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VII. CRIMINAL JUSTICE SYSTEM

1. Fundamental constitutional guarantees and the criminal justice system

Miha Hafner, Katja Šugman Stubbs

1.1. General

Criminal law is one of the most sensitive areas of law, as it allows the state to interfere with an individual's most fundamental rights and freedoms. The criminal justice system can function effectively if the state can use its coercive means not only against finally convicted perpetrators, but also against persons who are merely presumed to have committed crimes, and whose potential criminal liability is only being established in the proceedings. It is understandable that the fundamental guarantees and rights of persons involved in criminal proceedings, as well as the duties and rights of authorities operating in the criminal justice system, must therefore be defined in the highest legal act in the country – th

The Constitution of the Republic of Slovenia (URS)2 is the highest and most important legal act in the country. All lower general legal acts must be harmonized with it: laws and subordinate regulations (e.g. regulations, rules), individual legal acts (e.g. court decisions) and actions of state authorities (e.g. deprivation of liberty by the police). All of the listed general and individual acts and actions of state authorities must also be in accordance with international treaties ratified by the National Assembly. In the hierarchy of legal acts, such international treaties are placed immediately below the constitution, but above laws. As an example of an international treaty that plays a particularly important role in the field of criminal law, we can mention the European Convention for the Protection of Human Rights

1 Both the Constitution of the Republic of Slovenia and the laws must be published in a special publication called the Official Gazette of the Republic of Slovenia, so that everyone can familiarize themselves with them. Therefore, the first time we cite a specific legal act in a text, we always cite the number of the Official Gazette (and all subsequent ones, if the legal act has been amended).

2 Official Gazette of the Republic of Slovenia, No. 33/91, NPB9, No. 47/2013.

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For understanding the meaning of constitutional rights, the key provisions of Article 15 of the Constitution of Slovenia are those that stipulate that human rights and fundamental freedoms are exercised *directly* on the basis of the Constitution and that the manner of their exercise may be prescribed by law when so provided by the Constitution or if this is necessary due to the very nature of an individual right or freedom. Regarding the limitation of constitutional rights, the further provision that human rights and fundamental freedoms are limited only by the rights of others and in cases provided for by the Constitutio

The majority of guarantee provisions that directly relate to criminal law are found in Chapter II of the Constitution, entitled Human Rights and Fundamental Freedoms, but of course, numerous other constitutional norms are also related to the field of criminal law in one way or another, for example those that relate to the judiciary and the public prosecutor's office. Some constitutional provisions are very specific and regulate individual situations in considerable detail (e.g. the second paragraph of Article 20 of the Constitutional Court, which clearly limits the duration of detention before the filing of an indictment and even some related procedural deadlines), while others are more abstract (e.g. the provision on the protection of human personality and dignity in Article 21 of the Constitutional Court). However, the Constitution often authorizes the legislature to regulate the manner of exercising rights and any restrictions or exceptions by law. For example, the second paragraph of Article 19 of the Constitutional Court states: "No one may be deprived of liberty,

Thus, all dimensions of constitutional norms are usually expressed only in laws, which fill the – often very general and abstract – constitutional provisions with more detailed content, specify and systematize them in legal provisions. In our country, the pillars of statutory criminal law are the Criminal Code (KZ-1)3 in the field of substantive law and the Criminal Procedure Act (ZKP)4 in the field of procedural law, and the system is supplemented by a number of other sectoral laws.

The Constitutional Court has a special role in protecting constitutional rights in Slovenia. Although all (regular) courts in the country are obliged to protect constitutionality, the Constitutional Court may, among other things, assess whether laws and regulations are in accordance with the Constitution and whether individual legal acts have violated the constitutional rights and fundamental freedoms of persons. In the past, it has played an extremely important role – especially in the field of criminal procedural law – in protecting the rights and freedoms of the accused in criminal proceedings. Its emphasis on such

3 Official Gazette of the Republic of Slovenia, UPB2, No. 50/12.

4 Official Gazette of the Republic of Slovenia, No. UPB 32/12, and ZKP-L, Official Gazette of the Republic of Slovenia, No. 47/13.

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The so-called guarantee function of criminal law was also significantly shaped by procedural legislation.

The scheme needs to be supplemented with one more important actor – the European Court of Human Rights (ECHR). This international court, which assesses the responsibility of states for human rights violations under the aforementioned ECHR, has a significant impact on the understanding and interpretation of constitutional guarantees in Slovenia with its rich case law. The rights guaranteed in the ECHR overlap to a large extent with the guarantees that are also found in our Constitution, the – both regular and Constitutional – are increasingly referring to the practice of the ECHR.

1.2. Constitutional guarantees in criminal law

It is not possible to discuss all the constitutional guarantees that must be guaranteed in criminal law in detail, let alone exhaustively. In the following, we will draw attention to some that have a central place in this branch of law, which of course does not mean that others are less important. It should be explained that some constitutional guarantees are difficult to consider separately, as they reflect broader principles and are at the same time inextricably linked to other fundamental rights.

1.2.1. Principle of legality

The principle of legality is the foundation of all democratic legal systems and protects citizens from the arbitrariness and tyranny of the authorities. In our Constitution, it is found in Article 28, which states: "No one may be punished for an act for which the law has not determined to be criminal and has not prescribed a punishment for it before the act was committed." As Bavcon (2013, p. 130) explains, this principle is derived in the Criminal Code in provisions concerning the definitions of criminal acts, their determination in law, demarcations with acts that are not criminal, and in provisions on the selection and imposition of criminal sanctions.

1.2.2. Right to judicial protection

The Constitution, in Article 23, grants everyone the right “to have his rights and obligations and the charges against him decided without undue delay by an independent, impartial court established by law”. On the one hand, the right to judicial protection in criminal law is implemented in criminal law regulations. For example, the impartiality of the court in the ZKP is protected by provisions regulating the exclusion of judges from deciding on cases in which there is doubt about their impartiality. On the other hand, the right to judicial protection requires entire sets of

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broader constitutional and legal rules on the position and functioning of the judiciary (e.g. on the permanence of judicial mandates, on the organization of courts, etc.), which enable the judiciary to function effectively as an independent branch of government, independent of the legislative and executive branches.

1.2.3. Presumption of innocence

The presumption of innocence is also a fundamental postulate of criminal law in every democratic and constitutional state. Its simple premise, that everyone accused of a criminal offence is presumed innocent until proven guilty by a final judgment (Article 27 of the Constitutional Court of Slovenia), marks the course of the entire criminal procedure. Numerous other procedural guarantees stem from the presumption of innocence: first of all, the fact that the burden of proof in criminal proceedings lies with the prosecution. Since the accused is presumed innocent, the prosecution must prove his guilt and the accused does not have to prove his innocence. He may remain completely passive during the proceedings, but in case of doubt the court must rule in his favour *(in dubio pro reo).* **Due to the presumption of innocence, the accused is protected by the right to remain silent or the privilege against self-incrimination. The accused is "not obliged to testify against himself or his relatives, or to admit guilt" (fourth indent of Article 29 of the URS). In other words: "the accused [has] the right to say only as much about his involvement in a criminally relevant event as he** *voluntarily* **and** *consciously* **wants to say" (Šugman, 2000, p. 166). Viewed somewhat more broadly, the presumption of innocence prevents the defendant from being merely an object in criminal proceedings – a source of evidence against himself – but rather grants him the status of an autonomous subject with all procedural rights and guarantees.**

On the other hand, the presumption of innocence is in a kind of contradiction with the initiation and course of criminal proceedings (Šugman, 2007). The defendant finds himself in it precisely because there is a sufficiently strong suspicion that he is the perpetrator of a criminal offence. If the presumption of innocence were irrefutable, the criminal offence could not even be investigated, and the defendant would not have to endure any investigative actions (e.g. personal or home searches) or restrictive measures (e.g. detention). Criminal procedural law has therefore developed a system of rules based on criteria of probability of criminal involvement of the accused in the crime (evidence standards), which regulate when the presumption of innocence can be withdrawn by interference with the rights of the individual, so that the crime can be effectively investigated. The greater the probability that the accused is responsible for the crime, the more the presumption of innocence must be withdrawn and the more intense the interference with the rights of the accused can be.

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rights. If the defendant is convicted by a final judgment at the end of the proceedings, the presumption of innocence is definitively challenged, and the convicted person must submit to the criminal sanction. In the opposite case of an acquittal or dismissal, the individual is again fully protected by the presumption of innocence.

1.2.4. Protection of human personality and dignity

In Article 21, the Constitution guarantees respect for the human personality and dignity in criminal and other proceedings, during deprivation of liberty and the execution of sentences, and prohibits any violence and extortion of confessions and statements. As a fundamental civilisational norm, this guarantee is also reflected in numerous other constitutional provisions, for example, in the prohibition of torture (Article 18), in the inviolability of human life and the prohibition of the death penalty (Article 17), in the protection of privacy and personality rights (Article 35) and other norms.

1.2.5. Right to defense

The exercise of the right to a defence is a key prerequisite for fair criminal proceedings. The most important elements of this right of the accused are listed in Article 19 of the Constitution: adequate time and facilities for the preparation of one's defence, the possibility of presenting evidence in one's favour, trial in the presence of the accused, and the All of the listed elements of this right (which are also independent rights) enable the defendant to conduct his defense effectively.

1.2.6. Equal protection of rights

The guarantee of equal protection of rights from Article 22 of the URS is reflected in criminal procedural law in the principle of equality of arms. An essential prerequisite for a fair and impartial procedure is the equality of the parties. In criminal proceedings, the prosecutor and the defendant must have equal opportunities to state facts and propose evidence, each in accordance with their own interests, and to challenge the facts and evidence of the opposing party.

1.2.7. Protection of personal freedom

The right to personal liberty is also a fundamental human right, and criminal law uses its restriction as a type of sanction (see section ÿ). However, the nature of effective criminal proceedings in some cases dictates the restriction of personal liberty even before a final conviction. Since the framers of the constitution were aware that this was one of the most sensitive interferences with individual rights, they already

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The Constitution prescribes in considerable detail certain conditions that must be met and guarantees that must be respected upon deprivation of liberty, for example mandatory instruction on rights, maximum duration of detention, etc. (see Articles 19 and 20 of the Constitutional Court).

1.2.8. Other guarantees

Among the guarantees of constitutional rank, it is also necessary to mention: the public nature of the trial (Article 24 of the Constitutional Court), which enables public control over the correctness and fairness of court decisions; the right to a legal remedy (Article 25 of the Constitutional Court), which gives everyone the opportunity to verify the correctness of a decision of a court or other body by means of an appeal or other legal remedy; the prohibition of retrial (Article 31 of the Constitutional Court), which guarantees that anyone against whom criminal proceedings have been finally concluded (with a verdict or otherwise) will not be tried again for the same act *(ne bis in idem);* **the right to privacy (Article 35 of the Constitutional Court), inviolability of the home (Article 36 of the Constitutional Court), protection of the secrecy of letters and other means of communication (Article 37 of the Constitutional Court) and protection of personal data (Article 38 of the Constitutional Court), which allow interference with privacy only under constitutional and legal conditions; the right to rehabilitation and compensation (Article 30 of the Constitutional Court), which gives those who have been wrongly convicted or unjustly deprived of their liberty the right to rehabilitation and compensation for damages.**

2. A criminal justice system with a short presentation of the course of criminal proceedings *Miha Hafner, Katja Šugman Stubbs*

2.1. Bodies of the judicial system, their roles and relationships between them

2.1.1. Police

In criminal proceedings, the police are the body responsible for detecting criminal acts and perpetrators. Among the authorities involved in criminal proceedings, the police are usually the first to detect a suspicion of a criminal offence or to be informed about it first. They are also usually the first to arrive at the scene of the crime, so it is obvious that their role is most important in the pre-trial phase of the proceedings. This does not mean that the importance of their work for the subsequent phases and the outcome of the criminal proceedings is insignificant. On the contrary, the actions of the police, the information, notifications and, above all, the evidence they collect in the pre-trial phase are of decisive importance for the entire procedure and its outcome.

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The ZKP authorizes the police to begin work when there are reasons to suspect that a criminal offence has been committed for which the perpetrator is prosecuted ex officio. At that time, the police must do what is necessary to track down the perpetrator, to prevent him from fleeing or hiding, to secure traces of the criminal offence and any evidence, and to collect all useful information. The law regulates in more detail which measures, in which cases and under what conditions they can be carried out. Just as examples, we should mention the inspection of means of transport, passengers and luggage, taking photographs of the suspect, taking fingerprints and a swab of the oral mucosa, and referring persons to an investigating judge.

It is important to note the difference between the actions that the police can perform on their own and those ordered by the other two bodies in criminal proceedings – the public prosecutor and the court. Namely, the police, on the instructions of the public prosecutor and on the basis of a prosecutorial or court order, also carry out other investigative actions that they may not perform on their own initiative (except in urgent cases), e.g. house and personal searches, searches. The police must act on the instructions of the public prosecutor and are subordinate to the public prosecutor in this respect (Šugman, 2006a). It is understandable, however, that the majority of investigative actions are carried out operationally and technically by the police, as they have the necessary expertise for

Among the powers of the police, the possibility of formally questioning a suspect, which is otherwise reserved for the court, stands out strongly (Šugman, 2006b). In the event that the suspect has been informed of his rights, agrees to the questioning and is present, his defense attorney, a police officer may question the suspect, and the record of such questioning has the nature of "full-value" evidence at a possible later trial.
This type of interrogation is therefore very different from the information that the police can collect from the suspect and other persons, but official notes of such information cannot be "real" evidence at trial, they only assist the police and the prosecution.

2.1.2. State Prosecutor's Office

The State Prosecutor's Office has the status of an independent body in the judiciary. In the criminal justice system, the State Prosecutor primarily performs the function of prosecuting criminal offences and has the status of a party in criminal proceedings (alongside the defendant).5 The State Prosecutor directs the work of the police, proposes or orders investigative actions and other measures,

[5] In some cases, the injured party or a private prosecutor may act as a party on the prosecution side instead of the public prosecutor.

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In legal proceedings, he/she appears before the court on the side of the prosecution, files indictments and legal remedies.

Since criminal proceedings can only be initiated at the request of a duly authorized prosecutor (the accusatory principle), the most important decision of the state prosecutor is whether to initiate criminal prosecution or not (Article 45 of the ZKP).6 In principle, when there is a reasonable suspicion that a criminal offence has been committed and is prosecuted ex officio, the state prosecutor is obliged to initiate criminal prosecution (the principle of legality of prosecution), regardless of the will of the victim of the act (the principle of officiality). As will be shown below, however, the legislator is increasingly moving away from the principle of legality and in some cases gives the state prosecutor the option of pro If the public prosecutor believes that criminal prosecution would not be appropriate, he or she may, in cases of minor criminal offences, withdraw from prosecution (principle of opportunity, Article 163 of the Criminal Procedure Code) or "resolve" the case in an alternative manner, e.g. with conditionally postponed prosecution or in a settlement procedure. The prosecutor's decision whether to try to obtain a conviction through plea bargaining or, for example, a sentencing order, instead of regular criminal proceedings, is also responsible, as these are generally faster and more economical ways of resolving criminal cases. The role and powers of the public prosecutor's office have therefore been increasingly strengthened in the development of our criminal law, and today it is considered that public p

Because of his key role in the pre-trial procedure, we say that the state prosecutor is *the dominus litis* **("master") of the pre-trial procedure. In it, the state prosecutor sets the pace and directs the police in investigating the crime. Namely, he himself knows best what information he needs to be able to make quality decisions; not only regarding the aforementioned issues, but also regarding purely substantive legal issues, for example, how he will legally qualify the act, what form of guilt he will accuse the defendant of and what sanction he will request. The public prosecutor therefore gives instructions to the police on which issues they should investigate, what possible evidence they should try to obtain and what measures and actions they should carry out. In this context, some measures can be ordered by the public prosecutor himself, for example certain types of less invasive covert investigative measures, such as secret observation and tracking. In other cases, however, he must first obtain an order from the investigating judge. These are measures that more deeply infringe on the rights of the individual, such as house and personal searches, and more invasive covert investigative measures, such as wiretapping (**

[6] It would not be meaningful to list the numbers of all relevant articles in this text, as this is only a brief overview of the course of the procedure, so we will only list the articles in some places that we find particularly relevant.

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2006a). Therefore, good cooperation with the police and an efficient two-way flow of information between the two bodies are essential for the successful work of the state prosecutor.

Although the state prosecutor acts on the side of the prosecution, as a state body he is bound by the principle of seeking the (material) truth (Article 17 of the ZKP) and therefore may not conceal facts and evidence that are in the defendant's favor, or selectively collect only data and evidence that are to his detriment. The state prosecutor is also the guardian of legality, which has some consequences in criminal proceedings that are at first glance less logical. Thus, he may also file an appeal in favor of the defendant, and he may also file extraordinary legal remedies in favor of the convicted person: a request for a reopening of the proceedings and a request for the protection of legality (the latter on

2.1.3. Judiciary

In Slovenia, the judiciary is organized in a three-tier system. The first instance is the district and district courts, the second instance is the higher courts, and the third instance is the Supreme Court of the Republic of Slovenia. As the highest guardian of constitutionality and legality in the country, the Constitutional Court of the Republic of Slovenia carries out c

In district courts (there are 44 in the country), single judges try minor cases. These are criminal offences punishable by a fine or imprisonment of up to three years. In district courts (11), trials are generally held in plenary sessions. In criminal offences punishable by more than three but less than fifteen years of imprisonment, a three-member panel (a professional judge and two lay judges) tries the case, while in more serious criminal offences, a five-member panel (two professional judges and three lay judges) tries the case. In district courts, important bodies include the investigating judge, who leads the investigation phase or decides on individual investigative actions before the investigation is initiated, and the so-called extrajudicial panel of three professional judges, who decides on appeals against the decisions of the investigating judge and in certain other cases.

Four higher courts (in Ljubljana, Maribor, Celje and Koper) mostly decide on appeals against decisions of first-instance courts. They are judged by panels of three senior (professional) judges.

The Supreme Court is the highest appellate court in the country and in criminal cases it most often decides on an extraordinary legal remedy – a request for protection of legality, when an appeal against a higher court judgment is permitted, as well as on it, as well as on certain other issues, such as the "additional" extension of detention before the filing of an indictment and disputes over jurisdiction between lower courts.
The Supreme Court adopts the above decisions, as a rule, in chambers of five, in some

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In some cases, three or seven Supreme Court judges are also appointed. An important task of the Supreme Court is to ensure the uniform application of law in the country, which the Supreme Court actually achieves with each of its decisions. In extremely important legal issues, the Supreme Court decides in a general session, in which all Supreme Court judges participate. At general sessions, it decides, among other things, on initiatives to issue or amend laws, adopts legal opinions on issues of case law and legal opinions of principle that are important for the uniform application of laws. Both types of legal opinions are also formally legally binding for the panels of the Supreme Court, and indirectly for all courts in the country.

Courts must of course judge impartially on the basis of the constitution and the law, and in criminal proceedings the fundamental guideline of their work is primarily the principle of seeking the truth (instructional maxim). Namely, the law stipulates that courts must "truthfully and completely establish the facts relevant to issuing a lawful decision" (first paragraph of Article 17 of the ZKP). The instructional maxim has important consequences for the role of the court in our criminal procedure. Namely, because of this authority, the judge cannot be merely a relatively passive arbitrator between the parties and their (evidence) proposals, but must actively intervene in the investigation of a criminal offence if he believes that the parties' actions have not sufficiently clarified the facts. This is most clearly seen in the investigation phase, when the investigating judge not only carries out investigative actions proposed by the parties, but can even carry out investigative actions himself ex officio, if he considers this necessary. Even at the main hearing, the court has the authority to ex officio question witnesses and the defendant and take other evidence.

2.2. The functioning of the justice system – an outline of the criminal procedure

2.2.1. Introduction

Slovenian criminal procedure is the heir to continental, mixed inquisitorial--accusatory procedures, but is increasingly leaning towards accusatory. By the terms accusatory (the term adversarial is also often used) and inquisitorial, we mean two different ideal-type models of criminal procedures.
The adversarial model has its roots in the criminal procedure of ancient Rome, more specifically, the Roman Republic, and today its concepts are most closely related to the Anglo--American legal systems. The inquisitorial model is ideologically and historically based on the criminal procedures of continental Europe, which developed from the 13th century onwards and reached their infamous peak in the Inquisition and witchcraft trials (Bayer,

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In general, the fundamental starting point of the inquisitorial model can be stated as the search for the material truth about the criminal act, to which the entire procedure is subordinated. It is dominated by the investigator, who investigates the act and proceeds from the assumption that the defendant is guilty. The investigator combines all procedural functions within himself – accusation, defense and trial. When investigating an event, he has virtually all the means at his disposal. In this procedure, the defendant is merely the object of investigation, not an autonomous subject with his own procedural rights, and often does not even know what the basis for the accusation against him is. When the investigator collects all the evidence during the investigation phase (obtains the truth), he prepares a written report on the investigation and sends it to the court, which makes a ruling only on the basis of such a file: he does not see or hear either the defendant, the witnesses or the evidence.

**In the adversarial model, however, criminal proceedings are understood as a dispute between two equal parties, the prosecutor and the defendant (Zupanÿiÿ, 1988).
The court is only an impartial arbiter in this dispute, which may not actively interfere in the investigation of the case. The entire burden of proof lies with the prosecutor, who must convince the court that the defendant is guilty. If he fails to do so, the defendant is deemed innocent. The defendant can present evidence in his own favor, but he can also be completely passive, protected by the presumption of innocence. Adversarial proceedings do not involve an investigation, but rather The evidence is presented directly before the court, which will decide on the guilt of the defendant.**

Mixed procedures combine elements of both models. Thus, in our criminal procedure – which is a distinctly inquisitorial element – the judge is still bound by the principle of seeking the truth, and as a rule the investigation phase is also preserved, on the basis of which the investigating judge forms the file that forms the basis for the main hearing. On the other hand, the adversarial elements of our procedure are manifested in the presumption of innocence, the recognition of the procedural subjectivity of the defendant, the direct presentation of evidence at the main hearing and numerous other features. This explanation is necessary in order to facilitate the understanding of the ideological background of individual phases and institutes of our criminal procedure, which are not always self-evident, and some even seem contradictory.

Although we speak of criminal procedure in the singular, nowadays we can no longer to speak of a uniform course of criminal proceedings. Numerous factors, including broader social ones (for example, the increasing autonomy of the individual even within criminal law) and more utilitarian, legal-political ones (such as emphasizing the principle of procedural economy and finding solutions to court backlogs) have led to the increasing replacement of regular criminal proceedings with shortened and simplified forms of proceedings. Extrajudicial termination is also often possible

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procedure (in some cases, paradoxically, even before it has formally begun),7 which is decided by the state prosecutor. In the following, the regular criminal procedure will first be presented, and then other possible "scenarios" will be mentioned.

2.2.2. Regular criminal proceedings

Regular criminal proceedings are conducted for criminal offences within the jurisdiction of the district court, and are also referred to by special proceedings regarding issues not specifically regulated therein. They are divided into several phases. To initiate an individual phase, the prosecutor must prove with a sufficient degree of probability that the defendant is criminally liable for the alleged criminal offence. In other words, the prosecutor must meet the evidentiary standards, which, from lowest to highest, follow in this order: grounds for suspicion, reasonable grounds for suspicion, reasonable suspicion and conviction of guilt as a condition for a conviction (Šugman, 2007). The later the phase in the criminal proceedings, the higher the evidentiary standard is required. As we will see, evidentiary standards are also important when deciding on investigative actions and on restrictive and other measures. If the evidentiary standard prescribed for a particular measure is not met, the court will not allow the implementation of the proposed measure.

Pre-trial proceedings begin when there are grounds for suspecting that a criminal offence has been committed (Gorkiÿ, 2006). At this stage, it is not necessary for the police or the prosecution to already know whether the criminal offence has actually been committed and who the perpetrator might be. The police can begin investigating the offence at this point (in cooperation with the prosecution) (see the section on the police and the prosecution above). In doing so, they can implement fairly simple and non-invasive measures (e.g. collect information from persons, restrict movement in a certain area), but when necessary and under conditions regulated in more detail by law, they can also implement very profound interventions in the rights of the individual (e.g. detain the suspect). The purpose of pre-trial proceedings is to obtain as much information as possible about the crimi At the same time, they must also secure and collect as much material as possible that can be used as evidence later in the procedure. Of course, the police must also ensure safety, prevent the negative consequences of the crime, its completion or repetition, and enable what is necessary for the procedure to proceed effectively.

[7] In the case of a conditionally suspended prosecution, the public prosecutor may dismiss the complaint before filing an indictment (see below).

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As already explained, the pre-trial procedure is directed by the state prosecutor. Namely, he will lead the criminal proceedings on the prosecution side until a final judgment (unless the proceedings end in a different way), and is therefore aware that the success of his further work depends on the quality (effective and lawful) conduct of the pre-trial procedure.

A key moment in the pre-trial procedure is the focus of suspicion of a criminal offence on a specific person (Šugman, 2006b). Namely, at that time the police must inform the suspect about the act of which he is suspected, what the grounds for suspicion are, and about his rights to remain silent and to a lawyer (Article 148 of the Criminal Procedure Code). An individual's awareness of his status as a suspect and his rights is a necessary prerequisite for the suspect to be able to defend himself effectively, i.e. for a fair Therefore, the law stipulates that statements made by a suspect to the police without prior instruction may not be part of the evidentiary material.

Already in the pre-trial phase, the state can encroach extremely deeply on the suspect's right to privacy, even secretly. Covert investigative measures (CIMs) are a kind of legally permissible trick (Šugman Stubbs, Gorkiÿ, 2011, p. 145) that the state uses in combating the most serious forms of crime.
These measures, for example, enable the police to secretly observe and follow suspects, wiretap them, monitor their electronic communications (e.g. e-mail), record their conversations with sound and video, obtain data on their communication traffic or data related to their banking operations, join a criminal organization undercover, accept an illicit gift or bribe under the guise of another person, etc. It goes without saying that these measures are extremely sensitive. With them, the state secretly encroaches very deeply on the privacy of individuals who it merely assumes are involved in criminal activity, but who are still considered innocent, as they are protected by the presumption of innocence. On the other hand, the state is almost completely helpless in the fight against certain forms of (organized) crime, which are difficult to detect, let alone prosecute, without covert investigative measures.

The legislator was aware of the double-edged sword of this sword, so he regulated the PPU system in detail and built into it a whole series of safeguards (Articles 149a to 156 of the ZKP). For each of the measures, he prescribed, in accordance with the principle of proportionality, for which criminal offences it can be ordered, which authority orders it, what standards of evidence are required and what its maximum permitted duration is. As a rule, the proposer must also justify why evidence cannot be obtained in another way. The most invasive measures can only be ordered by an investigating judge, a

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in the case of serious crimes. They must undergo detailed prior judicial review of reasonable grounds for suspicion and can last for the shortest time. Slightly less profound interventions can also be ordered by the state prosecutor, can last longer and are subject to a lower standard of proof. Since the very nature of PPUs allows for the risk of their disproportionate use or even abuse, the law also provides for strict sanctions in these cases. If PPUs are carried out without an order, if it is insufficiently reasoned or if there were insufficient reasons for using PPUs, the verdict may not be based on evidence obtained with the help of PPUs, and they are excluded from the file (exclusion of evidence). (Šugman, 2000)).

If the evidence gathered in the pre-trial proceedings indicates a reasonable suspicion that a criminal offence has been committed, the public prosecutor may file a request for an investigation, which is decided by the investigating judge after questioning the suspect and examining the file. If the investigating judge considers that there is insufficient evidence for a reasonable suspicion (including if the defendant appeals against the investigating judge's decision to investigate), the extrajudicial panel shall decide on this. If the investigating judge or the extrajudicial panel considers that the request for an investigation is justified, it shall issue a decision on the investigation and serve it on the defendant and the public prosec

A judicial investigation may only concern a specific person and a specific criminal offence (Article 167 of the ZKP). Its purpose is to collect evidence and data that will serve as a basis for a decision on whether to file an indictment or discontinue the proceedings, as well as evidence for which there is a risk that it will no longer be possible to present it at the main hearing or that it would be very difficult to present it. All other evidence for which it is reasonable to do so is also presented because it may be useful for the proceedings.

The judicial investigation is conducted by an investigating judge, and proposals for the presentation of evidence may be submitted by both parties – the public prosecutor and the defendant – in accordance with their interests. The investigating judge has a dual role, which is partly contradictory. On the one hand, his task is to clarify all important circumstances of the criminal offence under investigation. In doing so, he may also take evidence ex officio (e.g. question witnesses, appoint an expert) if he believes that the evidence proposed by the parties is insufficient to clarify the factual situation. On the other hand, the judge is increasingly also a guarantor who protects the rights of (primarily) the alleged perpetrator in the proceedings. This role is evident in deciding on the performance of certain investigative actions (e.g. house searches) and on the introduction of PPU and restrictive measures (e.g. detention). When deciding on the ordering of all the aforementioned measures, the investigating judge assesses whether the request is justified, whether the appropriate standard of proof has been provided and whether other required conditions have been met. If it

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justified, rejects it and thereby protects the defendant from unauthorized interference by the state with his rights.

All important investigative actions and the taking of evidence8 are regulated in more detail in the law. Some investigative actions are not only related to the investigation and can be – or even more sensibly – carried out (of course under the same conditions as in the investigation) already in the pre-trial procedure (e.g. house and personal search, expert testimony). The common feature of all investigative actions and evidence is that they must be properly recorded. As a rule, a record is drawn up for this purpose, and in the case of some actions the record can be replace -image recording or photography.

The authorities can obtain the sought evidence in the form of objects and documents based on a request for extradition addressed to individuals. Persons who possess the requested evidence are in principle obliged to surrender it (duty of disclosure). Documentary and material evidence can also be obtained by the authorities in criminal proceedings through a home or personal search. Since this is a strong invasion of privacy, the law requires a prior court order in both cases and prescribes other conditions (including the presence of two witnesses and a defense attorney) and explicitly states when exceptions to these conditions are permissible. By examining, for example, the scene of the crime or objects, the court directly detects important facts. The CPA also regulates the questioning of witnesses in detail. The law prescribes who may not be a witness, who may refuse to testify, and in which cases a witness is not obliged to answer individual questions. The court may also turn to an expert for assistance when it needs any professional knowledge that it does not itself possess. Experts are often doctors who perform a physical examination of the victim or a psychiatric examination of the defendant and, based on this, provide t Electronic evidence should also be mentioned. Due to its specificity, its seizure, security and storage are regulated separately. Finally, the source of evidence can also be the defendant himself. Since he is protected by the privilege against self- incrimination and the right to remain silent, the defendant does not have to testify – to provide testim The situation is different for physical evidence (e.g. fingerprints, biological traces), which the defendant does not control with his will and which can be used against him at trial even against his will.

8 Carrying out investigative actions and taking evidence are two different types of measures. Investigative actions are just a way to obtain evidence (for more details, see Šugman Stubbs, Gorkiÿ, 2011, p. 100–101). For the sake of brevity, they are listed together.

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When the investigating judge considers that the act under investigation has been sufficiently clarified and that all necessary evidence has been collected,9 he sends the file to the public prosecutor, who can decide between three options: to withdraw from the prosecution, to propose to the investigating judge to supplement the investigation, or to file an indic

The indictment is the central document of the criminal procedure, and without it, the criminal procedure cannot proceed at all after the investigation is complete. Therefore, the law precisely prescribes the content and mandatory components of the indictment (first paragraph of Article 269 of the ZKP). It must include, among other things, the following: the defendant's personal data; a detailed description of the act (when, where, in what manner, by what means, against whom or what the criminal offence was allegedly committed); the legal qualification of the criminal offence and the provisions of the Criminal Code that should be applied (e.g. grand theft under point 3 of the first paragraph of Article 205 of the KZ-1); what evidence should be presented at the main hearing (which witnesses should be heard, which documents should be read, which objects should be presented, etc.); the prosecutor's explanation (which facts he will prove with th

The indictment is therefore a key document precisely because it defines precisely what will be the subject of the trial. This is equally important for both the court and the defendant. The court learns from the indictment which factual and legal issues it will have to resolve at the main hearing. The defendant and his/her defense attorney can use the indictment to prepare their defense – to find evidence and arguments that challenge the prosecutor's claims. The indictment has another important legal consequence. The judgment pronounced by the court may only refer to the person named in the indictment and only to the event described in the indictment (we are also talking about the subjective and objective identity of the indictment and the judgment). This means that even if it turns out during the trial that the defendant committed (another) criminal act that is not described in the indictment, the court may not try the defendant for that act.10

The indictment must also undergo a testing phase due to its important function. This includes both a formal and a substantive examination. At this stage, the court may return

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9 When the investigating judge becomes aware during the investigation that there are reasons to discontinue the investigation (e.g. that the act being investigated is not a criminal offence or that there is no evidence that the defendant committed a criminal offence), he or she shall discontinue the investigation.

10 Such a situation must be distinguished from the otherwise common scenario where, during the evidence, it turns out that the act described in the indictment corresponds to a different legal qualification (for example, the court finds that it is not a grand theft, but an “ordinary”, basic form of theft). In these cases, the court has free rein in assessing which criminal act is involved. The old rule that the court knows the law (iura novit curia) also applies in criminal law and is not bound by the legal definitions provided by the parties applies.

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The indictment is sent to the prosecutor for correction, and the defense may object to the indictment. The court may dismiss the indictment (for formal reasons) or decide not to admit the indictment and discontinue the proceedings (for substantive reasons). If the indictment passes the test and becomes final, the criminal proceedings move to the ma

After the indictment becomes final, but before the main hearing, the court calls a pre-trial hearing, which is intended primarily to ensure that the subsequent proceedings can proceed more quickly, more economically and rationally. At the pre-trial hearing, the defendant has the opportunity to confess to the crime. In this case, the court checks whether the defendant understood the meaning and consequences of the confession, whether the confession was made voluntarily, whether it is clear and complete and also supported by other evidence in the file. If the court accepts th the proceedings continue with a hearing for the imposition of a criminal sanction. At this hearing, the court only presents evidence that is relevant to the decision on the criminal sanction, and then pronounces a verdict. Such a hearing is also held if the defendant pleads guilty at any time during the main hearing and the court accepts his plea.

Even when the defendant does not plead guilty at the pre-trial hearing, this has important consequences for him. Namely, he must present his evidentiary and other proposals at the hearing: on what evidence the court should present and which evidence proposed by the prosecution should be excluded from the case file as inadmissible. He can also propose the exclusion of the presiding judge of the panel and waive some of his procedural rights (e.g. to be tried by a single judge instead of a panel).

The main hearing is the central part of the criminal procedure and is subject to certain specific rules and principles (Mozetiÿ, 2010). The main hearing is conducted orally,11 and evidence is presented directly (principles of orality and directness). This means that, as a rule, all witnesses must be heard at the main hearing (even if they have already been heard before the investigating judge), all evidentiary documents must be read, exhibits must be shown, etc. This is extremely important so that the judges who will rule on the charges can convince themselves of all the decisive facts with their own senses and form their own opinion about them. It is also connected to the principle of free assessment of evidence, which assumes that "the court evaluates the evidence presented in accordance with its logical and psychological analysis, and is not bound by any legal rules on how to assess its probative value" (Dežman, Erbežnik, 2003, p. 253). All of the above is intended to implement the principle of seeking the truth, to which the court is committed.

11 Of course, a record must be kept of its progress.

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The main hearing begins with the presentation of the indictment, after which the accused is informed of his rights, and the accused and his defense attorney may respond to the accusation. If the accused wishes to defend himself, he is questioned. This is followed by the evidentiary procedure, in which, as a rule, the evidence proposed by the prosecutor is presented first, then that proposed by the defense, and finally any evidence that the court ex officio presents. Once the evidentiary procedure is complete, the parties, the injured party, and the defense attorney speak. The prosecutor speaks first, followed by the injured party and the defendant's defense attorney, and the d

After the main hearing, the panel of judges shall retire for deliberation, where it shall rule on all issues. The court may issue a judgment of rejection that is not of a substantive nature It is pronounced, for example, when the prosecutor withdraws the charge or the court finds that the defendant has already been tried for the same act and the proceedings have been finally concluded. With an acquittal, the court finds that the defendant is not criminally liable for the criminal offence charged, while with a conviction, the defendant is found guilty. The court always announces the judgment publicly and serves the written judgment on the parties. Each judgment must contain: an introduction with general information about the court, the parties and other participants in the proceedings; a ruling, which contains the decision either on guilt and sanction or on acquittal or dismissal of the charge; an explanation. It is particularly important that the judgment is well reasoned12 and that it contains reasons on all important issues. Law is a rational discourse, so it must be understandable to everyone reading the judgment – primarily the parties, the defence lawyer and the injured party – why the court has taken a certain po

2.2.3. Legal remedies

Legal remedies are classified as regular and extraordinary. In our law, the only regular legal remedy is an appeal. When one of the parties believes that the judgment of the court of first instance was incorrect or unlawful, he or she may appeal. The appeal may concern an erroneous or incomplete determination of the facts, an incorrect application of the criminal law, or the appellant may accuse the court of material violations of the provisions of criminal procedure. An appeal is also permitted regarding other decisions, for example, regarding the criminal sanction, the costs of the proceedings, etc.

If the appeal is not dismissed (for formal reasons, e.g. because it was filed too late), it is considered on the merits by the second-instance court. When the higher court does not

[12] In some cases, a statement of reasons for (part of) the judgment is not required, for example when the defendant waives the right to appeal.

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finds a violation, rejects the complaint as unfounded. If it finds that the complaint is justified, it has two options: it can annul the judgment of the first-instance court and return the case to the first-instance court for a new trial; in some cases, the higher court can simply rule on the case and change the judgment of the first-instance court.

When an appeal is rejected or is no longer possible (e.g. because the appeal deadline has expired, because it is a judgment of a higher court), the judgment becomes final. "The finality of a court decision means that the factual and legal issues are considered to be finally resolved and that the regular criminal procedure is definitely over, because the matter in question is a *res judicata."* **(Dežman, Erbežnik, 2003, p. 500) Finality is also a condition and basis for the judgment to be enforced.**

Exceptionally, a final court decision may be challenged by extraordinary legal remedies. It should be emphasized that adjudicated matters can never be changed to the detriment of the defendant by extraordinary legal remedies. In our law, extraordinary legal remedies are the reopening of proceedings and the request for the protection of legality. The reopening of proceedings is possible if new facts are stated or new evidence is submitted that may lead to a more favorable decision, or if it turns out that the final judgment is based on a criminal act of the judge, on a forged document, a false testimony of a witness or some similar circumstance. The reopening of proceedings is decided by the court that decided the case at first instance. A request for the protection of legality can only be filed due to violations of law, not regarding factual issues.

2.2.4. Abbreviated procedure

Trials are held before district courts before a single judge using a summary procedure, which is much more common in practice than the regular procedure. As a rule, the summary procedure runs faster and is also concluded sooner. This is a consequence of the usually simpler factual and legal issues that are dealt with by district courts, as well as shorter procedural deadlines. The main difference between the regular and summary procedure is that there is no investigation phase in the summary procedure. However, the judge may carry out individual investigative actions at the request of the prosecutor. A pre-trial hearing is not mandatory, but in the case of a private lawsuit, the court may call a settlement hearing before the main hearing. If the parties successfully settle the case, the procedure is already stopped at this stage.

A special form of summary proceedings is the procedure for issuing a penalty order. The issuance of a penalty order may be proposed by the public prosecutor in the indictment, which he shall attach to it all the evidence. If the court grants the motion, it shall issue a ju

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a penalty order and serves it on the defendant. A penalty order can only impose sanctions other than imprisonment. If the court does not grant the public prosecutor's proposal or if the defendant objects to the penalty order (he or she is, of course, informed of this right in writing), the usual summary procedure is carried out.

2.2.5. Other forms of termination of criminal proceedings

The Criminal Procedure Code also regulates some special procedures, such as procedures against minors, for the use of security measures, for the confiscation of property gains, for the extradition of defendants and convicted persons, for international legal assistance, and others, which we only mention here. We will devote a few more words to different, agreed-upon ways of terminating criminal proceedings.

The Slovenian legislature has also introduced negotiations and plea agreements into the criminal justice system (Zagorac Tratnik, 2014). The initiative for concluding a plea agreement can be made by either party, the public prosecutor or the defendant or his/her defense attorney. An agreement is only possible within the framework set by law. An agreement regarding the criminal sanction is thus only permissible within the range prescribed by the Criminal Code for an individual criminal offense. It is also possible to agree on the manner of execution of the criminal sanction and on the costs of the procedure. However, it is not possible to negotiate on the legal qualification of the criminal offense, on the confiscation of the proceeds of crime, and on mandatory security measures (e.g., on mandatory psychiatric treatment).

A plea agreement must be concluded in writing, and the defendant's lawyer must be present at the negotiations, who must also sign the agreement in addition to the parties. The agreement can be concluded at any time up to the end of the main hearing and even during the pre-trial proceedings (in case of reasonable suspicion), but it must always be confirmed by the court, which would otherwise decide on the charge.

In the case of criminal offences within the jurisdiction of district courts and also in the case of some other criminal offences specifically listed by law, the state prosecutor has two other options for resolving the case out of court: conditionally postponed prosecution and settlement (Fišer, 2013). The state prosecutor may decide on conditionally postponed prosecution when the suspect is willing to act according to his instructions and fulfill a certain task that would reduce or eliminate the consequences of the criminal offence. This may, for example, be the settlement of damages, the payment of a certain amount to charity, community service, etc. In the case of settlement, the state prosecutor gives the suspect and the injured party the opportunity to reach an agreement with the help of an impartial conciliator. If the defendant fulfills th

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the state prosecutor, the state prosecutor shall dismiss the criminal complaint. In both cases, the injured party must agree to such a solution.

2.3. Coercive measures of a procedural nature for alleged perpetrators of criminal acts

The initiation of criminal proceedings is never pleasant for the defendant. At best, it causes him numerous inconveniences, and at worst, the defendant has to endure even interference with the most fundamental rights, such as personal freedom. We have already mentioned some of the measures of criminal procedure by which the state - even before it is established that a criminal offence has been committed, that it was committed by the alleged perpetrator and that he is criminally liable for it - interferes with the defendant's privacy (PPU, home and personal search) and his physical integrity (taking blood and oral swabs, physical examination). In this section, we also add restrictive measures as a special set of measures that enable the successful implementation of criminal proceedings or ensure the safety of people.

Restrictive measures can be classified as personal and material. The former primarily interfere with personal rights, while the latter interfere with property rights. Restrictive measures, as already mentioned in other interferences with the defendant's rights before a final judgment, are also in conflict with the presumption of innocence. Therefore, Fišer (2006a, p. 222) warns that "[w]e should never fall into the temptation of considering restrictive measures as a self-evident consequence of the initiation of proceedings following an alleged criminal offence: on the contrary, they are always the exception and never the rule".

The most characteristic and also the most severe personal restrictive measure is detention. The Constitution (first paragraph of Article 20 of the Constitutional Court) already stipulates that detention may be ordered only under the following conditions: that there is a reasonable suspicion, that detention is ordered by a court decision and that it is unavoidably necessary for the course of criminal proceedings or for the safety of people. When detention is unavoidably necessary for the course of criminal proceedings or for the safety of people is defined in more detail by the ZKP, which recognizes three reasons for detention: suspicion of flight, risk of repetitio Suspected fugitive refers to the risk that the accused will flee, or is hiding, or that his identity cannot be established. The risk of repetition is the fear that the alleged perpetrator will repeat the criminal offense, complete an attempted criminal offense, or commit a criminal offense that he is threatening to commit. The third reason for detention is the risk that the accused will influence witnesses (e.g. intimidate or threaten them) or evidence (e.g. hide or destroy it), so that the criminal proceedings could not be successfully conducted.

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Detention may only be proposed by the public prosecutor; the court cannot order it ex officio. The existence of any of the grounds for detention and the existence of a reasonable suspicion that the defendant has committed a criminal offence must be thoroughly verified by the court. If the evidence submitted by the prosecutor and other circumstances do not indicate a sufficiently high probability that the defendant is indeed the perpetrator of the criminal offence and that the danger is justified by the grounds for deten In order for the detention decision process to be fair, the court must hear the arguments of both sides, which is why a detention hearing is mandatory before the detention is imposed. At this hearing, the court must question the defendant against whom detention is proposed, and his defense attorney must always be present. At this hearing, the defense may use its arguments and evidence to oppose the prosecutor's request for detention. The court must decide on detention relatively quickly, namely within 48 hours of the suspect being taken into custody or being brought before the investigating judg

The law limits the maximum possible duration of detention at each stage of the procedure and prescribes the procedure for its extension. The fundamental rule regarding detention is that it must last for the shortest possible time and that it must be abolished or replaced by milder measures as soon as the reasons for it cease to exist. For this purpose, the legislator has made available to the courts a whole range of milder restrictive measures that can interfere less intensively with the rights of the defendant and at the same time eliminate the dangers arising from the reasons for detention. These measures are: house arrest, bail, reporting to the police station, the defendant's promise not to leave his place of residence, and a ban on approaching a specific place or

As already explained, material restrictive measures interfere with property rights. The most common material restrictive measure is the seizure of objects. Objects are seized either for evidentiary purposes or because they must be seized by law (e.g. dangerous objects such as drugs and weapons). Temporary securing of a property claim and temporary securing of the confiscation of property proceeds are also extremely important. The beneficiary or the public prosecutor may request the security when there is a risk that the property claim or the confiscation of property obtained through a criminal offence will not be enforceable after the judgment becomes final because the defendant would hide, destroy, transfer the property to another person or use it for further criminal activity. Of course, even for these two measures, the law prescribes the judicial decision-making procedure, the required standard of proof (reasonable grounds for suspicion) and the maximum permitted duration.

[13] When the police take a suspect into custody, they must generally bring him immediately before an investigating judge, but in some cases they have the option of police detention, which can last a maximum of 48 hours.

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3. Fundamental current problems of the criminal justice system

Miha Hafner, Katja Šugman Stubbs

Since the mid-1990s, the Slovenian justice system (including in the field of criminal law) has begun to choke on a backlog of cases. Unresolved cases have accumulated, and the average time for resolving cases has been lengthening. Slovenia has been repeatedly convicted by the ECHR for violating the right to a trial within a reasonable time. Several projects have been established to combat the backlog, the most extensive of which was the Lukenda project, which began in 2005. It has strengthened the staffing of the courts, reformed their organization and made them computerized, provided better spatial and working conditions, and established some other mechanisms for more successful work of the courts. After this turning point, the backlog of cases has gradually begun to decrease. In the field of criminal law, procedural legislation has also significantly contributed to the faster completion of proceedings and consequently smaller court backlogs, especially the introduction of plea agreements and other forms of consensual resolution of criminal cases (

However, the introduction of a plea agreement, which was a rather revolutionary innovation for our criminal justice system, also offers reasons for concern. These are multifaceted and range from concerns about the value bases of this institution to the consequences it brings in practice. The first raises questions such as: Is it appropriate and fair to leave the determination of guilt and the imposition of punishment to an informal agreement between two (unequal) parties, instead of an impartial court? Why should a criminal who pleads guilty be rewarded with a more favorable sentence than one whose guilt is found by the court? Doesn't the promise of a "reward" in the sentence for a plea constitute unacceptable (psychological) pressure on the defendant, who is uncertain about the outcome of the proceedings in the event of a trial? As for the question of how this institution has and will come to life in practice, comparative law experiences already warn against the facts: due to various psychological factors, even innocent people plead guilty; In pursuit of their goals, state prosecutors also resort to ethically questionable practices ("bluffing", exaggerated accusations, psychological pressure); defense attorneys also do not always act in the best interests of their client (interest in concluding the case as soon as possible, agreement with the prosecutor to the detriment of one party at the expense of the benefit of the other party in another case); and last but not least, an instituti

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trials, as has happened in the United States, where more than 90 percent of cases end in guilty pleas.14

Criminal justice systems all over the world – and Slovenia is no exception – are also facing other challenges brought about by today's times. Unstoppable technological progress is not only changing the nature of crime, but also affecting the criminal legal response to it. It is increasingly obvious that individual concepts and institutes of evidentiary law, which criminal law has used for centuries (with only some gradual adjustments to keep up with the times), are now conceptually less and less suitable or no longer sufficient. Investigating and proving modern forms of criminality often requires the use of various state-of-the-art computer technologies, systematic mining of information sources and databases, etc. With such methods (relatively simple in terms of implementation), we can simultaneously encroach with astonishing intensity on various spheres of privacy and personal rights of a multitude of innocent individuals. Such approaches are extremely difficult to define legally and to regulate their proportionate and selective use in criminal proceedings. Therefore, one of the greatest challenges of criminal law today is the appropriate legal regulation of the use of new methods and technologies in criminal proceedings, which will limit unjustified interference with the rights of individuals and at the same time enable the effec

4. Coercive measures of a material nature and their enforcement

Matjaz Ambroz

4.1. The system of criminal sanctions, the dualism of punishment and security measures

The system of criminal sanctions can be briefly defined as the regulation of measures that courts impose on perpetrators of criminal offences in criminal proceedings, and the content of these measures is the loss or restriction of a certain right. This definition needs to be supplemented somewhat due to the fact that in many criminal law systems, including ours, courts impose criminal sanctions not only on guilty perpetrators of criminal offences, but also on perpetrators of unlawful acts who have not acted culpably – most typically, these are incompetent perpetrators. These are criminal sanction systems that link the majority of criminal sanctions to the perpetrator's guilt, but also recognize sanctions that are "i

[14] For an in-depth analysis of the issue of plea bargaining, see Tratnik Zagorac, 2014.

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Most continental European criminal law systems, including ours, are today pluralistic – they recognize several types of criminal sanctions, which distinguishes them from monistic systems that recognize only penalties. It is worth noting that traditionally, instead of pluralistic systems, we sometimes speak of dualistic systems. This designation is based on the two most typical types of criminal sanctions: penalties and security measures.

Penalties are the central form of criminal sanctions, they express the social and ethical condemnation of the perpetrator's actions and constitute a direct interference with the rights of the perpetrator. The fact that they are the central, most typical form of criminal sanctions is also shown by the fact that an entire branch of law (criminal law) is named after them. In addition to imprisonment, our law also recognizes fines and a ban on driving a mot

Punishments can only be imposed on guilty perpetrators, i.e. those who can be personally blamed for the act; in this way they differ from security measures, which are not based on the perpetrator's guilt (they can also be imposed on incompetent perpetrators), but at his/her own risk. The purpose of security measures is not to morally condemn the perpetrator's conduct, but rather to ensure safety for society. A typical security measure is mandatory psychiatric treatment and protection in a health institution, which in our legal system can be imposed on mentally incompetent perpetrators of serious illegal acts under certain conditions. In addition to this security measure, our law also recognizes: mandatory psychiatric treatment at liberty, prohibition from practicing a profession, withdrawal of a driver's license and confiscation of objects.

Despite the characteristic conceptual differences between punishments and security measures, the difference between them is smaller today than it used to be. In modern criminal law, punishment is no longer conceived retributively as "compensation for guilt", but is primarily attributed a general and special preventive purpose. On the other hand, some security measures can greatly interfere with the rights of the individual and actually also have a punitive nature (which is why modern criminal law increasingly limits the time of security measures that include deprivation of liberty, and ties their imposition to comparable guarantees as the imposition of a sentence). The fact that the difference between punishments and security measures is not entirely sharp is also shown by the fact that in most legal systems the time spent in a security measure is deducted from the time spent in the execution of the sentence (a system of vicariousness or the mutual interchangeability of punishments and security measures). Thus, for a convict who is simultaneously sentenced to a prison sentence and a security measure of mandatory psychiatric treatment and care in a health institution, the time spent in the health institution will be included in the time served in the sentence, and the time spent in the care institut

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Security measures are imposed either instead of punishment (in cases of perpetrators who are not guilty and cannot be sentenced) or in addition to punishment (for guilty perpetrators), when necessary to achieve preventive effects. The degree of guilt of the perpetrator plays a key role in imposing punishment, while the principle of proportionality (proportionality to the acts committed and the level of danger posed by the perpetrator) is paramount in security measures.

In relation to security measures, it is also worth noting the view that security measures against mentally ill perpetrators of unlawful acts should be regulated outside of criminal law. This view, which is close to the monistic conception of the system of criminal sanctions, is established in some parts of the world and has some advocates in Slovenia as well. The amendments to the Criminal Code in 2008 went in this direction, but in order for them to come into effect in practice, other laws would have to be adopt With the amendments to the Criminal Code in 2012, the legislator returned, with some modifications, to the original model of dualism of punishment and security measures, which is established in relevant comparative law (e.g. in Germany, Switzerland).

In addition to penalties and security measures, Slovenian criminal law also includes warning (admonition) sanctions. These were developed primarily due to the realization that imposing short prison sentences in some cases is not only unnecessary, but also counterproductive and can contribute to “desocialization” rather than “resocialization”. For many convicted persons, the criminal procedure itself has a special preventive effect, so resorting to the heavy artillery of custodial sanctions is not necessary. This is also the main guideline of warning sanctions, which rely on the fact that a warning will already be a sufficient guarantee for the perpetrator that he Some of the warning sanctions are satisfied with a mere warning (in our country, such a warning sanction is a court warning), while others have a built-in safeguard that allows the court to revoke them and impose a sentence if the perpetrator does not justify the trust (suspended sentence and suspended sentence with protective supervision). In practice, in the Slovenian legal environment, warning sanctions are imposed more often than penalties, with suspended sentences prevailing among them, which account for approximately three-quarters of convictions in Slovenia.

From the perspective of the systematics of criminal sanctions, we encounter different approaches in comparative law regarding the question of whether warning sanctions should be a special type of criminal sanctions (as in our country, which is a relatively rare solution today) or whether they are just a modified form of punishment. There are some arguments for the fact that warning sanctions are regulated as a "third type" of sanctions. Namely, they differ from punishment in that they warn and threaten, but do not im

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of the rights of the convicted person. They also differ from security measures, as they can only be imposed on guilty offenders and express a reproach to the offender for the crime committed. Due to doubts as to whether these differences are really so important as to justify the status of a special, "third type" of criminal sanctions, some systems abandon such a classification (typically Croatia with the Criminal Code, which has been in force since 1 January 2013). This is a different approach to the systematics of criminal sanctions, which, however, does not bring any significant changes in terms of content.

It is also worth mentioning alternative criminal sanctions, which in our country include community service, house arrest and weekend imprisonment. We mention alternative criminal sanctions separately because in our country they enter the criminal sanctions system indirectly: courts cannot impose them independently, but are only considered as an alternative form of execution of a sentence (most often imprisonment, community service is also considered as an alternative form of execution of a fine). This approach, which envisages alternative sanctions only as substitute sanctions, is relatively complex and time-consuming, which is why today in comparative law a solution is increasingly gaining ground, according to which courts can impose alternative sanctions directly. Consideration of this solution is also one of the future tasks for the Slovenian legislator. A step towards procedural economy and simplification of decision-making on alternative sanctions was already taken with the amendment to the Criminal Code, which has been in force since 15 May 2012, as alternative sanctions can be decided upon when the verdict is pronounced, if the defendant so proposes (and not only after the verdict becomes final, as was the case before). The defendant can therefore file a motion for alternative enforcement of the sentence already during the trial. However, during the trial, the defendant's priority will generally be an acquittal and will be withheld until the motion for alternative enforcement of the sanction is filed, as the court could Therefore, even after the amendment, the possibility of proposing an alternative form of execution of a criminal sanction is retained only after the judgment has become final.

Alternative execution in the form of alternative sanctions is not an option for all criminal offences. Our legal system sets formal restrictions regarding the amount of the primary sentence. Thus, community service can be used to replace a prison sentence of up to two years (or a fine of up to 360 daily amounts), weekend imprisonment is provided as an alternative form of execution for prison sentences of up to three years, and house arrest is an option for prison sentences of up to nine months. A further formal restriction is that community service and weekend imprisonment are not an option as alternative methods of executing a sanction for sexual offences. An analysis of whether such a priori exclusion

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The possibility of imposing these two alternative sanctions in sexual offences was not necessary, but was not carried out. It seems that this was primarily a move aimed at preventing excessive public outrage when the possibility of using alternative sanctions was expanded in 2008.

Alternative sanctions generally contribute to greater diversification, individualization and humanization of criminal sanctions, which is why they have been expanding in Slovenia and abroad in recent decades at the normative level, as well as in the judicial reality. The introduction of plea bargaining in Slovenia has probably also contributed to their more frequent use, since the manner of execution of the sentence can also be the subject of a plea agreement (which is a controversial solution for some theory). In addition to the many positive effects of alternative sanctions, the penological literature often draws attention to the danger associated with them. This is a phenomenon called "widening the net"; this phrase aims to point out that the state's repressive response can also be intensified by expanding the possibilities for using alternative sanctions (for example: an offender who would have been released with a court reprimand before the introduction of alternative sanctions may now have to perform community service). It would be unreasonable to give up on further expansion of alternative sanctions because of this, but it is important that courts are aware of this danger.

Finally, among the measures imposed by courts in criminal proceedings, confiscation of property and publication of the judgment should also be mentioned. Although these two measures are similar to criminal sanctions in some aspects, they are traditionally not considered to be criminal sanctions, as they are not intended to infringe on the rights of the perpetrator.

The essence of confiscation of property is the implementation of the principle that no one has the right to be enriched by an unlawful act. It is usually described in the literature as a "special type" of criminal law measure: its purpose is neither punitive nor corrective, but restitutionary: it is supposed to create a property situation similar to that which existed before the commission of the criminal act, and the court can use it both against the defendant and against a third party who was enriched by the unlawful act.

Also considered a special type of measure is the public publication of the judgment, which the court may impose on a convicted person for criminal offences against honour and reputation committed through the media or on websites. The court decides on this measure at the request of the injured party; if it grants it, it orders the publication of the judgment at the expense of the convicted person in the same manner as the offence was committed, in full or in an extract. Some, however, see similarities with punishment in this measure, especially because it places a financial burden on the convicted person.

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4.2. Enforcement of criminal sanctions

Once a criminal conviction becomes final, it generally becomes enforceable. The regulation of the execution of criminal sanctions raises numerous controversial, mostly sensitive, issues, since the execution phase of the sanction directly interferes with the rights of the individual. At least at the normative level, we can talk about some indisputable axioms of the execution of criminal sanctions, such as the principle of humanity, the principle of individualization and the principle of ensuring the best possible opportunities for the reintegration of the convicted person.

Modern penology derives from these axioms a number of more concrete principles that relate specifically to the enforcement of prison sentences. The most important of these are: the principle of approximation to life outside the institution (living conditions in the institution should be as similar as possible to those outside it – the idea of "opening" the prison); the principle of assistance in integration into society (especially by acquiring social competences and professional knowledge); the principle of voluntary participation in programmes (treatment programmes should be an option, not a compulsion; in practice, the line between permissible encouragement and compulsion can be controversial, especially when non-cooperation constitutes an obstacle to obtaining benefits); the principle of preserving fundamental constitutional rights (it also applies to convicts that their constitutional rights can only be restricted by law; however, they are restricted in the exercise of certain constitutional rights "by the nature of things", as a "reflex" of the deprivation of liberty – it is highly controversial how many restrictions on const

The principles described are clearly quite open-ended legal standards that can raise numerous dilemmas when deciding on specific cases. For example: when does the lack of personal space in an overcrowded prison become a violation of the principle of humanity; to what extent is participation in treatment programs a matter of free choice when numerous benefits depend on it; where is the line between acceptable individualization and where does a violation of the principle of equal treatment begin.

4.2.1. Two models of enforcement of criminal sanctions (administrative and judicial model)

In the enforcement of criminal sanctions, especially prison sentences, it is crucial that there are effective mechanisms for monitoring respect for the human rights and dignity of convicted persons. Broadly speaking, there are two models of such monitoring: administrative and judicial, depending on whether the penal administration or the court plays the leading role in decisions related to the enforcement of prison sentences and the protection of the rights of convicted persons. It should be noted that almost no criminal justice system knows a completely "pure" model in which

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The supervisory function is performed entirely by either administrative bodies or courts, which is why the terms administrative and judicial models are used in relation to the dominant (but not exclusive) role played by the aforementioned bodies. While in the past the administrative model of supervision was clearly dominant in comparative law, in recent times the judicial model has been increasingly gaining ground. Such a "judicialization" of the execution of prison sentences came about due to the finding that the latter form of supervision can provide better protection of the rights of convicted persons. Some authors speak of the fact that the execution of prison sentences "requires greater guarantees than those that can be provided by administrative bodies" (Josipoviÿ, Tomaševiÿ, Tripalo, 2001, p. 86). It should be added that the problem with administrative models may also be that the roles of managing prison institutions and supervising the execution of prison sentences are quite tightly intertwined, which is not in the interest of impartiality of decision-making.

Many European criminal justice systems (e.g. German, French, Italian or Croatian) that have introduced judicial supervision over the execution of prison sentences have done so through the institution of a sentencing judge, who is responsible for protecting the rights of persons sentenced to prison and for supervising the legality of the process of executing a prison sentence. The mission of the institution of the enforcement judge is thus primarily the supervision of the judiciary over the prison administration in the execution of prison sentences. The characteristic powers of enforcement judges are in particular: sending a convict to serve a prison sentence, deciding on the postponement and suspension of the execution of a prison sentence, participating in the preparation of a treatment plan, deciding on the transfer of a convict to another institution, deciding on the statute of limitations for the execution of a sentence, deciding on requests for the protection of prisoners' rights, deciding on disciplinary measures (as a rule only as an instance decision on appeals against decisions of the prison administration), participating in the decision on conditional release and playing a leading role i

The Slovenian system of prison sentence enforcement is largely based on an administrative model, in which powers are divided between individual prison institutions and the Administration for the Execution of Penal Sanctions (a body within the Ministry of Justice). Courts do perform certain tasks related to the execution of prison sentences (these include, in particular, summons to serve a prison sentence, decisions on allowing the sentence to be served before it becomes final, decisions on the postponement of the execution of a prison sentence, determination of the statute of limitations for the execution of a sentence and, last but not least, the – rather narrowly regulated – supervision of the execution of sentences, which is carried out by the president of the district court in the area of the institution). Despite the listed powers of the courts, the Slovenian model can still be described as predominantly administrative. At the normative level, judicial protection of prisoners' rights is

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However, the concrete implementation of this protection does not meet the standards required by the European Court of Human Rights (ECHR) for effective legal remedies (Mandiÿ and Joviÿ v. Slovenia, Štrucl and Others v. Slovenia). The ECHR does not claim in the aforementioned decisions that judicial protection is necessary for the effective protection of prison According to the ECtHR, an administrative body may also decide, but it must be independent of the body allegedly responsible for the violation, procedural guarantees must be ensured, the complainant must have the right to participate in the proceedings, and the decision must be legally binding and adopted within a reasonable time. In future reforms of the regulation of the enforcement of criminal sanctions, the legislator will have to improve the system of legal remedies available to convicted persons, even if it insists on the administrative model for the time being.

4.2.2. Enforcement of prison sentences and the case law of the ECtHR

Today, at least at the normative level, it is considered that the essence of imprisonment is the restriction of individual freedom, and other deprivations are unacceptable, as long as they are not inextricably linked to the restriction of freedom (van Zyl Smit and Snacken, 2009). The principle sounds appealing, but it is so open to interpretation that it is difficult to apply in everyday decision-making on prison issues. For example, how do we know whether the curtailment of privacy that comes with living in a room with two other convicts is a necessary consequence of the restriction of freedom that comes with a prison sentence? To resolve dilemmas of this kind, someone is needed to weigh up and authoritatively decide which deprivations, restrictions or "pains" of imprisonment (Sykes) are still acceptable. In recent decades, this task in the European area, in addition to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), has been most prominently performed by the ECtHR.15 Its practice is sometimes reserved, hesitant and often inconsistent, but in the last two decades it has undoubtedly contributed greatly to improving conditions in European prisons and developing legal standards for serving prison sentences, which is why some today consider it the "fundamental source of European p

Much of the ECtHR's case law in this area concerns violations of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which provides for the prohibition of torture and inhuman and degrading treatment or punishment. This provision is not limited to torture *stricto sensu,* **but has over the years become a central instrument for assessing the adequacy of prison conditions. In addition to the prohibitio**

[15] More about the role of the ECHR in the field of European prison law and the rights of imprisoned persons Ambrož, Beets, Sharp, 2013.

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torture, the right to an effective remedy (Article 13), the right to private and family life (Article 8), the right to freedom of expression (Article 10), the right to manifest one's religion or belief (Article 9), and the right to marry and found a family (Article 12) are also important sources of prison law.

From the perspective of Slovenian prison law and practice, the most important case law of the ECtHR is in the area of Articles 3 and 13 of the Convention, as Slovenia has been convicted several times in recent years for violating these two articles. Typical cases in which the question of a violation of Article 3 of the Convention is generally raised are insufficient medical care, prolonged solitary confinement, inadequate protection from violence by other prisoners, and increasingly inadequate living conditions themselves – these have been the basis for Slovenia's

According to the recent case law of the ECtHR, a violation of the Convention may therefore be found simply because of the inconvenience and restrictions caused by a lack of personal space, and the applicants do not need to prove a specific intention by prison staff to humiliate the prisoner – the mere existence of poor conditions is sufficient. This is a significant departure from older case law, which considered prison overcrowding to be an undesirable situation, but not a violation of the C

Slovenia was convicted of violating Article 3 of the Convention in the cases Štrucl and Others v. Slovenia, Mandiÿ and Joviÿ v. Slovenia, and Praznik v. Slovenia. In all three cases, the applicants were prisoners or detainees (for the sake of economy, we will refer to them as prisoners, but everything said applies mutatis mutandis to detainees) in the Ljubljana Prison, where they had too little personal space due to space constraints, too few opportunities for meaningful activities outside their rooms, and in the summer, the rooms without artificial ventilation were unsuitable for living in due to high temperatures. According to the findings of the ECtHR, the living conditions in the Dob pri Mirni Prison were better than in the Kana Prison – the applicants, who were serving their prison sentences in this institution, have so far failed to prove a violation of the Convention before the ECtHR.

In the cases of Štrucl and Others v. Slovenia and Mandiÿ and Joviÿ v. Slovenia, the ECtHR also found a violation of Article 13 of the Convention. According to the court's findings, the Slovenian legal order does not provide persons detained in inadequate living conditions with a sufficiently effective remedy. Formally, numerous remedies are available to detained persons: in the proceedings before the ECtHR, the Slovenian State Attorney's Office listed as many as ten different remedies (such as supervision by the president of the district court, direct judicial protection, administrative dispute, constitutional complaint, action for damages, complaint to th

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and others), but according to the findings of the ECtHR regarding efforts to eliminate poor living conditions in prison, none of them meet the standards of an "effective" remedy.

In order for a legal remedy to be effective, it must be capable of quickly preventing the occurrence or continuation of the violation, and the individual must also be entitled to adequate compensation for any damage (including non-pecuniary). As already mentioned, the ECtHR does not formally require that the body deciding on the legal remedy must necessarily be a court; it can also be an administrative body if the following conditions are met: appropriate procedural guarantees must be ensured, the body deciding must be independent of the body allegedly responsible for the violation, the complainant must have the right to participate in the procedure, and the decision issued must be legally binding and quickly adopted. The case law of the ECtHR thus sets the Slovenian prison system two fundamental tasks: to eliminate the problem of overcrowding in institutions and to change the system of legal remedies available to prisoners so that they are effective.

4.2.3. Models and dilemmas of conditional release and other forms of early release

Convicts rarely serve their entire prison sentence in a penal institution: statistics from recent years show that approximately 90 percent of them in Slovenia receive some form of early release. The term early release is used here as a general term for all institutions that allow an individual to be released from prison before serving their entire sentence.

Among them, conditional release plays the most important role in practice. Other early release institutions include amnesty and pardon, as well as early release upon the decision of the director of the penal institution.

Conditional release allows a convicted person to be released from prison who has not yet served his sentence in full. This release is "conditional" because it can be revoked in the event of a new criminal offense (or violation of any of the imposed obligations). There are different views on the "legal nature" and purpose of this institution.
According to the prevailing view today, it is a form (modification) of the execution of a prison sentence, the purpose of which is to contribute to the faster and more successful reintegration of the convict.

There are several models of conditional release in the world. They can be roughly divided into discretionary, mandatory and those in between (mixed). In discretionary systems, which include ours, the convicted person does not acquire the right to conditional release over time, but only the possibility of a decision on conditional release by the competent administrative or judicial authority. In mandatory conditional release systems, the conditional

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Parole is a right that a convict acquires after serving a certain part of his sentence. In favor of mandatory parole, they cite in particular the possibility of better planning of serving the sentence (the date of parole is known in advance), the avoidance of possible arbitrariness in decision-making, and cost-effectiveness. As an advantage of the discretionary model, they mention in particular the possibility of greater individualization and the assumption that uncertainty about parole could encourage the convict to behave in a compliant manner and participate in treatment programs (for more details, see Ambrož, Šugman 2011). Complications related to parole and violations of the justified expectations of convicts can occur in cases where a convict is transferred from serving a sentence from one country to another (convict transfer). Due to different parole systems, it may happen that a convict, despite a nominally identical sentence, will have to *de facto*

spend more time in prison (illustratively, the ECtHR case Szabo v. Sweden).

The Slovenian model of conditional release is discretionary (conditional release is a benefit that may or may not be granted to the convict) and administrative (the decision on conditional release is not made by a judicial authority, but by a commission operating under an administrative procedure). For a favorable decision, two fundamental conditions must be met: the formal one, which refers to the proportion of the sentence served (as a rule, it is necessary for the convict to serve at least half of the sentence imposed), and the material one, the essence of which is a positive prognosis that the convict will not repeat the crime while at liberty.

The regulation of conditional release in Slovenia has not changed significantly over the decades, so that in some respects it is losing touch with trends in comparative law, where the idea is increasingly penetrating that deciding on release from prison *(getting out)* **is almost as important as deciding on guilt and prison sentence** *(getting* **in), and therefore it must be subject to comparable guarantees as those that apply in criminal proceedings. The key question in the future will therefore be whether to insist on deciding on such an important matter as release from prison in an administrative procedure. The answer to this question will have to be sought in a broader discussion on the judicialization of the Slovenian system of enforcement of criminal sanctions. Even if this regulation will remain predominantly administrative for the time being, a more precise regulation of procedural guarantees and legal remedies in the process of deciding on conditional release appears to be necessary.**

The essence of conditional release is its conditional nature, i.e. that it can be revoked. The revocation of conditional release is within the jurisdiction of the courts in our country, and a distinction must be made between mandatory and optional revocation. If the conditionally released person has committed one or more criminal acts during the probationary period for which the court has imposed a prison sentence of more than one year, revocation is mandatory (obligatory).
It is optional, however, if it concerns the commission of criminal acts for which the court has pronounced a sentence.

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a prison sentence of up to one year or if the conditionally released person has not properly performed the tasks imposed on him within the framework of the conditional release. In this case, the revocation is therefore a matter of the court's discretion, with the court taking into account the relationship of the criminal acts, the significance and motives for which they were committed, and other circumstances that the court considers relevant. Unlike in some other legal systems, the revocation of conditional release is not possible in our country due to the commission of a serious offence or so-called notoriously inappropriate behaviour (France). In the event of the revocation of conditional release, the convicted person must serve in prison that part of the sentence for which he was conditionally released. In these cases, the court must impose a new uniform sentence, taking into account the part of the sentence that he has not yet served in prison and the sentence that it impo

The solution according to which, in the event of revocation of conditional release, the time during conditional release is not even partially considered as a served sentence, is formally contrary to the idea that conditional release is a "form of execution of a prison sentence", that is, during conditional release, the prison sentence is executed in a modified manner. In terms of content, however, this solution ignores the fact that life during conditional release is not completely without restrictions, which is especially obvious when the conditional release is assigned certain tasks or in cases of conditional release with protective supervision. Therefore, some legal regulations have a system of quotients, according to which, for example, three days on conditional release correspond to one day in prison. This is one of the fundamental issues of conditional release, which will also need to be c

Conditional release must be distinguished from the institution of early release, which is regulated by the Act on the Execution of Criminal Sanctions (ZIKS-1). This institution authorizes directors of penal institutions to release a convict early after two-thirds of the sentence has been served, but no more than three months before the end of the sentence. Conditional release and early release differ not only in the decision-making body and the conditions that the convict must meet, but also in the fact that early release does not have a probationary period and is final (it cannot be revoked).

Among the institutions that allow for release from prison before the sentence has been fully served, amnesty and pardon should also be mentioned. This is an act of mercy by the legislator (amnesty) or the president of the state (pardon), which can be used to correct the effects of sentences that may have proven to be too harsh, or simply to show "good will". Both institutions in Slovenia allow for the granting of benefits even in cases where the legal proceedings have not yet been completed (dismissal of prosecution). Precisely because they enable the granting of benefits according to "extralegal" criteria, or

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outside the ordinary judicial discretion, are often problematized in theory: the possibility of their abuse and arbitrary use is pointed out. Beccaria succinctly expressed his reservations about acts of mercy: if the courts pronounce just sentences, pardons are not necessary.

A similar concern about amnesty and pardon is also found in contemporary literature. Some authors warn that potentially overly strict court decisions should be corrected by extraordinary legal remedies, rather than by the legislative or executive branch interfering in them. However, it turns out that there are situations where final court decisions with extraordinary legal remedies no longer exist.
can be appropriately corrected (this was particularly evident in our country after the abolition of the request for extraordinary leniency of sentences), which is why it is right that amnesty and pardon are also available. Thus, on a principled level, it can be said that the institutions are useful and acceptable as long as their use is not arbitrary. However, as experience shows, on a concrete level, their use will in most cases nevertheless give rise to polemics and controversy.

Amnesty is granted by law as an act of mercy by the legislator. In our country, persons who benefit from it may be pardoned (abolished), have their sentence completely or partially pardoned, the sentence imposed may be changed to a milder one, the conviction may be erased from the criminal record, or the legal consequences of the conviction may be eliminated. It is granted to a group of persons who are not listed by name, but who can be identified (e.g., all persons serving sentences for property crimes may be pardoned Since the persons who benefit from it are not listed by name, its implementation requires a special declaratory act from the court or the director of the prison, which establishes that a certain person is included in the circle of persons to whom the amnesty applies.

Historically, amnesties have been motivated by various reasons: they can be used as a means of calming social conditions after political upheavals or major social conflicts, and are often granted primarily as a gesture of "goodwill" (e.g. on important national anniversaries and holidays, for example in 2001 on the tenth anniversary of independence), or they can also be used purely pragmatically, e.g. as a way of solving the problem of overcrowded prisons.

A pardon differs from an amnesty primarily in that it refers to named persons and that it is not granted by a legislative body, but in our country it is granted by decree by the President of the country. The effects that can be achieved with a pardon are comparable to those of an amnesty, with a few minor differences: in addition to the possibilities offered by an amnesty, a pardon can also change the sentence.

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into a suspended sentence, and the legal consequences of the conviction can also be shortened (not just eliminated).

4.2.4. The Slovenian prison system and a look into the future

In the future, the Slovenian prison system will face two fundamental challenges: eliminating the problem of overcrowding in institutions and improving the effectiveness of legal remedies available to prisoners.

Solving the problem of overcrowding does not fundamentally leave much room for maneuver: it can be tackled either by reducing the prison population or by building new facilities. In Slovenian conditions, a combination of both approaches seems inevitable (new facilities also need to be built due to the inoperability and dilapidation of some existing ones), but the focus would seem to be on the first method, i.e. the gradual reduction of the prison population.
A significant relief would be brought by the abolition of submissive imprisonment, which places a heavy burden on Slovenian prison capacities, and in addition, prison staffing capacities are being exhausted for prison work, the sole purpose of which is to collect fines (cf. Filipÿiÿ, Šelih and Petrovec, 2011).

Measures to reduce the prison population are possible on the input and output sides, with the input side meaning the scope of imposition and duration of those prison sentences that are actually served in prison, and the output side meaning various forms of early release (cf. Dünkel, 2013). On the input side, the potential is seen primarily in increasing the scope of use of alternative sanctions, which have experienced expansion in Slovenia in recent years (both on a normative and actual level), but the scope of their use could be even greater, taking into account the guideline that an unconditional prison sentence served in prison should be the last resort. The use of alternative sanctions is currently somewhat complicated by the relatively complex system of imposition: they are provided for in a subsidiary manner (the court must first impose an unconditional prison sentence or fine, the execution of which is replaced by an alternative sanction only in the second step), therefore the regulation of alternative sanctions as independent sanctions appears to be a more suitable solution for the future (Šelih, 2007).

There are different emphases for measures on the exit side. Although there are known examples of European countries that alleviate the problem of prison overcrowding with occasional large-scale amnesties (e.g. France), it seems more appropriate to focus on a more liberal conditional release policy. There are two reasons for this. First, unlike amnesty, conditional release allows for individualized treatment. And second, the conditional nature of this institution can better promote resocialization, or at least

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"conformist behavior" as early freedom provided by amnesty, which cannot be influenced by behavior before and after release.

Although it is true that the institution of conditional release should not become a hostage to the problem of prison overcrowding, in practice its positive effects in this area cannot be ignored. The extent to which it is imposed is probably most influenced by the criminal policy beliefs of the commission members, but the improvement of the normative framework of the institution could also partially contribute to a greater extent to its use, especially if, following the example of some comparative systems (Scandinavian countries, the United Kingdom), it brought about mandatory conditional release for shorter prison sentences (Ambrož and Šugman, 2011; Plesniÿar, 2012).

Regardless of all the measures on the entry and exit sides, a certain size of the prison population inevitably remains. Eliminating spatial constraints mitigates the negative impacts on prisoners and staff, but does not eliminate all the unnecessary suffering that prison brings. Since prison, as everything shows, will be an integral part of our social reality for a long time to come, efforts should be invested in its opening, with good experiences from the past available (experiments in Logatec and Igo; Petrovec and Muršiÿ, 2011).

Similar to the problem of overcrowding in Slovenian prisons, the problem of insufficient legal remedies available to prisoners has been known for some time (see, for example, Erbežnik, 2010). When improving the legal remedies available to prisoners, the following points should be taken into account. The principle that no one should be the arbiter of their own case should be understood in the context of prisons as meaning that the focus of decision-making should be outside the prison administration. Internal control is undoubtedly necessary, but it cannot replace all the guarantees provided by an effective legal remedy. It is crucial that the decision-making body is independent, organizationally and personnel-wise unrelated to the prison system, but it does not necessarily have to be a court, as long as appropriate procedural guarantees and an adequate level of reasoning are ensured.

Among the procedural guarantees, it is worth noting first and foremost the possibility of participation in the procedure, i.e. the possibility of being heard and of expressing one's views on the opposing side (adversarial procedure). This is a fundamental element of a fair procedure, which seems self-evident at the trial level (decision on guilt), but is much more difficult to penetrate into people's legal consciousness when it comes to issues of enforcement of sanctions. An important shift has been made, for example, with the practice of commissions that decide on conditional release, to ensure that applicants are present at the decision-making process and have the opportunity to make their statements. Unfortunately, this is an informal practice and not something that would be mandatory by law (Ambrož and S

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The duration of the procedure is also extremely important. Especially in legal remedies through which an individual requests the elimination of a violation, such as unbearable living conditions in prison, it is crucial that they are decided quickly, within a few days a Among the remaining factors that cannot be precisely standardized, it is worth mentioning the importance of the quality of the reasoning of decisions, since only reasoned arguments can be used to adequately argue, and only a convincingly reasoned decision can convince the addressee that the decision-maker did not act arbitrarily. If we draw a line under the above, we can agree with the well-known statement that the idea of human rights must not end at the prison gate: convicted persons must have the same legal guarantees in exercising their rights as other citizens (van Zyl Smit and Snacken, 2009, pp. 69–72, 344–348). This is one of those principles that enjoys great consensus at the declarative level, but is relatively difficult and slow to make its way into reality.

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