trial is resumed after adjournment, the presiding judge announces the essence of the previous trial unless the trial must be recommenced due to a substantial procedural defect or for another serious reason [see Sections 277(5) and 298].

An exception to the principle of direct proceedings is the execution of individual acts of criminal procedure via a request to a competent authority (Section 56). This exception is justified by requirements of economy and expeditious treatment of the proceedings.

The principle of oral proceedings means that the court decides on the basis of oral statements of the parties and the oral evidentiary process (*"quod non est in foro, non est in mundo"* – "what is not in the court is not in the world"). This principle is enshrined in the Constitution and also in Section 2(18) of the Code of Criminal Procedure. It means that the court proceedings are oral, the court is in oral contact with the parties and other persons involved in the proceedings, that it announces the judgment and other decisions adopted in the case. The modern concept of criminal procedure no longer follows the principle of written procedure applied in an inquisitorial procedure (*"quod non est in actis, non est in mundo"* – "what is not on file is not in the world"). The principle of oral proceedings is applied not only during the trial, but also during the public hearing (Section 295). It does not preclude the use of the written word in the proceedings, which is always necessary, or written communi-

cation between the court and the parties (e.g. an appeal or other request for relief made in writing). The principle of oral proceedings is not violated by documenting evidence in the form of minutes (Section 58).

There are certain exceptions to the rule that the indicted, witnesses, injured party and experts are examined by the parties [Section 2(18)]. The principle of oral proceedings is not violated by reading out minutes containing a deposition or an expert statement or a written expert opinion during the trial if

- a direct examination is not deemed necessary by the court, and
- the prosecutor and the indicted agree (moreover, an expert must be instructed pursuant to Section 144 of the Code of Criminal Procedure and there may be no doubt as to whether the expert opinion is correct and complete).

Under the conditions stipulated in Section 135(2) of the Code of Criminal Procedure, the minutes containing the testimony of a witness younger than 15 years of age may be read out in court in lieu of his being examined even if the conditions set forth in Section 263 of the Code of Criminal Procedure are not met.

A public hearing is governed by evidentiary rules similar to those applicable during the trial. The limitations of the evidentiary process in the form of reading out minutes containing a testimony or an expert statement apply only to appellate public hearings.

In closed hearings, evidence is introduced by reading out minutes or other documents or by presenting an exhibit, an audio recording, a video recording or an audio-video recording, which can also be played, if necessary. Thus, the principle of oral proceedings does not apply to closed hearings, which is justified by the nature of the issues heard and determined at closed hearings.

Another exception to the principle of oral proceedings is the possibility of issuing a sentencing order by a single judge instead of hearing the matter at a trial (Section 353). This exception is justified by the economy and speed of the procedure. However, the accused may file a protest, which results in the matter being heard at a trial.

The principle of discretionary evaluation of evidence is expressed in Section 2(12) of the Code of Criminal Procedure which provides that the authorities acting in criminal proceedings and the court evaluate evidence obtained in accordance with the law on the basis of their discretion based on a careful consideration of all the circumstances of the case, assessed both individually and as a whole, whether it was procured by the court, by the authorities acting in criminal proceedings or by one of the parties. The law does not provide any rules relative to the standard of proof for proving a certain fact, nor does it determine the probative value or force of individual pieces of evidence. The authorities acting in criminal proceedings and the court are not bound by statutory rules when evaluating evidence. Consequently, the evidence is evaluated at their discretion, which is not defined by the law.

The ancient procedural codes, especially the feudal ones, were based on a statutory evidentiary theory taking two forms: a) *positive* – the court was obliged to regard a certain fact as proven if the statutory standard of proof was satisfied (e.g. two unbiased witnesses made a testimony under oath, which resulted in the accused being convicted), b) *negative* – the court was not allowed, without a certain

standard of proof being satisfied, to regard a certain fact as proven.

In contrast to the statutory evidentiary theory, the fundamental basis for establishing facts beyond reasonable doubt is the discretionary evaluation of evidence. By virtue of this principle, the authorities acting in criminal proceedings and the courts must take into account the circumstances and specificities of the case before them. It precludes formal evaluation of evidence. The judge may not take into account any evidence obtained in a manner contrary to the law. It is irrelevant at which stage of the criminal proceedings such evidence is obtained, whether it is obtained by the authority acting in criminal proceedings or by the accused or by his counsel.

The authorities acting in criminal proceedings and the court evaluate the evidence throughout the evidentiary process, both with respect to its relevance and legality. As for assessment of relevance, irrelevant evidence, i.e. evidence not probative as to the facts to be established, is excluded. The remaining evidence must be assessed as to its legality. Any evidence obtained or introduced in violation of procedural rules is deemed null and void if the violation of procedural rules amounts to a substantial procedural defect (e.g. interception and recording of telecommunication services without authorization by a court, use of force during examination). Certain procedural defects cause the evidence to be only relatively void (e.g. wrong numbering of pages of minutes, missing signatures on a page of minutes), which may be remedied in subsequent proceedings.

The evaluation of credibility and veracity of the evidence is the synthetic part of the evaluation as such. Based on an analysis of the information relative to the source of the evidence, the relevance of facts resulting from the evidence, their interrelation with other facts and evidence, their conformity with the information derived from practice and science, an image of the facts to be proven is obtained.

The principle of discretionary evaluation of evidence relies on the inner conviction of the authorities acting in criminal proceedings and the courts, which may not be arbitrary or autonomous, but must be based on the laws and other legal instruments, on knowledge of the law, on a comprehensive, detailed and logical evaluation of individual pieces of evidence, assessed both individually and as a whole, taking account of all circumstances of the case before the court. The court evaluates also elements that cannot be fully expressed by words, because they reflect the personality of the person examined, e.g. the manner and form of his testimony. If the court deems certain testimonies to be more reliable than others, which are rejected owing to their untrustworthiness, the justification of the judgment or other court decision on the merits may not be limited to a statement of and a reference to a "personal impression". The law requires that the reasons for decisions be articulated [Sections 168 and 176(2)]. When the evidence is evaluated as a whole, analytical and synthetic methods, induction and deduction, methods of formal and dialectical logic and other methods are applied in order to arrive at a clear, intelligible and persuasive decision. Accordingly, the evaluation of evidence is a complex intellectual process of the authorities acting in criminal proceedings and of the courts that is based predominantly on their inner conviction.

The authorities acting in criminal proceedings and the court must indicate the basis of their inner conviction in their decisions. Therefore, the court must indicate

in the reasoning of the judgment which facts it deems proven, on which evidence its factual findings are based and which considerations determined its evaluation of the evidence submitted, in particular in cases of contradictory evidence, how it dealt with the arguments of the defence, and why it did not grant motions to execute further evidence. Similar rules apply to the reasoning of orders. These rules apply also to simplified written judgments [Section 172(2)] and simplified orders [Section 176(3)], because these decisions, if rendered at a trial or at a public hearing, must be justified orally. The discretionary evaluation of the evidence and the justification of the court's inner conviction may be reviewed in the appellate proceedings. The only exception is a sentencing order. However, if a protest is filed against a sentencing order, the matter will be heard at trial [Section 355(3)] and a judgment including the justification will be delivered.

It follows from the above that the principle of discretionary evaluation of evidence applies to all stages of criminal proceedings and to all authorities acting in criminal proceedings and to the courts.

The meaning of *the principle of public proceedings* is twofold:

1. This principle is, above all, an important instrument of control with respect to the activity of courts. It reinforces the feeling of responsibility of judges for the quality of their work, it incites them to a strict adherence to the law and it increases their authority;
2. The principle of public proceedings is an important instrument for fulfilling the educational functions of courts.

The principle of public proceedings applies to trials and public hearings. Both professional and lay members of the public, i.e. anyone other than the parties to proceedings, may also have access to the results of the criminal proceedings by means of "provision of information on criminal proceedings" (Section 6), which extends the scope of the principle of public proceedings beyond a physical presence during the court proceedings. However, there are certain reasons allowing the authorities acting in criminal proceedings and the court not to provide the requested information.

The statutory exceptions to the principle of public proceedings resolve the conflict between the interest in public court proceedings and the interest in keeping the proceedings secret from the public if necessary for reasons such as a risk to a secret protected by special laws, public order, morals and security or other important interests of the indicted, of the injured party, of his close relations or witnesses. The public must be *excluded* from an examination of an agent and in cases of protection of secret information. The public may be excluded also for a certain part of the trial (e.g. for a certain stage of the evidentiary process). In the proceedings against a juvenile, the public will be excluded if necessary for the protection of the juvenile's interests [Section 343(3)(a)]. Even if the public is excluded from the trial, the court may allow certain individuals to be present at the trial. The confidants chosen by the indicted must be admitted to the trial. If the public was excluded in order to protect secret information or because of a risk to a secret protected by the law, the court must advise them of the consequences of disclosing information disclosed during the trial. However, protection of privacy of parties, e.g. of an adult indicted, is not a

reason for excluding the public.

Other appropriate measures serving the same purpose as the exclusion of the public include a special examination of a witness protected by secret identity (Section 262).

Exceptions to the provision of information relative to criminal proceedings include secret information, trade secret, banking secret, tax secret, post secret or telecommunication secret which may not be disclosed. The authorities acting in criminal proceedings and the court are entitled to keep secret any information liable to frustrate or obstruct clarification and investigation of the case, while observing the principle of presumption of innocence. They must make sure that no protected personal data or private information not directly connected with the criminal activity is disclosed, in particular information relative to family life, home and correspondence. Special attention is paid to interests of minors, juveniles and injured parties, whose personal data are not disclosed.

If the provision of information violates or jeopardizes interests protected by the law, the authorities acting in criminal proceedings and the courts refuse to provide such information.

The reasons for excluding the public must be distinguished from the *refusal* to admit minors or persons liable to disturb the course of the trial (e.g. intoxicated persons) to the trial (Section 250).

Even if the public is excluded from a trial or a public hearing (in which case provisions concerning a public trial apply *mutatis mutandis*), the judgment or other decisions at public hearings must always be delivered in open court (Sections 171, 249 and 296).

Video recordings, video transmissions or audio transmissions during the trial may be made only with a prior authorization by the presiding judge or by the single judge [Section 34(3) of Act No. 335/1991 Coll. on Courts and Judges, as amended by Act No. 385/2000 on Judges and Assessors].

An exception to the principle of public proceedings is the possibility for a single judge to issue a sentencing order without hearing the case at the trial (Section 353).

The purpose of the principle of public proceedings concerns the court proceedings, because it is the most important part of the criminal proceedings. Therefore, this principle is independent and not subsumed in any of the principles mentioned above.

As far as the educational effects of hearing criminal cases in open court are concerned, the number of cases heard in open court is not crucial. What is important is to prepare the proceedings so that both the parties to proceedings and the members of the public present are convinced that the criminal proceedings are objective and that the sentence is fair.

The achievement of the requirement of establishment of facts beyond reasonable doubt is facilitated also by the fact that the Code of Criminal Procedure:

- a) creates a system of fundamental principles so that individual principles further the achievement of the fundamental objective of criminal proceedings;
- b) regulates the procedure both during preparatory proceedings and court proceedings and individual procedural acts (e.g. examination of witnesses)

so that this objective is achieved.

It follows from these principles that the court must, on the basis of the evidentiary initiatives of the parties, in particular of the prosecution and the defence, evaluate carefully all relevant facts necessary for the decision. If the parties do not pay sufficient attention to a certain circumstance or do not clarify it at all, the court may, pursuant to Section 2(11), execute evidence not proposed by the parties if it deems it necessary. Accordingly, relevant evidence necessary for the decision may be executed by the court on its own motion, even if not proposed by the parties. Evidence not proposed and executed by the parties will usually be procured and executed by the court if there is a reasonable basis for assuming that it will contribute to clarification of essential circumstances. However, the court may dismiss a motion of a party to execute evidence if it is satisfied that the evidence concerns circumstances irrelevant for the decision or circumstances that can be ascertained by means of other evidence already proposed [Section 272(3)]. In conclusion, with respect to evidence, courts must not be satisfied with mere probability.

As far as rules of procedure are concerned, there are important statutory guarantees of establishment of facts beyond reasonable doubt. During the preparatory proceedings, such guarantees include the prosecutor's broad powers of supervision over the investigation and over making accusations, participation of the accused and his counsel in the acts of investigation and their right to act in these acts, the right of the accused and his counsel to propose evidence and to study the file when the investigation is closed. If the accused admits his guilt, the authorities acting in preparatory proceedings are not discharged from the duty to examine the circumstances of the case and to procure necessary evidence, in particular in light of the possibility of a confession being revoked at a later stage of proceedings. However, this rule does not apply to court proceedings concerning a guilt and sentence agreement (Section 331) and to sentencing orders (Section 353). In court proceedings, the establishment of facts is guaranteed, in particular, by examination of the indictment or by a preliminary hearing on the indictment by the court, by the concept of trial as such and by the rules governing proceedings concerning requests for relief. The rights of parties to proceedings and the adversarial character of procedure have been reinforced in criminal procedure. Under the principle of discretionary evaluation of evidence, it is no longer relevant for evaluation of evidence which party has procured the evidence. The court proceedings include procedural institutions concerning examination of witnesses, the indicted, the injured party and experts, which contribute to the establishment of facts and make the process more efficient.

If an indictment is filed and the indicted pleads guilty at the very beginning of the trial, the court may decide not to accept the plea. If such plea is not accepted, the evidentiary process will be effected at the trial (see Section 257). A confession of the accused is deemed valid provided its validity is corroborated by other valid evidence (Judgment R 38/1968). Consequently, the confession of the accused does not discharge the authorities acting in preparatory proceedings from the duty to examine the circumstances of the case if they want the court to accept the plea of the accused. However, this rule does not apply to proceedings concerning a guilt and sentence agreement and to sentencing orders. The court may not rely solely

on experts. Their findings and opinions must be examined carefully (Judgments R 40/1972, R 62/1973, R 55/1986, R 2/1989).

The court may base its decision on guilt on indirect evidence only if such evidence, assessed as a whole, constitutes a logical, coherent and enclosed system of interrelated and mutually complementary pieces of evidence that together provide clear and reliable proof of a certain fact and the causal link between such evidence and the fact to be proven allows for one conclusion only and excludes other conclusions (Judgments R 38/1970-I and R 29/1971).

All authorities acting in criminal proceedings and the court must adhere strictly to statutory provisions and establish the facts within the limits provided by the law. If any provision of the Code of Criminal Procedure is violated, e.g. for the sake of expedience, a correct establishment of facts will not be achieved.

Title III: Some entities in criminal proceedings and their procedural position

3.1 Courts

The foundations of the exercise of judicial power are governed by the Constitution of the Slovak Republic. Judicial power is exercised by impartial and independent courts. The main objective of courts is to protect rights. With respect to the function of courts in criminal proceedings, they may be characterized as state authorities deciding criminal cases on an autonomous, impartial and independent basis. Pursuant to Article 50(1) of the Constitution, deciding on guilt and sentence is the exclusive power of courts. In criminal proceedings, the courts, besides their most important function, which is to decide on guilt and sentence, also decide on interferences with rights and freedoms guaranteed by the Constitution and other laws. Encroachment on the rights guaranteed by the Constitution, e.g. restriction of personal freedom, infringement with the right of ownership, infringement with inviolability of a dwelling, breach of mail secret, secret of conveyed messages, documents and personal data in criminal proceedings must be pursuant to an authorization of the court. Only the court may authorize monitoring of persons and things, making of video recordings, audio recordings and audio-video recordings, interception and recording of telecommunication services, use of an agent and comparing data in information systems. The courts may adopt many other decisions in criminal proceedings. The Supreme Court may quash final decisions of courts in proceedings concerning extraordinary requests for relief.

Pursuant to Article 143 of the Constitution, the system of courts is composed of the Supreme Court of the Slovak Republic and other courts. The system of courts, their powers, organization and proceedings are governed by Act No. 757/2004 Coll. on Judges. The seats and circuits of courts are provided for in Act No. 371/2004 Coll. on Seats and Districts of Courts of the Slovak Republic.

The three-tier system of courts in the Slovak Republic is comprised of:

1. district courts,
2. regional courts
3. the Supreme Court of the Slovak Republic

The system of courts includes also the Specialized Criminal Court.

The first court tier is comprised of district courts. The second court tier consists of regional courts. There are eight regional courts in the Slovak Republic, residing

in Bratislava, Trnava, Trenčín, Nitra, Banská Bystrica, Žilina, Prešov and Košice. The judicial circuits of regional courts are defined by Act No. 371/2004 Coll. Pursuant to Act No. 291/2009 Coll. on the Specialized Criminal Court, the Specialized Criminal Court also has the position of a regional court. Its judicial circuit is the entire area of the Slovak Republic and its seat is Pezinok. The Specialized Criminal Court is a court of first instance, with the status of a regional court. It hears and decides criminal cases and other cases as provided by the rules of judicial procedure. The Supreme Court of the Slovak Republic is superior to the Specialized Criminal Court. A panel of the Specialized Criminal Court is comprised of three judges including the presiding judge. The presiding judge directs and organizes the proceedings of the panel. If no panel is established by the Specialized Criminal Court or if this court cannot exercise its powers under the law for other reasons, its powers are exercised by the Regional Court in Banská Bystrica.

The Supreme Court of the Slovak Republic residing in Bratislava is the highest court in the system of courts. Its jurisdiction covers the entire area of the Slovak Republic.

Under the theory of law, the courts as state authorities have both power and jurisdiction. Power is defined as the right of authorities to adopt legal acts by virtue of the Constitution and laws. With respect to courts, judicial power is defined as a set of prerogatives granted to the courts by the Constitution and the laws, which are different from those granted to other state authorities. Judicial power in criminal proceedings is based on Article 50 of the Constitution providing that only courts decide on guilt and sentence imposed for criminal offences. In criminal matters the courts exercise judicial authority by adopting individual legal acts determining, in particular, guilt or innocence and a just sentence or a protective measure imposed for criminal offences as defined in the Criminal Code. The decision-making process of courts in criminal matters is governed by the Code of Criminal Procedure.

Jurisdiction is defined by the theory of law as the scope of societal relations to which the relevant power applies. In procedural law, including procedural criminal law, jurisdiction is based on the division of judicial power between courts of different levels and between courts of the same level.

Pursuant to Article 50 of the Constitution, only courts may decide on guilt and sentence for criminal offences. The composition of courts is governed by Act No. 757/2004 Coll. on Judges, by Act No. 385/2000 Coll. on Judges and Assessors and by the Code of Criminal Procedure. In addition to judges, assessors, who are lay persons, also take part in the decision-making process in the courts of first instance. A citizen of the Slovak Republic may be an assessor if he has:

- attained the age of 30 years on the date of being appointed,
- legal capacity and a state of health compatible with the assessor's function,
- moral integrity and moral qualities guaranteeing a due discharge of the assessor's function,
- his permanent residence on the territory of the Slovak Republic,
- given consent to being appointed in a specific court.

Pursuant to Section 3(2) of Act No. 385/2000 Coll. on Judges and Assessors, when adopting decisions, judges and assessors are equal.

Criminal cases are heard in the first instance by the district courts and by the Specialized Criminal Court. Panels in district courts and military circuit courts are composed of a presiding judge and two assessors. Panels of the Specialized Criminal Court are composed of a presiding judge and two other judges.

Contraventions and crimes that may be punished with a prison sentence with a maximum term not exceeding eight years are tried in the first instance by single judges (see Sections 348 to 352 of the Code of Criminal Procedure) unless an aggregate sentence or a total sentence is to be imposed and a previous sentence was imposed by a panel of judges. Single judges have the same procedural rights and duties as panels of judges and presiding judges.

On appeal, criminal cases are heard by the regional courts and by the Supreme Court of the Slovak Republic. Panels of regional courts are composed of a presiding judge and two other judges.

Panels of the Supreme Court are composed of a presiding judge and two other judges. If the Supreme Court hears ordinary or extraordinary requests for relief filed against decisions of panels of the Supreme Court, the panel of the Supreme Court is composed of a presiding judge and four other judges.

On the basis of an authorization by the presiding judge certain acts may be performed also by a superior court clerk or by a probation and mediation officer.

3.2 Prosecutor and police officer in criminal proceedings

The role of the Prosecution Office is set forth in Article 149 of the Constitution. The prosecution Office protects the rights and interests of natural persons, of legal persons and of the State protected by the law. The Prosecution Office is a specific authority that is not part of the executive, legislative or judicial power. This authority combines elements of both executive and judicial powers. Article 150 of the Constitution provides that the Prosecution Office is headed by the Prosecutor General appointed and withdrawn by the President of the Slovak Republic upon the proposal of the National Council of the Slovak Republic. Accordingly, the Prosecution Office is a universal authority of protection of the law acting in the public interest.

The details concerning the Prosecution Office are provided for in Act No. 153/2001 Coll. on the Prosecution Office. This Act regulates the position and powers of the Prosecution Office, the position and powers of the Prosecutor General, the powers of other prosecutors, organization and administration of the Prosecution Office. The position of prosecutors, their rights and duties, establishment, modification and termination of their office and related claims, responsibilities, disciplinary proceedings and self-governance of prosecutors are regulated by Act No. 154/2001 Coll. on Prosecutors and Prosecutor Candidates.

The Prosecution Office is based on a uniform hierarchy of state authorities headed by the Prosecutor General. There are relations of subordination between superior and subordinate prosecutors. The hierarchy of the Prosecution Office is warranted by the necessity of uniform application of laws and other legal instruments and implementation of a uniform criminal policy. The Prosecution Office protects

the rights and interests of natural persons, of legal persons and of the State that are protected by the law. Within the scope of its powers, it must adopt measures for preventing violations of law, detecting and eliminating such violations, restoring violated rights and take measures resulting from such violations. Within the scope of its powers, the Prosecution Office must use all legal instruments to secure, without any influence, the consistent, effective and expeditious protection of rights and interests of natural persons, legal persons and the State that are protected by the law.

Pursuant to Article 151 of the Constitution, the structure of the Prosecution Office is determined by Section 38 of the Prosecution Office Act. It consists of:

- the General Prosecution Office of the Slovak Republic, including the Special Prosecution Office having jurisdiction for the entire territory of the Slovak Republic,
- regional prosecution offices,
- district prosecution offices.

The General Prosecution Office resides in Bratislava and is headed by the Prosecutor General. The Prosecutor General directs and controls all prosecution offices, including military prosecution offices. In order to ensure the achievement of assignments, he issues regulations, orders and instructions binding on all prosecutors, prosecutor candidates and other employees. For the purpose of uniform application of laws and other generally binding legal instruments, the Prosecutor General issues opinions binding on all prosecutors. He issues also legal instruments and organizational regulations.

The Special Prosecution Office is a special part of the General Prosecution Office. It supervises observance of the law prior to commencement of criminal prosecution. During the preparatory proceedings, it prosecutes persons suspected of criminal offences and exercises the rights of prosecutors in court proceedings in cases within the jurisdiction of the Specialized Criminal Court. The Special Prosecution Office is headed by a special prosecutor under the authority of the Prosecutor General. The prosecutors of the Special Prosecution Office are prosecutors of the General Prosecution Office appointed by the Prosecutor General.

The seats and circuits of regional and district prosecution offices are identical with the seats and judicial circuits of courts. In this respect, it must be noted that the organization of courts and of the Prosecution Office is not identical with the structure of districts. There are 45 district prosecution offices and 8 regional prosecution offices. The Prosecutor General may establish a branch of a district prosecution office or a branch of a regional prosecution office within its circuit but outside its seat. The Prosecutor General may establish also the seat of a district prosecution office in Bratislava and in its boroughs, without prejudice to the circuit of the prosecution office.

Regional prosecution offices accomplish tasks within the jurisdiction of regional prosecutors. They direct, control and organize subordinate district prosecution offices, supervise uniform application of laws and other legal instruments by subordinate district prosecution offices, receive and verify notifications reporting criminal offences and perform other tasks imposed by regional prosecutors and other supe-

rior prosecutors. Each regional prosecution office is headed by a regional prosecutor.

District prosecution offices accomplish tasks within the jurisdiction of district prosecutors. They receive and verify notifications reporting criminal offences and perform other tasks imposed by district prosecutors and other superior prosecutors. Each district prosecution office is headed by a district prosecutor.

The prosecutor participates in all stages of a criminal proceeding, from the commencement until the termination of such criminal proceeding. His role is defined by the Code of Criminal Procedure which does not refer to prosecution offices as authorities, but to prosecutors as persons. The prosecutor is an authority acting in criminal proceedings. Section 2(5) of the Code of Criminal Procedure provides explicitly that the prosecutor represents the State in criminal proceedings.

Jurisdiction of prosecutors is organized as follows:

- the Prosecutor General and prosecutors of the General Prosecution Office have jurisdiction for proceedings before the Supreme Court,
- prosecutors of the General Prosecution Office appointed as prosecutors of the Special Prosecution Office have jurisdiction for proceedings before the Specialized Criminal Court,
- regional prosecutors and prosecutors of regional prosecution offices have jurisdiction for proceedings before regional courts,
- district prosecutors and authorized subordinate prosecutors have jurisdiction for proceedings before district courts.

The subject-matter jurisdiction and the territorial jurisdiction of prosecutors in criminal proceedings are determined by the jurisdiction of courts.

In a criminal proceeding a prosecutor can only perform the duties prescribed by the law in an effective manner if he is able to influence the course of a criminal proceeding. Therefore, the Code of Criminal Procedure grants certain procedural rights to the prosecutor, but also imposes procedural obligations on him. Consequently, the prosecutor is an entity of a criminal proceeding. The role of the prosecutor in a criminal proceeding varies with the stages of such criminal proceeding. During court proceedings, the prosecutor has an independent position and he is a party to the proceeding.

Prior to commencement of criminal prosecution, the prosecutor receives and verifies notifications reporting criminal offences. He can examine only the reporting persons and request documents necessary for dealing with the notification. At this stage, the prosecutor supervises the observance of legality by police officers dealing with notifications reporting criminal offences. In this respect, he can:

- give binding instructions to a police officer to refer, defer or dismiss a case and to commence criminal prosecution;
- annul illegal or unjustified decisions of a police officer and replace them with his own decisions;
- participate in the procedural acts performed by a police officer, perform a procedural act himself and issue a decision;
- withdraw a case from a police officer and assign it to another police officer, irrespective of territorial jurisdiction or cause the case to be assigned to an-

- other police officer or other police officers;
- decide on complaints of the reporting person and of the injured party against the decisions of the police officer.

Prior to commencement of criminal prosecution, the prosecutor may request information subject to trade secret, bank secret or tax secret or information concerning registered securities. He may also authorize a police officer to request such information. He may also require anyone to surrender a thing relevant for criminal proceedings.

In case of an emergency, the prosecutor may also issue a warrant for:

1. storing and surrendering computer data and a warrant for terminating the storage of such data;
2. seizing funds in an account (unless confirmed by the judge having jurisdiction within 48 hours, the warrant expires);
3. seizing registered securities (unless confirmed by the judge having jurisdiction within 48 hours, the warrant expires);
4. searching other premises or parcels of land;
5. a personal search;
6. detecting the contents of undelivered telegraph messages, letters and other deliveries sent by or to an accused;
7. intercepting a delivery delivered by the post or by a legal person performing delivery services (if a court warrant is not issued within three days, the delivery can no longer be intercepted);
8. exchanging contents of deliveries;
9. monitoring movement of deliveries (monitored deliveries);
10. a simulated transfer;
11. monitoring persons and things;
12. using an agent, unless the use of an agent is connected with entering a dwelling of another; the warrant can be issued also in oral form (unless confirmed by the judge having jurisdiction within 72 hours, the warrant expires);
13. making video recordings, audio recordings or audio-video recordings, unless connected with entering a dwelling of another (unless confirmed by the judge having jurisdiction within 24 hours, the warrant expires);
14. intercepting and recording telecommunication services, in case of an emergency, if the warrant of the judge for preparatory proceedings cannot be obtained beforehand and the interception of telecommunication services is not connected with entering a dwelling (unless confirmed by the judge having jurisdiction within 24 hours, the warrant expires);
15. comparing data in information systems.

Prior to commencement of criminal prosecution, the prosecutor may apply to the judge for a warrant for:

- a home search,
- surrendering a delivery delivered by the post or by a different legal person

performing delivery services if there are reasonable grounds for believing that such criminal offence was committed by means of such delivery or such delivery is related to such criminal offence and it is necessary to determine its contents in order to clarify facts relevant for criminal proceedings in criminal proceedings concerning crimes, corruption, criminal offences of abuse of powers by public officials and legalization of proceeds from criminal activity,

- using an agent,
- monitoring persons and things in a dwelling, in other premises or in parcels of land not publicly accessible or by means of technical instruments,
- making video recordings, audio recordings or audio-video recordings,
- intercepting and recording telecommunication services.

The preparatory proceedings are commenced by issuing an order of commencement of criminal prosecution or by performing a securing act, an unrepeatable act or an emergency act. This order is issued by a police officer and served on the prosecutor within 48 hours. The preparatory proceedings are terminated by filing an indictment or by adopting another decision on the merits. The aim of the preparatory proceedings is to accumulate conclusive evidence to prove that the act is a criminal offence, that it was committed by a specific person (the accused) and that the accumulated evidence is sufficient for filing the indictment. The evidence obtained should be sufficient for a correct assessment of the act, its causes and consequences.

The prosecutor has a very important role during the preparatory proceedings, i.e. he supervises the course of the preparatory proceedings. He supervises the course of summary investigation or investigation and the proceedings of police officers. The prosecutor verifies, in particular, whether police officers perform the acts of preparatory proceedings in accordance with the Code of Criminal Procedure. When supervising the preparatory proceedings, the prosecutor may make full use of his right to issue binding instructions and set deadlines for performing procedural acts. The prosecutor cooperates very closely with the police officers. He may perform also individual procedural acts and issue his own decisions. The intensity of supervision by the prosecutor depends on the gravity of the offence, on the evidentiary situation and on the legal complexity of the case. If the offence is complicated and its legal qualification and evidentiary situation are difficult, supervision will be more intensive. In particularly complex cases, the prosecutor may perform permanent supervision or perform the investigation himself. The prosecutor is entitled to perform acts interfering with constitutional rights and freedoms of individuals and to authorize such interventions during the preparatory proceedings unless the Code of Criminal Procedure requires an authorization by the judge for preparatory proceedings.

The prosecutor has the exclusive power to apply derogations in criminal proceedings. In the preparatory proceedings, the prosecutor may terminate criminal prosecution conditionally (Section 216), terminate criminal prosecution of a collaborating accused conditionally (Section 218), approve a settlement (Section 220) and commence proceedings concerning an application for a guilt and sentence agree-

ment (Section 232). These decisions are called derogations in criminal proceedings and they are dealt with in a specific chapter.

A police officer, as an authority acting in criminal proceedings, receives notifications reporting a criminal offence and other applications for criminal prosecution, verifies them and decides how the case will be dealt with in further proceedings. A police officer is:

- a) a detective of the Police Corps,
- b) a detective of the Customs Administration in the case of criminal offences committed in connection with a violation of customs regulations or tax regulations within the power of the Customs Administration,
- c) an appointed member of the Police Corps,
- d) an appointed member of the Military Police in the case of criminal offences committed by members of the armed forces,
- e) an appointed member of the Prison and Court Guard Corps in the case of criminal offences committed by members of the Prison and Court Guard Corps and by employees of the Prison and Court Guard Corps in the premises of the Prison and Court Guard Corps and by persons serving a prison sentence or held in custody,
- f) appointed customs authorities in the case of criminal offences committed in connection with violation of customs regulations or tax regulations within the power of the Customs Administration,
- g) the captain of a sea ship in the case of criminal offences committed aboard such a ship.

Within the scope of their investigation authority, police officers are also representatives of:

1. a competent authority of a foreign country;
2. an authority of the European Union;
3. an authority established by Member States of the European Union integrated in a joint investigation team on the basis of an agreement.

In particular police officers are entitled to:

- issue orders, e.g. accusation orders, which must be served on the competent prosecutor within 48 hours;
- perform an investigation or summary investigation, usually in person, on their own motion, in order to clarify the case as quickly as possible;
- issue decisions to:
 - refer the case if no accusation has been made yet;
 - suspend criminal prosecution;
 - terminate criminal prosecution if no accusation has been made yet;
- commence criminal prosecution by issuing an order that must be served on the competent prosecutor within 48 hours;
- perform securing acts, emergency acts and unrepeatable acts if necessary.

The appointed members of the Police Corps indicated in Section 10(8)(c) to (h)

perform summary investigation concerning contraventions pursuant to Section 202 of the Code of Criminal Procedure. The detectives of the Police Corps indicated in Section 10(8)(a) perform investigation concerning crimes under Section 200(1) or contraventions pursuant to Section 200(2)(a) and (b) of the Code of Criminal Procedure.

The competent police authorities receive notifications reporting criminal offences, perform emergency acts and unrepeatable acts, use evidence and procedural acts to secure personal and material evidence for the purposes of a due establishment of facts to the extent necessary for their decision and for the decision of the prosecutor and the court.

Under the Code of Criminal Procedure, a joint investigation team may be established with another Member State of the European Union on the basis of an agreement if complex procedural acts requiring coordination and concerted proceedings of various authorities must be performed on the territories of different Member States.

At the request of other authorities, the police authorities perform many other acts to secure persons and things for the purposes of criminal proceedings. Many procedural acts may be performed by these authorities only with the authorization of the prosecutor or of the judge for preparatory proceedings. Certain decisions are adopted during an investigation and a summary investigation, upon application by the police officer, by the prosecutor, as mentioned in previous chapters.

3.3 The accused and the counsel in criminal proceedings

According to the degree of accusation and the stage of criminal proceedings, the person in question may be referred to as the suspect, the accused, the indicted or the convict.

A suspect is a person detained pursuant to Section 85 or another person whose personal freedom was restricted when committing a criminal offence, unless an accusation against such person has been made. An accused is a person against whom an accusation has been made and notified pursuant to Section 206 of the Code of Criminal Procedure. An indicted is an accused against whom an indictment has been filed by the prosecutor pursuant to Section 234 and a trial has been ordered by the court pursuant to Section 247 of the Code of Criminal Procedure. A convict is a person against whom a final judgment of conviction has been rendered. Unless provided otherwise by the Code of Criminal Procedure, the term “accused” includes also the terms “indicted” and “convict” [Section 10(11)].

The accused, as a person against whom criminal prosecution has been brought, has a complex procedural position. The accused is:

- a party to proceedings,
- a source of evidence (because of his testimony),
- a person against whom decisions are enforced.

The accused in the criminal proceedings has both rights and duties. He has the right to comment on all charges against him, to put forward facts, to propose, sub-

mit and procure evidence for his defence, the right to remain silent, the right to choose a counsel and to confer with him, the right to a free defence if he has no funds to cover the costs of his defence, the right to make motions and file requests for relief, to ask the prosecutor to examine the acts of the police officers, to be advised of his rights, of the possibilities of exercising them and of the importance of a confession, to inspect the file, to take notes and make copies of the file, to study the file and to make motions to supplement the investigation, the right to have the indictment served, the right to be present at the trial and at a public hearing, to examine witnesses proposed by him in the court proceedings, to a final speech and the right to a final word, the right to an interpreter and to a translator if he declares that he does not know the language of the proceedings.

The accused has a duty to present himself on summons, to submit to being brought to court or to an authority acting in criminal proceedings, to indicate an address for service of documents during his first examination, to submit to acts for ascertaining identity, to submit to personal examination and other similar acts, to submit to DNA analysis sampling under special legislation, to participate in a confrontation and a recognition, to submit to similar securing acts and to submit to mental examination by experts.

The theory of criminal law usually distinguishes between material and formal defence. Material defence means, in particular, that the accused may defend himself in person. The authorities acting in criminal proceedings and the court must guarantee such defence. Therefore, they must proceed in criminal proceedings in a manner ensuring the due establishment of the facts, clarification of facts not only against the accused, but also in his favour with equal diligence and execute relevant evidence even if not proposed by the accused. If the accused confesses, they are not discharged from their duty to examine all circumstances of the case. At each stage of a criminal proceeding, they must advise the accused of his rights and facilitate and guarantee the exercise of these rights, as well.

Formal defence means that the accused is entitled to choose a counsel educated in law (an attorney) to represent his interests.

Accordingly, the position of the accused, as a party to criminal proceedings, is also reinforced by his right to defence by a counsel. The counsel, especially at the trial, helps to compensate the objective inequality of parties with his legal knowledge and experience. The accused may choose a counsel in any criminal case. In certain more serious cases, the accused must have a counsel (mandatory defence – Sections 37 and 38).

The *counsel* must provide necessary legal assistance to the accused and make an effective use of the means and forms of defence provided by the law. In particular, he must make sure that all facts exculpating his client or mitigating his client's guilt are clarified in a due and timely fashion during the course of the proceedings. The counsel must not allow the rights of the accused to be prejudiced only because the accused does not know the law. The rights of counsel are listed in Section 44 of the Code of Criminal Procedure.

A counsel may only be an attorney registered in the registry of attorneys kept by the Slovak Bar Association. The position of attorneys is regulated by Act No. 586/2003

Coll. on Attorneys. Pursuant to Section 18(1) of this Act, an attorney must protect and defend the rights and interests of his client and follow his client's instructions. He is not bound by the client's instructions if they are contrary to generally binding legal instruments. He must so advise the client in an appropriate manner.

The accused may choose an attorney by authorizing him to defend him in writing. A counsel may also be chosen for the accused by other entitled persons (Section 39). Counsel may be represented by an attorney candidate during the criminal proceedings if the accused agrees. However, such representation is possible only during the preparatory proceedings concerning contraventions or crimes, except for particularly serious crimes, and during court proceedings concerning contraventions.

A counsel in a criminal case may not be an attorney who is also an expert, an interpreter, a translator or a witness in the case in question. The counsel may not be examined as a witness relative to the facts he has learned in his capacity as a defence counsel.

The accused in the criminal proceedings must, in the cases specified in Sections 37 and 38, be represented by a counsel from the moment the accusation is made (e.g. if he is in custody, if he is a juvenile or an absconder or if the proceedings concern a particularly serious crime). The court will set a deadline for choosing a counsel. If a counsel is not chosen by the accused or by another entitled person before this deadline, a counsel will be appointed for the accused by virtue of office (*ex officio*) by the presiding judge during the court proceedings or by the judge for preparatory proceedings during the preparatory proceedings.

If there is a justified concern that the court proceedings could be frustrated by the absence of the appointed or chosen counsel, a surrogate counsel may be appointed for the accused.

The counsel in the criminal proceedings must not disclose any information learned in his capacity as a defence counsel. Only his client (the accused) may discharge him of this duty.

The counsel must provide necessary legal assistance to the accused, defend his interests and make sure that the facts exculpating his client or mitigating his guilt are established during the proceedings. Accordingly, the counsel must not communicate facts against the accused either to the authorities acting in criminal proceedings or to the court.

During the criminal proceeding counsel has, in particular, the following rights:

- to make motions, applications and requests for relief;
- to inspect the file,
- to participate in the acts of investigation,
- to speak with the accused in custody without anyone else being present,
- to request copies of minutes concerning all acts relative to the criminal proceedings,
- to procure and to submit evidence at the expense of the defence,
- to study the file upon termination of the investigation and to make motions to supplement the investigation,
- to examine the accused and witnesses at the trial, to take an active part in

the evidentiary process and to make a final speech.

A counsel may be chosen according to various criteria. However, the most important criterion is the will of the accused, because the accused has to pay the counsel's remuneration. An attorney may refuse to become a defence counsel or terminate his function as a defence counsel only for serious reasons (Sections 21 and 22 of Act No. 586/2003 Coll. on Attorneys). The accused may choose several counsels, which is quite common in proceedings concerning particularly serious crimes.

In addition to his counsel, the statutory representative of the accused also exercises the rights of the defence on behalf of the accused. An accused deprived of legal capacity or an accused with a limited legal capacity is represented during the criminal proceedings by his statutory representative [see Section 31(1)] determined by Act No. 36/2005 Coll. on Family. The statutory representative may, for instance, choose a counsel for the accused, make motions, applications and requests for relief on his behalf and participate in procedural acts.

In cases where the statutory representative of the accused cannot exercise his rights or in cases of emergency, a guardian may be appointed to exercise the rights of the accused by the judge for preparatory proceedings during the preparatory proceedings, upon application of the prosecutor, and by the presiding judge in the court proceedings, on his own motion (Section 35).

The youth protection authorities enjoy extensive procedural rights under the Code of Criminal Procedure with respect to proceedings against juveniles. These authorities are entitled to be present at the trial, to make motions, to put questions to persons examined, to file requests for relief in favour of the juvenile, etc. The Code of Criminal Procedure also grants certain procedural rights in favour of the accused to certain relatives of the accused. For instance, pursuant to Section 308, the relatives of the accused may appeal a first instance judgment on his behalf.

Trustworthy persons and citizen interest associations represented during the proceedings in district courts and regional courts by an appointed representative have an important role in criminal proceedings, as well. These entities are entitled to be present at the trial, to present their opinion on the case being heard, on the personality of the perpetrator and on the possibilities of his reform. Citizen interest associations include citizen associations, trade unions, groups of colleagues and churches and religious communities recognized by the State. A trustworthy person is a person capable of exerting positive influence on the behaviour of the accused. Trustworthiness is assessed by the court and, during the preparatory proceedings, by the prosecutor.

3.4 Injured party and involved party

An injured party [Section 46(1)] is a person whose health was injured (i.e. bodily harm or disease was caused to him) as a result of a criminal offence, who has suffered material damage (i.e. damage that can be objectively assessed in pecuniary terms), moral damage (for instance, damage caused by actions against human dignity) or

other damage (damage that cannot be subsumed in any category of damage), or whose rights or freedoms protected by the law (the rights and freedoms enshrined in the Constitution and in other legal instruments) were violated or endangered. An injured party may be a natural person, a legal person or the State. In this respect, it must be noted that the Code of Criminal Procedure does not make a distinction between a victim and an injured party. A victim is an individual killed or injured as a result of a criminal offence, an individual whose life was put at risk, an individual having suffered material damage or immaterial harm, or an individual whose freedom or other rights were restricted, whether or not he was later recognized as an injured party in the criminal proceedings.

An injured party is also a person who has suffered certain damage as a result of a criminal offence and has been already fully reimbursed by the offender.

The theory of criminal law distinguishes two groups of injured parties:

1. injured parties having, in addition to the general rights stipulated in Section 46(1), a right to be an entity in the adhesion proceedings, i.e. entitled to claim damages in the criminal proceedings (the claim must be made by the injured party prior to the termination of the investigation or summary investigation),
2. injured parties without such rights.

If the injured party is deprived of legal capacity or if his legal capacity is limited, his rights under of the Code of Criminal Procedure are exercised by his statutory representative, who may authorize an organization of assistance to victims of criminal offences to represent him. The rights of the injured party may not be exercised by an accused in the criminal proceedings. Furthermore, the position of injured party is incompatible with the position of an expert or an involved party. However, an injured party may be examined as a witness during the criminal proceedings.

The injured party having a statutory claim for compensation of damage against the accused and caused by the criminal offence may apply also to the court for a decision imposing on the accused a duty to compensate for such damage in the judgment of conviction (such proceedings are called adhesion proceedings). An injured party is a party to the adhesion proceedings only if he has a statutory claim for pecuniary damages. In the adhesion proceedings, the court applies the substantive rules of civil law when deciding on the duty to pay damages. A claim for damages may not be made if the claim was already determined in civil proceedings or in other proceedings.

If the court convicts the indicted of a criminal offence by which damage was caused to another pursuant to Section 46(1), it will, in principle, impose a duty to compensate for the damage to the injured party in the judgment provided that the claim was made in a due and timely manner. Unless there is a statutory obstacle, the court will always impose a duty to compensate for the damage on the indicted if the amount of damage is included in the description of the offence indicated in the judgment of conviction or if moral damage caused by a violent intentional criminal offence under special legislation and not yet compensated is claimed [Section 287(1)].

The decision concerning the duty of the indicted to compensate damage must include a precise identification of the entitled person and the awarded claim. In justified cases, the court may order that the claim be satisfied in instalments and specify when they fall due, taking account of the opinion of the injured party.

The duty to compensate damage may be, if requested by the injured party, quantified in a foreign currency, provided that it is compatible with the circumstances of the case and damage was caused to funds in a foreign currency or to things purchased with such funds or the indicted or the injured party is a foreign currency-based foreigner.

If the results of the evidentiary process do not justify the imposition of a duty to compensate for the damage or if a further evidentiary process, exceeding the extent necessary for criminal prosecution, is necessary for a ruling on the claim for damages, and which would lengthen the criminal prosecution, the court will refer the injured party to civil proceedings or to other proceedings. The injured party must be identified by his forename and surname, date and place of birth and place of residence. If the injured party is a legal person, it must be identified with its trade name, seat and identification number, in accordance with the data stated in the Business Registry, Trade Registry or other registries.

The court will also refer the injured party to civil proceedings or to other proceedings for the remainder of the claim if, for any reason, only a part of the claim is awarded.

If the court acquits the indicted or if the criminal proceeding is terminated, the court will refer the injured party to civil proceedings or other proceedings with respect to his claim for damages [Section 288(3)]. In the case of proceedings concerning a guilt and sentence agreement, if no agreement on compensation for damage was concluded during the preparatory proceedings, the prosecutor will move for the injured party to be referred with his claim for damages or a part of it to civil proceedings or to other proceedings by the court [Section 232(3)].

An *involved party* is a person whose thing, pecuniary amount or property may be confiscated, is to be confiscated or was confiscated [Section 45(1)].

The involved party's interests are related to the interests of the accused. However, just like an injured party, the involved party has the right to comment on the merits, but only with respect to his own position.

The involved party must be given the opportunity to express his view. He is entitled to be present at the trial and at the public hearing, to take notes, to make motions and to submit evidence, to inspect the files and to file requests for relief. The authorities acting in criminal proceedings and the court must advise the involved party of his rights and allow him to exercise them, and advise him of the service of documents and of the consequences of service of documents.

During the preparatory proceedings, the judge for preparatory proceedings, upon application by the prosecutor, and, during the court proceedings, the presiding judge appoints an attorney to represent the involved party if necessary for protecting the involved party's interests. If the reason of appointment ceases to exist, the appointment is terminated, upon application by the prosecutor, by the judge for preparatory proceedings and, during the court proceedings, by the presiding

judge [Section 45(5)].

Seizure of a thing may be ordered by a judgment or by an order issued in a public hearing (Sections 289 and 299).

Title IV: Procedural acts and their procedural institutions

The contents of a procedural act are determined by the nature of the act, by the criminal case at issue and by the relevant provisions of the Criminal Code, the Code of Criminal Procedure and other binding legal instruments.

Procedural acts are acts of entities in the criminal proceedings causing establishment, modification or extinction of the criminal-law relationships as provided by the Code of Criminal Procedure.

According to the entity performing them, procedural acts of authorities acting in criminal proceedings, of the court, of the parties and of other entities of criminal proceedings may be distinguished. Decisions rank among the most important procedural acts. In the criminal proceedings, primary and consequent procedural acts, emergency procedural acts and unrepeatable procedural acts and procedural acts for securing persons and things for the purposes of criminal proceedings are distinguished.

The form of procedural acts is regulated by the Code of Criminal Procedure in order that performance of procedural acts ensures a due establishment of facts for adopting decisions or for other functions of the criminal proceedings.

Except for emergency procedural acts, unrepeatable procedural acts and procedural acts that must be performed at the crime scene, procedural acts are usually performed in official premises, during working hours, in the direct presence of the entities and parties to the criminal proceeding.

The chronology of procedural acts is sometimes determined by the Code of Criminal Procedure, in particular with respect to certain phases or stages of criminal proceedings. In other cases, the authorities acting in criminal proceedings and the court follow methodical and tactical procedures.

Every procedural act (e.g. securing evidence) must be recorded in the form of minutes at the time it is performed.

A motion is a request for a procedural act that may be made in the form stipulated in Section 62(1). For instance, if a criminal offence is reported in oral form, the reporting person must be advised of the responsibility for false accusation and of other issues indicated in Section 62(2).

A time limit is the period during which a procedural act may be performed, e.g. a time limit for filing an appeal. A date is an exact specification of the time and place of performing a procedural act, e.g. specification of date, time and room where the accused will be examined. Time limits for performing certain procedural acts under the Code of Criminal Procedure may be expressed in terms of hours (e.g. the accused

may be detained for up to 48 hours), days (e.g. judgments may be appealed within 15 days of notification). Pursuant to Section 63, certain time limits are expressed in terms of weeks, months and years (e.g. summary investigation must be terminated within two months of an accusation being made).

If the accused or his counsel, the injured person or the involved person misses a deadline for filing a request for relief for serious reasons, he may be granted a statutory extension pursuant to Section 64(1).

Service of documents involves serving decisions or other documents on the person concerned.

The form of service is regulated by Section 65 providing that certain documents may be served by post, exceptionally by means of a substituted service on another person, or by depositing a delivery at the post office.

In certain cases, personal service of documents is required (see Section 66), which means that documents must be served directly on the addressee in person. Personal service is required in the case of an indictment, a summons or in case of decisions against which a request for relief may be filed or where the judge, the authority acting in criminal proceedings, the probation and mediation officer or the superior court clerk orders personal service.

The accused, the counsel, the injured person, the involved person, the representative, the appointed guardian, the probation and mediation officer, the superior court clerk and the court clerk are entitled to inspect the files, to take notes and to make copies, except for cases indicated in Section 69.

During the preparatory proceedings, the authority acting in the criminal proceedings may deny a file inspection for serious reasons, e.g. if the purpose of criminal prosecution could be frustrated (see Section 69 of the Code of Criminal Procedure).

Disciplinary fines allow the authorities acting in criminal proceedings and the courts to ensure an undisturbed and appropriate accomplishment of procedural acts.

If a person, having been warned or having not complied with an order or request, disturbs the proceedings or displays offensive behaviour, the authority concerned may impose a disciplinary fine of up to €1,660 on a natural person and of up to €16,600 on a legal person.

Title V: Securing persons and things for purposes of criminal proceedings

The persons and things relevant for criminal proceedings are procured by means of procedural acts, which often interfere with civil rights and freedoms. Unless provided otherwise by the Code of Criminal Procedure, decisions concerning interferences with rights and freedoms are adopted, prior to commencement of criminal prosecution and during the preparatory proceedings, by the judge for preparatory proceedings or the prosecutor, and, during the court proceedings, by the presiding judge.

Interferences with fundamental rights and freedoms in the cases permitted by the Code of Criminal Procedure may not go beyond what is necessary for achieving the aim of the criminal proceedings as provided by the law.

5.1 Securing persons for purposes of criminal proceedings

If the accused, having been summoned for examination or for another act in a due and timely fashion, fails to present himself without a sufficient excuse, he may be brought to the competent authority. If the accused evades the criminal proceedings and if it is necessary for a successful accomplishment of the procedural act in question, the accused may be brought to the competent authority without being previously summoned.

If there is a ground for custody (Section 71) and, owing to the emergency of the case, a custody decision cannot be obtained beforehand, a police officer may detain the accused on a preliminary basis himself, examine him and if there is a ground for custody, immediately deliver the person, the detention record and a motion for remand in custody to the prosecutor. The motion must be filed so as to allow the prosecutor to deliver the accused to the court within 48 hours of being detained and taken over by the prosecutor; otherwise, he must be released.

The judge for preparatory proceedings must examine the detained person within 48 hours and, in case of particularly serious crimes, within 72 hours of receiving the prosecutor's motion and, if custody is justified, he must rule on custody. If he decides not to remand the person in custody, the person must be released. For further conditions, see Section 86.

Pursuant to Section 85(1), a police officer may, with the authorization of the prosecutor, detain a person suspected of a criminal offence if there is a ground for custody pursuant to Section 71(1), even if no accusation has been made against such

person. Detention without authorization by the prosecutor is possible only in cases of emergency, where the authorization cannot be obtained beforehand.

The personal freedom of any suspect person caught in the act of committing a criminal offence or immediately thereafter may be limited if it is necessary for

- ascertaining the person's identity,
- preventing his escape, or
- securing evidence.

Such person must be immediately handed over to the Police Corps or to the nearest unit of the armed forces. If the detained person cannot be handed over, one of these authorities must be notified immediately.

The detaining person may, on general inspection, verify whether the detained person has a gun or other thing liable to endanger his own life or health or that of another.

The procedures followed by a police officer after taking over a person caught in the act of committing a criminal offence are similar to the procedures followed after detaining the accused [see Section 85(3) and (4)].

The detained person has the right to choose a counsel and to confer with such counsel and to require that his counsel be present during his examination providing that an attorney is available.

If a witness, having been summoned to the court proceedings in a due manner, does not present himself without an excuse and his presence cannot be ensured otherwise, e.g. by bringing him to the court, the court may order that his personal freedom be restricted and that he be brought to the court for the time necessary to perform the procedural act, but not exceeding 72 hours, 24 hours of which are reserved for bringing him to the court (see Section 88).

Custody is a procedural act securing the accused for the purposes of criminal proceedings and for the enforcement of a sentence. The accused may be remanded in custody only if the facts established justify the conclusion that he has committed a criminal offence and that his actions and other specific facts justify the concern that he may

- escape or abscond so as to evade criminal prosecution or the sentence if he has no permanent residence,
- influence witnesses, experts, co-accused persons or otherwise obstruct clarification of the facts relevant for criminal prosecution,
- continue criminal activity, especially consummate a prepared or an attempted criminal offence.

If the accused is released from custody, he may not be remanded in custody in the same case unless he

- is escaping or absconding so as to evade the criminal prosecution or the sentence, especially if he is not staying at the address communicated to the authorities acting in criminal proceedings, is not receiving deliveries, does not comply with the orders of these authorities and of the court or otherwise deliberately obstructs the performance of procedural acts,
- influences witnesses, experts, co-accused persons, continues criminal activity, fails to present himself for serving his sentence after being released from

custody or is accused of another intentional criminal offence committed after being released from custody.

The accused may be remanded in custody only by an order of the court, during the preparatory proceedings upon application by the prosecutor, which is decided on by the judge for preparatory proceedings. The court or the judge for preparatory proceedings decides whether the accused will be remanded in custody, whether he will be released from custody, whether custody will continue, whether grounds for custody will be modified and whether custody will be prolonged (see Section 72 of the Code of Criminal Procedure).

If there is a ground for custody and the accused cannot be summoned, brought to the court or to the authority acting in criminal prosecution or detained and his presence for the examination or for another procedural act cannot be ensured otherwise, an arrest warrant is issued, upon application by the prosecutor, by the judge for preparatory proceedings and, during the court proceedings, by the presiding judge.

The authority having arrested the accused by virtue of the warrant must deliver him to the court having issued the warrant within 24 hours, otherwise he must be released.

The judge must examine the accused within 48 hours and, in case of particularly serious crimes, within 72 hours, of the accused being delivered, and rule on custody; otherwise, he must be released.

The court or, during the preparatory proceedings, the judge for preparatory proceedings must inform immediately:

- a family member of the accused or a different person indicated by the accused,
- a superior officer, if the accused is a soldier or a member of an armed corps,
- the employment authority if the accused is registered as unemployed,
- the consular authority of the country concerned if the accused is a foreigner,
- the injured party and the witness to whom the accused poses a risk and
- the detention facility under Section 75.

The duration of custody during the preparatory proceedings and during the court proceedings may not go beyond what is necessary.

If the duration of custody exceeds seven months, the prosecutor must apply to the judge for preparatory proceedings for a prolongation of custody, no later than 20 working days before the expiry of this period, unless he releases the accused himself or files the indictment or an application for a guilt and sentence agreement.

The total duration of custody during the preparatory proceedings and during the court proceedings may not exceed

- 12 months in the case of criminal prosecution concerning a contravention,
- 36 months in the case of criminal prosecution concerning a crime,
- 48 months in the case of criminal prosecution concerning a particularly serious crime.

In the event of a criminal prosecution concerning a particularly serious crime, i.e. a crime punishable with a prison sentence of up to 25 years or a sentence of life imprisonment, that cannot be, due to the complexity of the case or for other

serious reasons, closed, the court may repeatedly extend the duration of custody for the necessary period, within the maximum duration of custody during criminal proceedings permitted by the law, if the release of the accused from custody would frustrate or substantially obstruct the achievement of the aim of the criminal proceedings. However, the total duration of custody during the criminal proceedings including any extensions may not exceed 60 months.

If the grounds for custody or for continuation of custody cease to exist or the period stipulated in Sections 76(6) and (7) and 78 expires, the accused must be released immediately (see Sections 76 to 79).

Custody may be replaced by the guarantee of an interest association or of a trustworthy person, on the recognizance of the accused, by the supervision of a probation and mediation officer and by a bond under the conditions stipulated in Sections 80 to 82 of the Code of Criminal Procedure.

A complaint may be filed against the decision on custody except for cases where the decision is adopted by the appellate court or by the higher appellate court, unless provided otherwise. A complaint filed by the prosecutor against a decision releasing the accused from custody and against a decision dismissing a motion to extend duration of custody has a suspensive effect.

If the criminal proceedings are held against the accused serving a prison sentence and there is a ground for custody, the court or the judge for preparatory proceedings imposes necessary restrictions in order to secure the reasons of custody with respect to such person.

An absconding person suspected of a criminal offence may be secured also by performing a home search, which is discussed below.

5.2 Procuring things and securing information for purposes of criminal proceedings

A thing may be seized for the purposes of a criminal proceeding by means of the procedural acts listed in Chapters 4 to 6 of Title IV of the Code of Criminal Procedure as discussed below.

Any person holding a thing relevant for the criminal proceedings must submit it, upon request, to the police officer, to the prosecutor or to the court pursuant to Section 89(1) and, if the thing needs to be seized for that purpose, surrender it to these authorities. A similar procedure applies under Section 90 with respect to necessary storage and surrender of computer data for the purposes of clarification of the facts relevant with respect to criminal proceedings.

If a person holding a thing or computer data relevant for the criminal proceedings fails to surrender the thing or data, at the request of the authorities mentioned above, the thing or the data may be taken from such person by virtue of a warrant. A police officer may issue a warrant for taking a thing only with prior authorization of the prosecutor. A police officer may issue such warrant without prior authorization only in the case of an emergency where prior authorization cannot be obtained. If possible, the thing will be taken in the presence of a disinterested person.

The thing surrendered for the purposes of criminal proceedings will be taken over by the prosecutor or by the court and must be documented in minutes. The thing will be stored by a legal person or a natural person performing business activities in this field. Immovable things are administered by the Cadastre of Immovables.

If the thing having been surrendered or taken is not necessary for further proceedings and it cannot be forfeited or confiscated, it will be returned to the person having surrendered it or to the person from whom it was taken.

If funds in a bank account are intended for committing a criminal offence or if they were used for committing it or if they constitute proceeds from criminal activity, the presiding judge during the court proceedings and the prosecutor during the preparatory proceedings may issue a warrant for seizing them. In case of emergency, the prosecutor may issue a warrant even before the commencement of criminal prosecution.

The warrant is served on the bank or other legal or natural person possessing the funds and on the owner of the funds.

The presiding judge or the prosecutor may issue a warrant for registering a suspension of the right to dispose of a security intended to be or used for committing a criminal offence. (For other conditions, see Section 96.)

A home search may be performed only if there is a justified suspicion that, in a flat, house or other residential premises:

- there is a thing relevant for the criminal proceedings,
- there is a person suspected of having committed a criminal offence hiding there or
- movables must be seized for the purposes of satisfying the claim of the injured party for damages.

A home search warrant may be issued during the court proceedings by the presiding judge and during the preparatory proceedings by the judge for preparatory proceedings. The warrant must be served on the owner or user of the dwelling when the search is performed. It is usually performed by police officers by virtue of a warrant issued by the judge for preparatory proceedings or by the presiding judge.

A warrant for search of other premises or of parcels of land is issued by the presiding judge during the court proceedings and by the prosecutor, or by the police officer with authorization by the prosecutor during the preparatory proceedings. A police officer may perform such a search without a warrant only if

- in case of emergency, where a warrant or an authorization cannot be obtained beforehand,
- the person concerned is caught in the act of committing a criminal offence,
- an arrest warrant has been issued against the person concerned,
- the person concerned is a prosecuted person hiding in such premises.

A personal search may be performed if

- there is a justified suspicion that the person concerned has a thing relevant for the criminal proceedings, or
- the person concerned is a detained person, an arrested person or a person remanded in custody, if there is a suspicion that he has a gun or other thing liable to endanger his life or health.

A personal search may be ordered by the presiding judge during the court proceedings and by the prosecutor or by the police officer with authorization by the prosecutor during the preparatory proceedings. A police officer may perform a personal search without a warrant only if on the basis of the reasons mentioned above with respect to search of other premises [see Section 99(4)].

A police officer may enter such premises only in case of emergency, where such entry is necessary for

- protection of life or health of a person or persons,
- protection of the State,
- protection of public order,
- protection of property,
- protection of rights and freedoms,
- protection of nature,
- protection of a person caught in the act of committing a criminal offence.

When entering such premises, a police officer may perform only emergency acts or bring the detained person to the competent authority.

All searches mentioned above must be based on a request. These acts are performed only if, following such a request, the thing searched is not surrendered or the suspected person does not surrender or a different obstacle is not eliminated. The authority performing the search must allow the person concerned to be present and advise him in a due manner. A disinterested person must be present, as well. These acts must be documented by minutes describing not only the acts of the authority in question, but also indicating the things seized and the persons present during such acts.

If an inspection of premises, a reconstruction, a recognition, a verification of testimony at the crime scene, an investigation experiment or another act that cannot be performed elsewhere must be performed on such premises and the person concerned does not give his consent, the act necessary for the criminal proceedings will be performed pursuant to Section 107.

If, in order to clarify the facts relevant for the criminal proceedings, the contents of undelivered deliveries sent by or to the accused must be ascertained, the presiding judge or, during the preparatory proceedings, the prosecutor, or the police officer with authorization by the prosecutor, issues a warrant enjoining the post or a legal person performing delivery services to surrender such deliveries.

Similarly, if necessary for clarification of the facts relevant for the criminal proceedings concerning crimes and criminal offences, corruption, abuse of powers by public officials or legalization of proceeds from criminal activity, the presiding judge or the judge for preparatory proceedings may, upon application by the prosecutor, issue a warrant for surrendering deliveries if there is a justified suspicion that they were used for committing such criminal offence. Without a warrant issued by these authorities, such delivery may be intercepted in an emergency, on the basis of a warrant issued by a prosecutor or by a police officer, where a warrant by the above-mentioned authorities cannot be obtained beforehand.

If the post or the legal person performing delivery does not receive the warrant for surrendering the delivery issued by the authorities mentioned above, the deliv-

ery may no longer be intercepted.

The delivery may be opened by the presiding judge and, during the preparatory proceedings, by the prosecutor or by the police officer with prior authorization by the judge for preparatory proceedings. If the contents of the delivery are relevant for clarification of the facts relevant to the criminal proceeding, they are annexed to the file. Otherwise, the delivery is returned to the addressee or the dispatcher.

If it is necessary to detect persons handling a delivery containing

- narcotic drugs,
- psychotropic substances,
- poisons and precursors,
- nuclear or similar materials,
- high-risk chemical substances,
- counterfeit or altered money or securities, revenue stamps, labels and stamps,
- firearms or weapons of mass destruction, ammunition, explosives,
- cultural goods,
- other things that may be handled only with special authorization,
- things intended for committing a criminal offence or resulting from a criminal offence,

the presiding judge and, during the proceedings prior to court proceedings, the prosecutor or a police officer with authorization by the prosecutor may order that the contents of the delivery surrendered pursuant to Section 108(1) and (2) be exchanged and the modified delivery be dispatched for further delivery.

The exchange is performed by the authority authorized by the relevant minister indicated in Section 110(2). The procedural act of exchange is documented in a record and the things or materials exchanged are stored.

A monitored delivery means monitoring the movement of a delivery containing things or materials similar to those indicated above (see Section 110) from the dispatcher to the addressee in order to detect unauthorized handling of things or materials requiring special authorization and to detect the persons committing criminal offences. The warrant for monitoring a delivery is issued by the presiding judge and by the prosecutor during the preparatory proceedings. The Police Corps may commence the monitoring of a delivery without authorization by the prosecutor only in case of emergency, where a warrant cannot be obtained beforehand. If the prosecutor, having been notified, fails to issue a warrant within 48 hours, the monitoring of the delivery must be discontinued and the information obtained must be destroyed (For further conditions, see Section 111).

A simulated transfer means a simulated sale, purchase or other transfer of things that may be possessed only with a special authorization.

A simulated transfer is possible only with respect to criminal offences punishable under the Criminal Code with a prison sentence with a maximum prison term exceeding three years, a criminal offence of corruption or another intentional criminal offence pursuant to an international treaty if there is a substantiated assumption that the facts relevant for criminal proceedings may be ascertained by the simulated transfer.

A warrant for a simulated transfer may be issued, usually upon written request, by the prosecutor during the preparatory proceedings and by the presiding judge during the court proceedings. A warrant is not required in the case of an emergency, where a written warrant cannot be obtained beforehand. If a warrant is not issued within 48 hours, the simulated transfer must be discontinued.

Secret monitoring of persons and things pursuant to Section 113 is used for obtaining such information related to criminal activity that constitutes facts relevant for criminal proceedings. A written monitoring warrant is issued by the presiding judge and by the prosecutor during the preparatory proceedings.

The monitoring is performed by the relevant authority of the Police Corps. Communications between the accused and his counsel may not be monitored. If the monitoring is to be performed with respect to premises not publicly accessible or parcels of land or if technical instruments are to be used, the warrant is issued by the authorities mentioned above upon written request of a police officer or of the relevant authority of the Police Corps and during the court proceedings, at the request of the prosecutor, which must be justified with a suspicion of a specific criminal activity.

The authority having issued a warrant for monitoring may extend the duration of monitoring by an additional six months. The monitoring must be discontinued as soon as the reasons for monitoring cease to exist. It is always discontinued if the warrant is not issued within 24 hours or if the monitoring was commenced without a warrant, unless it was an emergency and a written warrant could not be obtained beforehand. The monitoring record must be destroyed immediately in accordance with the law if no facts relevant for the criminal proceedings were detected during the monitoring.

In the criminal proceedings concerning a criminal offence punishable under the Criminal Code with a prison sentence with the maximum prison term exceeding three years, a criminal offence of corruption or another intentional criminal offence pursuant to an international treaty, it is possible to make

- video or audio recordings, or
- audio-video recordings,

provided that there is a reasonable basis for the assumption that facts relevant for criminal proceedings may be ascertained.

A written warrant for making such recordings is issued during the court proceedings by the presiding judge and during the proceedings prior to court proceedings by the judge for preparatory proceedings, at the request of the prosecutor. The request must be justified with a suspicion of a specific criminal activity and with information concerning the persons and things affected by the recordings.

In the case of an emergency, where making a recording is not connected with entering a dwelling and a written warrant cannot be obtained beforehand, the prosecutor may issue a warrant that must be confirmed by the judge for preparatory proceedings within 24 hours, otherwise the recordings cannot be used as evidence.

During the preparatory proceedings concerning crimes and criminal offences of corruption, abuse of powers by public officials or legalization of proceeds from criminal activity, or in cases pursuant to an international treaty, the procedural act

connected with entering a dwelling may be performed only by virtue of a warrant issued by the judge for preparatory proceedings. The warrant must indicate the period for making recordings, which may not exceed six months. This period may be extended repeatedly by two months by the authority having issued the warrant.

This procedural act is performed by the relevant authority of the Police Corps, which must permanently verify whether there are still reasons for continuing it. If the reasons cease to exist, the procedural act is discontinued. The authority having issued the warrant for this procedural act must be notified. If no facts relevant for the criminal proceedings are ascertained by this act, in accordance with the law, the recordings must be immediately destroyed which is documented by minutes. Otherwise, it is annexed to the investigation file.

A warrant for interception and recording of telecommunication services may be issued by the presiding judge and, during the proceedings prior to court proceedings, by the judge for preparatory proceedings at the request of the prosecutor only in criminal proceedings concerning

- a crime,
- a criminal offence of corruption, of abuse of power by public officials, of legalization of proceeds from criminal activity, or
- an intentional criminal offence pursuant to an international treaty,

providing that there is a reasonable basis for assuming that facts relevant for the criminal proceedings will be detected.

In an emergency, where a warrant issued by the judge for preparatory proceedings cannot be obtained beforehand, such a warrant may be issued during the proceedings prior to court proceedings by the prosecutor if the interception is not connected with entering a dwelling. Such warrant must be confirmed by the judge for preparatory proceedings within 24 hours. The duration of interception and recording is limited to six months. This duration may be extended by the judge for preparatory proceedings, at the request of the prosecutor, repeatedly for periods of two months.

The interception and recording of telecommunication services is performed by the relevant authority of the Police Corps, which must verify permanently whether the reasons for issuing the warrant still exist.

During criminal proceedings concerning intentional criminal offences other than those mentioned above, a warrant for interception and recording of telecommunication services may be issued by the presiding judge and, during the proceedings prior to court proceedings, by the judge for preparatory proceedings, at the request of the prosecutor only with authorization of the user of the telecommunication facility to be intercepted or recorded.

If such recordings are to be used as evidence, the officer of the Police Corps must make a verbatim transcription of the recordings, which is included in the investigation file. If no facts relevant for the criminal proceedings are detected by this procedural act, the recordings must be immediately destroyed, which is documented in minutes.

If the discovery, detection and incrimination of perpetrators of criminal offences of corruption, abuse of powers by public officials or legalization of proceeds from

criminal activity were otherwise substantially obstructed and if the facts established justify a suspicion that such a criminal offence was or is about to be committed, the presiding judge or the judge for preparatory proceedings during the preparatory proceedings may, at the request of the prosecutor, issue a warrant for using an agent.

In an emergency, where entering a dwelling is not involved, the prosecutor may also issue a warrant for using an agent during the proceedings prior to court proceedings. However, such warrant expires unless confirmed in writing by the judge for preparatory proceedings within 72 hours.

The agent performs assignments in the criminal environment for the purposes of clarification of criminal offences and detection of perpetrators and informs the relevant authority acting in criminal proceedings about his findings. He is an authorized police officer or other person acting undercover on a temporary or permanent basis.

A warrant for comparing data in information systems is issued by the presiding judge and, during the proceedings prior to court proceedings, by the prosecutor if the data contain characteristics of persons or things relevant for the criminal proceedings that are identical with or different from the data contained in other information systems provided that such comparison is necessary for clarification of an intentional criminal offence punishable under the Criminal Code with a prison sentence with a maximum term exceeding three years, a criminal offence of corruption or another intentional criminal offence pursuant to an international treaty. For other conditions of performing this procedural act, see Section 118.

Title VI: Evidentiary process in criminal proceedings

In procedural criminal law, the evidentiary process denotes proceedings of the authorities acting in criminal proceedings pursuant to the law, aimed at detecting circumstances relevant for a due establishment of facts and for reaching a decision.

The facts to be proven by the evidentiary process in the criminal proceedings is the subject matter of evidence.

Means of evidence are the means used by the authorities acting in criminal proceedings and by the court to ascertain the facts and to secure evidence. Means of evidence include examination of the accused, of witnesses and experts, opinions and professional statements, verification of testimony at the crime scene, recognition, reconstruction, investigation experiment, inspection, things and documents relevant for the criminal proceedings, notifications and information obtained by means of technical instruments or operational investigation instruments.

Evidence in the procedural sense is direct information concerning a fact relevant for the criminal proceedings obtained by the authority acting in criminal proceedings by using a means of evidence and by performing a procedural act.

Pursuant to Section 119(2), evidence may be anything liable to contribute to a due clarification of the case, obtained by a means of evidence in accordance with the Code of Criminal Procedure. For instance, by performing a crime scene inspection (means of evidence), multiple pieces of evidence may be obtained (murder gun, traces, tools).

The means of evidence are the procedural forms of detecting facts relevant for the criminal proceedings. The evidence is the result obtained by using such means.

The objective of the authorities acting in criminal proceedings and of the court in the evidentiary process is to reconstruct the course of action by which the criminal offence was committed in order to establish the objective facts, which are the correct reflection of events.

The aim of the evidentiary process is to achieve a due establishment of the facts beyond a reasonable doubt to the extent necessary for a decision in the criminal proceedings.

During the evidentiary process, for the purposes of establishing the facts, the authorities acting in criminal proceedings apply, in particular, the principle of investigation, the principle of direct proceedings and of oral proceedings, the principle of presumption of innocence and the principle of discretionary evaluation of evidence.

The subject matter of the evidentiary process in a specific criminal case are all the facts relevant for a due establishment of the facts for reaching a decision in

the criminal proceedings, which is a statutory prerequisite for achieving the aim of the evidentiary process. The subject matter of the evidentiary process includes also circumstances accompanying, conditioning or affecting other circumstances, which directly or indirectly, also determine a just decision in the criminal proceedings.

The subject matter of the evidentiary process includes not only issues of law, but, in particular, issues of fact that must be proven pursuant to Section 119 of the Code of Criminal Procedure.

The facts ultimately decided by a different authority or the facts concerning personal status, notorious facts, unless contested, and rules of law are excluded from the subject matter of the evidentiary process.

A detailed definition of the subject matter of the evidentiary process is a necessary prerequisite not only of duly establishing the facts, but also of a correct legal qualification of an act constituting a criminal offence.

The scope of the evidentiary process consists of facts to be proven in a specific criminal case under Section 119(1). Pursuant to this provision, the authority acting in criminal proceedings and the court must prove

- whether the act occurred and whether it has the characteristics of a criminal offence,
- by whom and for what motives the act was committed,
- the gravity of the offence,
- the causes leading to the criminal offence and the conditions facilitating its commission,
- the personal situation of the perpetrator to the extent necessary for determining the type and extent of sentence or for imposing a protective measure or for adopting other decisions,
- the result and the amount of damage caused by the criminal offence,
- the proceeds from criminal activity and instruments for committing it, their location, type, state and value.

First of all, it must be proven whether the act has all the characteristics necessary for a decision on the merits, in particular whether the characteristics of the subject matter of a criminal offence are satisfied. Furthermore, it is necessary to prove the degree of gravity of the offence for the purposes of applying the basic subject matter or a qualified subject matter; the mitigating and aggravating circumstances; the motive of the perpetrator in committing the criminal offence; the causes leading to the criminal offence and the conditions facilitating its commission; whether a result affecting life, health, property was caused or whether an interest protected by the law was endangered; the amount of damage caused by the criminal offence for the purposes of assessing the gravity of the offence and satisfying the claim of the injured party; whether the act was committed by the accused and whether he is criminally responsible; the personal situation of the perpetrator and possibilities of his rehabilitation; the acquisition of proceeds from criminal activity and the use of such proceeds for committing organized crime, e.g. terrorism.

The evidentiary process consists of the following *stages*:

- search for evidence,
- procurement of evidence,

- execution of evidence and procedural securing of evidence,
- verification and evaluation of evidence.

These stages of the evidentiary process may overlap, which relativizes the classification indicated above.

The search for sources of evidence relative to persons or things is usually performed by police officers and the parties to criminal proceedings. This activity is focused on obtaining information concerning the criminal offence and its perpetrator and the relevant facts for corroborating or rebutting certain facts during the evidentiary process. At this stage, the authorities acting in criminal proceedings apply the principle of investigation, various forensic methods and instruments and perform emergency acts and unrepeatable acts in order to secure the sources of evidence.

Procurement of evidence includes the right of the parties to proceedings to propose evidence and to execute evidence procured by them. Evidence may not be rejected only because it was submitted by a party to the proceedings and not requested by the authority acting in criminal proceedings or by the court. The parties procure evidence at their own expense.

The execution of evidence is a procedural activity by which the authorities acting in criminal proceedings or the court obtain facts relevant for decisions in criminal proceedings, using certain means of evidence and by performing procedural acts. The evidence obtained is recorded in minutes relative to the procedural act performed and is used for establishing the facts during the criminal proceedings.

At this stage of the evidentiary process, it is necessary to verify the evidence obtained as to its legality, reliability and completeness. Evidence obtained by illegal coercion or by a threat of coercion may not be used in the criminal proceedings. At the same time, it must be verified whether there are any contradictions based on a mutual verification of evidence. Such contradictions must be eliminated by performing further procedural acts and by using further means of evidence.

The aim of this stage of the evidentiary process is to assess whether the pieces of evidence executed individually, when assessed as a whole, provide reliable, complete and true information concerning the facts to be proven for the purposes of duly establishing the facts necessary for reaching a decision in criminal proceedings. For this purpose, the authorities acting in criminal proceedings and the court apply the principle of discretionary evaluation of evidence. Pursuant to this principle, evidence is evaluated according to the inner conviction of the relevant authority, taking due account of all circumstances of the case, both individually and as a whole. It is an intellectual activity of the relevant authority ascribing certain procedural value to the evidence obtained with respect to its legality, reliability, veracity and usability in the criminal proceedings. With respect to legality, it must be assessed whether the evidence was executed in accordance with the procedure as provided by law, whether the information and facts contained in the evidence are true and reliable and whether they can be used in the criminal proceedings. When evidence is evaluated as a whole, it is necessary to establish and to eliminate inconsistencies between various pieces of evidence and to assess whether the evidence secured so far will be sufficient for reaching a decision in the criminal proceedings.

The evidentiary process occurs to a greater or lesser extent, during the different

stages of criminal proceedings, to the extent necessary for reaching a decision by the relevant authorities in criminal proceedings.

Prior to commencement of criminal prosecution, the evidentiary process usually consists of performing emergency acts and unrepeatable acts, requesting explanations from various persons to the extent necessary for deciding whether the case will be referred to the relevant authority for hearing for an infraction or a different administrative offence or for disciplinary proceedings or whether it will be deferred because criminal prosecution is impermissible or the act is no longer a criminal offence, or whether it will be dismissed (Section 197). If there is no reason to proceed as provided in this provision and the evidence obtained or the procedural acts performed justify the conclusion that a criminal offence was committed, the results of the evidentiary process serve as the basis for commencement of criminal prosecution.

During the preparatory proceedings, the authorities acting in preparatory proceedings use the evidentiary process not only as a means of establishing facts for their decisions, e.g. for termination of criminal prosecution or for filing an indictment, but also for the decision of the court, e.g. for the judgment with respect to guilt and sentence rendered at the trial. The authorities acting in criminal proceedings execute all personal and material evidence relevant for the criminal proceedings in a specific case.

During the examination and the preliminary hearing on the indictment, evidence is executed only to the extent necessary for assessing whether the indictment provides a reasonable basis for reaching a decision at the trial, i.e., whether the evidence executed during the preparatory proceedings justifies the indictment or a different decision, e.g. a decision to remand the case to the prosecutor for further preparatory proceedings for supplementing the evidentiary process.

The evidentiary process culminates at the trial. The court deals, in particular, with the evidence secured in the proceedings prior to court proceedings. On the basis of principles of direct proceedings and of oral proceedings, the court takes into account the evidence stemming from sources closest to the court first. Then, the court examines the more remote evidence, including the evidence submitted by the parties.

The evidentiary process during the appellate proceedings is usually limited to the file, which constitutes the basis for the decision of the appellate court.

The evidentiary process during the enforcement proceedings is limited to obtaining information necessary for enforcing or modifying the execution of a sentence or a protective measure.

The Code of Criminal Procedure regulates also specific procedures during the evidentiary process, e.g. procedures with respect to summary investigation (see Sections 101 to 103), approval of settlement (Section 309), proceedings concerning a guilt and sentence agreement (Sections 232 to 233), where the evidentiary process is more limited than during ordinary criminal proceedings.

Legal relations with foreign countries are regulated by Title XXIII of the Code of Criminal Procedure including provisions governing specific procedures during the evidentiary process. The authorities acting in criminal proceedings and the court

proceed in accordance with these provisions which are based on international treaties binding on the Slovak Republic.

The authorities acting in criminal proceedings and the courts use various means of evidence and procedural acts for *executing and securing of evidence* for the purposes of criminal proceedings, especially those indicated in Section 119(2) of the Code of Criminal Procedure. The manner of using the means of evidence and procedure with respect to executing and securing evidence is regulated by Title VI of the Code of Criminal Procedure. The relevance and effectiveness of each means of evidence for executing and securing evidence depends on the correct choice of the type of evidence and on the circumstances to be proven in the criminal proceedings.

Notifications reporting criminal offences are, pursuant to Section 62(2), made orally. They contain facts indicating that a criminal offence has been committed; who is suspected of having committed it; the evidence; the damage and the results caused by the criminal offence and other circumstances relevant for the criminal proceedings.

As for examination of the accused, the presence of the accused is achieved by summoning him or by bringing him to the competent authority (Section 120). The examining person must obtain the personal data of the accused, advise him of the essence of the charges against him and of his rights (Section 121), ascertain his family, property and income situation and his relationship to the other entities and parties to the criminal proceedings. The aim of examining the accused is not to obtain his confession, but to establish the facts relevant for the criminal proceedings.

First, the examining person requests the accused to recount the criminal offence and the charges and to clarify the course of action constituting the criminal offence he has committed.

Following his uninterrupted and spontaneous testimony, the accused is asked to comment on what he has not mentioned already, in particular in order to eliminate any ambiguities and inconsistencies with the information contained in his testimony.

The accused must not be forced to testify or to confess by means incompatible with the law. He must not be asked questions including answers, captious questions or suggestive questions (questions including information that is to be obtained from his testimony).

The testimony of the accused is usually reproduced using direct speech in minutes, which are submitted to the accused for reading and signing in the presence of a disinterested person.

If the testimony of the accused is inconsistent with the testimony of a co-accused person or of a witness with respect to serious circumstances and the inconsistency cannot be eliminated otherwise, the accused may be put face to face with the co-accused person or the witness and, with the authorization of the examining persons, they may, put questions to each another (Section 125).

A recognition is used for establishing the identity of a person or a thing. The person in question is requested to describe the person or thing first, and then he is requested to point out the person or thing to be recognized among multiple per-

sons or things. The identification is documented in minutes.

A witness is a person requested by the authority acting in criminal proceedings or by the court to testify about the circumstances related to a committed criminal offence that he perceived with his own senses.

Before a witness is examined, his identity and his relationship with the accused must be ascertained, he must be advised of the significance of his testimony, of his right not to testify, on the prohibition of examination and on the consequences of false testimony.

A witness must tell the truth, he must not conceal anything relevant to the criminal proceedings and therefore, he must take an oath. He must relate what he knows about the criminal offence, about the perpetrator and other circumstances relevant for the criminal proceedings.

A witness must not be examined:

- with respect to circumstances constituting classified information, unless discharged of the confidentiality duty by the relevant authority, or
- if his testimony violates a non-disclosure duty imposed or recognized by the law or by an international treaty, unless discharged from this duty.

A witness may refuse to testify if

- · he is a direct relative of the accused or his sibling, adopter, adoptee, spouse or partner,
- · with his testimony, he might put himself, his relatives or other close relations in a family relation or in a similar relation at the risk of criminal prosecution,
- · with his testimony, he would violate a confessional secret, confidential information or a clergy secret.

At the beginning of examination of a witness, the circumstances for assessing his credibility must be ascertained. As in case of the accused, the testimony of a witness must be based on a coherent account concerning all the facts he knows about the case. When the witness has stated everything he knows about the case, he is asked questions to verify, supplement or clarify other facts, to eliminate inconsistencies or to prove that he is lying. The questions posed must be clear, simple, certain and direct. A witness must not be asked captious or suggestive questions (cf. above). The examination is documented in minutes.

Special rules apply to examination of witnesses who are physically or mentally impaired, minors, juveniles or persons protected by the law. For instance, if a person under 15 years of age is examined, the examination must be performed with particular care so that it need not be repeated. A teacher, a representative of a youth protection authority, a statutory representative, an expert or another person facilitating a correct examination must be present. In justified cases, a witness may be examined by means of technical equipment keeping the identity of the witness secret.

When evaluating witness testimony, it is necessary to take account of how the witness perceives a certain fact, to what extent he is able to remember it and whether he is able to recount it correctly. Examination of a witness must, besides obtaining information relevant for the criminal proceedings, also discover false or unreliable testimony in order to evaluate its probative value in the criminal proceed-

ings correctly.

If a fact relevant for the criminal proceedings must be clarified and professional knowledge is required, the authority acting in criminal proceedings or the presiding judge requests a professional statement. In simple cases, a written confirmation may be sufficient, provided that its correctness raises no doubts.

If, due to the complexity of a fact to be established, it is necessary to prove or to rebut a circumstance relevant for the criminal proceedings on the basis of professional knowledge or practical experience, the authority acting in criminal proceedings or the presiding judge appoints an expert to submit an expert opinion. In the case of particularly complex circumstances, two experts are appointed. Two experts are always appointed in the event of a mental examination or autopsy.

The issues to be resolved by the expert are formulated in questions indicated in the order appointing the expert. Experts are not allowed to deal with issues of law, to evaluate evidence executed or to make legal conclusions. As a general rule, expert opinions must be in writing.

If there are doubts as to whether the expert opinion is correct or if it is unclear or incomplete, the expert must be requested to explain or to supplement his opinion. If the doubts cannot be eliminated in this way, another expert must be appointed.

In exceptional, particularly serious cases requiring specific scientific assessment or examination of an expert opinion, the authority acting in criminal proceedings or the court may appoint an expert institution to submit an expert opinion.

An inspection is performed if the facts relevant for criminal proceedings must be clarified by direct observation. Inspections are usually performed by the authority acting in criminal proceedings.

There are specific rules concerning inspections for the purposes of expert opinions (Sections 148 to 150). A mental examination of the accused (by observation in an institution or on an out-patient basis) is performed on the basis of a warrant issued by the court or by the judge for preparatory proceedings. A mental examination of a witness may be ordered by a warrant issued by the authorities mentioned above in order to assess his ability to perceive and to relate the facts relevant for the criminal proceedings.

If it is necessary to establish whether there are traces or consequences of a criminal offence on a body, anyone must submit to an examination for the purposes of ascertaining the facts relevant for the criminal proceedings. If a blood sample or a similar examination must be performed for evidentiary purposes, the person in question must submit to such an examination, unless his health is put at risk. Furthermore, in order to ascertain the identity of a person present at the crime scene, his fingerprints may be secured.

If there is a suspicion that a person was killed by means of a criminal offence, the corpse must be examined and dissected. A post-mortem examination may be ordered by the prosecutor or by the police officer. An exhumation may be ordered only by the presiding judge and, during the proceedings prior to court proceedings, by the prosecutor.

The aim of a crime scene inspection is to obtain information concerning the situation and circumstances of a criminal offence by direct observation, to discover

and to detect traces, material and documentary evidence with which or on which the criminal offence was committed, proving or rebutting the facts relevant for the criminal proceedings.

If there are any doubts as to the possible existence of a fact relevant for the criminal proceedings, they may be eliminated by means of an investigation experiment.

An investigation experiment is performed if it is necessary, by observation in stable or modified conditions, to verify or to specify the facts established during the criminal proceedings or to detect new facts relevant for criminal proceedings. The accused, a suspect or a witness cannot be forced to take part in such an experiment.

A *verification of testimony* at the crime scene is performed if it is necessary to corroborate or to rebut facts contained in testimony and to complete or verify information relevant for the criminal proceedings pertaining to the crime scene.

A reconstruction as a means of evidence is used in the evidentiary process to reconstruct the situation and the factual circumstances under which a criminal offence was committed by comparing the secured evidence with the probable objective circumstances if such evidence is not sufficient for establishing the facts.

If the voice of the accused or of a witness must be identified in the criminal proceedings, a voice sample may be verified.

Technical instruments include electronic equipment, radio equipment, photo-technical equipment, optical equipment, mechanical equipment and technical equipment used in secret to secure the facts relevant for the criminal proceedings, especially where it is not possible to clarify the criminal offence and to incriminate the perpetrator by means of the evidence obtained from other means of evidence.

Operational investigation instruments in the criminal proceedings include monitored delivery (Section 111), exchange of contents of deliveries (Section 110), agent (Section 117), simulated transfer (Section 112) and monitoring of persons and things (Section 113). The instruments for securing necessary evidence are used undercover, in accordance with the Code of Criminal Procedure.

Classification of evidence defines the differences between various types of evidence and determines their relevance for the evidentiary process during the criminal proceedings.

The evidence in the criminal proceedings is classified according to the subject matter of the accusation, according to the relationship between the evidence and the source of information, according to the relationship between the evidence and the facts to be proven, according to the source of evidence and according to the possibility of its use in the criminal proceedings.

According to the subject matter of accusation, two types of evidence are distinguished:

- incriminating evidence – evidence against the accused, e.g. a document falsified by the accused,
- exculpating evidence – evidence in favour of the accused, e.g. testimony of a witness at the crime scene who did not see the accused there.

According to the relationship between the evidence and the source of information, two types of evidence are distinguished:

- original evidence – evidence obtained from an immediate source of infor-

- mation, e.g. when the perpetrator is caught at the crime scene,
- derived evidence – evidence obtained indirectly, from another person who, for example, saw the accused killing the victim.

According to the relationship between the evidence and the facts to be proven, two types of evidence are distinguished:

- direct evidence – evidence directly corroborating or rebutting a fact relevant for the criminal proceedings, e.g. when a witness testifies that he saw the accused assaulting a police officer or that, at the time the criminal offence was committed, the accused was with him in a place other than the crime scene,
- indirect evidence – evidence indirectly corroborating or rebutting a fact relevant for the criminal proceedings.

According to the possibility of use in the criminal proceedings, two types of evidence are distinguished:

- absolutely void evidence – evidence obtained illegally, which may not be used in the evidentiary process, e.g. a coerced confession of the accused,
- relatively void evidence – evidence with lesser defects that can be used in the criminal proceedings provided that the defects are eliminated, e.g. if the accused signs the pages of the minutes that he did not sign during his examination,
- absolutely valid evidence – evidence obtained legally, by using the means of evidence in accordance with Code of Criminal Procedure.

According to the source of evidence, two types of evidence are distinguished:

- material evidence – objects and instruments used for committing the criminal offence or things on which the criminal offence was committed, e.g. a gun, poison, a falsified document or fingerprints,
- personal evidence – evidence obtained by examination of persons, e.g. witnesses, injured parties.

Title VII: Decisions in criminal proceedings

Decisions in criminal proceedings are the most important procedural acts of the authorities acting in criminal proceedings and of the courts. The most significant are the decisions on the merits.

A. The court decides in the form of:

- a) a judgment, a sentencing order or a warrant, where the Code of Criminal Procedure so provides,
- b) an order in other cases, unless provided otherwise by the law.

B. The authorities acting in criminal proceedings decide in the form of:

- a) an order, unless provided otherwise by the law,
- b) a warrant where the law so provides.

Judgments, sentencing orders and orders must include specific information and be in a specific form (for judgments, see Sections 163 to 168; for sentencing orders, see Section 354; and for orders, see Section 176).

Following the opening statement, "In the Name of the Slovak Republic", a judgment must include the following information:

- identification of the court, of the judges and of the assessors,
- the date and the place of announcement of the judgment,
- the operative part of the judgment indicating the statutory provisions, i.e. a ruling on guilt, a ruling on the sentence, a ruling on a protective measure, if any, a ruling on damages, if the claim for damages was made in a due and timely fashion,
- the reasoning, unless provided otherwise by the law,
- a notice of a request for relief.

During the deliberations and voting, the court takes into account all of the circumstances indicated in Section 169. The voting is governed by Section 170.

The presiding judge must always deliver the judgment, as voted, in open court and in the name of the Slovak Republic. The judgment must be delivered in writing, as well. Judgments are served on the indicted, on the prosecutor, on the injured party and on the involved party provided that they have made their claims during the proceedings. If the indicted is represented by counsel or by a statutory representative, they are also served with the judgment. In the case of juveniles, the judgment is always served on the youth protection authority, as well.

A sentencing order may be issued by a single judge trying contraventions and crimes punishable under the Criminal Code with a prison sentence with a maximum prison term not exceeding eight years. A sentencing order is equivalent to a judg-

ment of conviction.

A sentencing order contains the following information:

- identification of the court, the forename and the surname of the judge issuing it,
- the date and place of delivery,
- identification of the accused,
- a ruling on guilt and sentence imposed,
- a ruling on protective measure, if imposed,
- a ruling on damages, if the claim for damages was made in due fashion,
- a notice of the right to file a protest.

Sentencing orders are not announced, but only served under conditions similar to those relative to judgments.

A warrant is a decision in the criminal proceedings by which the presiding judge, the judge for preparatory proceedings or the prosecutor orders that a certain procedural act be performed by procedurally subordinate authorities acting in criminal proceedings or by other authorities and legal persons.

A warrant must contain the following information:

- identification of the authority issuing it,
- date and place of decision,
- the operative part indicating the statutory provisions invoked,
- the act legally qualified as a criminal offence, unless provided otherwise,
- reasoning (in case of a written warrant).

An order is a general form of decision. Both courts and authorities acting in criminal proceedings issue orders. Even a judgment on the merits may be set aside by means of an order.

An order must contain the following information:

- identification of the authority issuing it; the forenames and surnames of the persons involved in issuing the order,
- the date and place of delivery,
- the operative part indicating the statutory provisions applied and, if it is a decision on the merits, also the act and its legal qualification,
- the reasoning, unless provided otherwise by the law (a simplified order),
- notice of the request for relief.

Orders are announced during a procedural act, at the trial, at a public hearing or at a closed hearing.

An order must be communicated to:

- the person directly affected by it,
- the person having applied for it to be issued,
- the prosecutor, to the Prosecutor General,
- the counsel,
- the statutory representative,
- the youth protection authority.

Not all orders are announced. They are communicated by announcement or by service of a copy of the order to be communicated.

Decisions are final if no request for relief (appeal, protest, complaint) may be

filed against them under the law, but also if a request for relief may be filed under the law, but was not filed within the time limit provided by law or if the entitled persons explicitly waived their right to file a request for relief, withdrew it explicitly or if the request for relief was dismissed.

Title VIII: Criminal proceedings and its stages

Criminal proceedings consist of precisely defined procedural stages, in which are changeably more dominant either authorities acting in criminal proceedings or the courts who are mutually verifying and supplementing their procedural acts and decisions.

According to The Code of Criminal Procedure we distinguish:

A. Proceedings prior to court proceedings divided into:

- a) proceedings prior to commencement of criminal prosecution,
- b) preparatory proceedings.

B. Court proceedings divided into:

- a) examination and preliminary hearing of indictment,
- b) trial,
- c) review of judicial decisions,
- d) enforcement proceedings.

8.1 Proceedings prior to court proceedings

Proceedings prior to court proceedings begin by submitting the notifications reporting criminal offences to authorities acting in criminal proceedings. During this stage there are established circumstances relevant for decisions and evidence for judicial decisions is accumulated and secured by means of emergency acts, un-repeatable acts or securing acts.

The proceedings prior to commencement of criminal prosecution begin when reporting a criminal offence by individual. The reporting person must be advised and conscious about the consequences of the false accusations. He is examined with respect to the circumstances of the commission of the criminal offence. He ought to be examined with respect to the personal situation of the person against whom the notification is directed, with respect to the evidence and with respect to the amount of damage and other consequences caused by the criminal offence. Pursuant to such notification, after verification of the relevant facts, without having a reason for commencing criminal prosecution or for deferring the case because of inexpediency of criminal prosecution [see Section 215(2)], the police officer or the prosecutor

- a) refers the case
 - to the authority responsible for hearing an infraction or other administrative

- offence,
- to another authority for disciplinary proceedings,
- b) defers the case
- in case of impermissibility of criminal prosecution,
- if the act is no longer considered as a criminal offence,
- c) dismisses the case
- if it is obvious from the notification that the act in question cannot be qualified as a criminal offence or as a misdemeanour.

The preparatory proceedings is part of the criminal proceeding from commencement of criminal prosecution to the filing of the indictment. The preparatory proceedings is usually divided into the following stages:

- commencement of criminal prosecution,
- investigation or summary investigation,
- termination of investigation or summary investigation,
- decision.

Authorities acting in criminal proceedings should as soon as possible clarify all facts inevitable for reaching the aim of the evidentiary process for the purposes of the decisions to be made by

- the officers of the Police Corps (e.g. a decision to suspend criminal prosecution),
- the prosecutor (especially filing the indictment),
- the court (rulings on guilt, sentence, protective measure and claim of the injured party).

if the police officer does not find a reason to refer, defer or dismiss the case under Section 197, he must, without delay and no later than 30 days after receiving the notification, commence criminal prosecution by issuing an order.

To start Criminal prosecution for criminal offences enumerated in Section 211 is required the consent of the injured party, otherwise criminal prosecution cannot be commenced and if it has already started it may not be continued.

Only in the certain cases, is the police officer entitled to commence criminal prosecution by performing a securing act, an unrepeatable act or an emergency act (e.g. a home search, interception and opening of a delivery). After performing such act, he issues an order of commencement of criminal prosecution, which he serves on the prosecutor within 48 hours. After the criminal prosecution has been commenced, the police officer is entitled to perform all acts under of the Code of Criminal Procedure.

Investigation is held when dealing with crimes. Investigation of misdemeanour is held only if

- the accused is in custody, serving a prison sentence or being examined in a medical institution, or
- it is ordered by the prosecutor.

Summary investigation is dealing mainly with misdeavour. The police officers performing the investigation (detectives) or summary investigation usually perform it personally by themselves. The acts by which criminal prosecution was commenced or which were performed after the commencement of criminal prosecu-

tion by a police officer lacking territorial jurisdiction do not need to be repeated if they were performed in accordance with the law.

Police officers proceed in both kinds of investigation try to obtain information for clarification of the criminal offence and of its perpetrator as expeditiously as possible. Except of the case when a decision or a warrant issued by the judge for preparatory proceedings or by the prosecutor is required, they perform all acts independently in accordance with the law.

There are some differences between summary investigation and investigation:

- in a summary investigation, a witness is examined only in the case of unrepeatable or an emergency act, if he witnessed the criminal offence directly; otherwise, the police officers only request explanations from individuals, state authorities or legal persons and document them in a record,
- in a summary investigation, the police officers search and secure the sources of evidence in order to use them in further proceedings and they make the record about it afterwards.
- a summary investigation should be closed after two months since accusation was made.

For special summary investigation is typical that a suspect caught in the act or immediately after committing a misdemeanour punishable with a prison sentence with a maximum prison term not exceeding five years is delivered to the prosecutor together with the file and the prosecutor does not release the person, but brings him within 48 hours of his detention, together with the indictment and the file, to the court. If the prosecutor discovers grounds for custody, he also moves for the accused to be remanded in custody.

The investigation is a complex set of acts, means of evidence and decisions. The most important procedural act during the investigation is the accusation.

If a notification reporting a criminal offence or the facts established after commencement of criminal prosecution sufficiently justify the conclusion that the criminal offence committed specific person, the police officer issues an accusation order immediately, communicates it directly to the accused and forward it within 48 hours to the prosecutor. The reporting person and the injured party must be notified about this act without any delay.

If the perpetrator is known at the time the criminal prosecution is commenced, the police officer may commence criminal prosecution and make an accusation against him by issuing a single order. If during the investigation the police officer discovers that the accused has committed another offence, he commences criminal prosecution and makes an accusation for this offence and conducts joint proceedings with respect to both offences.

If the legal qualification of the offence is changed during the investigation, the police officer should notify the accused in written form and forward a copy of this notification to the prosecutor within 48 hours.

If accusation obstructs the clarification of

- criminal offence of corruption, or
- establishing, plotting and supporting a criminal group or a terrorist group, or

- crime committed by an organized criminal grouping, or
- the detection of perpetrators of these criminal offences,

with prior authorization of the prosecutor can the police officer for a necessary time and on a temporary basis, defer the accusation of a person making a substantial contribution to the clarification of

- any of the previously mentioned offences, or
- the detection of the perpetrators.

A record regarding temporary deferral of accusation is sent to the prosecutor within 48 hours.

As soon as the reasons for such deferral cease to exist, the police officer, when being given the instructions by prosecutor, makes the accusation without delay.

In the Code of Criminal Prosecution there is not defined which conditions have to be met in order to close the investigation or the summary investigation. Therefore, if the police officer deems the investigation to be closed and deems the conclusions to be sufficient for making an application for indictment or for a different decision, e.g. referral, he allows the accused, his counsel, the injured party, his guardian and his representative to

- have a sufficient time to study the file
- make proposal to supplement the investigation or summary investigation.

The investigation should be closed:

- in case of particularly serious criminal offences, within six months of the date of the accusation,
- in other cases, within four months.

If the investigation is not closed within these time limits, the prosecutor may set a different time limit.

When the investigation or the summary investigation is closed, the police officer submits the file, application for indictment and *various decisions* to the prosecutor together, unless he refers the case under Section 214 or terminates criminal prosecution, provided that no accusation has been made yet.

If the results of the investigation or of the summary investigation demonstrate that the offence in question is not a criminal offence, but an infraction, a different administrative offence or a disciplinary offence, the police officer refers the case to another authority only if the accusation has not been made yet. Otherwise, must be case referred by prosecutor.

The referral order is served on the accused and on the injured party and, within 48 hours, on the prosecutor.

A. During the preparatory proceedings is the prosecutor obliged to terminate the criminal prosecution if:

- there is no hesitation that the act for which the criminal prosecution is held did not occur,
- the act is not considered to be a criminal offence and there is no ground for referral,
- there is no doubt that the act was not committed by the accused,
- criminal prosecution is not allowed (Section 9),
- the accused was not criminally responsible at the time of committing the

- offence because of his mental incapacity,
 - a settlement between the accused and the injured party is approved,
 - the act is no longer a criminal offence.
- B. The prosecutor may terminate the criminal prosecution of an accused
- if he has made a substantial contribution to the clarification of criminal offences of corruption, establishing, plotting and supporting a criminal group or a terrorist group or of a crime committed by a dangerous grouping or having incriminated the perpetrator of such criminal offences and the interest of society in the clarification of such offences outweighs the interest in the criminal prosecution of the accused,
 - if the sentence that may be imposed on the basis of the criminal prosecution is obviously negligible in comparison with a final sentence that has been imposed already on the accused for a different offence,
 - if the act has already been dealt with in disciplinary proceedings or by a different authority having jurisdiction to try infractions or other administrative offences and the decision of such an authority may be regarded as sufficient.

The police officer is entitled to terminate the criminal prosecution for the reasons under A above only if no accusation has yet been made. The order of termination of criminal prosecution is served on the accused and on the injured party and, within 48 hours, on the prosecutor.

In proceedings concerning a contravention punishable with a prison sentence with a maximum prison term not exceeding five years, the prosecutor may, with authorization of the accused, after the accusation is made and until the indictment is filed, upon application by the police officer or without such application, terminate the criminal prosecution conditionally if the accused

- declares that he has committed the act for which he is being prosecuted,
- declares that he will compensate for the damage caused by the criminal offence or conclude an agreement on compensation of damage with the injured party,
- given the person of the accused, his life and the circumstances of the case, this may be regarded as sufficient.

There is imposed probationary period which lasts from one to five years. Appropriate measures may be imposed on the perpetrator during the probationary period, which should prevent him from criminal activity.

A conditional termination of criminal prosecution is not possible if

- the death of a person was caused by the criminal offence,
- the criminal prosecution is for corruption,
- the criminal prosecution is against a public official or against a foreign public official.

If the accused does not pass probation, criminal prosecution is continued.

If the accused has made a substantive contribution to the clarification of the criminal offences mentioned above with respect to termination of criminal prosecution and the interest of society in the clarification of such offences outweighs the interest in the criminal prosecution of the accused, the prosecutor may terminate the criminal prosecution of the accused conditionally for a probationary period of

two to ten years from the date of termination of criminal prosecution.

If the accused does not pass probation, criminal prosecution is continued.

In the proceedings concerning a contravention punishable with a prison sentence with a maximum prison term not exceeding five years, the prosecutor may, with the authorization of the accused and the injured party, approve a settlement and terminate the criminal prosecution if the accused

- declares, in a free, serious and certain manner, that he has committed the act for which he is being prosecuted,
- compensates for the damage or takes other measures to compensate for the damage he has caused by committing the criminal offence,
- deposits, with the account of the court or, during the preparatory proceedings, with the account of the prosecution office, a pecuniary amount for the purposes of general interest intended for a specific beneficiary.

A settlement may not be approved for reasons enumerated in Section 222(2). For other statutory conditions, see Sections 222 to 227.

If no facts for conducting criminal proceedings against a specific person are established during the preparatory proceedings, the police officer suspends the criminal prosecution if

- the case cannot be clarified in a due manner because the accused or a witness is absent,
- the accused cannot be tried in a court because of a serious disease,
- the accused is not able to understand the meaning of criminal prosecution because of his mental disease having occurred after he committed the offence,
- the accused is extradited or expelled,
- the Constitutional Court or the Court of Justice of the European Communities suspends the effects of a legal instrument essential for the proceedings or for a decision on the merits,
- the accused is a foreign national or a stateless person handed over to foreign authorities.

The police officer, with prior authorization of the prosecutor, may suspend the criminal prosecution for criminal offences indicated in Section 228(3).

If the reason for suspension ceases to exist, the prosecutor or the police officer orders that criminal prosecution be continued.

If the results of the investigation or of the summary investigation sufficiently justify trying the accused in a court, the prosecutor lodges an indictment with the court having jurisdiction to which he annexes the files and all the evidence. The indictment may be filed only for the offence for which the accusation has been made. The contents of the indictment are indicated in Section 235. Apart from an indictment, if statutory conditions are met, the prosecutor may also close the preparatory proceedings by making an application for a protective measure.

8.2 Court proceedings

Once the indictment is filed by the prosecutor, the case passes from the preparatory proceedings to the court, which is obliged to deal with it. Criminal prosecution in a court may be based either on an indictment or on an application for a guilt and sentence agreement filed by the prosecutor. The indictment and the application for a guilt and sentence agreement is heard by

- the judge for preparatory proceedings, in the case of summary investigation,
- a single judge in proceedings concerning contraventions punishable with a prison sentence with a maximum prison term not exceeding five years,
- the presiding judge or a panel of judges in other cases.

The indictment or the application for a guilt and sentence agreement filed by the prosecutor is first examined by the court in order to determine whether the indictment or the application provides a sufficient basis for further court proceedings. In particular, the court verifies whether the preparatory proceedings prior to the indictment or the application were performed in accordance with the Code of Criminal Procedure and whether the results provide a sufficient justification for trying the accused in a court.

An indictment filed for a contravention punishable with a prison sentence with a maximum prison term *not exceeding eight years is examined by a single judge*. No preliminary hearing is held.

Once it has examined the indictment and the contents of the file, the court may, according to the circumstances of the case, adopt any of the decisions listed in Section 241(1). It may:

- refer the case to the court having jurisdiction if it does not have jurisdiction,
- refer the case to another authority under Section 214(1),
- terminate the criminal prosecution [Section 215(1) to (3)],
- suspend the criminal prosecution [Sections 228(2) and (3) and 283(5)],
- dismiss the indictment and remand the case to the prosecutor for serious procedural defects or for a violation of the right to defence,
- terminate the criminal prosecution conditionally under Sections 216(1) or 218(1),
- rule on the participation of a citizen interest association in the court proceedings,
- issue a sentencing order,
- order a trial, set the date for trial and determine the scope of the evidentiary process,
- suspend the criminal prosecution if it makes a request for a preliminary ruling to the Court of Justice of the European Union.

After receiving an indictment for a crime with a prison sentence *above eight years, the presiding judge may decide to order a trial or to hold a preliminary hearing* on the indictment, which is usually a public hearing

A preliminary hearing on the indictment is held if the indictment contains substantial errors, because the authorities acting in criminal proceedings failed to observe the procedures for executing and securing evidence defined by the law, to respect the statutory rights of the accused or to establish the facts in a due manner.

During the preliminary hearing on the indictment, the court may adopt one of

the decisions listed in Section 244, similar to those mentioned relative to the examination of the indictment. However, these decisions are adopted by a panel of judges at a public hearing.

To hear the criminal, establish the facts by means of evidentiary process in a due manner and to deliver a legal and justified decision on guilt, sentence and other issues relative to the criminal offence these all are considered to be the most important aims of the trial.

Presiding judge fixes the date of *trial*. He serves the indictment and notifies the parties of the criminal proceedings that an indictment has been filed and takes any measures necessary to secure a fair trial. The presiding judge may order a trial only with respect to the offence indicated in the indictment charges. The prosecutor, indicted and his counsel and other parties must be present during the trial.

A trial may be held in absence of the indicted only if the aim of the criminal proceedings may be achieved without indicted being present. (See Section 252)

Stages of the Trial are:

- a) Opening
- b) Evidentiary process
- c) Close of trial
- d) Decision of the court

The presiding judge opens a trial by announcing the criminal case to be heard. There are permanently present all members of the panel of judge, minute clerk and prosecutor.

One of the presiding judge responsibilities is to ascertain whether all summoned parties are in attendance for the trial. In case that they are not, he decided whether trial should be adjourned.

When organizational acts are performed, the presiding judge invites the prosecutor to present the indictment. Then is the injured party asked about making a claim for damages, which are going to be paid by the indicted.

Evidentiary process can start after the indictment has been presented and the question of the claim for damages has been resolved. The court executes evidence, clarifies and evaluates the facts to be proven and constitutes the basis for making decision at the trial.

The court commences the evidentiary process after the indictment has been presented and the issue of the claim for damages has been resolved. When there are parties and other people present, the court executes evidence, clarifies and evaluates all the facts to be proven and makes conclusions constituting the basis for reaching its decision at the trial. When making its decision and dealing with the evidence from the preparatory proceedings, the court takes into consideration only the evidence executed at the trial.

Evidentiary process starts always by examining the indicted, confronting the position of the prosecution with the attitude of the indicted. Presiding judge is entitled to determine the order of the executing further evidence. Evidence is executed with the active participation of all parties, observing all principles and procedures indicated in Chapter 3 of Part II of the Code of Criminal Procedure.

After the relevant evidence has been executed and if there is no more to deal

with, the presiding judge declares the evidentiary process closed and makes a request for final speeches.

At the beginning prosecutor presents his final speech. He assesses the facts and the evidence corroborating or rebutting the facts relevant for the decision of the court, especially illegality and gravity of the action of the indicted, the consequences of the criminal offence and the possibilities of rehabilitation of the indicted. He gives reasons for the legal qualification of the action, as well.

After the prosecutor has finished his speech, the representative of the citizen interest association is having his final speech. He can present either positive or negative position of the association with respect to the indicted.

Then, the injured party and the involved party is invited to make their final speeches and to make their claims with respect to the criminal proceeding. Finally, counsel and the indicted make their final speeches.

After the final speeches, before retiring for final deliberations, Indicted has a right of final word. This speech cannot be interrupted.

The court may rule only on the act indicated in the indictment charges, taking into account only the evidence executed at the trial.

If it is discovered during the trial that the indicted has committed another act constituting a criminal offence and the prosecutor moves for the case to be remanded, an order remanding the case for further investigation is issued by the court and a joint hearing will be held.

If there is lack of jurisdiction for the court, it refers the case to the other to try the offence in question. It refers the case to another authority if it discovers that the offence in question is not a criminal offence, but only an administrative infraction.

If criminal prosecution is impermissible pursuant to Section 9(1) or if one of the reasons indicated in Section 215(3) exists, the court terminates the criminal prosecution at the trial. It may also terminate the criminal prosecution conditionally if the conditions enumerated in Section 216(1) are met [for a collaborating accused, see Section 218(1)].

The criminal prosecution can be terminated by the court if there are conditions for concluding a settlement (Section 220), proceeding in accordance with Sections 221 to 227.

If any of the circumstances enumerated in Sections 228(2), 241(3), 244(4) or 228(3) is discovered during the trial, the criminal prosecution is suspended. Criminal prosecution can be continued, if the reason for suspension ceases to exist (Section 283).

If none of the decisions mentioned above is adopted, the court renders a judgment by which it rules whether the indicted is

- convicted, or
- acquitted of the indictment charges.

The court convicts the indicted if it has been established during the criminal proceeding that the indicted has committed the criminal offence and there is no reason for a different decision or measure.

The court acquits the indicted of the indictment charges if

- it has not been proven that he has committed the act for which he is prosecuted,

- the act is not a criminal offence,
- it has not been proven that the act was committed by the indicted,
- the indicted is not criminally responsible because of his mental incapacity,
- the act is no longer a criminal offence,
- the prosecutor renounced the indictment at the trial pursuant to Section 239(2).

For further information concerning judgments, see Sections 286 to 289.

Except of the trial, courts conduct also public hearings and closed hearings. At public hearings, there are decided issues of guilt, sentence and ordinary and extraordinary requests for relief are. At closed hearings, only issues not requiring examination of persons or the presence of the parties are decided. Closed hearings are held where the law does not provide possibility of a public hearing. Closed hearings are held only in the presence of the members of the panel of judges and of the minute clerks. Other persons may not be present.

The proceedings relative to requests for relief are commenced with filing a request for relief by a person entitled to do so, seeking the review of a decision of an authority acting in criminal proceedings or of a judicial decision.

The following requests for relief are distinguished in criminal procedure:

- ordinary requests for relief, which are filed against non final decisions,
- extraordinary requests for relief, which may be filed only against decisions which are final.

Ordinary requests for relief are:

- a) a complaint against an order,
- b) an appeal against a first instance judgment,
- c) a protest against a sentencing order.

A complaint, which is an ordinary request for relief against an order, may be filed against:

- any order of a police officer (excluding the order of commencement of criminal prosecution),
- an order of the court or prosecutor only if the law provides so or if the order in question is a first instance decision,
- an order to seize property issued by the Prosecutor General.

A complaint is filed with the authority having issued the order by the person concerned by the order within three days of notification of the order.

A complaint may be filed against an order because

- the ruling is incorrect,
- the ruling is obviously inconsistent with the reasoning,
- during the proceedings prior to the order, procedural rules were infringed.

A request may be granted by the authority having issued the order but the rights of the other parties to the criminal proceedings may not be affected by the modification of the original decision.

If the request is not granted, the case will be referred

- by the police officer to the supervising prosecutor,
- by the police officer to the superior prosecutor if the request was filed against an order of the police officer issued with authorization or on the basis of the

- instructions of the superior prosecutor,
- by the prosecutor or by the court to the superior prosecutor or to the superior court,
 - by the superior court clerk or by the court secretary to the presiding judge or to the judge for preparatory proceedings during the preparatory proceedings,
 - by the judge for preparatory proceedings to the superior court, if the request was filed against an order not to remand the accused in custody,
 - by the prosecutor to the judge for preparatory proceedings, if the complaint was filed against an order to seize property.

The superior authority, having examined the operative parts of the order and the proceedings prior to the order:

- dismisses the complaint if it is inadmissible, if it was not filed in a timely manner, if it was filed by a person not entitled to do so or if the person in question waived his right to file it or withdraws it, or
- does not dismiss it, in which case it quashes the contested order and renders its own decision or orders that the authority having issued the contested order hear the case again and adopt a correct decision (except for decisions concerning the accused not being remanded in custody or decisions extending the duration of custody).

An appeal is an ordinary request for relief filed against a first instance judgment. An appeal may be filed against any ruling in the judgment. An appeal may be filed also because a ruling was not made or because a mistake in the proceedings prior to the judgment may have caused a ruling to be incorrect or missing.

An appeal may be filed against a judgment

- by the prosecutor with respect to any incorrect ruling,
- by the indicted with respect to an incorrect ruling which directly concerns him,
- by the injured party with respect to an incorrect ruling on damages,
- by the involved party with respect to an incorrect ruling on confiscation of a thing.

An appeal may be filed by certain entitled persons in favour of or against the indicted, even against his will.

An appeal may be filed against the judgment against the indicted by

- the prosecutor;
- the injured party only with respect to his claim for damages.

An appeal may be filed against the judgment in favour of the indicted by

- the indicted;
- the prosecutor,
- direct and collateral relatives of the indicted.

An appeal may be filed against the will of the indicted by the prosecutor, by the statutory representative or by the counsel of the indicted, if the indicted is deprived of legal capacity or if his legal capacity is limited.

Appeals are filed with the court having issued the contested judgment within 15 days of notification of judgment.

An appeal must indicate which rulings are contested, whether the proceedings prior to the judgment are being contested, and what defects of the judgment are being alleged. An appeal may be based on new facts and evidence.

An entitled person may explicitly waive his right to appeal or explicitly withdraw an appeal already filed.

The presiding judge serves a copy of the appeal on the other parties who may be directly affected by the appellate decision, inviting them to make comments on the appeal. Once the time limit for filing an appeal with respect to all entitled persons has expired, the judge submits the file to the appellate court.

The appellate court

- a) dismisses the appeal if it was
 - not filed on time,
 - filed by a person who is not entitled to do so,
 - filed by a person having explicitly waived his right to appeal or withdrawn his appeal,
- b) quash the contested judgment, remand the case to the court of first instance and order that the case, to the necessary extent, be heard and decided again if
 - the judgment was rendered by a court whose composition was not in accordance with the law,
 - the indicted was not represented by counsel, even though defence by a counsel was mandatory in his case, or
 - trial was held in the absence of the indicted, even though the statutory conditions were not met.

If the appellate court does not dismiss the appeal and does not quash the judgment, it

- examines the contested rulings contained in the judgment as to whether they are legal and justified,
- examines the proceedings prior to the judgment as to whether they were performed in accordance with the law.

The appellate court may suspend the criminal prosecution under Section 318, quash the contested judgment or refer the case under Section 320 or terminate the criminal prosecution if such a decision should have been made by the court of first instance.

The appellate court quashes the contested judgment

- because of substantial defects during the proceedings prior to the judgment,
- because of errors in the contested rulings contained in the judgment, especially if they are unclear or incomplete,
- because the facts concerning the contested rulings were not established correctly if evidence must be executed again or new evidence must be executed,
- if the contested judgment infringes the provisions of the Criminal Code,
- if the sentence imposed is disproportionate,
- if the ruling on the injured party's claim for damages is contrary to the law.

If the appellate court quashes the ruling on guilt, or partially quashes it, it always quashes the entire ruling on sentence and other rulings based on the ruling on guilt.

The appellate court may not

- convict the indicted of a criminal offence of which he was acquitted by the contested judgment,
- convict the indicted of a criminal offence more serious than the criminal offence for which he could have been convicted by the court of first instance in the contested judgment.

The appellate court, having quashed the judgment, may remand the case to the prosecutor back to preparatory proceedings pursuant to Section 279(1).

If the appellate court rules in favour of any of the indicted, it also rules in favour of the other indicted, even if they did not file an appeal.

If the appellate court remands the case for a new hearing and trial, it may order that the case be heard by a different panel of judges.

The court to which the case was remanded for a new hearing and trial is bound by the legal opinion of the appellate court.

A protest is an ordinary request for relief against a sentencing order. It may be filed by the persons entitled to file an appeal.

A protest is filed with the court having issued the sentencing order within eight days of notification. If an entitled person files a protest against a sentencing order within the statutory time limit, the sentencing order is set aside and the single judge orders a trial. If a sentencing order is set aside, the judge refers the injured party and his claim for damages to civil proceedings.

Extraordinary requests for relief are filed against final decisions suffering from serious defects, which jeopardize correctness and fairness of decisions of authorities acting in criminal proceedings and of courts.

A final decision is a decision that cannot be contested with an ordinary request for relief. A decision is final if no ordinary request for relief may be filed against it under the law, if such request for relief was not filed within the statutory time limit or if it was filed by a person not entitled to file it or if the person in question explicitly waived his right to file it or withdrew it or if it was filed, but dismissed. Only rulings contained in a decision, and not the reasoning of a decision, become final.

According to The Code of Criminal Procedure we can distinguish three extraordinary requests for relief:

- a) annulment of final decisions during the preparatory proceedings,
- b) a higher appeal,
- c) reopening of proceedings.

Annulment of final decisions during preparatory proceedings is used for correcting

- mistakes of law in final decisions, or
- incorrect proceedings of authorities acting in preparatory proceedings prior to such decisions.

An application for annulment of a final decision during preparatory proceedings may be filed with the Prosecutor General by

- the accused, in his favour,

- the persons entitled to file an appeal, in favour of the accused,
- the injured party, against the accused,
- the involved party.

If the Prosecutor General, examines the application, concludes that the contested decision is not in accordance with the law, he annuls the final decision of the prosecutor or of a police officer, or a part of it, as well as, if necessary, the incorrect proceedings prior to the illegal decision. He annuls also other decisions derived from the illegal decision.

A contested final decision can be annulled by the Prosecutor General within three months of becoming final, even without an application, against the accused or in his favour. The Prosecutor General may decide the case himself or he may order the authority having issued the annulled decision to hear and decide the case again. In the second case, the authority is bound by the legal opinion of the Prosecutor General.

Otherwise, the Prosecutor General decides, by issuing an order, that there was no violation of the law, which means that the contested decision remains final.

A higher appeal, which is another extraordinary request for relief, may be filed only against a final judicial decision on the merits within three months of service.

A final appellate decision may be contested by a higher appeal by:

- the Prosecutor General, with respect to any ruling,
- the accused, in his favour, with respect to a ruling which directly concerns him,
- a direct relative or a collateral relative of the accused, in favour of the accused, with the express written authorization of the accused,
- the statutory representative or counsel of a juvenile accused or of an accused deprived of legal capacity.

Higher appeals are filed with the court of first instance, within three months of service of the judicial decision.

The grounds for a higher appeal are named in Section 371(1)(a) to (h). A higher appeal can be filed, for instance, if the case was decided by a court lacking jurisdiction, if the right to defence was substantially infringed, if the criminal prosecution was held without the consent of the injured party where the law requires such consent, if evidence was executed in a manner which is in contrary with the law or if the sentence imposed is contrary to the law.

The reasons referred to above cannot be invoked if the person filing a higher appeal knew of such reason already in the original proceedings and did not invoke it in the appellate proceedings.

A higher appeal must indicate the defects of the contested decision or of the proceedings prior to it.

The presiding judge in the court of first instance serves a copy of the higher appeal to the other parties, inviting them to make comments. He sets an appropriate time limit, which cannot exceed 30 days, for making comments, and then he submits the file to the higher appellate court.

Supreme Court, which is the biggest appellate court, decided all higher appeals, A higher appeal is examined on a preliminary basis by the presiding judge of the

higher appellate court. If it is incomplete or if it has other defects, the person having filed it is requested to correct such defects.

The higher appellate court dismisses the higher appeal at a closed hearing, without examining the case, if

- it was not filed on time,
- it was not filed by a person entitled to do so,
- it is obvious that the reasons or conditions of a higher appeal are not satisfied,
- the higher appeal, in spite of having been completed, does not contain the information required by the law [Section 374(1) and (2)].

If the higher appeal is well-founded and if other statutory conditions are met, the higher appellate court examines the rulings contained in the contested decision as to whether they were legal and justified, as well as whether the proceedings prior to the decision were performed in accordance with the law and the grounds for a higher appeal.

If the higher appellate court determines that the higher appeal is well-founded, it rules, by issuing a judgment, that the law was infringed and it quashes the contested decision or a part of it and annuls the incorrect proceedings prior to it. It quashes also the previous first instance decision and other decisions based on the contested decision.

The higher appellate court, having quashed the contested decision, orders the court having issued the decision in question to hear and to decide the case to the necessary extent again.

According to Section 386(1) and (2), the higher appellate court may remand the case back to preparatory proceedings, if requested by the General Prosecutor.

If the higher appellate court finds that no grounds for a higher appeal have been established, it dismisses the higher appeal by issuing an order that may not be contested with a request for relief.

Unlike the two extraordinary requests for relief referred to above, which are focused on eliminating legal defects, the reopening of proceedings is focused on eliminating deficiencies in the establishment of facts in final decisions discovered after the original decision becomes final.

An application for a reopening of proceedings may be filed against a final judgment, sentencing order or order. If the application is granted, the criminal prosecution of the same person for the same offence may be continued.

The reopening of proceedings with respect to a final judgment may only concern the ruling on guilt and sentence and the ruling on damages, but not the ruling on protective measures.

The reopening of proceedings is allowed only upon application by the entitled persons against the accused or in his favour, even against his will. Such an application may be filed:

- a) against the accused, only by the prosecutor,
- b) in favour of the accused, by the accused and by any person entitled to file an appeal,
- c) by the persons entitled to file an appeal, against the will of the accused.

The reopening of proceedings is allowed only if there are new facts or evidence raising doubts as to whether a final decision is correct, provided that such facts or evidence could, individually or in combination with facts and evidence previously known, justify a decision different from that constituting the contested judgment, the order of termination of criminal prosecution or the order of referral of the case to another authority. Likewise, the reopening of proceedings is possible if the authority acting in criminal proceedings or the judge in the original proceedings violated their duties, which was not discovered until after the judgment or the order in question became final.

To reopen the proceedings terminated by a final judgment is possible both against the accused and in his favour. The reopening of proceedings terminated by an order of termination of criminal prosecution is possible only against the accused.

The reopening of proceedings against the accused is not possible if

- the act is no longer a criminal offence,
- the sentence has been pardoned by the President of the Slovak Republic,
- the accused has died.

If a certain circumstance must be clarified before the ruling on the application for a reopening of proceedings, it will be done by the presiding judge or, at his request, by the authority acting in criminal proceedings.

The court, having verified whether the application for a reopening of proceedings is founded, dismisses the application if

- it was filed by a person who is not entitled to do so,
- it is directed solely against a ruling denying reopening of the proceedings,
- if the reopening of proceedings is excluded pursuant to Section 394.

If the court grants the application for a reopening of proceedings, it annuls the contested decision in whole or in part, to the extent that the application is founded. If the ruling on guilt is annulled, all other rulings based on this ruling are annulled, as well.

The court, having granted the application for a reopening of proceedings and annulled the contested decision, remands the case back to the preparatory proceedings if it is necessary for clarifying the case and the completion of the evidentiary process before the court would be excessively onerous.

The application for a reopening of proceedings is decided at a public hearing. The application may be dismissed at a closed hearing if it contains the same facts and evidence as in the previous application that has been definitively dismissed.

The case is heard and decided in the court of first instance again when the application for a reopening of proceedings is granted. If an application for a reopening of proceedings terminated by an order of termination of criminal prosecution or by an order of referral is granted, the preparatory proceedings are continued. If the court quashes a final judgment rendered in the proceedings concerning a guilt and sentence agreement, the case is always remanded to the prosecutor for further preparatory proceedings.

If an application for a reopening of proceedings in favour of the accused or co-accused is granted, the sentence imposed in the new judgment may not be more severe than that imposed in the original judgment.

Main aim of *enforcement proceedings* is to enforce final and enforceable decisions. Enforcement proceedings are a separate procedural stage of the criminal procedure only in the case that judgment of conviction is enforced. The enforcement of sentences and protective measures imposed in final and enforceable judgments or orders is supported by the following principles:

- a) judicial decision imposing a sentence or a protective measure must exist,
- b) the order, the judgment or the sentencing order in question must be enforceable, i.e. it must be possible for the court or appropriate authority to enforce it,
- c) an enforceable decision must be enforced as soon as possible, For instance, if an extraordinary request for relief is filed, enforcement may be suspended. Other exceptions are for example the convict's bad state of health, pregnancy, etc.,
- d) When the enforcement of a sentence or of a protective measure has commenced, it should be continued without any delays, save for exceptions stipulated by the law. General and special reasons for suspending enforcement may be distinguished. Such reasons include a waiver of enforcement of a prison sentence in case of expulsion or extradition,
- e) the enforcement of a sentence must comply with the decision in question both in respect of the type and the extent of the sentence. Exceptions to this rule include cases of conditional release from imprisonment and of modification of the mode of execution of a sentence or a waiver of enforcement of the remaining sentence,
- f) sentences and protective measures imposed by final and enforceable judicial decisions are enforced by virtue of office, as soon as the conditions for enforcement are met,
- g) final and enforceable decisions must be enforced by the authorities authorized to enforce them. The court having issued the decision in question guarantees that it is correct and enforceable,
- h) sentences and protective measures can be enforced by the court which imposed them, save for certain exceptions, e.g. the execution of a prison sentence may be suspended by the director of the correctional institution because of compelling family reasons,
- i) enforcement of sentences should, as far as possible, ensure the rehabilitation of convicts,
- j) a correct enforcement of such final and enforceable decisions in accordance with the law is ensured by the supervision over the enforcement of sentences and protective measures by various supervisory authorities.

Enforcement proceedings are not necessary in the case of every decision. If the person in question complies with the decision voluntarily, there is no need for it to be enforced.

Title IX: Special types of criminal proceedings

Title VII of Part II of the Code of Criminal Procedure deal with special types of criminal proceedings, providing for certain derogations from ordinary criminal proceedings in Sections 331 to 362.

Special types of criminal proceedings include:

- Guilt and sentence agreement;
- Proceedings against juveniles;
- Proceedings before the judge for preparatory proceedings and before a single judge;
- Sentencing order;
- Proceedings against an absconding person;
- Proceedings on a proposal for confiscation of money and a proposal for confiscation of assets;
- Proceedings after the annulment of the decision by issuing Constitutional Court finding.

If the results of the investigation or of the summary investigation sufficiently support the conclusion that the act is a criminal offence and that it was committed by the accused, who has confessed and admitted his guilt, and the evidence supports his confession and if the persons enumerated in Section 232(2) conclude a *guilt and sentence agreement* and the prosecutor applies for it to be approved by the court, the presiding judge examines the content of the agreement as it was submitted to him. If he discovers a serious violation of procedural rules or the right to defence, he dismisses the application and return the case back to the preparatory proceedings. In other case, he sets a date for a public hearing of the application and serves it on the persons concerned.

After the application is heard, the presiding judge asks the questions enumerated in Section 333 to the accused and hears comments from all persons concerned by the application. In the final deliberations, when the accused has answered all questions in the affirmative, the court approves the agreement, which is confirmed by a judgment delivered in open court. No appeal or higher appeal may be filed against this judgment.

If the court does not deem the guilt and sentence agreement to be adequate and just or if the accused answers any of the questions put to him in the negative, the court does not approve the agreement and, by issuing an order, remands the case to the prosecutor for preparatory proceedings.

A juvenile is a person between 14 and 18 years of age. The differences of *criminal*

proceedings against juveniles in comparison with ordinary proceedings are based on the position of juveniles requiring a special assessment of the circumstances of the case in order to make the decision and to choose the most appropriate sentence or measure in order to reform juvenile offenders.

Proceedings against juveniles differ from ordinary criminal proceedings, especially in the following points:

- the juvenile must be represented by counsel from the first moment of the accusation is made,
- the degree of intellectual and moral development of the juvenile, his character features, and the environment where he lived and was brought up and his behaviour before and after committing the criminal offence must be taken into consideration,
- appropriate educational activities for his reform must be chosen,
- the youth protection authority in the place of residence of the juvenile must be associated with the proceedings in order to eliminate any obstacles to the educational effect of the proceedings,
- the proceedings against juveniles should be performed by persons having professional knowledge and experience in this area,
- if a juvenile has not reached the age of 15 at the time of commission of the offence, it must always be ascertained whether he was able to discern the illegality of his action and to control his action,
- a juvenile accused of the offence or the crime may be remanded in custody only if there is no other way to achieve the purpose of the purpose of the custody.
- joint court proceedings against a juvenile and a person over 18 years of age is possible only in very exceptional cases justified with compelling reasons,
- the trial or a public hearing cannot be held in the absence of the juvenile,
- upon application by the juvenile, his counsel or statutory representative, the court excludes the public from the trial or orders that the juvenile will not be present in the courtroom for a specific time,
- instead of a sentence, the court may impose protective custody on a juvenile offender,
- additional persons are entitled to file requests for relief.

Proceedings before the judge for preparatory proceedings and before a single judge is to ensure that contraventions or crimes punishable with a prison sentence with a maximum prison term not exceeding eight years are heard and tried in simplified, accelerated and more effective proceedings (see e.g. Section 204).

In the cases listed in Section 204(1), the judge for preparatory proceedings

- a) examines the accused with respect to
 - the circumstances of detention,
 - the circumstances justifying a remand of the accused in custody provided that a motion to that effect has been made,
 - filing an indictment and admission of guilt,
- b) rules on custody pursuant to an application by the prosecutor,
- c) within 15 days of the indictment being filed, unless he issues a sentencing

order, he fixes a trial date and serves the indictment on the persons concerned,

- d) allows the indicted person to choose a counsel or appoints a counsel for him (mandatory defence),
- e) holds the trial immediately after examining the indicted.

A single judge, panel of judges and a presiding judge, have the same rights and duties when hearing contraventions or crimes punishable with a prison sentence with a maximum prison term not exceeding eight years.

A single judge duly examines the indictment and the proceedings preceding the indictment and adopts one of the decisions listed in Section 241(1)(a) to (j) and (6), as a panel of judges does at the preliminary hearing of the indictment. If he does not issue a sentencing order, he orders a trial and, in the case of an application for a guilty and sentence agreement, he orders a public hearing to hear the application.

If the executed evidence are sufficient to establish the, a single judge, without holding a public hearing, may issue a *sentencing order* by which he may impose on the accused:

- a prison sentence not exceeding three years,
- a sentence of prohibition of certain activities not exceeding eight years,
- a pecuniary penalty,
- a sentence of forfeiture of a thing,
- a sentence of community work provided that the accused agrees,
- a sentence of home detention,
- a protective measure.

A sentencing order may not be issued against

- a person deprived of legal capacity or a person whose legal capacity is limited,
- a juvenile.

A sentencing order is equivalent to a judgment. A protest may be filed against a sentencing order within eight days of service.

The proceedings against an absconding person are possible only if the person in question tries to avoid the criminal proceedings, e.g. by staying abroad or by hiding.

The proceedings against an absconder cannot be held when dealing with a juvenile evading criminal proceedings.

The person against whom such proceedings are held must always be represented by counsel, who has, besides his own rights, the rights of the absent accused, as well.

Court proceedings may be held pursuant to an application by the prosecutor or on the basis of a measure adopted by the presiding judge in the absence of the accused.

The person convicted in these proceedings may move for a new hearing of his case in his presence within six months since he was informed about his conviction. The court can either dismiss the motion or set aside the previous decision and continue the criminal proceedings.

Title X: Legal relations with foreign countries

The provisions of the Code of Criminal Procedure described below are subject to a general clause, which states that these provisions are applicable unless an international treaty provides otherwise. The extradition procedures between the Slovak Republic and the Member States of the European Union were replaced on the basis of the European Arrest Warrant system. In the Slovak Republic this issue is regulated by the Act no. 154/2010 Coll. on European Arrest Warrant laying down the procedure of Slovak authorities when take-over persons among the EU member states on the basis of the European arrest warrant and the related proceedings.

Legal relations with foreign countries are governed by Part V of the Code of Criminal Procedure in Sections 477 to 552, based on international treaties, regulating specific procedures concerning extradition, enforcement of decisions with respect to foreign countries, taking over and transferring criminal cases and legal assistance relative to foreign countries.

Only Ministry of Justice at the request of the court or the judge for preparatory proceedings has the right to request an accused from a foreign country (*extradition*). However firstly is needed to issue an arrest warrant upon application by the prosecutor.

The conditions for issuing an arrest warrant and its contents are defined in Section 490(2) to (4). For instance, a warrant can be issued if the presence of the accused cannot be secured for procedural acts or the convict has not presented himself for the service of a prison sentence (for further statutory conditions, see Sections 491 to 497).

A person may be extradited from the Slovak Republic to a foreign country only when foreign authority requests containing the information indicated in Section 498(2) and (3) and only for one of the criminal offences subject to extradition and punishable with a prison sentence of at least one year or for the service of an imposed sentence of at least four months.

The reasons for denial of a request for extradition of a person to a foreign country are named in Section 501(a) to (h).

Preliminary investigation, which is usually performed by a prosecutor of the regional prosecution office, precedes extradition in order to establish whether there are reasons for the extradition proceedings or not. The person who is supposed to be extradited must be represented by a counsel in the extradition proceedings. If the person in question agrees with his extradition to a foreign country, the Ministry of Justice may extradite the person in accordance with the simplified extradition procedure pursuant to Section 503.

The person in question can be detained by the Police Corps when requested by the foreign authorities and the prosecutor with jurisdiction orders it. According to an application by the prosecutor, the president of the regional court may decide, within 48 hours of the person being detained, that the detained person will be held in preliminary custody. If the presiding judge does not remand the detained person in custody in accordance with the time limit mentioned above, the detained person must be released. Preliminary custody of an extradited person cannot exceed 40 days following the detention. The aim of extradition custody is to secure the presence of the person in the extradition proceedings on the territory of the Slovak Republic so that the purpose of these proceedings is secured.

When the preliminary investigation, has been terminated, according to the application by the prosecutor, the regional court with jurisdiction decides whether extradition of the person in question is permissible and refers the case to the Ministry of Justice.

With respect to the extradition of a person to a foreign country, the Minister of Justice

- does not authorize the extradition if the regional court or the Supreme Court has ruled that extradition is not permissible,
- if the court having jurisdiction has ruled that extradition is permissible, he may decide not to authorize the extradition for any of the reasons listed in Section 510(2)(a) to (e); otherwise, he authorizes the extradition.

A decision issued by a court of foreign country has legal effects in the Slovak Republic only if the Slovak Republic is obliged to do so according to an international treaty or a law (*execution of decisions with respect to foreign countries*). The conditions of recognition are included in Section 516(1)(a) to (i). The Ministry of Justice with a court are entitled to fill in an application for recognition of a foreign decision. They decide at a closed hearing following a written opinion submitted by the prosecutor having jurisdiction.

For more information about taking over and transferring a convict for the execution of a prison sentence, see Sections 522 to 527.

The General Prosecution Office makes decisions whether to take over of a criminal case by the Slovak authorities from foreign authorities and it is obliged to notify the Ministry of Justice about it (*transferring and taking over a criminal case*).

The Slovak authorities have right to move the criminal prosecution to be transferred to the state of citizenship of the accused if criminal proceeding is held in Slovak Republic against individual without Slovak citizenship. During the proceedings prior to court proceedings the Minister of Justice decides at the request of the General Prosecution Office. In Section 529(3) there are described reasons for transferring a criminal case.

Slovak authorities may continue the criminal proceedings if the requested country does not take over the criminal proceedings or orders the enforcement of the sentence or revokes its decision to take over and announces that it will not continue the proceedings.

In *legal assistance* are included procedural acts following the commencement of criminal proceedings in the Slovak Republic

- performed abroad on the basis of requests by Slovak authorities,
- performed on the territory of the Slovak Republic on the basis of requests by foreign authorities.

The manner, the content and the form of requests by Slovak authorities are described in Sections 532 to 536. Requests by foreign authorities, treatment of such requests and further proceedings concerning the performance of procedural acts are governed by Sections 537 to 542. For special forms of assistance, see Sections 543 to 552.

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