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## PRE-TRIAL PROCEEDINGS IN THE CZECH REPUBLIC

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**Abstract.** *In the opening of the article, the author briefly assesses the existing legal regulations of criminal procedure in the Czech Republic adopted as far back as in 1961. He points out to specific imperfections, which justify the need for their recodification. The mainstay of the article is devoted to the very pre-trial proceedings, i.e. checking and investigation. The existing legal regulations are analysed, and selected application problems are mentioned in relation to the recodification under preparation.*

**Keywords:** *Criminal Procedure Code, amendments to the Criminal Procedure Code after 1989, recodification of criminal procedure, substance of the new Criminal Procedure Code, pre-trial proceedings, checking, investigation, police body, investigating body.*

### Introduction

The topic of the present article is the issue of pre-trial proceedings in the Czech Republic. Its objective is to provide the reader with basic information about the existing legal regulations and the recodification of criminal procedure under preparation. To start with, I will briefly evaluate the current legal regulations of criminal procedure adopted as far back as in 1961. With regard to the changes in the Czech Republic after 17 November 1989, I will point out to their specific imperfections caused by large quantities of

amendments, frequently non-system ones, adopted after 1989. All of that will emphasize the need for the mentioned recodification. The main part of the article will be devoted to an analysis of the existing legal regulations concerning pre-trial proceedings. In this context, I will mention certain application problems in relation to the recodification. I will end the article with a summary of the issues discussed and concluding points.

Significant economic, political and social changes, which occurred in the Czech Republic after 17 November 1989 within the so-called Velvet Revolution, gradually affected all aspects of life in the society. Quite logically, they made an impact on the contents of criminal regulations as well. It was clear that criminal codes in their original form could not stand up under the new conditions of a democratic state respecting the rule of law and market economy, and that the time had come to remove the deformations and imperfections of previous years. Criminal substantive law was regulated by Act No. 140/1961 Coll., Criminal Code, as amended, and criminal procedure was regulated by Act No. 141/1961 Coll., on Criminal Procedure (Criminal Procedure Code), as amended.<sup>1</sup> Both codes were in effect as of 1 January 1962. After 1989 it was not realistic to start preparing new codes of criminal law at once. Therefore, the existing ones were subject to amendments, and, at the same time, works on new recodifications started. Even then the expert public was widely discussing the question whether both drafts of the proposed new codes should have been presented to the Parliament of the Czech Republic jointly (the intention was for them to be discussed and approved simultaneously if possible and to become effective on the same date) or whether the Criminal Code should have been prepared and adopted at first, followed by the preparation of the new Criminal Procedure Code. It is now pointless to retroactively evaluate the selection of the process of separate preparation, discussion and approval of these important codes.<sup>2</sup> Hence, at first the recodification of the criminal substantive law was to be prepared and approved and only then the preparation of the criminal procedure recodification was to start. It was clear that it was to be a long-distance run (which finally proved true). The recodification process in relation to the criminal substantive law was completed only in 2009 by the adoption of Act No. 40/2009 Coll., Criminal Code, as amended, in effect as of 1 January 2010.<sup>3</sup>

## 1. The State of Legal Regulations Included in the CPC

The still valid CPC was adopted as far back as on 29 November 1961. It was then a relatively modern rule reflecting the social need for effective prosecution of criminal activity of that time. It is necessary to appreciate its legislative conception, system interconnection and legislative-technical standard. Nevertheless, the CPC was a reflection

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1 Hereinafter referred to as the CPC.

2 The backstage talk was that those codes were essential and too extensive to run their legislative process simultaneously. Rather, we can assume that the legislator did not have enough courage and motivation for the said process.

3 Hereinafter referred to as the CC.

of the political-legal doctrine of law as a power tool of the Communist Party and the state used to enforce ideological interests. At that time, one of the purposes of law was to suppress the so-called hostile classes, *inter alia*, by means of criminal law enforced by criminal proceedings.

The CPC was amended many times after 1989. Only seven amendments had been adopted before 1989. The remaining more than fifty amendments date back to the period after 1989. The amendments significantly extended the rights of the accused and his/her counsel. The aggrieved person's right of disposal was laid down: in relation to certain offences, criminal prosecution could be initiated and continued only with an aggrieved person's approval.<sup>4</sup> Conditions for the ordering of eavesdropping on and recording of traffic in telecommunication were stipulated. As a novelty, the function of making decisions regarding more significant interference with the fundamental human rights and freedoms at the pre-trial stage of criminal proceedings was assigned to the judge, not to the prosecuting attorney.<sup>5</sup> The institute of the initiation of criminal prosecution was abandoned. The notification of accusation to a specific person became the exclusive form of the initiation of criminal prosecution. Diversions of criminal proceedings were reinforced in the form of conditional discontinuance of criminal prosecution and settlement. Greater witness protection in criminal proceedings was ensured by introducing the institute of the concealment of the witness's identity and appearance in cases when his/her life or health is in danger in connection with his testimony. Conditions for taking the accused into custody as well as for a continued custody became stricter. By the so-called Great Amendment of the CPC adopted by Act No. 265/2001 Coll., in effect as of 1 January 2002,<sup>6</sup> the focus of producing the evidence was moved to the stage of trial before court and hence the role of the pre-trial stage was restricted. The institute of an investigator as a party to the proceedings was cancelled and the prosecuting attorney's supervision over pre-trial proceedings was reinforced. A new extraordinary relief, the appellate review, was introduced to reduce the possibility of legal defects of judgments. By Act No. 218/2003 Coll., on Criminal Liability of Juveniles and Juvenile Justice and on Amendment of Certain Acts (Juvenile Justice Act), as amended, in effect as of 1 January 2004 new regulations, in addition to the substantive ones, regarding the procedural processes concerning juveniles were established; it is a *lex specialis* in relation to the criminal codes. A number of important as well as partial issues were subject to radical changes due to the amendments from the beginning of the nineties; the changes reflected both the principles of a democratic state respecting the rule of law, on which a democratic society is based, and the new criminal phenomena accompanying an open society.

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4 It applies to exhaustively defined offences (for example, bodily injury, blackmail, theft, fraud or rape) if the offender is a spouse, cohabitee, partner or a relative in the direct line of descent in relation to the aggrieved person.

5 It concerns, for example, the fact that only the judge may issue an order to carry out house search and only the judge may take the accused into custody. Before 1989, it was the public prosecutor, the predecessor of the current prosecuting attorney, who had these powers within the pre-trial stage of criminal proceedings.

6 Hereinafter referred to as the Great Amendment of the CPC.

Moreover, they reflected the interest in speedy proceedings that found its legislative expression in the introduction of new modern institutes (in particular, diversions).

It is clear that, despite its far-reaching changes in 1989, the CPC no longer satisfies the modern trends of restorative justice as opposed to the retributive one. Criminal proceedings are still relatively complicated and protracted. This means that the principle of the irreversibility of punishment has not been successfully met. The system of criminal justice is not able to cope with certain very serious forms of criminality, problems arise even when dealing with petty criminality. A number of offences remain unpunished or punished with a considerable delay. Too great demands are placed on the formal aspects of producing evidence, which makes it impossible to convict the real perpetrators of crimes. Frequent amendments disturbed the overall integrity of the concept of the CPC as the basic rule of criminal procedure. They disturbed and to a considerable extent changed the basic principles on which the valid legal regulations should be based and which they should respect. They also disturbed the relations between those principles, including the implementation of a considerable number of exceptions from these principles. This leads to a justified question whether a certain principle of criminal proceedings as provided for in Section 2 of the CPC is valid at all in such a form. Hence, various concepts affected by the creation of certain normative constructions mingle in the CPC, what quite often leads to doubts about the correctness of a specific action taken by the parties to criminal proceedings. It is all the more important that the CPC is a procedural regulation that should stipulate the actions of the parties to criminal proceedings unambiguously.<sup>7</sup> Despite its latest amendments, the CPC is based on the former legal order in terms of time (the period of its creation) and in many respects factually. It includes institutes from which certain conformity to the time of their creation may follow (for example, cooperation with associations of citizens). It also includes numerous new institutes (diversions, concepts and functions of the Probation and Mediation Service, etc.) based on absolutely different principles originated from the so-called restorative justice. Hence, it is self-evident that the need for a new Criminal Procedure Code is more than urgent.

Only on 31 July 2008, the Legislative Council of the Government of the Czech Republic approved the substance of a new Criminal Procedure Code prepared by the Ministry of Justice.<sup>8</sup> It was approved by the resolution of the Government of the Czech Republic No. 996 of 20 August 2008. It follows from the substance that by the end of 2009, the Ministry of Justice would have presented the wording of the individual sections of the new Criminal Procedure Code to the Government. However, it failed to do so, and it is now clear that by the end of 2010 it will not be done either. The authors of the new Criminal Procedure Code are aware of the fact that the preparation of the wording

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7 Frystak, M., *et al.* *Trestní právo procesní*. 2. prepracované vydání. [Criminal Procedure. 2nd revised edition]. Ostrava: Key publishing, 2009, p. 248.

8 For details in relation to recodification works in the area of criminal procedure, see Ruzicka, M. Vecny zamer trestniho radu – aktualni stav [Substance of the Criminal Procedure Code - Current State]. In Vanduchova, M.; Grivna, T. (eds.). *Rekodifikace trestniho prava procesniho. Aktualni problemy* [Recodification of Criminal Procedure. Latest Issues]. Prague: Charles University, 2008, p. 10–11.

of individual sections will be a long-lasting process and will bring about a great number of debatable questions to consider. Consequently, it will be necessary to find acceptable solutions for the theory as well as the application practice. A certain touchstone will be the very legal regulations concerning pre-trial proceedings and the position and powers of the police body and the prosecuting attorney therein.

## 2. The Characteristics of Pre-Trial Proceedings in the Czech Republic

Czech criminal proceedings represent the so-called reformed type of the European continental process, for which a pre-trial stage of criminal proceedings is typical. In the Czech Republic, this stage is represented by pre-trial proceedings. Pre-trial proceedings, as it follows from their very name, are a certain filter preventing those criminal cases that do not qualify for the trial before court from getting into such a stage; in particular, such materials should be provided to the prosecuting attorney, that a criminal case would be able to stand the trial before court.

Until the Great Amendment of the CPC, the relationship between pre-trial proceedings and the trial-before-court stage, i.e. the trial, was based on the concept of the trial as a focal point of evidence and relatively strong pre-trial proceedings. Pre-trial proceedings hence included adequate production of evidence which was only repeated, with certain simplification, within the trial. The negative aspect of the described situation was the fact that, for example, an individual was at first informally interrogated by the criminal police, then questioned in detail in the procedural position of a witness by an investigator from the Office of Investigation and, finally, once again interrogated by the court within the trial as the court is authorized to make decisions on guilt and punishment only on the basis of evidence produced to it. Repeated interrogations not only caused unnecessary protraction of criminal proceedings but, to a certain extent, contributed to the reluctance of such an individual to cooperate with investigative, prosecuting and adjudicating bodies.<sup>9</sup> In this respect, the Great Amendment of the CPC emphasized the reinforced importance of the trial to the prejudice of pre-trial proceedings. This approach is reflected, *inter alia*, in the fact that pre-trial proceedings have had three basic forms since 1 January 2002:

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9 According to Section 12 para. 1 of the CPC, investigative, prosecuting and adjudicating bodies include the court, the prosecuting attorney and the police body. The substance of the new Criminal Procedure Code classes only the policeman (the term policeman shall replace the term police body and it will represent a legislative abbreviation that will include a list of entitled or authorized persons or bodies) and the prosecuting attorney as investigative, prosecuting and adjudicating bodies. They will no longer include the court. The court is supposed to render an independent and unbiased decision on the charges, i.e. the guilt and punishment of the person, against whom the criminal proceedings are conducted. With regard to the fact that a number of acts in pre-trial proceedings may be performed only by the judge (for example, taking into custody, issuing an order of house search or an order of eavesdropping on and recording of traffic in telecommunication), the substance of the new Criminal Procedure Code introduces a new institute, namely, the judge for pre-trial proceedings.

- a) standard pre-trial proceedings, which include the hearing of cases under the jurisdiction of a county court<sup>10</sup> and, in principle, evidence is searched for but not produced at this stage;
- b) extended pre-trial proceedings, which include the hearing of cases under the jurisdiction of a regional court,<sup>11</sup> and evidence is searched for and produced at this stage;
- c) summary pre-trial proceedings, which are the proceedings regarding the so-called petty cases.<sup>12</sup>

Under Section 12 para. 10 of the CPC, pre-trial proceedings mean the phase of the criminal proceedings which starts with the drawing up of a record about the initiation of acts of criminal proceedings or with the performance of exigent and unrepeatable acts immediately preceding it. If no such acts are performed, pre-trial proceedings mean the stage from the initiation of criminal prosecution until the submission of an indictment, transfer of the case to another body or discontinuance of criminal prosecution, or until the judgment or occurrence of another fact with effects of the discontinuance of criminal prosecution before the submission of an indictment, beyond the limits of the clarification and checking of a fact suggesting that an offence was committed, and investigation. Regardless of their form, the objective of pre-trial proceedings is to check the suspicion of a committed offence and to provide materials for the submission of an indictment. When there is no reason to submit an indictment, pre-trial proceedings serve as a basis for another prosecuting attorney's decision on the merits. They include searching for the sources of evidence, producing and subsequently evaluating evidence. Pre-trial proceedings consist of two main areas, namely, checking and investigation.

Most frequently, pre-trial proceedings start with the drawing up of a record about the initiation of acts of criminal proceedings<sup>13</sup> under Section 158 para. 3 of the CPC. The so-called pre-trial stage of criminal proceedings is thereby separated from the stage of the trial before court. The pre-trial stage is not considered as criminal proceedings within the meaning of the CPC. Within this stage, the police body most frequently carries out operative activities and necessary investigation and measures aimed at the revelation of facts suggesting an offence was committed and the perpetrator of such an offence. This is done on the basis of regulations providing for its actual activity,<sup>14</sup> not

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10 The county court conducts first-instance proceedings, if they are not held by the regional court.

11 The regional court conducts first-instance proceedings regarding offences with the minimum sentence of at least five years and exhaustively enumerated offences regardless of the sentence. Those include, for example, unauthorized taking of tissues and organs, offences committed through investment tools or their counterfeits, offences concerning a breach of regulations about rules of economic competition or selected offences directed against the Czech Republic, a foreign state and an international organization (like, for example, sabotage, spying, etc.).

12 These are offences under the jurisdiction of a county court with a maximum sentence not exceeding three years.

13 The substance of the new Criminal Procedure Code cancels the said record as it failed in the application practice. Its only positive effect is that it unambiguously determines the beginning of pre-trial proceedings. Hence, at present, pre-trial proceedings should be initiated informally, i.e. upon the performance of the first act by the police body.

14 For example, in relation to the Police of the Czech Republic as one of the police bodies, it is Act No. 273/2008 Coll., on the Police of the Czech Republic, as amended.

on the basis of the CPC. Within the trial stage, these facts are clarified and checked as stipulated in the CPC.

The drawing up of the record formally defines the beginning of pre-trial proceedings and thereby the whole criminal proceedings. From this moment, the prosecuting attorney supervises the observance of legitimacy in pre-trial proceedings under Section 174 para. 1 of the CPC. The impulse for drawing up of the record may be the so-called criminal information,<sup>15</sup> results of own, most frequently operative activity of the police body<sup>16</sup> or any information acquired from the so-called open sources, for example, public means of communication, the Internet, etc. Hence, it is drawn up because the ascertained facts reasonably suggest that an offence was committed. It must include facts due to which the proceedings are initiated and the manner in which the police body learnt of them. However, it does not have to specify legal qualification; the application practice considers this fact an imperfection of the existing legal regulations.<sup>17</sup> On the one hand, it may be very difficult for the police body to determine legal qualification at this early stage with regard to the volume of available information. On the other hand, it is clear that if the local jurisdiction and jurisdiction *in rem* are to be determined, the record must include legal qualification which is accepted by the application practice, and hence the legal qualification forms an integral part of the record.

Criminal or pre-trial proceedings may also be initiated by the performance of the so-called exigent and unrepeatable acts immediately preceding the record about the initiation of acts of criminal proceedings; however, this is not frequent in practice. Exigent acts are those which may not be postponed to the time of criminal proceedings initiation with regard to the danger of obstructing, destroying or losing a piece of evidence. An unrepeatable act is an act that will be impossible to perform within the trial before court.<sup>18</sup> The abovementioned acts must be, under Section 158a of the CPC, realized in attendance of a judge who is responsible for its legality.<sup>19</sup>

At this moment, it is necessary to mention the position of the prosecuting attorney. His/her capacity in pre-trial proceedings substantially differs from the one in the trial. In

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15 The criminal information means any submission of facts suggesting that an offence could have been committed, regardless of the name of such submission (Section 59 para. 1 of the CPC).

16 It would be optimal, if the results of the police body's own operative activity formed a substantial source of information, and the police body did not rely only on information acquired from the outside.

17 The explanatory report to the Great Amendment of the CPC states that in the record about the initiation of acts of criminal proceedings, the police body shall describe the action which it considers an offence, its legal qualification and manner, in which it learnt of the offence, i.e. it shall briefly describe the preceding, purely operative and informal police investigation. Hence, the legal qualification forms an integral part of such a record. For detailed information see [www.psp.cz](http://www.psp.cz), parliamentary press 785, electoral term III.

18 Musil, J., *et al.* *Trestní právo procesní*. 3. přepracované vydání [Criminal Procedure. 3rd revised edition]. Prague: C. H. Beck, 2007, p. 573.

19 Compulsory participation of the judge in these acts was negatively evaluated in the article by Riha, J. *Některé podněty k rekonstrukci trestního práva procesního z pohledu soudce okresního soudu* [Some Suggestions Regarding the Recodification of Criminal Proceedings by the County Court Judges]. In Vanduchová, M.; Grivna, T. (eds.). *Rekonstrukce trestního práva procesního. Aktuální problémy* [Recodification of Criminal Procedure. Latest Issues]. Prague: Charles University, 2008, p. 122–124.

the trial, the prosecuting attorney is a party to the proceedings,<sup>20</sup> his/her role is therefore weaker. On the other hand, he/she has a dominant role in pre-trial proceedings, emphasized by the Great Amendment of the CPC and sometimes expressed by saying that the prosecuting attorney is the master of pre-trial proceedings, i.e. the *dominus litis*. The strong position of the prosecuting attorney in pre-trial proceedings is a typical feature of the continental type of criminal process. Such a role is emphasized by the power to finally determine the content and volume of evidence that will be searched for, provided and possibly produced within pre-trial proceedings. If the prosecuting attorney is to fulfil his/her main role, i.e. to submit an indictment in criminal proceedings, he/she must have an opportunity to establish necessary prerequisites for the fulfilment of this task.<sup>21</sup> Hence, in pre-trial proceedings, the prosecuting attorney supervises the observance of legitimacy. Therefore, he/she makes sure the police body complies with the CPC and proceeds in accordance with the purpose of criminal proceedings.<sup>22</sup> He/she must take care, in particular, of the fact that no one is prosecuted unreasonably, no one's personal freedom and other fundamental human rights and freedoms are restricted.

### 3. The First Stage of Pre-Trial Proceedings

The first stage of pre-trial proceedings is the checking, which is also called a procedure before the initiation of criminal prosecution. Its purpose is to clarify and check facts reasonably suggesting that an offence was committed and to identify its perpetrator. Hence, it is a decision on whether it will be possible to initiate criminal prosecution of a specific person for a specific offence on the basis of ascertained facts.

Checking is carried out by the police body, which means the divisions of the Police of the Czech Republic under Section 12 para. 2 of the CPC. In the proceedings regarding offences by policemen and employees working for the Police of the Czech Republic, the position of the police body is held by the Inspection of the Police of the Czech Republic. The same position is held by the authorized bodies of the Military Police in proceedings regarding offences by the members of armed forces, by the authorized bodies of the Prison Service of the Czech Republic in proceedings regarding offences by its members, by the authorized bodies of the Security Information Service in proceedings regarding offences by its members, by the authorized bodies of the Office of Foreign Relations and Information in proceedings regarding offences by its members and by the authorized bodies of Military Intelligence in proceedings regarding offences by its members. The

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20 Under Section 12 para. 6 of the CPC, parties to the proceedings are those parties to the criminal proceedings which enforce the indictment or support the prosecution or stand on the side of the defence and defend themselves or anyone else against it. Hence, the party to the proceedings is the person against whom the criminal proceedings are conducted, the participant, the aggrieved and, in the trial before the court, also the prosecuting attorney.

21 Samal, P., et al. *Připravne řízení trestní*. 2. doplněná a přepracovaná vydání. [Pre-trial proceedings. 2nd amplified and revised edition]. Prague: C. H. Beck, 2003, p. 632–634.

22 Under Section 1 of the CPC, the purpose of the criminal proceedings is the due detection of offences and identification of their perpetrators and their fair punishment.



position of police bodies is also held by the authorized customs authorities in proceedings regarding offences of a breach of customs regulations and regulations on import, export or transit of goods, namely, including cases when offences by the members of armed forces or armed corps and services are concerned, and those of a breach of legal regulations when locating and acquiring goods in the Member States of the European Communities, provided that those goods are transported across the borders of the Czech Republic, and in cases of breaching the tax regulations, provided that customs authorities are a tax administrator according to special legal regulations.

The police body is authorized to perform all acts according to Chapter IX of the CPC. Those include the authorization to demand explanation from natural and legal persons and from state authorities; to demand expert statements from competent bodies and even expert opinions, provided that they are necessary for the assessment of the case;<sup>23</sup> to provide necessary documents, in particular, files and other written materials; to examine a thing and the scene of a crime; to demand a blood test or another similar action including taking of the needed biological material; to make audio and video recordings of persons; to take fingerprints; to perform examination of body and its external measuring by a person of the same sex or a doctor, provided that it is necessary in order to establish the identity of a person or to find and detect tracks or effects of an action; to detain the suspect or perform a body search, a house search and a search of other premises and lands. Within the checking, it is also possible, under Section 158a et seq. of the CPC, to work with intelligence means and devices directed at the establishment of facts important for criminal proceedings. Those include sham transfer, surveillance of persons and things and employment of an agent.

The checking may result in the police body's or the prosecuting attorney's rendering of the decision not to proceed with prosecution, most frequently, on the grounds that no offence is concerned in such a case or that it has proved impossible to identify its perpetrator, the perpetrator's criminal prosecution is inadmissible due to the lack of his/her criminal liability<sup>24</sup> or due to his/her insanity,<sup>25</sup> or possibly on the grounds that his/her prosecution is subject to statutory bar or the concerned person is exempt from the powers of investigative, prosecuting and adjudicating bodies. Only the prosecuting attorney may render a decision on the termination of checking in the form of a decision not to proceed with criminal prosecution in the event that, with regard to the importance and extent of breach or endangering of the affected protected interest, the manner of committing the offence and its effects or circumstances, under which it was committed, and with regard to the conduct of the accused after committing the crime, in particular, to his effort to compensate damages or to remedy other harmful effects of the offence, it is clear that the purpose of criminal proceedings has been achieved by the very hearing

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23 Expert opinions are requested, if, due to the complexity of the assessed issue, the preparation of an expert statement is not sufficient.

24 The perpetrator becomes criminally liable when he reaches fifteen years of age, as of the midnight of the next day respectively (Section 25 of the CC).

25 A perpetrator is considered insane if he/she cannot recognize the illegality of his/her act or control his/her conduct at the time of committing a crime due to a mental disorder (Section 26 of the CC).

of the case. Should it be necessary in order to clarify criminal activity committed for the benefit of an organized criminal group<sup>26</sup> or another wilful offence or in order to identify their perpetrators, the police body with an approval of the prosecuting attorney or the prosecuting attorney on his own may temporarily suspend the initiation of criminal prosecution for the necessary period of time.<sup>27</sup> They may proceed in this manner in cases when the immediate initiation of the prosecution of a specific person could frustrate the achievement of the abovementioned objective in relation to other persons engaged in the criminal activity.

If the facts detected and justified by checking suggest that an offence was committed, and if the conclusion that the offence was committed by a specific person is sufficiently justified, and hence it is possible to initiate criminal prosecution of this person under Section 160 para. 1 of the CPC, the police body may hand over the case to the body authorized to carry out investigation under Section 161 of the CPC for further measures without undue delay.

#### 4. The Second Stage of Pre-Trial Proceedings

The second stage of pre-trial proceedings is called the investigation. The investigation is primarily carried out by the divisions of the Police of the Czech Republic,<sup>28</sup> unless the CPC provides otherwise. Offences committed by the members of the Police of the Czech Republic, the Military Police, the Security Information Service, the Office of Foreign Relations and Information or the members of Military Intelligence are investigated by the prosecuting attorney. In relation to the abovementioned, the prosecuting attorney also carries out investigation against those accused who are not the members of the Police of the Czech Republic, the Military Police, the Security Information Service, the Office of Foreign Relations and Information or the members of Military Intelligence. In addition, the investigation may also be carried out by a captain of a vessel on a long-distance voyage or by the Military Police in relation to offences by the members of armed forces committed when fulfilling their tasks abroad.

If the offences are investigated by the prosecuting attorney, he/she has no ‘investigating machinery’ of his own available. He may ask bodies specified in Section 12 para. 2 of the CPC to provide individual pieces of evidence or to perform single investigating actions, to cooperate in the abovementioned case, to bring a person or to deliver a written document, and those bodies are obliged to speedily meet such a request. The authori-

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26 An organized criminal group is a fellowship of several persons with an internal organization structure, with divided functions and division of activities that is focused on continuous committing of deliberate criminal activity (Section 129 of the CC).

27 The said period may be of two months at most, but it may be extended repeatedly.

28 These divisions are laid down neither in the CPC nor in any other act. On the basis of internal management acts of the Police of the Czech Republic, these are divisions of the Criminal Police and Investigation Services with national and territorial powers. The national divisions are, for example, the Division for Detection of Organized Crime or the Division for Detection of Corruption and Financial Criminality. Regional divisions are divisions operating on the territory of the concerned county or region.

zation of a captain of a vessel to conduct investigation is regulated in detail in Section 39 of the Sea Navigation Act.<sup>29</sup> This authorization has not been actually applied in practice and the said statutory provisions may be called dead.<sup>30</sup> The authorization of the Military Police to conduct investigation has been included into the CPC as of 1 January 2010 by Act No. 41/2009 Coll., on Amendment of Certain Act in Connection with Adoption of Criminal Code, as amended. According to the explanatory report to the abovementioned Act, the reason for this change was the reaction to the situation when the armed forces of the Czech Republic fulfil tasks abroad and their police protection is provided by the Military Police. In such a case, the investigation is conducted by the authorized body of the Military Police until the repatriation of the soldier who committed the offence. This authorization of the Military Police is also applicable to situations related to the distance and nature of the place (country) where the Czech Army unit troops are deployed.

Although the CPC mentions various entities authorized to conduct the investigation, it is most frequently conducted by divisions of the Police of the Czech Republic. At this point, it would be appropriate to consider the fact whether the legal regulations based on the actual ‘investigation monopoly’ of the Police of the Czech Republic represent an ideal and justified solution.

As mentioned above, under to Section 12 para. 2 of the CPC, the term ‘police body’ also includes entities other than divisions of the Police of the Czech Republic. According to the CPC, these bodies are authorized to conduct checking only. If it is possible to initiate criminal prosecution of a specific person, they hand over the specific case for further measures, most frequently to a specific division of the Police of the Czech Republic. Unless it has cooperated with the police body checking the case before, such a division must acquaint itself with the case in detail, which naturally takes some time. I consider the said procedure unnecessarily complicated and protracted. An effective solution could be to engage the entities, to which the CPC grants a position of the police body under Section 12 para. 2 and which conduct the checking of a specific case, in the investigation of the case as well, at least as delicts are concerned.<sup>31</sup> In any case, it would, in my opinion, contribute to the swiftness and quality of pre-trial proceedings, which would at all its levels be conducted by a police body or policemen of high professional and expert standard, and who would be capable of covering the specific nature of individual types of criminal activity.<sup>32</sup> The breach of the ‘investigation monopoly’ of the

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29 Act No. 61/2000 Coll., on Sea Navigation, as amended, hereinafter referred to as the Sea Navigation Act.

30 By a question addressed to the Ministry of Industry and Trade of the Czech Republic, Department of Navigation, Section of Sea Navigation, it was ascertained on 11 June 2010 that they have no record of any case of a captain of a sea ship acting as a police body and thereby exercising his powers specified in Section 39 of the Sea Navigation Act.

31 Under Section 14 of the CC, offences are divided into delicts and crimes. Delicts are all offences of negligence and wilful offences with a maximum sentence up to five years. Crimes are all other offences, which are not delicts.

32 As, in addition to the divisions of the Police of the Czech Republic, the CPC considers (Section 12 para. 2) other entities as the police body as well, it clearly shows that issues they deal with are specific to such an extent that this activity must be checked by them only.

Police of the Czech Republic is nevertheless a very sensitive issue.<sup>33</sup> The attitude of the substance of the new Criminal Procedure Code to such a breach is still a very restrained one.

However, let us get back to the investigation. It is initiated at the moment when a resolution on the initiation of criminal prosecution is delivered to the person against whom the criminal prosecution is conducted. The verdict of such a resolution must include a description of the action (in order not to confuse it with another) and its legal qualification.<sup>34</sup> The grounds must precisely specify the facts on the basis of which the criminal prosecution is initiated.

The classification of pre-trial proceedings into three forms is in practice manifested within the investigation. Within the standard pre-trial proceedings/investigation, only the questioning of the accused is performed after the initiation of criminal prosecution. Persons in the procedural position of a witness are not heard. Only within the trial before court, the court decides, on the basis of the official records of explanations provided by persons as drawn up within the checking, whether any of these persons will be summoned within the trial in order to be heard in the procedural position of a witness.<sup>35</sup> This procedure contributes to the acceleration of the process of this form of pre-trial proceedings. In this case, the right of defence is limited to the hearing of the accused and, before the termination of investigation, the accused and his counsel have the right to acquaint themselves with the contents of the investigation file and to propose additional evidence (as there is usually no other time for producing evidence, the evidence is produced only at the trial before court). Under the extended pre-trial proceedings/investigation, the evidence may be (but does not have to be) produced.<sup>36</sup> Persons are heard in the procedural position of a witness. The right of defence is fully exercised in these proceedings. Under Section 165 para. 2 of the CPC, as of the initiation of criminal prosecution, the counsel attends those investigating actions the effect of which may be used as evidence in the trial before court, which, *inter alia*, includes the hearing of persons in the procedural position of a witness. Summary pre-trial proceedings/investigation represent(s) a very specific form of pre-trial proceedings. It may be applied only if the perpetrator was caught in the act or immediately after the act, or if in the course of checking the criminal information or another impulse for criminal prosecution facts otherwise justifying the initiation of criminal prosecution were detected, and it may be expected that it will be possible to bring the suspect before court in the period of two weeks as of the initiation

33 Frystak, M. Je nadale nezbytný „monopol vysetrovani“ Policie Ceske republiky? [Is the ‘monopol of investigation’ by the Police of the Czech republic still necessary?]. *Criminalistics*. 2010, 43(2): 81–91.

34 The said legal qualification is not binding on the prosecuting attorney or on the court, and it may be changed any time.

35 These official records may not be used as evidence in the trial before court.

36 For the admissibility of evidence by private persons, problems related to the search for evidence and the procurement of evidence by the parties to criminal proceedings in pre-trial proceedings see Viktorjova, J.; Blatnický, J. Dokazovanie v europskom kontexte [Criminal Evidence in the European Context]. In Záhora, J. (ed.). *Rekodifikácia trestného práva. Doterajšie poznatky a skusenosti* [Recodification of Criminal Law. Current Findings and Experience]. Bratislava: Bratislava School of Law, 2008, p. 250–263.

of criminal prosecution. The purpose of this form of pre-trial proceedings is for the crime perpetrator to be punished immediately after committing the crime if possible, what may very effectively lead to the achievement of the purpose of the punishment, in particular in relation to individual and general criminal prevention.

All decisions on the merits about the termination of investigation are rendered solely by the prosecuting attorney. This emphasizes his position of the master of pre-trial proceedings. The investigation may be hence terminated by a decision on the merits, for example:

- a) by transfer of the case to another body
  - the results of pre-trial proceedings suggest that no offence is concerned, but an act that might be considered an administrative infraction, another administrative delict or disciplinary violation by another competent body;
- b) by the discontinuance of criminal prosecution in cases, when
  - it is, unambiguous that the act for which the criminal prosecution is conducted did not happen,
  - such an act is not an offence, and there is no reason to transfer the case,
  - it is not proved that the act was committed by the accused,
  - the punishment to which the prosecution may lead is absolutely insignificant compared to the punishment that has been imposed on the accused for another act or that will be imposed on him according to expectations;
- c) by the suspension of prosecution in cases, when
  - it is impossible to clarify the case due to the absence of the accused,
  - the accused may not be brought before court due to a serious illness,
  - the accused is not capable of grasping the meaning of prosecution due to a mental disease striking only once the act has been committed.

Another form of terminating criminal prosecution (which is nevertheless not a decision on the merits of the case) is a situation when the police body considers the investigation terminated and its results sufficient for the submission of an indictment, allows the accused and his counsel to acquaint themselves with the investigation file and propose additional evidence. If the police body does not consider such proposed additional evidence necessary, it may reject it. Once the investigation has been terminated, the police body submits a motion to the prosecuting attorney to submit an indictment. If the investigation results sufficiently justify the bringing of the accused before court, the prosecuting attorney submits an indictment.<sup>37</sup> Otherwise, he should return the case to the police body for completing, i.e. he actually takes the case back into the investigation stage or decides in the manner specified above.

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37 On the basis of the accusatorial principle, the trial before court may be initiated only on the basis of an indictment or a motion of punishment filed by the prosecuting attorney. A less formalized motion of punishment is filed only within the summary pre-trial proceedings.

## 5. Deadlines for the Completion of Checking and Investigation of Criminal Cases

By the Great Amendment of the CPC, new deadlines for the completion of checking and investigation of criminal cases were introduced; they are provided for in Sections 159 and 169 of the CPC. The checking/investigation must be completed in two months in cases under the jurisdiction of a single judge,<sup>38</sup> in three months in cases under the jurisdiction of the county court or in six months in cases under the jurisdiction of the regional court.

The introduction of deadlines is connected with the overall new philosophy of criminal proceedings based on the fact that criminal proceedings should be conducted in accordance with the principle of the fastest hearing of criminal cases, and evidence should be produced primarily within the trial before court. The speed of criminal proceedings is one of the basic principles of the Czech criminal law. It is an important principle, but it is not considered the most important. The requirement for the proceedings to be quick cannot debilitate a pleading of defendant, for instance.<sup>39</sup>

In pre-trial proceedings, one is to provide and produce only such pieces of evidence, which would be impossible to be produced within the trial or the production of which at a later stage of proceedings might mean their destruction or loss. In terms of searching for and assessing the evidence, pre-trial proceedings should not replace the trial. In the application practice, one often encounters situations when a number of prosecuting attorneys seem not to understand or not willing to understand this new meaning and importance of pre-trial proceedings. The police body is hence frequently burdened with a number of redundant acts that might be performed only in the trial before court.<sup>40</sup> The reasons thereof are very clear. The prosecuting attorney wants to in advance eliminate the possible evidence-related problems that might appear in the trial and the risk that the whole case might end up in the acquittal of charges under Section 226 of the CPC. Nevertheless, it is not the fault of prosecuting attorneys only; it is also the fault of judges who got used to the fact that the prosecuting attorney hands everything to them ‘on a silver plate’ and they can decide the case easily and without complications.

If these deadlines are exceeded, the police body proceeds in the manner specified in the CPC and asks the supervising prosecuting attorney for their extension. Should this be the case, the supervising prosecuting attorney is obliged to review the file materials

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38 The jurisdiction of a single judge includes offences with a maximum sentence of up to five years.

39 Jelinek, J. Rychlost trestního řízení a nová právní úprava odvolání v trestních věcech [The Speed of Criminal Proceedings and a New Modification of Appeal in Criminal Matters]. In Záhora, J. (ed.). *Rekodifikacia trestného práva – doterajšie poznatky a skusenosti* [Recodification of Criminal Law. Currently findings and experience]. Bratislava: Bratislava School of Law, 2008, p. 146–152.

40 From the application practice, I can mention a case when all witnesses were heard, often repeatedly, in a criminal case, and the supervising prosecuting attorney still instructed the police body to hear two of those witnesses again (already for the third time), and to ask each of them two questions in order to remove minor inconsistencies. He wanted no ‘possible complications’ to arise within the trial.

on a monthly basis and supervise activities of the police body, in particular, with regard to whether they do not cause unnecessary delays. What regards the disproportion in the number of persons acting in criminal proceedings on behalf of the police body and the number of supervising prosecuting attorneys, it is clear that these reviews tend to be only a formality, and they are a useless burden on both parties. In addition, if no unjustified delays are detected in the procedure of the police body, the police body is not subject to any sanctions for such a failure to meet the deadline. What concerns the running of these deadlines, it must be stated that they start running from the moment when the police body learns of facts suggesting that an offence was committed. Hence, with regard to the abovementioned issues, a situation when the stated statutory deadline expires before the police body initiates acts of criminal proceedings may occur.<sup>41</sup> The importance of these deadlines as an instrument that is supposed to contribute to the acceleration of criminal proceedings may be subject to great doubts.

## Conclusions

It has been emphasized several times that the need for the recodification of the criminal procedure is really urgent. The current legal regulation under the CPC is unsuitable within its whole context and, in addition, due to the CC in effect as of 1 January 2010, it must be repeatedly amended. It is clear that the whole recodification process will be very demanding and, most probably, lengthy. It is necessary to create a code which would fully comply with the current trends of modern justice—a code which would not have to be amended immediately after its adoption, what, unfortunately, often happens in the Czech Republic (and which was the case of the CC, too, as it had been amended even before it came into effect).

The present time is hence an ideal moment for all of us, for whom criminal law is everyday life. Regardless of whether we work in practice or in a purely academic field, many of us may perhaps be able to cope with both fields in order to express our opinion on the newly prepared Criminal Procedure Code by means of various expert conferences, seminars and articles. It is possible that some of our proposals and comments will be forgotten with time, and others, which at the first sight may even seem controversial and fearless for breaking into the deep-rooted stereotypes and principles, will become a breeding ground for future considerations related to the concerned topic. Some of them may even contribute to the final wording of the new Criminal Procedure Code. My attempt in this article was the same: I also wanted to point out to selected imperfections of the existing legal regulations, the solution of which might be a stepping stone for future considerations about the recodification of the criminal procedure.

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41 The reason for which the said deadline may expire in vain without, for example, the initiation of acts of criminal proceedings, may be a dispute between police bodies regarding jurisdiction *in rem* or local jurisdiction.

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## References

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- Act No. 140/1961 Coll., Criminal Code, as amended.
- Act No. 141/1961 Coll., on Criminal Procedure (Criminal Procedure Code), as amended.
- Act No. 218/2003 Coll., on Criminal Liability of Juveniles and Juvenile Justice and on Amendment of Certain Acts (Juvenile Justice Act), as amended.
- Act No. 273/2008 Coll., on the Police of the Czech Republic, as amended.
- Act No. 40/2009 Coll., Criminal Code, as amended.
- Act No. 61/2000 Coll., on Sea Navigation, as amended.
- Fryšták, M., *et al.* *Trestní právo procesní*. 2. prepracované vydání [Criminal Procedure. 2nd revised edition]. Ostrava: Key publishing, 2009.
- Fryšták, M. Je nadále nezbytný „monopol vyšetřování“ Policie České republiky? [Is the ‘monopol of investigation’ by the Police of the Czech republic still necessary?]. *Criminalistics*. 2010, 43(2).
- Jelinek, J. Rychlost trestního řízení a nová právní úprava odvolání v trestních věcech [The Speed of Criminal Proceedings and a New Modification of Appeal in Criminal Matters]. In Záhora, J. (ed.). *Rekodifikace trestního práva. Doterajší poznatky a zkušenosti* [Recodification of Criminal Law. Current Findings and Experience]. Bratislava: Bratislava School of Law, 2008.
- Mušil, J., *et al.* *Trestní právo procesní*. 3. prepracované vydání [Criminal Procedure. 3rd revised edition]. Prague: C. H. Beck, 2007.
- Riha, J. Některé podněty k rekodifikaci trestního práva procesního z pohledu soudce okresního soudu [Some Suggestions regarding the Recodification of Criminal Proceedings by the County Court Judges]. In Vanduchová, M.; Grivna, T. (eds.). *Rekodifikace trestního práva procesního. Aktuální problémy* [Recodification of Criminal Procedure. Latest Issues]. Prague: Charles University, 2008.
- Ruzicka, M. Věcný záměr trestního řádu - aktuální stav [Substance of the Criminal Procedure Code – Current State]. In Vanduchová, M.; Grivna, T. (eds.). *Rekodifikace trestního práva procesního. Aktuální problémy* [Recodification of Criminal Procedure. Latest Issues]. Prague: Charles University, 2008.
- Samal, P., *et al.* *Přípravné řízení trestní*. 2. doplněná a prepracované vydání [Pre-trial Proceedings. 2nd amplified and revised edition]. Prague: C. H. Beck, 2003.
- Viktoryová, J.; Blatný, J. Dokazování v evropském kontextu [Criminal Evidence in the European Context]. In Záhora, J. (ed.). *Rekodifikace trestního práva. Doterajší poznatky a zkušenosti* [Recodification of Criminal Law. Current Findings and Experience]. Bratislava: Bratislava School of Law, 2008.
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## IKITEISMINIS TYRIMAS ČEKIJOS RESPUBLIKOJE

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**Santrauka.** *Straišnis yra pristatoma Čekijos Respublikos baudžiamojo proceso raida, ypač daug dėmesio skiriamą ikiteisminiam jo etapui. Straišnio tikslas yra apžvelgti ikiteisminio tyrimo reguliavimo pagrindus bei nustatyti ikiteisminio tyrimo etapo reguliavimo*



*perspektyvas rekonstruojant Čekijos baudžiamojo proceso teisę. Trumpai apžvelgus baudžiamojo proceso raidą nuo 1961 m., išanalizavus gausius baudžiamojo proceso įstatymo pakeitimus ir papildymus, atliktus po 1989 m., daroma išvada, kad baudžiamojo proceso įstatymas turi būti rekonstruotas taip įgyvendinant poreikį sistemškai reformuoti Čekijos baudžiamąjį procesą.*

*Straipsnyje konstatuojamos svarbiausios priežastys, paskatinusios imtis rengti naują Baudžiamojo proceso įstatymą: pasikeitusi socialinė realybė, naujo Baudžiamojo įstatymo įsigaliojimas 2010 m., taip pat nemažai Baudžiamojo proceso kodekso pataisų, kurios išderina baudžiamojo proceso principų sistemą. Ligšiolinės įstatymo pataisos iš esmės buvo susijusios su žmogaus teisių apsauga baudžiamajame procese, teismine ikiteisminio tyrimo kontrole, prokuroro vaidmens ir atsakomybės stiprinimu, taip pat apeliacijos reforma.*

*Toliau autorius nagrinėja ikiteisminio proceso reguliavimą. Pateikiama ikiteisminio tyrimo etapo sąlyginė struktūra: preliminarusis tyrimas ir baudžiamasis persekiojimas, kuris savo ruožtu gali būti atliekamas pasirenkant vieną iš trijų tyrimo procesinių formų. Jos susijusios su nusikalstamos veikos sunkumu, taip pat su bylų teisingumu ir su bylos aplinkybių aiškumu. Straipsnis baigiamas baudžiamojo proceso mokslininkų ir praktikų kvietimu diskutuoti dėl tinkamiausio baudžiamojo proceso reguliavimo.*

**Reikšminiai žodžiai:** ikiteisminis tyrimas, baudžiamojo proceso kodeksas, policija, tyrimas.

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