

Pavel PINKAVAT
Avocat (Ostrava), représentant du barreau de la République Tchèque

Report on a development of the Czech criminal

General introduction and fundamental principles

Rules of CP of CR are incorporated in The Criminal Procedure Act adopted in 1961 and amended more than 30 times so far.

However, fundamental principles and rules which CP is based on and which CP Act derives from is The Czech Constitution Act adopted in 1992 and The Charter of fundamental rights and freedoms adopted in 1992 as well.

These two legal acts form together with binding international treaties and conventions a legal frame for the whole CP and incorporate such essential rules like :

- a right for a fair trial (Art. 36)
- an admissibility to prosecute someone and to deprive of his freedom exclusively for the reasons set out by a legal act and to just by any governmental or an administrative state authority resolution (Art. 8/2)
- a presumption of innocence (Art. 40)
- a right for a defence (Art. 40/3, 4)
- ne bis in idem principle (Art. 40/5)

In case of a breach of these principles or other constitutional rights and freedoms in the course of CP a claim may be raised directly before the Constitutional Court.

All principles mentioned hereinabove are transposed in The Criminal Procedure Act, namely in its Art. 2.

CP unlike certain branches of law was quite well established before 1989. Other branches must have been significantly adjusted or newly developed due to the opening-up process of CR and due to an increasing inquiry for a new legal regulations relating to such fields as Real Estates Act, Bankruptcy proceedings etc.

However, after 1989 we may see lots of important changes of a position of a injured party, an accused and a defence in CP as well.

1) The request for speeding up and an effectiveness of CP with a due maintenance of rights of an accused

Taking into account that a final judgement issued at the end of CP must not only be sufficiently grounded on an evidence properly gained in the course of CP but that it must be issued in a timely manner we could have noticed an effort to speed up the CP and to make it more effective.

The results of such effort are following :

- an introduction of a judgement without a written justification

In case that all parties to CP agree upon a judgement and waive their right to file an appeal against such judgement a judge is entitled to write down just a short judgement not including its justification.

- a representation of injured parties namely in white collars crimes by one representative

In case of economic crimes where there is a high number of injured parties there are obliged to authorize one mutual representative for an exercising and a protection of their rights in CP. In case of a failure to agree upon one person, such representative shall be nominated by a judge deciding the case.

- in 1993 an introduction of legal instituts speeding up CP
 - Conditional interruption of a criminal prosecution §307 – pleading guilty, a reparation of a damage occurred
 - a right to decide minor offences without an oral hearing §314
 - extrajudicial settlement between an accused and a injured
- In 2001
 - an obligation to terminate an investigation within a certain period of time following charging a person with a crime – 2 months minor offences, 3 others – in case of a failure a written justification submitted to a public prosecutor
 - a duty of a judge to hold the first oral hearing of the case or to take another procedural act aiming to a termination of CP within 3 weeks at district courts or within 3 months at regional courts following a receipt of an indictment made by a public prosecutor
 - a time limitation for an issuance of a judgment in writing

2) A protection of rights of accused

Major changes relating to a protection of rights of accused relating to shortening of period of time spent in a pre-trial detention and to a proper consideration of all circumstances of a case and its other relevant aspects while deciding on a deprivation of accused freedom.

In 1990 the accused has an exclusive right to speak to its defence lawyer without a presence of a third person. Prior to this amendment this right was a subject to a consent of an investigator in case that an accused was held in a pre-trial detention in order to prevent him from influencing witnesses or other persons.

The abolishment of a provision of CPA under which an accused person might have been held in a detention within a period of time equal to a upper limit of a criminal sanction set out by Criminal Code for a said offence.

In 1991 only a judge may decide upon sending someone to a pre-trial detention. Prior to this amendment it was a public prosecutor who exercised this power. The same applies in case of an arrest warrant.

In 1993 the prosecution may be commenced only on condition that there is a reasonable conclusion that an offence was committed by a certain person. Prior to this amendment a prosecution could have been commenced against a so far unidentified perpetrator, which made the execution of all procedural rights of an accused impossible. The investigators were entitled to question witnesses and to take other procedural steps without having someone charged with an offence. Such evidence might have been used in a trial and might have served as a ground for a conviction.

The accused has a right to be present at the examination of witnesses and to ask them questions.

In 2001 it is expressly stated in CPA that a pre-trial detention is a facultative procedural measure which may be used only on condition that its purpose cannot be reached in any other way. Those, claiming an introduction of a compulsory detention for the most serious crimes into CP were overvoted. Unlike for example in Slovakia in CR the detention is still only facultative.

Except circumstances expressly stated in CPA no one charged with an offence with a criminal sanction not exceeding in case of offences committed intentionally 2 years and in case of offences committed by negligence 3 years may be sent to a detention. Exceptions – a perpetrator has escaped, he influenced witnesses etc.

Every person held in a detention exclusively in order to prevent him from influencing witnesses must be released after 3 months. This should make a work of an investigator more effective. This will not apply on condition that such person has already exercised certain influence over witnesses.

State authorities are obliged to assess a necessity to hold an accused in a detention every 3 months even without a written request of an accused. A judge is obliged to do so within 30 days following a receipt of an indictment.

The maximal time limit for holding an accused in a detention varies from 1-4 years according to a seriousness of a crime he is charged with.

3) A protection of rights of a injured party

In 1990 a right of a injured party to express in writing its unwillingness to start up CP or to continue in commenced CP against a perpetrator accused of certain offences. Such expression of its will was binding upon state authorities which had to respect it. This right lasts until the termination of appellate proceeding. Once expressed there is

no possibility to remove it back. The purpose of this procedural institute was to protect a injured party against a double victimisation. This right has widely been exercised in case of an offence committed by a family member against another family member. In such cases a injured party – a wife often did not want to prosecute its relative; otherwise she would lose a source of family income and thus she would suffer again.

In 1993 an identity of a witness or a injured person may be concealed provided that there is a danger of a physical or mental harm in relation with its testimony. Further, such a person may give his testimony without a presence of an accused. However, an accused must be made acquainted with a content of such testimony and has a right to ask questions without seeing each other.

In 1995 as reaction to an increasing volume of economic crimes an introduction of freezing of financial funds deposited on a bank account which come from or are related with a criminal activity. No legal act of an accused aiming to a transfer of his assets or to a concealment of his assets is legally valid and effective upon an injured party. This applies also in case of an enforcement of civil judgements relating to a property of an accused. The fight against fake debts of an accused.

In 1997 one condition of an extrajudicial settlement between an accused and an injured party is an obligation of an accused to pay a certain amount in favour of victims of criminal offences.

In 2001 an adoption of a special legal act governing a protection of witnesses. Such protection is decided upon by the Minister of Internal Affairs upon a proposal made by a judge or a public prosecutor. The protection contains :

- a personal protection
- a change of a location
- a concealment of an identity

4) A right of a defence

In the past the role of a defence lawyer was limited only to challenging evidence brought by a public prosecutor. A defence lawyer was not entitled to search for and to submit an evidence before a judge.

From 2002 on there is a crucial change of a role of a defence embodied in Art. 2/5 of CPA under which an accused or his defence lawyer respectively is entitled to search for his evidence and to support his statements by such evidence. A defence lawyer is therefore entitled not only to get in contact with a witness and to find out in general what such witness knows about the case, but also to call up him before a judge and to question him at the court. A defence may ask an expert to make out an expertise on certain issue relevant for criminal procedure and to bring this expertise as an evidence before a judge.

Strengthening of a position of parties of CP before the court results in an provision of CPA which says that it is a duty of a public prosecutor to prove the guilty of an

accused. However, in case of a failure to do so, a judge has to complete the evidence on his own. But in general the activity of bringing the evidence before the court lies on parties of CP.

Art. 14/4 of The Charter of Fundamental Rights and Freedoms :

„A citizen cannot be forced to leave his native country.“