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The European Institute for Crime Prevention and Control,
affiliated with the United Nations

Criminal Justice Systems in Europe and North America

CROATIA

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THE CRIMINAL JUSTICE SYSTEM OF CROATIA

1. Demographic Issues

1.1. Croatia is a Mediterranean country, surrounded by Italy, Slovenia, Hungary, Bosnia and Herzegovina and the Federal Republic of Yugoslavia, and covers 89.810 km². According to the last census conducted in March 2001, the total population of Croatia is 4,381,352. A large proportion (770,058 or 17.6 %) of the population lives in Zagreb, the Croatian capital. In accordance with international recommendations and definitions, the total population of the Republic of Croatia includes the following persons:

1. persons with a place of usual residence in the Republic of Croatia and are present on the day of the Census (31 March 2001 at 24.00 hours);
2. persons whose usual place of residence is in the Republic of Croatia but who have been absent from the Republic of Croatia for less than a year;
3. persons who are temporarily present in the Republic of Croatia for a year or more.

Exceptions are citizens of the Republic of Croatia employed as diplomatic staff and members of their families, representatives in international organisations, and citizens of the Republic of Croatia who are permanently employed in the Republic of Croatia but have been sent to work abroad by their employers. They are considered to be present in the country at the time of the Census, i.e. they are included in the total population of the Republic of Croatia irrespective of how long they may be absent from the country.

The following persons are excluded from the total population of the Republic of Croatia:

1. persons who have been absent from the Republic of Croatia for a year or longer, although their usual place of residence is in the Republic of Croatia,
2. persons temporarily present in the Republic of Croatia for less than a year.

1.2. The statutory minimum age of criminal responsibility is fourteen years. As proscribed in the Croatian Criminal Code, criminal legislation shall not be applied to a child who, at the time of committing a criminal offence, had not reached fourteen years of age.

1.3. Minors (persons older than fourteen and younger than eighteen years of age) can be held criminally responsible for all criminal offences. In relation to the preconditions for criminal responsibility of adults, substantive criminal law provides no difference in the grounds for the criminal responsibility of minors. However, a special relation to this category of offenders is apparent in the existing special system of criminal sanctions for minors in substantive criminal law, as well as in special procedural provisions.

1.4.-1.5. There are more than 50 nationalities represented among the people living in the Republic of Croatia. In addition to the native Croats, who form the majority, the largest groups are the Serbs (12.2% of the total population), and others (9.7% of the total population).

1.6. The Republic of Croatia is divided administratively into 21 counties with 70 cities and 418 municipalities. Most of the people who reside in the Republic of Croatia live in urban areas which are not separately defined:

Zagreb - 707,058 inhabitants
 Split - 189,388 inhabitants
 Rijeka - 167,964 inhabitants
 Osijek - 104,761 inhabitants

1.7. According to data collected by the National Employment Service and presented by the National Bureau of Statistics, in 2000 a total of 1,340,957 persons were employed in Croatia. Most of them worked in legal entities (1,053,260), and significantly less in crafts and trades and as free-lance workers (204,501). Only 83,196 of the economically active population of that year worked as private farmers. The unemployment rate in 2000 was 21.1 percent (the total number of unemployed persons in 2000 was 357,872). More than a half of all unemployed persons were women (188,502 or 52.7%). The average number of unemployed persons according to professional training can be seen from table 1:

Table 1. Unemployed persons in Croatia by professional attainment

| Total | Unskilled | Semi-skilled, basic school education | Skilled, highly skilled | Secondary school education | Non-university college degree | University degree |
|----------------|-----------|--------------------------------------|-------------------------|----------------------------|-------------------------------|-------------------|
| 357 872 | 70 074 | 52 437 | 124 385 | 85 517 | 11 238 | 14 221 |

2. Substantive Criminal Law Statutes

2.1. The present Croatian Criminal Code (hereinafter: CC) was enacted in 1997 and entered into force on 1 January, 1998. As a piece of criminal legislation which contains not only a general part, but also a special part (catalogue of criminal offences), the CC replaced two previous codes which regulated substantive criminal law issues, namely the Basic Criminal Code and the Criminal Code of the Republic of Croatia.

For a better understanding of the present situation, a few remarks are presented here regarding general and legal Croatian history. From 1945 to 1990 when Croatia declared independence on the basis of the new Constitution, Croatia was part of the former Yugoslavia. During that time in Croatia, as well as in other parts of the former Yugoslavia, the General Criminal Code from 1947 was in force first and thereafter, the first post-war codification – the Criminal Code from 1951 (with significant amendments in 1959). Constitutional changes which took place in 1974 divided legislative competence between the Federation and federal units (to which Croatia belonged until declaring independence in 1990). As a result, since 1977 when the Criminal Code of the Republic of Croatia entered into force, two previously mentioned criminal law statutes regulated substantive criminal law issues in the Republic of Croatia - the Basic Criminal Code (which prescribed only the general part and some criminal offences under the legislative jurisdiction of the Federation) and the Criminal Code of the Republic of Croatia (containing criminal offences under the legislative jurisdiction of the former federal units, and only a few provisions pertaining to the general part). These two codes have been adopted into law by an Act of the Croatian Parliament and published in its official gazette in 1993. With a few amendments (the most significant was the so-called «mini-reform» of 1996) these two codes were in force until 1 January 1998 when the present Criminal Code entered into force. The present Criminal Code was drafted under the strong influence of German and Austrian criminal law, both very deeply rooted in the Croatian criminal law tradition.

Since its introduction, the CC has been amended several times. The amendments from the end of the year 2000 deserve special mention. Above all, these amendments were designed to strengthen the criminal law protection of children and young persons (by raising penalties for offenders), to promote equal rights in the sphere of instituting criminal procedure regarding criminal offences against honour and reputation (instituting criminal procedure for insult, defamation and other criminal offences against honour and reputation upon private charge regardless of the official function of the victim), and to enable more efficient criminal law prevention and suppression of economic crime, organised crime and corruption.

2.2. The CC has been officially published in Croatian (the official gazette *Narodne novine*, hereinafter: NN, 110/1997, 27/1998, 129/2000, 51/2001) and recently (1999) translated into English thanks to the initiative of the Ministry of Justice of the Republic of Croatia and the Council of Europe and the great contribution of the group of experts headed by Željko Horvatić, S.J.D. Professor of Law and one of the authors of this profile. The translation mentioned was published in a special edition of *Croatian Annual of Criminal Law and Practice*, Vol. 6, Supplement to No. 1/1999, ISSN 1330-6286.

2.3. Due to the fact that the CC is not an exhaustive codification of substantive criminal law, criminal offences are currently regulated in a few other laws (called additional criminal legislation). Among these laws are the following:

- the Law on Poisons (NN 27/99, 55/96)
- the Law on Investigative Committees (NN 24/96)
- the Law on Corporations (NN 111/93, 34/99)
- the Law on Securities (NN 107/95)

As a part of the Croatian criminal law system in a wider sense, economic misdemeanours and contraventions are prescribed in a number of special laws and other regulations. The general part containing pre-

requisites for responsibility of punishable acts of this kind as well as procedural provisions are provided in the Contravention Act (NN 41/1990, 59/1990, 91/1992) and the Economic Misdemeanours Act. Translations of these laws are not available.

3. Procedural Law Statutes

3.1. The Criminal Procedure Act now in force (hereinafter: CPA) was enacted simultaneously with the CC and became valid on the same date as the former one – 1 January, 1998. In comparison with substantive criminal law statutes, exclusive legislative competence in the field of criminal procedure belonged to the Federation of the former Yugoslavia. The first codification of criminal procedure was the Criminal Procedure Act from 1953 which was amended a few times – worth mentioning are the amendments of 1959 and 1967. A second codification of criminal procedure law was made in 1976 and significantly amended in 1985. The last codification was undertaken by the Croatian Parliament after declaration of independence in 1990, and published in the official gazette in 1993. The latter was valid in Croatia until the new Criminal Procedure Act came into force on 1 January 1998.

3.2. The CPA has been officially published in Croatian (NN 110/1997, 27/1998, 58/1999, 112/1999) and up to now has only been available as a translation made on the initiative of the Ministry of Justice of the Republic of Croatia and the Council of Europe and published in the Croatian Annual of Criminal Law and Practice, vol. 6, supplement to no. 1/1999, ISSN 1330-6286.

3.3. Regarding criminal offences, the Office for the Suppression of Corruption and Organized Crime Act (NN 88/2001) was recently (19 October 2001) introduced in Croatia. It contains not only provisions for the organisation of the Office, but also for regulating procedural issues. These provisions, in general, expand the jurisdiction of the State Attorney's office in the pre-trial stage of criminal procedure. In preliminary proceedings the Office has significantly more authority compared with the police and other state bodies, enabling it to more efficiently manage not only criminal interviews but also interviews connected with the accumulating of wealth through the perpetration of criminal offences. Periods of detention and custody are prolonged in

comparison with regular criminal procedure, and in order to make criminal proceedings more efficient, all criminal offences covered (corruption offences such as bribing, accepting bribery, trading in influence etc. and criminal offences committed by a criminal organisation, or with foreign element etc.) come under the jurisdiction of just four county courts, which are found in the four biggest cities of Zagreb, Split, Osijek and Rijeka. Very important procedural issues covered by the Act are treatment regarding «crown witnesses», and freezing (forfeiture) the property and gain acquired through criminal offences before the start of criminal proceedings.

The Contravention Act also contains provisions on procedure (basic principles of procedure, jurisdiction, proceedings, summary proceedings, decisions, appeal, extraordinary legal remedies, execution of decisions etc.).

3.4. Together with the CC, CPA and the Law on Mentally Disordered Persons, the Law on Juvenile Courts was enacted in 1997 in the «criminal law package» mentioned earlier and published in the official gazette (NN 111/1997). Inspired by the German and Austrian model of criminal courts for young perpetrators (and also the tradition of such courts in Croatian criminal law history) Croatian legislation has developed a new form of codification in the procedural sense characterised mostly by

- expanding the jurisdiction of juvenile courts (establishing jurisdiction *ratione personae* of these courts not only in respect to persons younger than eighteen at the time of the trial, but also a) towards persons who have committed a criminal offence as minors and at the time of the trial have not reached the age of 23, and b) towards adults who have committed one of the criminal offences against children and minors)
- strengthening and affirmation of the procedural rights of young perpetrators (right of formal defence in the preliminary stage, right for assigning a counsel to a poor perpetrator etc.).

4. The Court System and the Enforcement of Criminal Justice

4.1. The statute which regulates the organisation of the court system in Croatia is the Law on Courts of 6 January, 1994. (NN 3/1994) with all subsequent amendments (NN 100/1996, 131/1997, 129/2000). This law prescribes the following: basic provisions, organisation and jurisdiction of the courts, internal organisation of the courts, special provisions on internal organisation of the Supreme Court of the Republic of Croatia, judicial administration, judges and lay persons, rights and duties of the judges, court counsellors, judicial apprentices, permanent expert witnesses and interpreters, professional secrecy and the financing of courts.

4.2. The Law on Courts has been officially published in Croatian in the Official Gazette «Narodne novine» (3/1994). No translations of this law are available.

4.3. The Constitutional Law on the Constitutional Court was enacted in 1991 and officially published in Croatian (NN 13/1991). This law contains the following sections: basic provisions, prerequisites for the appointment of constitutional judges, protection of constitutional rights and freedoms of citizens, considering responsibility of the President of the Republic, monitoring the activities of political parties, monitoring the legality of election procedure etc.

4.4. The Police Act was enacted in 2000 and officially published in Croatian (NN 129/2000). This act deals with the following issues: police activities, the organisation of the police, defining a police officer and his legal status, police authorities etc. According to the definition given in the act, the police form a public office within the Ministry of Interior responsible for the protection of life, the right, security and inviolability of one's person, the protection of property, the prevention and detection of criminal offences, economic misdemeanours and con-

traventions, searching for perpetrators of such punishable offences, the supervision and administration of road traffic, the supervision of national boundaries etc.

The Law on the Bar was enacted in 1994 and officially published in Croatian (NN 9/1994). It contains the following sections: basic provisions, rewards and compensation of costs, advocate offices, organisation of Advocacy (the Bar), legal prerequisites for admittance to the Bar Association, apprentice advocates, specialisation of advocates and responsibility for disciplinary infractions.

The Execution of Imprisonment Act, described in detail below in Section 9, establishes the agency responsible for the functioning of the prison system. This act also covers the probation agency described in detail below in Section 8.

4.5. A special law that deals with juvenile offenders is the Law on Juvenile Courts, which was enacted in 1997 and officially published in Croatian (NN 111/1997). This law specifies the following: sanctions for minors, prison for juvenile offenders, security measures, organisational provisions concerning juvenile courts, provisions on procedure concerning juvenile offenders, execution of sanctions, application of the law concerning younger adults, and criminal law protection of children and minors (when they are victims of criminal offences).

5. The Fundamental Principles of Criminal Law and Procedure

5.1. The main principle of Croatian criminal law is stated in Article 1. of the CC: «Criminal offences and criminal sanctions shall be prescribed only for acts threatening or violating personal liberties and human rights, as well as other rights and social values guaranteed and protected by the Constitution of the Republic of Croatia and international law in such a manner that their protection could not be realised without criminal law enforcement.» The principle of limiting criminal law enforcement which determines the content and scope of other important substantive criminal law principles (principle of legality, principle of culpability etc.) means that prescribing specific criminal offences, as well as the types and the range of criminal sanctions against their perpetrators, shall be based upon the necessity for criminal law enforcement and its proportionality with the degree and nature of the danger against personal liberties, human rights and other social values (Art. 1, para. 2. CC).

On the basis of the constitutional provision, the principle of legality (*nulum crimen nulla poena sine lege*) is established in Article 2 of the CC. Criminal offences and criminal sanctions may be prescribed only by statute. No one shall be punished and no criminal sanction shall be applied for conduct which did not constitute a criminal offence under a statute or international law at the time it was committed and for which the type and range of punishment by which the perpetrator may be punished has not been prescribed by statute. Article 3 CC contains the relative prohibition of retroactivity (*ex post facto law*), which means that if, after the criminal offence is committed, the law changes one or more times, the law that is more lenient to the perpetrator shall be applied. In these two articles all the contents of modern meaning of the principle of legality are included: *lege stricta*, *lege scripta*, *lege praevia*, *lege certa*, *nulla poena sine lege*.

5.2. Regarding division of offences the CC introduces just one type of offence, namely criminal offence (crime). In this respect we can say there is no division *stricto sensu*. But, as was already mentioned before, other punishable acts fall in the scope of the criminal law system in a wider sense, namely economic misdemeanours and contraventions. That means that despite the fact that a formal definition of the division of punishable acts in Croatian criminal law does not exist, some kind of factual division does.

5.3. The CC prescribes exclusion of applying criminal legislation to children (persons who *tempore criminis* had not reached fourteen years of age). The minimum and maximum ages at which an offender is dealt with as a juvenile are provided by Article 89, page 10 of the CC (the meaning of the terms used the CC) – a minor is a person who has not reached the age of eighteen years (and is at least fourteen years of age). Together with adolescents (persons aged 18-21), minors are considered as young perpetrators on whom the CC shall apply, unless a special statute on young perpetrators (Law on Juvenile Courts) provides otherwise (Art. 11 CC).

5.4., 5.5. The principle of culpability established in Article 4. CC seems to give extreme importance to the mental element embodied in levels of guilt – intent (*dolus directus* and *dolus eventualis*) and negligence (advertent or inadvertent). According to this principle, which is quite new in the continental criminal law (civil law) tradition, no one shall be punished, and no criminal sanction shall be applied, unless the perpetrator is found culpable of the committed offence. The commonly accepted principle of the continental criminal law tradition provides that anyone who, at the time of committing an offence, is incapable of understanding the significance of his conduct, or cannot control his will (mentally disordered person, a child), may not be punished for his act. Croatian legislation, for the very first time in continental criminal law history, in Article 4 of the CC mentioned above, added – «and no criminal sanction shall be imposed». The legal consequence of such a principle is that towards persons incapable for guilt as one of the prerequisites of the criminal offence (children, mentally disordered persons), no criminal

sanctions may be applied. Before 1 January 1998, the court was entitled to impose criminal sanctions other than punishments (forexample, a security measure of compulsory psychiatric treatment) on mentally incapable persons, and after that date there is no legal possibility to impose criminal sanctions on such persons (and children who are protected by Article 10. CC: exclusion of applying criminal legislation to children). Recognising the quite new content of the principle of culpability, Croatian legislation decided to place the above categories of persons outside the scope of application of the CC. For this reason, as a part of so-called «criminal law package», the new Law on Mentally Disordered Persons was enacted simultaneously with the CC. This law deals, inter alia, with persons who at the time of the perpetration of a criminal offence were mentally incapable, and provides that outside the criminal procedure a special non-criminal judge may decide on forced hospitalisation of such person if he seriously endangers his life, health or security or the life, health or security of others.

A perpetrator is culpable of a criminal offence if at the time of the perpetration of a criminal offence he is mentally capable, acts with intent, or negligently, when the law prescribes punishment for these types of culpability, and if he is aware, or should and could have been aware, that his act is prohibited (art. 39 CC). Consequently, no criminal sanction (not even a security measure) may be applied to a perpetrator who fulfils the definition in the statute, but has not been guilty *tempore criminis*. A mentally incapable person (a person who at the time of the perpetration of a criminal act is incapable of understanding the significance of his conduct, or cannot control his will due to mental illness, temporary mental disorder, mental deficiency or some other severe mental disturbance) is subjected to the special provisions of the Law on Mentally Disordered Persons (which provides the possibility of non-forensic forced hospitalisation of such person if he is seriously threatening his own life, health or security or the life, health or security of others). Considering the above, strict liability is not recognised in Croatian criminal law.

5.6. Responsibility for criminal offences is strictly individual, and for the time being, no criminal sanctions for criminal offences can be applied upon legal persons (about reform, see below in 10.1 below). Nevertheless, legal persons can be held responsible for other punishable acts such as economic misdemeanours and contraventions. As prescribed in Article 16 of the Contravention Act, a legal person can be held responsible for a contravention only if it is explicitly prescribed and if such offence was committed due to the act or omission (qualified omission, omission of due diligence) of a responsible person within this legal person. Furthermore, legal persons can be apprehended by confiscation of pecuniary gain acquired by a criminal offence. According to Article 82 CC, the confiscation of a pecuniary gain shall be ordered by a court decision establishing that a criminal offence has been committed and shall be forfeited if it is owned by a third party (including legal person) on any legal ground if such a party, according to the circumstances in which he has acquired the gain, knew or could and ought to have known that this gain was obtained as a result of a criminal offence. It is required that this knowledge is held by a responsible person within the legal person.

5.7. The grounds of justification provided in the CC are of two kinds: first there are the general ones, which may be applied to all or a great part of criminal offences. Then there are the special ones that are provided in the special part of the CC and concern the justification of particular criminal offences. The general grounds of justification are a) self-defence, b) necessity, c) coercion or threat, d) lawful use of force and e) insignificant offence. Some of the most important grounds of justification prescribed in the special part of the CC are a) disclosure of a professional secret without authorisation, if the secret is disclosed in the public interest or in the interest of another person which prevails over the interest of keeping the secret, b) exclusion of unlawfulness of criminal offences against honour and reputation when insulting or defamatory content are realised or made accessible to another person in scientific or literary works, works of art or public information, in the discharge of official duty, political or other public or social activity, or journalistic

work, or in the defence of a right or in the protection of justifiable interests, if, from the manner of expression and other circumstances, it clearly follows that such conduct was not aimed at damaging the honour or reputation of another person, c) exclusion for a criminal offence committed by a soldier on his superior's orders, unless this order relates to the perpetration of a war crime or another criminal offence for which, according to law, imprisonment for ten years or a more severe punishment may be imposed, or if it is obvious that by obeying such an order a criminal offence would be committed, etc.

5.8. With respect to time limits, criminal proceedings shall not be instituted when the following time periods have elapsed since the perpetration of a criminal offence:

- twenty-five years in the case of a criminal offence for which a punishment of a long-term imprisonment is prescribed,
- fifteen years in the case of a criminal offence for which a punishment of more than ten years of imprisonment is prescribed,
- ten years in the case of a criminal offence for which a punishment of more than five years of imprisonment is prescribed,
- five years in the case of a criminal offence for which a punishment of more than three years of imprisonment is prescribed,
- three years in the case of a criminal offence for which a punishment of more than one year of imprisonment is prescribed,
- two years in the case of a criminal offence for which a punishment of up to one year of imprisonment or a fine is prescribed (art. 19).

As prescribed in Article 24 CC, no statutory limitation shall apply to the execution of punishment pronounced on a perpetrator of the criminal offence of genocide, war of aggression, war crimes or other criminal offences

which, pursuant to international law, are not subject to the statute of limitations.

5.9. The CC is divided into a general part (Articles 1-89) and a special part (Articles 90-391). The general part contains the following sections:

- Basic Provisions,
- Applicability of the Criminal Legislation of the Republic of Croatia;
- Criminal Offence,
- Culpability,
- Punishment and Sentencing,
- Non-Custodial Measures,
- Security Measures,
- Confiscation of Pecuniary Gain, Public Announcement of Judgement, Legal Consequences of Conviction, Rehabilitation, Amnesty and Pardon,
- The Meaning of the Terms Used in this Code.

The special part consists of the following chapters:

- Criminal Offences Against Life and Limb,
- Criminal Offences Against the Freedoms and Rights of Man and Citizen,
- Criminal Offences Against the Republic of Croatia,
- Criminal Offences Against Values Protected by International Law,
- Criminal Offences Against Sexual Freedom and Sexual Morality,
- Criminal Offences Against Honour and Reputation,
- Criminal Offences Against Marriage, Family and Youth,
- Criminal Offences Against Property,
- Criminal Offences Against Peoples' Health,
- Criminal Offences Against the Environment,

- Criminal Offences Against the Public Safety of Persons and Property and Safety in Traffic,
- Criminal Offences Against the Safety of Payment and Business Operations,
- Criminal Offences Against the Judiciary,
- Criminal Offences Against Authenticity of Documents,
- Criminal Offences Against Public Order,
- Criminal Offences Against Official Duty,
- Criminal Offences Against the Armed Forces of the Republic of Croatia,
- Transitory and Closing Provisions.

5.10. Intentional killing of another person is a crime of murder prescribed in Article 90 CC. Whoever kills another person shall be punished by imprisonment for not less than five years (and not more than fifteen years). There is no distinction between murder and intentional homicide in Croatian criminal law. Murder prescribed in Article 90 CC covers both forms of intentional killing of another person (*dolus directus* and *dolus indirectus*).

Aggravated murder punishable by imprisonment for not less than eight years or by long-term imprisonment (up to forty years) is committed when someone:

- murders a child or a minor,
- murders a pregnant woman,
- murders another in a very cruel or especially treacherous way,
- murders from greed,
- murders another in order to commit or to cover up another criminal offence,
- murders another out of heedless vengeance or other base motives,
- murders an official person when such a person is executing his duty of protecting the constitutional order, safeguarding

persons or property, discovering criminal offences, bringing in, arresting or preventing the escape of a perpetrator of a criminal offence, guarding persons deprived of liberty or keeping public order and peace. (art. 91. CC)

So-called privileged murders (for which more lenient punishment is prescribed) or murders in mitigating circumstances are

- manslaughter (art. 92 CC) – killing a person on the spur of the moment, after being brought without fault of one's own into a state of strong irritation or fright by another person's attack, maltreatment or serious insult,
- infanticide (art 93 CC) – when a mother kills her child during or immediately after birth,
- killing on request (art. 94 CC) – killing a person upon his express and earnest request.

Negligent homicide (manslaughter) is committed when someone causes the death of another person by negligence (the whole offence is covered by negligence). (art. 95 CC)

Robbery is prescribed under the section concerning criminal offences against property in Article 218 CC. A person has committed robbery if, by use of force against a person or by threatening a direct attack on a person's life or limb, he takes away movable property from another person with intent of unlawful appropriation. Aggravated robbery has been committed if the perpetrator commits the robbery as a member of a group or a criminal organisation, or if, during the robbery, a weapon or dangerous instrument is used.

Theft or larceny has been committed if someone takes away the movable property of another person with intent of unlawful appropriation (art. 216 CC). Forms of aggravated theft are prescribed in Article 217 CC. A perpetrator shall be punished with an aggravated penalty (imprisonment for six months to five years) if he commits a theft

- by breaking in, entering by force or otherwise overcoming great obstacles in order to come to property within closed buildings, rooms, safes or other enclosed areas,
- in a particularly dangerous or brazen manner,
- by taking advantage of conditions caused by a fire, flood, earthquake or other calamity,
- by taking advantage of another person's helplessness or other particularly difficult situation.

Further forms of aggravated theft depend on

a) the value of the stolen property:

- if the stolen property is of great value and the perpetrator acts with an aim to appropriate the property of such value,
- if the stolen property is used for religious purposes or if the property is stolen from a church or other building or room serving for the practice of religion,
- if a piece of cultural heritage, or an object of scientific, artistic, historical or technical significance is stolen, or the stolen property is included in a public collection, a protected private collection, or is exhibited to the public.

b) whether the theft was committed by a member of a group carrying a weapon or dangerous instrument for attack or defence.

Assault is not considered a criminal offence in the CC. Assault can only be relevant as an attack which results in killing or inflicting intentional bodily injuries on another person.

6. The Organisation of the Investigation and Criminal Procedure

6.1. General Issues

6.1.1. The Criminal Procedure Act sets out that criminal proceedings are instituted upon the oral or written report of citizens or state authorities. All state authorities and all other legal entities shall be bound to report criminal offences subject to public prosecution about which they themselves have learned or have learned of from other sources. When submitting crime reports, state authorities and legal entities shall indicate evidence known to them and undertake measures to preserve traces of the offence, the objects upon which or by means of which the offence was committed as well as other evidence. All reports about criminal offences have to be investigated and a decision either to institute criminal proceedings or to refuse them has to be adopted.

The State Attorney shall dismiss a crime report by ruling with statements of reasons if it follows from the report that the reported act is not a criminal offence subject to public prosecution, that the period of limitation for the institution of prosecution has expired, that the offence is amnestied or pardoned or that other circumstances exist excluding culpability or barring prosecution or if no reasonable suspicion exists that the suspect committed the reported offence. The State Attorney is, in general, bound by the principle of legality in conducting criminal proceedings. There are two exceptions where the State Attorney may decide on criminal prosecution in accordance with the principle of opportunity:

- when a crime report is submitted for an offence of a lower degree of guilt where the absence or insignificance of the damaging consequences does not justify the public benefit of criminal

prosecution. In such a case the State Attorney may render a decision to postpone the commencement of criminal proceedings provided that the suspect gives his consent and that he is willing to fulfil obligations such as performing an action with the purpose of amending or compensating the damage caused by the offence, to perform community service work, to be submitted for treatment against drug abuse or other addictions pursuant to special rules etc.,

- with regard to a person who was a member of a criminal organisation, if this is of importance for the discovery of offences and of the members of a criminal organisation, as well as if this is in proportion with the gravity of the offences committed and with the importance of that person's statement.

The pre-trial phase of criminal proceedings consists of two sub-phases: pre-investigatory proceedings and the investigation. During the pre-investigatory proceedings, when grounds for suspicion seem to exist that a criminal offence subject prosecution has been committed, the police authorities shall be bound to take necessary measures aimed at discovering the perpetrator, preventing the perpetrator or accomplice from fleeing or going into hiding, discovering and securing traces of the offence and objects of evidentiary value as well as gathering all information which could be useful for successfully conducting criminal proceedings. Police authorities may summon citizens but may not examine citizens in the role of defendants, witnesses or expert witnesses. If there is danger in delay, the police authorities may, even before the start of the investigation phase, temporarily seize objects and carry out search of a dwelling, arrange an inspection and order necessary expert witness examinations, except for autopsies and exhumations. The police authorities shall notify the State Attorney about activities they have conducted.

An investigation shall be instituted against a designated person when reasonable suspicion exists that he has committed a criminal offence. The investigation shall be conducted upon the request of the authorised prosecutor and be submitted to the investigating judge of the court hav-

ing jurisdiction thereof. Upon receiving the request for investigation, the investigating judge shall without delay examine the file and interrogate the person against whom the investigation is required, except if there is danger in delay. When the investigating judge decides to institute an investigation, evidence is collected and charges are brought against an offender. Evidence is obtained in the following ways: by searching dwellings and persons, temporarily seizing objects, interrogating the defendant, examining witnesses, judicial viewing and examining expert witness testimony.

The presence of the defendant while actions in criminal proceedings are being carried out shall be provided by serving him with a summons. When summoned for the first time, the defendant shall be informed of his right to retain a defence counsel and of the right to have the defence counsel present during the interrogation. When the defendant is interrogated for the first time, he shall be instructed that he is bound to appear upon a summons and immediately to notify the court of change of address as well as of intention to change his place of residence. After completing his statement, the defendant shall be asked questions if it is necessary to fill in gaps or remove contradictions and ambiguities in his statement. The defendant may be interrogated in the absence of a defence counsel only if he has expressly waived this right and if defence is not mandatory. Furthermore, the defendant may be confronted with a witness or another defendant if their statements regarding relevant facts do not correspond. The objects connected to the offence and those which serve as evidence shall be presented to the defendant for identification after he has previously described them. If such objects may not be brought to the defendant, he shall be taken to the place where they are located.

The role of the defence counsel in the pre-trial phase is also very important. After the authorised prosecutor submits the request for the institution of proceedings or after the investigating judge undertakes certain investigatory actions before the ruling on the opening of the investigation, the defence counsel has the right to inspect the files as well as objects which serve to determine facts.

When summoned, a witness must appear before the investigating judge and give true testimony. If a duly summoned witness fails to appear and does not justify his absence, or if he leaves the place where he is to testify without authorisation or justifiable reason, the court may issue a warrant for compulsory appearance and may impose a fine to an amount not exceeding 2,000 kn (approx. 250,00 USD). Witnesses shall be examined separately without other witnesses being present, and may be confronted if their testimonies do not correspond regarding the relevant facts. The confronted witnesses shall be examined separately on any circumstance where their testimonies do not correspond.

The investigating judge shall order expert witness testimony when, in order to determine or assess relevant facts it is necessary to obtain findings and the opinion of a person who has the necessary expert knowledge. A person summoned as an expert witness is bound to appear and to give his findings and opinion. Failure of compliance with the former may be punished with a fine up to 2,000 kn (approx. 250,00 USD).

The prosecutor, the defendant and the defence counsel may be present at the interrogation of a witness when it is likely that the witness shall not appear at the trial, when such presence appears expedient to the investigating judge or when one of the parties requests to be present at the interrogation. The injured person may be present at the interrogation of a witness only when it is likely that the witness shall not appear at the trial. Persons attending the performance of investigatory actions may suggest that the investigating judge asks the defendant, witness or expert witness certain questions for the purpose of clarification, and may with the permission of the investigating judge ask questions directly themselves. They are entitled to request that their objections to the performance of certain actions are entered in the record and may propose that certain evidence be examined.

6.1.2. The pre-trial phase of the criminal proceedings has a rather inquisitorial character, although parties have to some extent the right to

submit motions to the investigating judge to undertake certain investigatory actions.

6.1.3. The investigating judge shall conclude the investigation when he finds that the case has been sufficiently clarified so that the indictment may be preferred or the proceedings discontinued. After the conclusion of the investigation, the investigating judge shall deliver the case files to the State Attorney who is bound within a term of fifteen days to file a motion to supplement the investigation or to prefer an indictment or to declare that he is desisting from prosecution. Upon a motion from the State Attorney, the panel of the county court may prolong this term for another fifteen days at the longest. After the investigation is completed, or when indictment without investigation may be preferred, the proceedings before the court may continue only on the basis of the indictment preferred by the State Attorney or the subsidiary prosecutor. The indictment shall be submitted to the court having jurisdiction.

6.1.4. The trial phase of the criminal proceedings has an accusatorial character.

6.1.5. The Criminal Procedure Act makes provisions for the institution of the examining or investigating judge (juge d'instruction, Untersuchungsrichter) who is the central person in the course of the investigation. For more about his jurisdiction, see the previous items.

6.1.6. The Criminal Procedure Act is divided into three parts – general provisions, the course of proceedings and special proceedings:

Part One: General provisions

- Preliminary Provisions
- Jurisdiction of Courts
- Disqualification
- The State Attorney
- The Injured Person and Private Prosecutor

- Defence Counsel
- Briefs and Records
- Terms
- Measures for Providing the Presence of a Defendant and Other Precautionary Measures
- Costs of Criminal Proceedings
- Claims for Indemnification
- Rendering and Pronouncing Decisions
- Service of Decisions, Briefs and Documents and Inspection of Files
- Enforcement of Decisions
- Meaning of Legal Terms and Other Provisions

Part Two: The Course of Proceedings

A. Pre-trial Proceedings

- Pre-investigatory Proceedings
- Investigation
- Investigation Actions
- Indictment and Objection to the Indictment

B. The Trial and Judgement

- Preparation for the Trial
- The Trial
- The Judgement

C. Proceedings of Judicial Review

- Ordinary Judicial Remedies
- Extraordinary Judicial Remedies

D. Special Provisions on Proceedings Before a Municipal Court

- Summary Proceedings
- Proceedings for the Issuance of a Criminal Order
- Special Provisions on the Imposition of Judicial Admonition

Part Three: Special Proceedings

- Proceedings regarding mentally disturbed persons, persons who have committed an offence without mental capacity or with diminished mental capacity or under the influence of alcohol and drug addiction and proceedings for the confiscation of pecuniary benefit and the revocation of a suspended sentence
- Proceedings for rendering a decision on the expungement of conviction
- Proceedings for compensation of damages and realisation of other rights of unjustifiably convicted or illegally arrested persons
- Proceedings for the issuance of a wanted notice and public announcement
- Transitional and concluding provisions.

6.2. *Special Issues*

6.2.1. The Criminal Procedure Act prescribes three procedural coercive measures which restrict a persons freedom: arrest, provisional confinement and detention.

Regarding arrest, any person may prevent the flight of a person who is in the act of committing a criminal offence subject to public prosecution. A person is considered to be in the act of committing a criminal offence when he is seen by somebody while committing an act which represents a criminal offence or if he is caught under circumstances which indicate that he has just committed an offence.

On the motion of the police authorities or the State Attorney, the investigating judge may order confinement for a duration of up to 24 hours by a written ruling with stated reasons.

Detention may be ordered only if the same purpose cannot be achieved by another measure (principle of subsidiarity). When deciding on detention, especially regarding its duration, the court shall take into consideration the proportionality between the gravity of the offence, the sentence which, according to data at the disposal of the court, may be expected to be imposed, and the need to order and determine the duration of detention (principle of proportionality).

6.2.2. Apart from the reasons mentioned above, police authorities are entitled to arrest a person against whom they are executing a ruling for compulsory appearance or a ruling on detention if the following conditions are met:

- the person is in the act of committing an offence subject to public prosecution,
- there are grounds for suspicion that the person concerned has committed an offence subject to public prosecution, if grounds exist for ordering detention.

The legal prerequisite for application of provisional confinement is the existence of grounds for suspicion that the arrested person committed the offence he is suspected of and grounds exist that prescribe application of the detention (if there are circumstances indicating a danger of flight or if there exists reasonable suspicion that he shall destroy, hide, change, or forge items of evidence and traces of importance for criminal proceedings or that he shall impede the investigation by influencing witnesses, co-principals or accessories after the fact). If such circumstances exist, provisional confinement may be issued in order to determine the identity, check the alibi, collect data on items of evidence, or remove serious danger to the life or health of people or to property of considerable value.

If reasonable suspicion exists that a person committed an offence, detention against this person may be ordered

- if there are circumstances indicating a danger of flight (the person is in hiding, his identity cannot be established etc.),
- if reasonable suspicion exists that he shall destroy, hide, change or forge items of evidence and traces of importance for criminal proceedings, or that he shall impede the investigation by influencing witnesses, co-principals or accessories after the fact,
- if special circumstances support the concern that he shall repeat the offence, or complete the attempted one, or perpetrate the offence he threatens to commit,
- if the offences involved are murder, robbery, rape, terrorism, kidnapping, abuse of narcotic drugs, extortion or any other offence punishable by imprisonment for a term of eight years or more and if this is justifiable because of the manner in which the offence was committed or other specially grave circumstances of the offence.

6.2.3. Detention in the course of the investigation shall be ordered and vacated by the investigating judge. The investigating judge shall decide on a motion of the State Attorney to order detention immediately, but at the latest within 24 hours. The investigating judge shall order and vacate detention on a motion of the State Attorney or by virtue of the office either in cases when conducting some investigatory actions in summary proceedings or when the State Attorney has requested consent to prefer an indictment without investigation, until it is submitted to the court. After an indictment or motion to indict has been submitted to the court, outside the trial until the judgement becomes final, detention shall be ordered, prolonged and vacated by the court panel. Pending trial and until the judgement is pronounced, detention shall be ordered, prolonged and vacated by the panel or single judge conducting the trial.

6.2.4. Detention ordered by the ruling of the investigating judge may last one month at the longest from the day the detainee was deprived of his liberty. On the motion of the investigating judge or the State Attorney, the panel may, if there are justifiable reasons, prolong detention for

a term not longer than two months. If the investigation is carried out for an offence punishable by imprisonment for a term of five years or more, the panel may, after the expiry of the term mentioned before, prolong detention for a term not longer than three months. In any case, the whole duration of detention may not be longer than

- six months if the offence is punishable by imprisonment for a term of less than three years
- one year if the offence is punishable by imprisonment for a term of less than five years
- one year and six months if the offence is punishable by imprisonment for a term of less than eight years
- two years if the offence is punishable by imprisonment for a term of more than eight years
- two years and six months if the offence is punishable by long-term imprisonment.

On the motion of the State Attorney, after the first instance judgement has been vacated upon a judicial remedy, the panel of the Supreme Court of the Republic of Croatia may, if important reasons exist, prolong the terms of detention mentioned for an additional six months at the longest (it can be prolonged only once).

6.2.5. The defendant, his defence counsel and the State Attorney may file an appeal within 48 hours against a ruling on the ordering, prolongation or vacation of detention. The ruling on ordering, prolongation or vacation of detention by the panel of the Supreme Court of the Republic of Croatia is not subject to appellate review. An appeal against a ruling on the ordering, prolongation or vacation of detention shall not stay its execution. The panel of the court shall decide on the appeal filed against the ruling of the single judge or the investigating judge and the panel of the higher court shall decide on an appeal against the panel's ruling. The panel shall render a decision on the appeal within 48 hours.

6.2.6. As provided by the Criminal Code, the time spent in detention, as well as any other deprivation of liberty due to a criminal offence, shall be included in the pronounced sentence of imprisonment, long-term imprisonment, juvenile imprisonment or fine. Inclusion means the equating of one day of detention, imprisonment for a contravention, imprisonment, long-term imprisonment or imprisonment of a juvenile for a criminal offence.

6.2.7. The Criminal Procedure Act provides ordinary and extraordinary judicial remedies. The ordinary judicial remedy is appeal. Authorised persons (parties, the defence counsel, the legal guardian of the accused and the injured person) may lodge an appeal from a judgement rendered at first instance within fifteen days from the day the copy of the judgement is served. An appeal shall be filed with the court which rendered the judgement at the first instance in a sufficient number of copies for the court, the opposing party and the defence counsel to reply thereto. Grounds for challenging a judgement raised in appeal are the following:

- substantive violation of the criminal procedure provisions,
- violation of the Criminal Code,
- erroneous or incomplete determination of the factual situation,
- a decision on criminal sanctions, confiscation of pecuniary benefit, costs of criminal proceedings, claims for indemnification as well as the decision to publish the judgement in the media.

Extraordinary judicial remedies may be made only concerning a judicial decision which has become final. The Criminal Procedure Act specifies the following extraordinary judicial remedies:

- reopening of criminal proceedings
- extraordinary mitigation of punishment
- request for the protection of legality
- request for extraordinary review of the final judgement.

6.2.8. In proceedings for an offence punishable by imprisonment for a term of less than five years, the trial may be held without the presence of the accused who was duly summoned and who presented his defence if, according to the state of the matter, the sentence expected is imprisonment for a term of less than six months, a fine, a suspended sentence, or a security measure of the prohibition to operate a motor vehicle or of seizing an object obtained by the commission of an offence or the confiscation of pecuniary benefit. In such a case, another or graver sentence or measure may not be imposed without a new summons and the presence of the accused. The accused may be tried in his absence only if he has fled or is otherwise not amenable to justice, provided that particularly important reasons exist to try him although he is absent. Upon the prosecutor's motion, the panel shall render a ruling on a trial in the absence of the accused. An appeal shall stay the execution of the ruling, if the ruling is contrary to the prosecutor's motion.

6.2.9. Evidence in a criminal case consists of any factual data on the basis of which the court determines the commission or non-commission of the criminal offence, the guilt or innocence of the defendant, and other circumstances important for the case. In order to get enough acknowledgement for rendering a decision, the court may use the following sources of relevant information: search of dwellings and persons, interrogation of the defendant (during the pre-trial phase) and examining of the accused (during the trial), examination of witnesses, expert witness testimony and judicial view.

Presentation of evidence during the trial extends to all facts deemed by the court to be important for a correct adjudication. The evidence shall be examined in the order determined by the president of the panel. As a rule, the evidence proposed by the prosecutor is examined first, then the evidence proposed by the defence and finally the evidence ordered by the panel by virtue of the office. After the examination of evidence is completed, the president of the panel shall ask the parties and the injured person whether they have any motions to supplement the presentation of evidence. Unless the court in the course of deliberation decides

that the trial should be reopened to supplement the proceedings or to clarify certain issues, the court shall render a judgement. The court shall found its judgement only on the facts and evidence presented at the trial and is bound to conscientiously assess each piece of evidence individually and in relation to other evidence and on the basis of such assessment to reach a conclusion on whether or not a particular fact has been proved.

The court's decisions in criminal proceedings may not be founded on evidence obtained in an illegal way (illegal evidence). Illegal evidence is evidence obtained in a way representing a violation of fundamental human rights to defence, dignity, reputation, honour and inviolability of private and family life, guaranteed by the Constitution, domestic law and international law, as well as evidence obtained in violation of criminal procedure and evidence obtained through such illegal evidence (the so-called *fruits of poisons tree* doctrine).

6.3. *The Organisation of Detection and Investigation*

6.3.1. Investigation in criminal cases is conducted by the investigating judge of the court having jurisdiction upon the motion of the authorised prosecutor (State Attorney or injured person as a private prosecutor). The Minister of Justice may designate one court where the investigation is to be conducted within the jurisdictional territory of more than one court (the investigating centre). As a rule, the investigating judge shall conduct investigatory actions only within the jurisdictional territory of his court. If the purpose of the investigation so requires, he may conduct certain investigatory actions outside the territory of his court, but in such a case he shall inform the court thereof in whose territory he is conducting the investigatory actions. In the course of the investigation, the investigating judge may entrust the performance of particular investigatory actions to the investigating judge of the court in whose jurisdictional territory these actions need to be undertaken, and in the case where

one court is designated to give legal aid within the jurisdictional territory of several courts, then to that court. In the course of the investigation, the investigating judge, upon the motion of the State Attorney, may confer to the police authorities the performance of a certain investigatory action to the police authorities, if the investigation is conducted for offences of illegal trafficking of narcotic drugs or dangerous materials, weapons, ammunition or other defence objects, the counterfeiting of money or securities, as well as for other offences whose perpetrators are connected to persons abroad or for offences which are committed by a group of people or a criminal organisation, provided that such conferring is necessary for the successful completion of the investigation, due to the seriousness of the offence and the complexity of the evidence.

6.3.2.-6.3.3. A kind of indirect supervision over the activities of the investigating judge is embodied in the authorisation of a panel of the court having jurisdiction to review rulings of the investigating judge (upon appeals). When deciding in the course of the investigation, the panel may request necessary explanations from the investigating judge and the parties and may summon both parties to a panel session in order to give their declaration orally.

6.3.4. A very important detection service regarding criminal offence of money laundering is the Office for the Prevention of Money Laundering, established within the Ministry of Finance by the Prevention of Money Laundering Act (NN 69/1997, 128/1999). This special unit is obliged to transfer a case file to the prosecution service if a «suspicious transaction» is in regard. All the monetary institutions (banks, savings institutions etc.) shall report such suspicious transactions to the Office (a suspicious transaction is one exceeding 105,000 kn - approximately. 11,000USD - or a few «connected suspicious transactions»).

Another office whose detection function deserves to be mentioned is the Office for the Suppression of Corruption and Organised Crime established by the Office for the Suppression of Corruption and Organised Crime Act. The office is a special State Attorney's office responsible for

- acting against perpetrators of criminal offences of corruption and organised crime,
- criminal offences punishable by imprisonment of more than 3 years that have been perpetrated or have been to a large extent prepared or planned in or directed or controlled from, two or more countries,
- criminal offences perpetrated in connection with the above-mentioned offences (money-laundering, use of force against an officer of the court, etc.).

Although part of the State Attorney's office, the specialised office for combating organised crime and corruption is significantly different in its structure and internal organisation and consists of three departments:

- the department for Investigation and Documentation;
- the department for the Suppression of Corruption and for Public Relations;
- the department of the Public Prosecutor.

6.4. The Organisation of the Prosecution Agency

6.4.1. The prosecution agency in the Republic of Croatia is the State Attorney's Office. Recent amendments to the Constitution of the Republic of Croatia made in 2000 (NN 113/2000) established a new position, the State Attorney's Office, within the division of power between the legislative, executive and judicial branch. These amendments define the State Attorney's Office as an autonomous and independent body within the justice system (before the amendments, the State Attorney's Office was defined as a state body) responsible for prosecuting perpetrators of criminal offences and other punishable acts, conducting legal actions aimed at the protection of state property (until now conducted by the State Defender's Office which has been adjoined to the State Attorney's Office) and submitting legal remedies for the protection of the

Constitution and laws made by Parliament. On the basis of the constitutional changes mentioned, a new State Attorney's Office Act was enacted in 2001 (NN 51/2001). This new act prescribes the organisation of the prosecution agency in Croatia more precisely than the previous one. In addition to the State Attorney's Offices at the municipal court and county court level, the new act provides the possibility of establishing other organisational forms within the State Attorney's Office, responsible for the prosecution of particular criminal offences. Furthermore, it is now possible to establish a special State Attorney's Office for prosecuting perpetrators of criminal offences for whose prosecution the Republic of Croatia is obligated under international law.

6.4.2. The basic powers and main function of the State Attorney's Office shall be the prosecution of perpetrators of criminal offences. The State Attorney's Office shall, regarding the offences subject to public prosecution, be competent to

- undertake the necessary measures aimed at discovering the commission of offences and the perpetrators,
- request that an investigation and investigatory actions be carried out,
- prefer and press an indictment or motion to indict before the court having jurisdiction thereof,
- take appeals from a court's decisions before they become final and submit extraordinary judicial remedies against a final court's decisions,
- represent the prosecution in proceedings upon a request for judicial protection against a decision or action of an administrative authority having jurisdiction for the infliction of a sentence of imprisonment imposed by a final judgement in the criminal proceedings.

6.4.3. Internally, the State Attorney's Office is characterised by hierarchical relations, which means that lower offices are responsible to the higher ones. Municipal offices are subordinated to the county offices,

and both are subordinated to the main State Attorney's Office situated in Zagreb. Such subordination is *conditio sine qua non* for equalised application of laws, because decisions made by State Attorneys may not be controlled by the legal remedies such as is the case regarding court dealings. In accordance with the mentioned internal structure and responsibilities mentioned

- the State Attorney may give mandatory instruction to the lower office when it is necessary to obtain equalised application of law, as well as instruction for ruling in particular criminal cases,
- dealings in a lower office may be taken over by the State Attorney (so-called right of avocation), and the State Attorney may also, if justifiable reasons exist, confer dealings in a particular criminal case to lower office (so-called right of devolution).

6.4.4. For offences which come to the State Attorney's knowledge on the basis of a credible crime report and are punishable by imprisonment for a term of less than three years or a fine, the State Attorney may request in a motion to indict that the court issue a criminal order imposing a certain punishment or measure on the accused without holding a trial. The State Attorney may request the imposition of one or more of the following punishments or measures:

- a fine, judicial admonition, confiscation of pecuniary benefit obtained as a consequence of the commission of an offence and publication of the criminal order in the media,
- prohibition to operate a motor vehicle or seizure of objects.

6.5. Organisation of the Courts

6.5.1. The organisation of the judicial system in the Republic of Croatia is prescribed by the Law on Courts (NN 4/1990, 100/1996, 131/1997,

129/2000). According to Article 13 of the Law on Courts, the judicial power is exercised in the Republic of Croatia by municipal, county and commercial courts, including the High Commercial Court of the Republic of Croatia and the Administrative Court of the Republic of Croatia. The highest court is the Supreme Court of the Republic of Croatia. It is possible to establish special courts of law in certain legal fields under separate laws (as was the case with the contravention courts which were considered administrative bodies before the amendments of the Contravention Act in 1995). Military courts, introduced by the Decree of the President of the Republic for the situation of emergency, were abolished in late 1996.

6.5.2.-6.5.3. The perpetrators of criminal offences are prosecuted in municipal and county courts in the first instance, and in county courts and the Supreme Court of the Republic of Croatia in the second instance.

Municipal courts administer justice in the first instance for the criminal offences that are punishable by imprisonment not exceeding ten years (smaller municipal courts specified by law may only deal with less serious criminal cases punishable by a fine or by imprisonment not exceeding five years). County courts administer justice in the first instance for criminal offences punishable by imprisonment exceeding ten years or by long-term imprisonment (and criminal offences such as manslaughter, kidnapping, damaging the reputation of the Republic of Croatia, rape /only paragraph 1 – basic form of the offence/ and abuse of office and official authority /only paragraph 4 – aggravated form of the offence/). They also carry out investigations and the procedure of extradition of foreigners or enforce foreign court decisions. In addition, county courts administer justice in the second instance in the case of appeals against the judgements of municipal courts. The Supreme Court of the Republic of Croatia conducts appellate proceedings upon the appeals against the first instance judgements of county courts, decides at the third instance on appeals against the judgements rendered at the second instance, and decides on the so-called extraordinary judicial remedies.

As far as territorial jurisdiction is concerned, as a rule, the court within whose territory the offence is committed or attempted shall have jurisdiction. If the offence is committed or attempted within the territory of several courts or on their border, or if it is uncertain within which territory the offence has been committed or attempted, the court which on the request of the authorised prosecutor has first instituted proceedings shall have jurisdiction, and if proceedings have not yet been instituted, the court to which the request for commencement of proceedings was first submitted shall have jurisdiction. Special rules are provided on criminal offences committed on ships or aircraft or committed through the press. If a person commits offences both in the Republic of Croatia and abroad, the court which has jurisdiction over the offence committed in the Republic of Croatia shall have jurisdiction. If it cannot be established which court has territorial jurisdiction, the Supreme Court of the Republic of Croatia shall designate one of the courts with subject matter jurisdiction to conduct proceedings.

6.5.4. As far as municipal courts are concerned, offences punishable by a fine or imprisonment for a term of less than three years as principal punishment shall be considered by a municipal judge sitting alone. Municipal courts shall sit in panels of three judges when rendering a decision outside the trial.

First instance county courts sit in panels of one judge and two lay judges, and in panels of two judges and three lay judges when considering offences punishable by imprisonment for a term of more than fifteen years or long-term imprisonment. Furthermore, county courts sit in panels of three judges when making decisions at the second instance and outside the trial, and sit in panels of two judges and three lay judges when they render decisions at a trial at the second instance. Decisions in the procedure for the infliction of imprisonment are rendered by a county judge sitting alone. County courts sit in panels of three judges when they decide on appeals against the first instance decisions of the judge for the infliction of sanctions.

The Supreme Court of the Republic of Croatia sits in panels of three judges. A panel of five judges considers offences punishable by imprisonment for a term of more than fifteen years or long-term imprisonment. At a trial at the second instance, the Supreme Court sits in panels of two judges and three lay judges when considering offences punishable by imprisonment for a term of fifteen years, and in a panel of three judges and four lay judges when considering offences punishable by long-term imprisonment. At the third instance, the Supreme Court sits in a panel of seven judges when it decides on appeals against judgements rendered by its own panels at the second instance. When it decides on extraordinary judicial remedies, the Supreme Court sits in a panel of three judges when considering offences punishable by up to fifteen years and in a panel of five judges when considering offences punishable by more than fifteen years or by long-term imprisonment.

6.5.5. According to the provisions of the Law on Courts, lay assessors are normally appointed by county assemblies for a term of four years and are eligible for re-appointment. Lay assessors or lay judges are citizens who are called to sit on the panels and decide together with the professional judge. See the previous item for their number in different panels.

6.5.6. The highest court in criminal matters is the Supreme Court of the Republic of Croatia. For jurisdiction of the Supreme Court see 6.5.2 above.

6.5.3. When deciding as a second instance court (appellate proceedings), the Supreme Court shall confine its review of the judgement to the part which is challenged by the appeal and to the grounds for which it is challenged. Exceptionally, the court (the Supreme Court as well as county court when performing as an appellate court) shall always by virtue of the office review

a) whether there is violation of the following criminal procedure provisions:

- if the court was not composed in accordance with the law,
- if the court violated the provisions of criminal procedure related to whether a charge of an authorised prosecutor, a motion of an injured person or the approval of the authority having jurisdiction exists,
- if the judgement was rendered by a court which, due to a lack of subject matter jurisdiction could not render the judgement in this case or if the court incorrectly rejected the charge on the grounds of lack of subject matter jurisdiction,
- if the accused who, when asked to enter his plea, pleaded not guilty regarding all or certain counts of the charge, was interrogated before the presentation of evidence was completed,
- if the judgement exceeds the charge,
- if the judgement violates the prohibition of *reformatio in peius*,
- if the ordering part of the judgement is incomprehensible, self-contradictory or contrary to the statement of reasons for judgement, if the judgement fails to contain any reasons or fails to contain reasons relating to the relevant facts or if these reasons are entirely unintelligible or contradictory to a significant degree or if a significant contradiction exists in the relevant facts between what is stated in the statement of reasons for judgement on the contents of certain documents or records on statements given in the proceedings and the documents or records themselves.
- and whether the trial was, in violation of the provisions of the Criminal Procedure Act, held in the absence of the accused and his defence counsel;

b) whether the Criminal Code was violated to the prejudice of the accused.

6.5.7. Court decisions are not sources of the law in the formal sense. However, as set out by the Law on Courts, the Supreme Court of the

Republic of Croatia is the court competent to provide harmonisation in the application of formal legal sources. The mechanism established for achieving this goal is the institution of obligatory legal opinions reached at the general session of the Supreme Court of the Republic of Croatia. These legal opinions are not obligatory to the lower courts, but they are obligatory for all the panels and single judges of the Supreme Court. Eventual change of established legal opinion reached by the general session of the Supreme Court by the panels of that court means breaching the non-retroactivity rule.

6.6. The Bar and Legal Counsel

6.6.1. The defendant may be represented by a defence counsel at any stage of the proceedings as well as before their commencement. The defendant shall have the right to defend himself in person or be assisted by a defence counsel of his own choice retained from the ranks of the Bar. The court or other authorities participating in criminal proceedings shall inform the defendant of his right to legal assistance and to unimpeded communication with the defence counsel already at the first interrogation.

The Criminal Procedure Act prescribes the following reasons for mandatory defence:

- if the defendant is mute, deaf or otherwise unable to defend himself successfully or if the proceedings are carried out for an offence punishable by long-term imprisonment, the defendant must have a defence counsel even at his first interrogation,
- if the defendant is in detention, he must have a defence counsel throughout the time he is in detention,
- after an indictment has been preferred for an offence punishable by imprisonment for a term of eight years, the de-

- defendant must have a defence counsel at the time the indictment is served,
- a defendant tried in his absence must have a defence counsel as soon as the ruling on the trial in absence is rendered.

Apart from the mandatory defence, during the investigation the defence counsel may be present at the interrogation of the defendant and also may attend an inspection and the interrogation of an expert witness. The defence counsel may be present at the search of a dwelling, at the interrogation of a witness when it is likely that the witness shall not appear at the trial, when such presence appears expedient to the investigating judge or when one of the parties requests to be present at the interrogation.

6.6.2. In the course of collecting information the police authorities shall inform the suspect who has been arrested or against whom the search of a dwelling shall be undertaken about his rights to have a defence counsel. Upon the request of the suspect, the police authorities shall allow him to retain a defence counsel and for that purpose they shall cease collecting information from the suspect or undertaking a search of a dwelling until a defence counsel arrives or at the latest two hours from the moment when the suspect was able to retain a defence counsel. If the circumstances indicate that a chosen defence counsel will not be able to come within this time, the police authorities shall allow the suspect to retain a defence counsel from the ranks of the Bar in the area of the police administration's jurisdiction, listed in the report made for the county court.

If the defendant is in detention, he must have a defence counsel throughout the time he is in detention. Police authorities may collect information from the detained person only upon a written motion from the investigating judge or if the president of the panel grants permission and only in the presence of the investigating judge or defence counsel chosen by the person in detention. In such a case the detainee shall also be informed of the right to have a defence counsel.

6.6.3. If the defendant has insufficient means to pay for legal assistance and for this reason cannot retain a defence counsel, one shall be appointed to the defendant on his request and paid from public funds.

6.6.4. According to the Criminal Procedure Act only a member of the Bar may be retained as defence counsel, but in proceeding for offences punishable by imprisonment for a term of less than five years he may be replaced by an apprentice attorney who has passed the Bar examination. Before the Supreme Court of the Republic of Croatia, only a member of the Bar may be defence counsel, and when the Supreme Court of the Republic of Croatia decides in a panel of seven judges, only a member of the Bar who has practised for at least five years in the judiciary or in an attorney's office after passing the Bar examination may be a defence counsel.

6.7. The Position of the Victim

6.7.1. The Criminal Procedure Act regulates the legal position and rights of the injured person (victim) in the criminal procedure but does not provide a legal definition of victim.

6.7.2. The injured person, when performing as a private prosecutor, has the same rights as the State Attorney, except for those rights which belong to the latter as a state body.

6.7.3. Instead of legal remedies against a decision of the State Attorney not to proceed with a case, the victim has the right to take up criminal proceedings abandoned by the State Attorney. Where the State Attorney determines that no grounds exist to institute prosecution for an offence subject to public prosecution, or prosecuted upon a motion, or where he determines that there are no grounds to institute prosecution against one of the accessories reported to the authorities, he shall be bound within eight days to notify the injured person thereof and instruct him that he can

assume prosecution by himself. The injured person shall be entitled to institute or continue prosecution within eight days following receipt of the notice mentioned.

6.7.4. The injured person has the right to claim for indemnification in criminal proceedings. The claim for indemnification may consist of a demand for compensation of damages, recovery of an object or the annulment of a certain legal transaction. Such a claim may be submitted at the latest at the end of the public hearing before the court of first instance. The right of the injured person to claim for indemnification in the criminal proceedings may be restricted if such a claim would considerably delay proceedings.

6.7.5. The Criminal Procedure Act specifies that public charges are pursued by a prosecutor, and the victim gives testimony in a court. A different situation occurs when the victim acts as a private plaintiff (for some of the criminal offences such as libel, insult etc.) or as a subsidiary prosecutor as described above in item 6.7.3.

6.7.6. According to the Criminal Procedure Act, the injured person as well as his legal guardian may exercise his procedural rights through legal representatives. When proceedings are carried out upon the request of the subsidiary prosecutor for an offence punishable by imprisonment for a term of more than three years, the court may upon the request of the injured person assign him a legal representative, if this is to the benefit of the proceedings and if the injured person, due to his financial situation, has insufficient means to pay for legal representation.

6.7.7. As the Criminal Procedure Act prescribes, the injured person has a right to appeal. The injured person may only challenge a judgement regarding the court's decision on the costs of the proceedings, but if the State Attorney assumes the prosecution from the subsidiary prosecutor, the injured person may file an appeal for all the reasons for which the judgement may be appealed.

6.7.8. In the present legislation of criminal procedure in Croatia, the victim is not assisted by the State in claiming compensation from the offender.

6.7.9. The law does not provide for the right of a victim to receive compensation from the State for damage or injuries suffered due to a crime.

6.7.10. Although Croatia does not have a national victim support programme, several non-governmental organisations provide support for victims of some criminal offences (sexual offences, violent crimes etc.). Due to the lack of financial resources these organisations mainly provide psychological and legal help and assistance to the victims.

7. Sentencing and the System of Sanctions

7.1. The Criminal Code distinguishes between punishments and other criminal sanctions. Perpetrators of criminal offences may be punished only by two types of punishment: fine and imprisonment. The need for individualisation is satisfied by the large scale of other criminal sanctions, namely non-custodial measures (suspended sentence and admonition), security measures and criminal sanctions for young perpetrators (with the emphasis on prevention and educational measures). The duration of any type of criminal sanction shall be determined by statute and no criminal sanction shall be prescribed, pronounced or applied for an indefinite time (Art. 5. CC). According to the provisions of the Basic Criminal Code which was in force in Croatia before 1 January, 1998, the security measure of compulsory psychiatric treatment could be applied for an indefinite period, in other words until the purpose of such measure has been fulfilled. With Article 5 mentioned above, Croatian legislation abandoned prescribing criminal sanctions with an indefinite period of application. As noted below in 7.7. the duration of the security measure of compulsory psychiatric treatment may extend until the reasons for which it has been ordered have ceased to exist, but in any event not longer than three years.

7.2. As was mentioned in the previous item, the Criminal Code distinguishes between punishments and other criminal sanctions. The distinction between principal and additional sanctions appears not on the level of prescribing of the sanctions, but in their imposition. For differences between imprisonment, which is always principal punishment, and a fine, see item 7.5. below.

7.3. Special sanctions for minors are prescribed in the Law on Juvenile Courts (NN 111/1997): correctional measures, juvenile imprisonment and security measures. Juvenile imprisonment may be imposed only on a minor who was older than sixteen and younger than eighteen years of

age (a so-called older minor), at the time the criminal offence was committed, while only correctional measures may be applied on younger minors (persons older than fourteen and younger than sixteen years of age).

7.4. Neither the Criminal Code nor other special statutes provide special sanctions for civil servants, military personnel or other major groups.

7.5. Capital punishment in Croatia was abolished by Article 21 of the Constitution of the Republic of Croatia (1990), setting out the following: «Every human being has the right to life. In the Republic of Croatia, there shall be no capital punishment.»

Imprisonment shall be imposed only as the principal punishment and may not be shorter than thirty days or longer than fifteen years. Imprisonment shall be assessed and imposed in full years and months, and in full days if its duration is up to three months. For the most serious and dangerous forms of criminal offences, imprisonment for a duration of twenty to forty years shall be prescribed as an exception (this long-term imprisonment shall be assessed and imposed only in full years). The latter shall never be prescribed as the sole principal punishment for a specific criminal offence, nor shall it be imposed on a perpetrator who, at the time of the perpetration of the criminal offence, has not reached the age of twenty-one years (younger adult). In Croatia life imprisonment does not exist, but long-term imprisonment, if not followed by conditional release, can be a factual substitute for such punishment. Long-term imprisonment is an exception, provided only for the most serious criminal offences such as aggravated murder, assassination of the highest state officials, genocide, war of aggression, war crimes (against the civilian population, against the wounded and sick, against prisoners of war), aggravated form of sexual intercourse with a child (resulting in death or severely impairing the health of the child or if a female child is left pregnant) etc. In order to improve the principle of individualisation of criminal sanctions, the legislation makes the provision that when imprisonment without a minimum duration and with a maxi-

imum duration of three years is prescribed for a criminal offence, together with such a penalty, a fine shall be prescribed as an alternative punishment. In Croatian criminal law, deprivation of liberty for an indeterminate period does not exist.

The new CC has introduced community service as one of the so-called community sanctions. As a criminal sanction alternative to imprisonment, community service would replace imprisonment when the court assesses and imposes imprisonment for a duration of up to six months and reaches the conclusion that, considering all the circumstances determining the type and range of the sentence, the execution of imprisonment would not be necessary to realise the purpose of punishment, and (at the same time) a non-custodial measure would not be sufficient to accomplish the general purpose of criminal sanctions. Community service shall be determined for a duration proportional to the imposed imprisonment, from a minimum of ten to a maximum of sixty working days and the period for performing this sanction shall be neither shorter than one month nor longer than one year. When, upon the expiry of the determined period, the convict has not completed or has only partly completed his community service, the court shall render a decision on the execution of imprisonment for a period proportional to the non-fulfilled community service.

The second type of punishment, a fine, may be imposed both as the principal and a supplementary punishment. For criminal offences committed for personal gain, a fine may be imposed as a supplementary punishment, even when is not prescribed by law, or when the law prescribes that the perpetrator is to be punished with imprisonment or with a fine, while the court pronounces imprisonment as the principal punishment (for example, the perpetrator of an aggravated form of murder committed from greed could be punished with a fine, although this type of punishment is not prescribed for such an offence). A fine shall be prescribed and imposed according to the daily income of the person against whom it is imposed, and shall not be lower than ten times his daily income or higher than three hundred times his daily income, except for criminal offences committed for personal gain when the maximum

fine may amount to five hundred times one's daily income. When the perpetrator of a criminal offence does not have any income, or when the determination of his income would considerably prolong the criminal proceedings, the court shall take the average daily income in the Republic of Croatia as the daily income of the perpetrator. This income shall be determined and published by the Supreme Court of the Republic of Croatia on the basis of the official data of the Bureau of Statistics.

Compensation orders are not considered punishments, but as civil liability derived from the commission of a criminal offence. Nevertheless, in deciding on suspended sentence, the court can also take into account the readiness of the perpetrator to compensate the damage caused to the victim by the committed criminal offence. Furthermore, the court shall revoke a suspended sentence and order the execution of the pronounced punishment if the convicted person does not fulfil the obligations (including his obligation to compensate the damage to the victim) imposed on him in a situation where he could have fulfilled them.

Confiscation of pecuniary gain acquired by a criminal offence is not a criminal sanction but a measure *sui generis* aimed to prevent the perpetrator and third persons from keeping benefits gained from their criminal actions. The confiscation of a pecuniary gain shall be ordered by a court decision establishing that a criminal offence has been committed. If it is impossible to seize in full or in part the pecuniary gain consisting of money, securities or objects, the court shall obligate the perpetrator of the criminal offence to pay the corresponding pecuniary counter-value.

7.6. The fine shall not be collected by force and if not paid in full or in part within the period determined in the judgement, the court shall, without delay, render a decision to substitute the fine by imprisonment (the formula is that one daily income equals one day of imprisonment). The replacement of imprisonment with community service may also be applied in the case of substituting a fine with imprisonment when such an imprisonment does not exceed six months.

7.7. The purpose of security measures is to eliminate the conditions which would enable or encourage the perpetration of another criminal offence. These security measures as criminal sanctions directed at prevention (*ut ne peccetur*) undoubtedly lead to restriction of some fundamental rights such as operating a motor vehicle, engaging in a profession, activity or duty etc. Security measures prescribed in the CC (numerus clausus of these measures) are compulsory psychiatric treatment (lasting until the reasons for which it has been ordered have terminated, but in any event not longer than three years), compulsory treatment of addiction (same as above), prohibition to engage in a profession, activity or duty (for a period not shorter than one or longer than five years), prohibition to operate a motor vehicle (for a period not shorter than one or longer than five years), expulsion of an alien (for a period which shall not be shorter than one or longer than ten years, and for a perpetrator of a criminal offence for which long-term imprisonment is prescribed, expulsion may be ordered for life), and forfeiture.

Legal consequences of conviction also lead to restrictions of some of the rights. In comparison with security measures, legal consequences of conviction come into force *ex lege* (not by court decision) on the day the judgement establishing the perpetration of a criminal offence and the pronouncement of the sentence becomes final. The legal consequences that may be prescribed are the following:

- termination of employment,
- termination of the performance of certain jobs in governmental bodies or prohibition of being engaged in such jobs (this prohibition shall expire five years after the legal consequences have become effective),
- deprivation of military rank,
- deprivation of state decorations and awards.

The legal consequences shall become effective only if the perpetrator of an intentional criminal offence is sentenced to imprisonment of a minimum of one year, and provided that a suspended sentence has not been ordered.

7.8. A general rule on the selection of the type and range of punishment is prescribed in Article 56 CC and it states that the selection of the type and the range of punishment of the perpetrator of a criminal offence shall be determined by the court, within the limits established by law for the committed criminal offence and on the basis of the degree of culpability and dangerousness of the offence, as well as the purpose of punishment. In determining the type and the range of punishment, the court shall take into consideration all the circumstances leading to a less serious or more serious punishment for the perpetrator of a criminal offence (the mitigating or aggravating circumstances) and in particular the following: the degree of culpability, motives for committing the criminal offence, the degree of peril or injury to the protected good, the circumstances under which the criminal offence was committed, the conditions in which the perpetrator had lived prior to committing the criminal offence and his abidance by the laws, the circumstances he lives in and his conduct after the perpetration of the criminal offence, particularly his relation towards the injured person and his efforts to compensate for the damage caused by the criminal offence, as well as the totality of social and personal grounds which contributed to the perpetration of the criminal offence. The last part of the provision which was introduced in the new CC reflects influence of criminological science on criminal law. The totality of social and personal grounds which contributed to the perpetration of the criminal offence covers all internal (personal) and external (social) factors which may have an influence on the perpetrator of the particular offence.

7.9. No specific sanctions or measures are provided for certain types of criminal offences.

For two criminal traffic offences (causing a traffic accident, failure to render aid to a person suffering serious bodily injury in a traffic accident) imprisonment and a fine are provided.

Narcotic criminal offences cover a wide range of illegal behaviour from the less dangerous simple possession of drugs to organising a group of people or criminal organisation for illegally manufacturing and trafficking of narcotic drugs. In this respect, criminal sanctions for these criminal offences are quite different – from a fine and imprisonment not exceeding one year (for unauthorised possession of substances or preparations which are by regulation proclaimed to be narcotic drugs) to imprisonment for not less than three years or long-term imprisonment (if the manipulation of drugs is committed by a number of persons who conspire to commit such offences, or if the perpetrator of this criminal offence has organised a network of resellers or dealers). Imposing of the security measure of forfeiture for these offences is obligatory.

Firearms offences (illicit possession of weapons and explosive substances) are punishable by imprisonment and a fine.

For environmental offences (environmental pollution, endangering the environment by noise, by waste disposal, importing radioactive or other hazardous waste into the country etc.) imprisonment (from three months for lesser accidents to ten years for serious criminal offences against the environment if an ecological catastrophe is caused) and a fine are provided.

Economic offences (various forms of counterfeiting, money laundering, preference of creditors, evasion of tax and other levies etc.) are punishable by fine and imprisonment (the prescribed punishment depends on the nature and gravity of the criminal offence).

8. Conditional and/or Suspended Sentence and Probation

8.1. In Croatian criminal law the suspended sentence is one of two non-custodial measures (the second is admonition) with the purpose of giving the perpetrator a reprimand which achieves the purpose of criminal sanctions by pronouncing a sentence without executing it. The suspended sentence consists of the pronounced punishment and the term within which such a punishment shall not be executed under the conditions prescribed by statute. A suspended sentence shall postpone the execution of the pronounced punishment for a period of time which cannot be shorter than one or longer than five years, with the period assessed in full years only.

Apart from the classical continental form of suspended sentence, Croatian law also sets out a suspended sentence with supervision similar to probation. The court may impose this specific form of suspended sentence if the conditions for imposing a suspended sentence exist but the circumstances in which the perpetrator lives and his personality suggest that he needs assistance, protection or supervision in order to fulfil the obligation not to commit a criminal offence within the period of probation. Supervision may last for the period of probation, but may also, by court order, be cancelled sooner if the requirements for assistance, protection and supervision have ceased to exist.

8.2. There is no separate list of offences for which application of a suspended sentence is possible. The court may apply a suspended sentence when it establishes that even without the execution of the punishment the realisation of the purpose of punishment can be expected, particularly taking into account the relationship of the perpetrator towards the injured person and the compensation for the damage caused by the criminal offence. As far as prescribing and imposing punishment is concerned, a suspended sentence may be applied to the perpetrator of a criminal

offence for which the statute prescribes imprisonment of up to five years and for criminal offences for which imprisonment of up to ten years is prescribed, if the provisions of mitigation of the punishment have been applied. The latter means that a suspended sentence could be applied even to the perpetrator of manslaughter or rape, if mitigating provisions have been applied.

8.3. A partial suspension of sentences is not possible.

8.4. Together with imposing a suspended sentence, the court may order the following obligations:

- that the perpetrator of a criminal offence shall compensate for the damage he has caused,
 - that he restitutes the gain acquired by the offence or
 - that he fulfils other statutory obligations regarding the perpetration of the offence.
- The period for the fulfilment of an obligation shall be determined by the court within the assessed period of probation.

When pronouncing a suspended sentence with supervision, the court may, in addition to the obligations specified for the common suspended sentence, order the perpetrator to fulfil one or more obligations during the probation period, such as:

- to undertake vocational training for a certain profession which he chooses with the professional assistance of a probation officer,
- to accept employment which corresponds to his professional qualifications, skills and actual abilities to perform the working tasks suggested or offered to him by a probation officer,
- to dispose of his income in accordance with the needs of persons he is bound to provide for under the law and in accordance with advice offered by the probation officer,

- to undergo medical treatment necessary to eliminate physical or mental disorders which may induce the perpetration of a new criminal offence,
- to avoid visiting certain places, bars and events which could offer an opportunity and motive to commit a new criminal offence,
- to regularly keep in touch with the probation officer so as to be able to report on the circumstances which could induce the perpetration of another criminal offence.

8.5. The behaviour of the convicted person and the fulfilment of the imposed obligations are monitored by a governmental body responsible for the execution of criminal sanctions (the Department for the Execution of Sanctions within the Ministry of Justice of the Republic of Croatia).

8.6. Non-compliance with the obligations imposed in a suspended sentence or repeating a crime could lead to revocation of that non-custodial measure. Revocation is obligatory a) if the convicted person, within the period of probation, commits one or more criminal offences for which the court has imposed imprisonment of two years or a more serious punishment, b) if the convicted person, within the course of the probation period, does not fulfil the obligations imposed on him in cases where he could have fulfilled them, c) if the court after the imposition of a suspended sentence finds that the person under a suspended sentence has previously committed a criminal offence, if it deems that the conditions required for the application of a non-custodial measure would not have existed had this criminal offence been known. Furthermore, the court may revoke a suspended sentence (so-called optional revocation) and order the execution of the pronounced punishment if the convicted person, within the period of probation, commits one or more criminal offences for which the court has imposed imprisonment of up to two years or a fine.

8.7. The organisation of the probation service is prescribed by the Supervision of Suspended Sentence and Community Service Act which has been enacted in 1999 and published in Croatian (NN 128/1999). The central body responsible for organising probation service is the Ministry of Justice of the Republic of Croatia. This ministry directly carries out measures intended for the improvement of probation and community service, collects and analyses statistical data and performs other activities related to the execution of the sanctions mentioned. The Ministry of Justice has the obligation to permanently inform the general public about conditions concerning the execution of probation and community service in order to include in mentioned executions as many subjects as possible in them.

Probation and community service are executed according to an individual programme of execution, which is based on an assessment of the personality, personal circumstances, health conditions, employment and professional abilities of the convicted person.

The central person in the execution of probation is the officer, who is a civil servant employed by the Ministry of Justice of the Republic of Croatia. The preconditions for the appointment of a probation officer are a university degree, working experience of not less than five years and personal characteristics which may have a positive influence on persons under probation.

8.8. The main functions of the probation officer are keeping personal records of persons under probation, drawing up individual programmes of execution of probation, employment aid, the monitoring of convicted person's compliance with the programme of execution, informing the court about the behaviour of the convicted person and any possible negligence of imposed obligations, and submitting to the court a final report on the execution of probation.

8.9. The Supervision on Suspended Sentence and Community Service Act provides the possibility for volunteers to participate in the execution of probation. After a public announcement, a special committee of probation officers appointed by the Minister of Justice of the Republic of Croatia is entitled to decide on the appointment of probation officer assistants. These persons participate in the execution of probation and community service upon the proposal of the probation officer and after finishing a special education programme. Making detailed regulations on the rights and duties of probation officer assistants is under the jurisdiction of the Minister of Justice of the Republic of Croatia.

9.The prison system and after-care of prisoners

9.1. Organisation of the prison system

9.1.1. After the new Execution of Imprisonment Act entered into force on 1 July 2001 (NN 129/1999, 55/2000, 129/2000, 59/2001, 67/2001), the Prison System Administration replaced the Administration for the Execution of Sanctions as the main central body responsible for prison administration in Croatia. The Prison System Administration is an administrative organisation within the Ministry of Justice of the Republic of Croatia. Although a part of the Ministry of Justice, the Prison System Administration is an autonomous organisation whose establishment represents a necessary precondition for improvements in the field of the execution of imprisonment. The establishment of such an administration means a step forward in the organisation of the imprisonment system in Croatia.

9.1.2. The person responsible for administration is the Principal of Administration who is at the same time the Assistant Minister of Justice and Head of the Central Bureau of the Prison System Administration. He is appointed directly by the Government on the proposal of the Minister of Justice. Within the Central Bureau the establishment of department services and the appointments of heads for these services is carried out by the Minister of Justice on the proposal of the Principal of Administration for the prison system. A special department in the Prison System Administration is the Centre for Education established to provide permanent education for employees in the prison administration system. Each prison has a warden appointed by the Minister of Justice. The warden is a civil servant with a university degree and not less than five years of working experience in prison administration. Prison wardens are automatically members of the Wardens Advisory' Council, which at

least once a month considers, analyses and proposes a plan for the implementation of tasks within the jurisdiction of prison administration in the prisons.

A new figure in the execution of the prison system introduced by the act mentioned is the executive judge who protects the rights of prisoners, monitors the legality of prison administration procedures during the execution of imprisonment sentences and guarantees equal rights of prisoners before the law. The institution of the executive judge is organised in county courts for the area which falls under the territorial jurisdiction of the court. An exception is that if the prison in the territory of a county court so requires, due to its size or number of prisoners, the act provides for the possibility of establishing a special centre for the execution of imprisonment with at least two execution judges and auxiliary staff.

9.1.3. The Principal of the Prison System Administration is responsible directly to the Minister of Justice and to the Government of the Republic of Croatia.

9.1.4. The execution of prison sentences (for criminal offences and contraventions), but also the execution of any other form of legally based deprivation of liberty (detention, prison as a substitute for unpaid pecuniary punishment) is regulated by the Execution of Imprisonment Act, which was enacted in 1999, and after a rather long period of being vacated (changed a few times by amendments), entered into force on 1 July 2001. In addition to this normative source, the execution of imprisonment is also regulated by a number of implementation rules (which are drawn up under the jurisdiction of the Minister of Justice and the Government of the Republic of Croatia), above all Rules of the Interior Order of Prison Institutions. According to the Execution of Imprisonment Act, the main purpose of the process of the execution of the prison sentence is, together with humane treatment and respecting the prisoner as an individual, preparation for life outside the prison in accordance with the law and the rules of society. The rights of prisoners are guaranteed by recognition in this act all rights established by the Constitution of the Republic of Croatia

and international agreements. Restrictions of prisoners' rights are justifiable only if conducted in order to protect the security of the prison or other prisoners.

The Execution of Imprisonment Act defines the basic principles of the execution of prison sentences (prohibition of discrimination, establishing a prisoner database), types of prisons and regimes (open, semi-open, closed), the rights of prisoners and their protection, bodies responsible for the execution of imprisonment sentences, processing of execution, reception of prisoners, accommodation and nutrition meals of prisoners, the responsibility of prisoners for disciplinary infractions, work done by prisoners, education, contact with the outside world, prisoners' ordinary and special benefits, use of force towards prisoners, conditional release (parole), interruption of the execution of a prison sentence, preparation for release and after-care and release from prison.

The legal status of prisoners is defined by laws and the sentence. The Execution of Imprisonment Act regulates the following special prisoner rights and the procedure for exercising them: the right to work, the right to an elementary education and education aimed at acquiring a qualification, the right to satisfy the religious needs of prisoners, the right to the self-organisation of leisure time of a prisoners' (a hobby) if it is in compliance with the internal order of the prison and rights of other prisoners, the right to read newspapers, magazines, books, the ownership of products made during leisure time.

The executive judge protects the rights of prisoners which can be violated by decisions of the prison administration. The executive judge has appellate jurisdiction over the decisions made by the prison administration (warden or Prison System Administration) and can vacate, revise or affirm their decisions.

The execution of other criminal sanctions, in addition to the Criminal Code which contains fundamental provisions in this respect, is regulated by the Act on the Execution of Sanctions Imposed for Criminal

Offences, Economic Misdemeanours and Contraventions (NN 21/1974., 39/1974., 55/1988., 19/1990. i 66/1993.).

9.1.5. There are six prisons for the execution of prison sentences in the Republic of Croatia (Lepoglava, Glina, Požega, Turopolje, Lipovica and Valtura). The execution of detention takes place in fourteen county prisons situated in county centres (Bjelovar, Dubrovnik, Gospić, Karlovac, Osijek Požega, Pula, Rijeka, Sisak, Split, Šibenik, Varaždin, Zadar and Zagreb).

In addition to the execution of detention, prison sentences of up to six months, prison sentences for contraventions and imprisonment as a substitution for an unpaid fine are also executed in these prisons. Departments of Lepoglava prison have been established in three of these county prisons (Gospić, Pula and Šibenik). The number of prisoners can be seen in Table 2:

Table 2. Number of prisoners in six prisons in the Republic of Croatia during the year 2000.

| 2000. | Glina | Lepoglava | Lipovica | Požega | Turopolje | Valtura | TOTAL |
|------------------------|--------------|------------------|-----------------|---------------|------------------|----------------|--------------|
| Jan. | 20 | 536 | 51 | 117 | 55 | 58 | 837 |
| Feb. | 20 | 540 | 57 | 117 | 56 | 53 | 843 |
| Mar. | 19 | 565 | 61 | 124 | 60 | 58 | 887 |
| Apr. | 22 | 568 | 61 | 122 | 66 | 62 | 901 |
| May | 22 | 560 | 69 | 120 | 71 | 63 | 905 |
| June | 22 | 566 | 60 | 123 | 71 | 52 | 894 |
| July | 22 | 555 | 82 | 129 | 73 | 52 | 913 |
| Aug. | 26 | 560 | 80 | 123 | 77 | 50 | 916 |
| Sept. | 26 | 583 | 80 | 123 | 76 | 49 | 937 |
| Oct. | 26 | 606 | 72 | 123 | 80 | 54 | 961 |
| Nov. | 27 | 628 | 72 | 122 | 78 | 52 | 979 |
| Dec. | 28 | 666 | 73 | 125 | 77 | 46 | 1015 |
| monthly average | 23 | 578 | 68 | 122 | 70 | 54 | 915 |

Concerning the security level and restrictions of prisoners' movement, prisons are open, semi-open and closed. Regardless of the type of prison determined by the security level, all of these institutions can have open, semi-open and closed departments (for example Lepoglava, a closed-type prison designed for first-time offenders and recidivists, provides facilities for the execution of prison sentences in semi-open conditions).

9.1.6. In the Republic of Croatia, there are no separate prisons for the execution of prison sentences for minors. For this reason, the execution of such sentences takes place in a special department of the Požega Prison. Correctional measures imposed on minors who are male are executed in the Turopolje Reformatory (Correctional) Centre, and those for female minors in the Požega Reformatory (Correctional) Centre.

9.1.7. The placement of prisoners in a particular prison is partially regulated by the Execution of Imprisonment Act, and partially depends on the decision made by the Central Bureau of Administration for the prison system. This act provides that a person convicted to up to three months of imprisonment or whose remaining (non-executed) part of the sentence does not exceed six months shall be sent to the prison closest to his place of residence. A person sentenced to prison for more than six months or whose non-executed part of the sentence is one year or more shall be sent to the Central State Prison in Zagreb in order for a proposal to be drawn up for an individual programme of execution of the sentence. Rendering a decision on which prison the person will be sent to comes under the jurisdiction of the Central Bureau of the Prison System Administration.

9.1.8. More than one inmate may be placed per prison cell in prisons only if, according to the prison administration assessment, it would not have a negative impact among prisoners. The Execution of Imprisonment Act states that prisoners are provided with an individual place to sleep. Prisoners' rooms have to be clean, dry and have sufficient space. The minimum living space for each prisoner in the cell has to be at least 4 m² and 10 m³. Drinking water has to be available to each prisoner at any

time. Pregnant women, breastfeeding mothers and persons who are ill are provided with better living conditions.

9.1.9.-9.1.10. The Execution of Imprisonment Act provides that the prisoner, if he agrees, can work outside of prison for another employer on the basis of a contract concluded between that employer and the prison and confirmed by the Prison System Administration. If a person convicted to short-term imprisonment (not exceeding six months) has a private enterprise, he can be granted permission to continue with his previous activities outside of prison. Before the beginning of the execution of the prison sentence, this decision is up to the executive judge with jurisdiction over the execution of the sentence, and after the execution starts rendering decision falls on the executing judge competent in regards of the place of execution.

The prison's responsibility is to organise elementary and professional education and to instruct prisoners in acquiring additional working skills. Education is to be organised not only within the prison, but also outside the prison taking into account other relevant regulations. The Execution of Imprisonment Act provides that a prisoner may participate in additional education outside of prison (and at his own cost), if it is acceptable concerning the security standards of the institution.

9.1.11. The warden is entitled to permit a prisoner special and temporary leave from the prison for the following reasons:

- to attend the funeral of a close relative,
- to visit a close relative suffering from a fatal illness,
- to attend a close relative's wedding or birth of a child,
- to realise his legal interests before the court or administration participating in court proceedings.

Permission can be granted to the prisoner after one-third of his sentence has been executed for up to ten years of imprisonment or after half of the imposed sentences has been completed for ten years or more. Special and temporary

leaves can be escorted and unescorted but can last no longer than three days. Apart from the reasons listed above, the warden can decide to permit the prisoner to leave the institution for some other important reason, but for only up to three days.

9.1.12. The escape of a prisoner (or detainee) from prison is punishable by imprisonment for three months to three years. A perpetrator is someone who, by force or threat of immediate attack upon the life or limb of another person, escapes from the institution wherein he has been placed pursuant to a lawful decision depriving him of liberty. Aiding a prisoner (by force or threat of immediate attack upon the life or limb of a third person or by deceit) in order to enable him to escape from prison is also punishable by a fine or by imprisonment not exceeding one year.

9.1.13. The Croatian prison system does not contain any significant minority categories of prisoners.

9.1.14. In 1995, Croatia ratified the European Convention on the Transfer of a Sentenced Person (1983).

9.2. *Conditional Release (Parole), Pardon and After-care*

9.2.1-9.2.2. Provisions on conditional release (parole) are contained in the Criminal Code and Execution of Imprisonment Act. The latter defines the notion of conditional release – parole is the release of a prisoner from executing his sentence before it has been completed. During the remainder of the non-executed part of the sentence, the convicted person can be supervised and also obligated to continue with the execution of measures prescribed by the programme made for the execution of his sentence.

According to the Criminal Code wording, a person sentenced to imprisonment or long-term imprisonment may be released from the institution after having served at least one-half of the term or, exceptionally, after

having served one-third of the term to which he had been sentenced, under the conditions determined in the Statute on the Execution of Criminal Sanctions.

9.2.3. Rendering a decision on conditional release, the executive judge may impose at least one of the following obligations on the convicted person:

- acquiring professional qualifications, or continuing a previous job
- accepting offered employment
- supervised disposition of income
- continuation of medical treatment
- avoiding (not-visiting) certain places
- reporting to the centre for social care
- reporting to the executive judge
- reporting to the police station.

9.2.4. The following persons are entitled to submit a proposal for conditional release: the prisoner, his close relatives, the defence counsel, the State Attorney and the prison warden.

The entity entitled to decide on a proposal for conditional release is a committee composed of four permanent members appointed by the Minister of Justice (one member of the Central Bureau of the Prison System Administration, one member from the State Attorney's Office and two judges), and as a non-permanent member, the executive judge in the area where the prison sentence is being executed. The Proposal is submitted to the committee through the prison institution administration. The warden delivers the proposal and his opinion to the committee and a copy of the proposal is sent to the court of the first instance.

Before rendering its decision, the committee reviews the data on the particular prisoner, the opinion and proposal submitted by the prison, and after hearing the prisoner, the committee then issues an opinion of the

Centre for Social Care, the court of first instance, and also the opinions of other experts, if circumstances so require. When deciding on conditional release, the executive judge has to take into consideration the prisoner's personality, his previous life and abidance by the law, his behaviour during the execution of his sentence, life circumstances and the expected impact of conditional release on the prisoner.

9.2.5. In accordance with the Execution of Imprisonment Act, the executive judge with jurisdiction concerning the domicile or residence of a conditionally released prisoner shall monitor his life outside of prison and organise support for him during parole. The executive judge is also entitled to revise conditions and obligations initially imposed on the convicted person if there is danger that a conditionally released person would repeat the criminal offence. A person under parole may change his domicile or the residence determined in the decision on conditional release only upon the consent of the executive judge.

9.2.6. The consequences for a convicted person who breaches conditions determined in the decision made by the executive judge or otherwise threatens the expected outcomes of his parole, are prescribed by the Criminal Code and the Execution of Imprisonment Act. The CC sets out that the court shall revoke conditional release if the convict, while on conditional release, commits one or more criminal offences for which he is sentenced to non-suspended imprisonment for at least six months. The Execution of Imprisonment Act provides that conditional release may be revoked by executive judge with jurisdiction concerning the place of domicile or residence of the person under parole, if he commits criminal offence or misdemeanour for which a non-suspended imprisonment sentence of not less than thirty days was imposed, or unjustifiably failed to carry out determined obligations.

9.2.7. The Constitution provides that the President of the Republic has the power to grant pardons, whereas amnesty acts are passed by Parliament. The Criminal Code provides a notion and effects of amnesty – persons covered by an act of amnesty are granted immunity from criminal

proceedings, a complete or partial exemption from the execution of punishment, substitution of the imposed punishment by a more lenient one, an annulment of the suspended sentence, early rehabilitation or an annulment of a certain legal consequence of the conviction.

After the aggression on the Republic of Croatia in 1991, the Croatian Parliament rendered three amnesty laws:

- the Law on Amnesty of Criminal Prosecution and Proceedings for Criminal Offences Committed in Armed Conflict and in War Against the Republic of Croatia on 25 September 1992,
- the Law on Amnesty on 17 May 1996,
- the Law on General Amnesty on 20 September 1996.

What is common for all these laws is the granting of immunity from criminal proceedings (or execution of sentence) to persons who participate in armed conflict and war against Croatia, except for those engaged in criminal activities which the Republic of Croatia is obligated to prosecute and punish according to peremptory norms of international criminal law (genocide, war crimes etc.).

As the CC sets out, a pardon shall accord to an individual immunity from criminal proceedings, complete or partial exemption from the execution of punishment, substitution of the imposed punishment by a more lenient one or by a suspended sentence, the annulment of a suspended sentence, early rehabilitation, the annulment or curtailment of the legal consequence of a sentence, the annulment or curtailment of the security measure of prohibition to operate a motor vehicle or the expulsion of an alien.

9.2.8-9.2.9. The notion of after-care is given in the Execution of Imprisonment Act as measures and activities conducted with the purpose of integration of released persons (former prisoners) into everyday life.

After-care covers

- securing accommodation and nutrition,
- securing medical treatment,
- advising on domicile or residence choice,
- looking for employment,
- giving financial support for satisfaction of urgent needs etc.

The executive judge may, even after the prison sentence has been completed, order the Centre for Social Care to conduct particular after-care measures and activities. The Centre for Social Care has an obligation to designate a counsellor (permanently employed in this centre) who will prepare and implement after-care.

10. Plans for Reform

10.1. After the general reform of the criminal law system in 1997, the Croatian legislature has continued with the necessary changes in the framework of that system in order to harmonise it according to constitutional principles and obligations undertaken under international law. Simultaneously, the Republic of Croatia, completely in favour of participation in every common international legal action designed for the purpose of combating global threats such as terrorism, organised crime, corruption etc., is ready to take appropriate internal law measures (including criminal law) in order to facilitate international co-operation and to set up more efficient international legal mechanisms for suppressing such crimes. Therefore, plans for reform are in permanent progress. Worth mentioning are

1. The Amendments of the Criminal Procedure Act is now being prepared in the Ministry of Justice of the Republic of Croatia. It will provide a list of procedural changes necessary for more efficient procedure.

2. The Draft Law on Responsibility of Legal Persons for Criminal Offences. As mentioned above, legal persons in the Croatian criminal law system in a wider sense may be held liable only for contraventions and economic misdemeanours. The Draft Law on Responsibility of Legal Persons for Criminal Offences made under the auspices of the Ministry of Justice of the Republic of Croatia, provides, for the first time in Croatian criminal law, punishment of legal persons for certain criminal offences (listed in the Draft). Sanctions for legal persons are mostly pecuniary ones, and the ultimate sanction for a legal person established for criminal purposes is cancellation of the legal person from the commercial court register.

3. The Draft Law on Contravention, made in the Ministry of Justice of the Republic of Croatia, represents legislative improvement in comparison with the present Contravention Act, in particular with regard to the definition of contravention, expanding the forms of sanctions for contraventions (for example, introducing the suspended sentence etc.), better and more precisely regulated procedure (significantly less provisions which call upon subsidiary application of the Criminal Procedure Act), special provisions for minors etc.

4. Apart from the very important reformatory activities listed above, as a party of relevant international agreements or as a member of the main international organisations (United Nations, Council of Europe), the Republic of Croatia has conducted, or is going to conduct, internal legal actions in order to legalise and implement principles and provisions of such agreements. The following are of note:

- The Convention on Transnational Organized Crime with two additional protocols
- The Cybercrime Convention
- The Statute of the International Criminal Court (Rome Statute)
- Resolution 3713 of the United Nations Security Council

10.2. As is obvious from the table presented below in Section 11, non-custodial sanctions are very often used by the Croatian courts. The suspended sentence is the most frequently used non-custodial sanction, composing about 60% of all imposed criminal sanctions for adult perpetrators. Nevertheless, there is a tendency to expand the application of community service and the suspended sentence with supervision (probation).

10.3. The most recent amendments of the Criminal Code made at the end of 2000 which raised penalties for some criminal offences (causing injury to children or minors, economic offences etc.), have exhausted the need for

further increasing criminal sanctions. The present prescribed penalties completely correspond to international criminal law standards and the existing phenomenology of the crime scene in the Republic of Croatia. In this regard, further improvements can be made on the level of application of existing criminal law sanctions.

10.4. There is no significant tendency to increase the support provided to victims of criminal offences, but there is a tendency to improve the application of existing provisions (mostly contained in the Criminal Procedure Act) concerning such support.

11. Statistics on Crime and Criminal Justice

Sources: Adults as perpetrators of criminal offences - reports, prosecutions and convictions in the year 2000, Central Bureau of Statistics, Zagreb, 2001, ISSN 1332-1668, Minors as perpetrators of criminal offences - reports, prosecutions and convictions in the year 2000, Central Bureau of Statistics, Zagreb, 2001, ISSN 1332-165X, Perpetrators of contraventions in the year 2000, Central Bureau of Statistics, Zagreb, 2001, ISSN 1332-1676.

Table 3. Reported criminal offences /adults and minors/ (1990-2000)

| Year | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Total | 53,636 | 46,443 | 63,321 | 72,511 | 56,250 | 48,625 | 49,673 | 45,305 | 50,539 | 47,160 | 47,860 |
| Women (%) | 3,366 6.3% | 2,158 4.6% | 2,771 4.4% | 2,880 4% | 2,697 4.8% | 2,826 5.8% | 2,916 5.9% | 2,610 5.8% | 3,416 6.8% | 3,337 7% | 3,375 7.1% |
| Minors (%) | 2,689 5% | 2,124 4.6% | 2,509 4% | 3,267 4.5% | 2,961 5.2% | 2,174 4.5% | 2,274 4.6% | 2,102 4.6% | 1,896 3.8% | 2,267 4.8% | 2,375 5% |

Table 4. Number of prosecuted adults (1990-2000)

| Year | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|--------------|----------------|----------------|----------------|----------------|----------------|----------------|--------------|---------------|---------------|----------------|---------------|
| Adults | 43,013 | 30,456 | 23,596 | 25,296 | 25,561 | 21,118 | 23,965 | 22,777 | 28,702 | 27,648 | 26,129 |
| Women (%) | 6,108 14.2% | 4,169 13.7% | 2,759 11.7% | 3,064 11.7% | 2,665 10.4% | 2,275 10.8% | 2,403 10% | 2,191 9.6% | 2,607 9.1% | 2,812 10.2% | 2,572 9.8% |

Table 5. Number of prosecuted minors (1990-2000)

| Year | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|------------|--------------|--------------|
| Total | 1,629 | 1,337 | 1,240 | 1,900 | 1,898 | 1,542 | 1,303 | 1,076 | 922 | 1,026 | 1,108 |
| Women (%) | 95 5.8% | 57 4.3% | 32 2.6% | 51 2.7% | 53 2.8% | 49 3.2% | 38 2.9% | 44 4.1% | 43 4.7% | 50 4.9% | 51 4.6% |

Table 6. Convicted adults (1990-2000)

| Year | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|--------------|----------------|----------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Total | 24,248 | 18,259 | 14,266 | 16,827 | 17,334 | 14,386 | 13,328 | 1,390 | 12,243 | 16,205 | 16,466 |
| Women (%) | 2,791 11.5% | 1,996 10.9% | 1,413 9.9% | 1,435 8.5% | 1,431 8.3% | 1,285 8.9% | 1,140 8.6% | 1,039 8.4% | 942 7.7% | 1,410 8.7% | 1,480 9% |

Table 7. Convicted individuals (adults and minors) by type of criminal offence (1992-2000)

| | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|-----------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Murder | 248 | 217 | 229 | 127 | 124 | 124 | 107 | 170 | 132 |
| Serious Bodily Injury | 545 | 598 | 540 | 468 | 407 | 376 | 469 | 629 | 477 |
| Rape | 61 | 50 | 63 | 26 | 20 | 34 | 32 | 45 | 57 |
| Theft | 1,393 | 2,148 | 2,012 | 1,249 | 1,229 | | 1,621 | 1,605 | 1,857 |
| Aggravated Theft | 1,582 | 2,046 | 2,480 | 2,74 | 1,564 | 1,146 | 1,512 | 1,798 | 1,564 |
| Embezzlement | 178 | 200 | 183 | 117 | 120 | 82 | 103 | 151 | 158 |

Table 8. Convicted adults by age in the year 2000

| | 18-20 | 21-24 | 25-29 | 30-39 | 40-49 | 50-59 | 60 and more | Unknown |
|--------------|--------------|--------------|--------------|--------------|--------------|--------------|-------------|------------|
| Total | 1,815 | 2,967 | 2,825 | 4,327 | 2,767 | 1,018 | 479 | 268 |
| Men | 1,698 | 2,785 | 2,585 | 3,863 | 2,452 | 921 | 434 | 248 |
| Women | 117 | 182 | 240 | 464 | 315 | 97 | 45 | 20 |

Table 9. Criminal sanctions imposed on convicted adults in the year 2000

| | | |
|--------------------|---------------|-------------|
| Imprisonment | 1,757 | 9.4% |
| Fine | 2,718 | 14.5% |
| Suspended sentence | 10,999 | 58.6% |
| Admonition | 353 | 1.9% |
| Security measures | 2,955 | 15.7% |
| Total | 18,783 | 100% |

Table 10. Security measures imposed on convicted adults in the year 2000

| | | |
|---|--------------|------------|
| Compulsory Psychiatric Treatment | 32 | 1.1% |
| Compulsory Treatment of Addiction | 362 | 12.3% |
| Prohibition to Engage in a Profession, Activity or Duty | 18 | 0.6% |
| Prohibition to Operate a Motor Vehicle | 306 | 10.4% |
| Forfeiture | 2,069 | 70% |
| Expulsion of an Alien | 168 | 5.7% |
| Total | 2,955 | 100 |

Table 11. Previous convictions of convicted adults (recidivism)

| | | |
|-------------------------|--------------|-------------|
| Murder | 23 | 1.1% |
| Abuse of Narcotic Drugs | 315 | 15.6% |
| Theft | 228 | 11.3% |
| Fraud | 30 | 1.5% |
| Forgery of a Document | 161 | 8% |
| Total | 2,014 | 100% |

Table 12. Convicted minors by the type of the criminal offences (1992-2000)

| | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|---|------|------|------|------|------|------|------|------|------|
| Murder | 9 | 9 | 6 | 1 | 7 | 7 | 4 | 8 | 4 |
| Serious Bodily Injury | 14 | 20 | 21 | 37 | 17 | 26 | 26 | 36 | 26 |
| Theft | 123 | 190 | 137 | 58 | 106 | 141 | 82 | 94 | 97 |
| Aggravated Theft | 485 | 756 | 689 | 595 | 423 | 293 | 237 | 274 | 287 |
| Robbery | 17 | 39 | 32 | 24 | 7 | 33 | 29 | 22 | 34 |
| Removing Property Belonging to Another Person | 9 | 14 | 11 | 4 | 10 | 16 | 7 | 4 | 3 |

Table 13. Complicity rate among convicted minors (1994-2000)

| Complicity | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|-------------------------|-----------------------------|---------------------------|---------------------------|-------------------------|-------------------------|---------------------------|---------------------------|
| Complicity in total | 837 69% | 595 68% | 484 66% | 413 63.% | 297 58.6% | 424 61.5% | 462 58.7% |
| With adults | 89 | 46 | 34 | 27 | 27 | 41 | 38 |
| With minors or children | 671 | 511 | 415 | 365 | 252 | 354 | 382 |
| With both groups | 77 | 38 | 35 | 21 | 18 | 29 | 42 |
| Total | 1,212 6.5% | 866 5.7% | 732 5.2% | 653 5% | 506 4% | 697 4.1% | 787 4.6% |

Table 14. Criminal sanctions imposed on minors (1991-2000)

| | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|-----------------------|------------|------------|--------------|--------------|------------|------------|------------|------------|------------|------------|
| Educational Measures | 884 | 734 | 1,175 | 1,205 | 862 | 724 | 644 | 498 | 672 | 762 |
| Juvenile Imprisonment | 3 | 15 | 13 | 7 | 4 | 8 | 9 | 4 | 12 | 11 |
| Total | 887 | 749 | 1,188 | 1,212 | 866 | 732 | 653 | 506 | 697 | 787 |

Table 15. Adult perpetrators of contraventions (1996-2000)

| | 1996 | 1997 | 1998 | 1999 | 2000 |
|-----------------------|----------------|----------------|----------------|----------------|----------------|
| Public Order Offences | 20,156 | 21,817 | 26,499 | 33,125 | 35,655 |
| Road Traffic Offences | 98,225 | 78,951 | 93,460 | 98,771 | 102,102 |
| Financial Offences | 24,664 | 34,742 | 22,390 | 17,507 | 19,534 |
| Total | 206,760 | 207,184 | 229,836 | 246,231 | 269,367 |

**Table 16. Legal persons and responsible persons /
within legal persons/ as perpetrators of contraventions (1996-2000)**

| | 1996 | 1997 | 1998 | 1999 | 2000 |
|-----------------------------|---------------|---------------|---------------|---------------|---------------|
| Road Traffic Offences | 3,313 | 2,536 | 2,307 | 1,833 | 2,538 |
| Economic Offences | 3,997 | 3,217 | 4,396 | 4,098 | 6,543 |
| Financial Offences | 6,854 | 8,693 | 9,816 | 9,141 | 11,376 |
| Total | 15,790 | 15,661 | 18,150 | 17,169 | 24,806 |

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APPENDIX 1

1. Demographic issues

1.1 What is the total population as of 1 January 20__?

1.2 What is the minimum age of criminal responsibility? Is this an absolute limit, or are courts allowed discretion on a case-by case basis? What is the total population that has reached this minimum age?

1.3 What is the age at which full (adult) criminal responsibility is reached? What is the total population that has reached this age?

1.4 What is the total number of non-natives (aliens) as of 1 January 20__?

1.5 What are the most important nationalities represented among these non-natives?

1.6 What proportion of the population lives in urbanised areas? (What is the definition of urbanised areas used in your country?)

1.7 How many people are employed? What percentage of the employed are male? How large is the unemployment rate?

2. Criminal law statutes

2.1 Please provide a brief history of your Penal Code. When was it enacted? Has it been influenced by foreign Penal Codes and, if so, by which? What have been the major reforms of the Penal Code since 1945?

2.2 In what languages has the Penal Code been officially published? What translations are available (English, French, German, Spanish, Russian, other)? Please provide the bibliographical references and, if available, the international standard book number (ISBN).

2.3 What other main statutes contain definitions of criminal offences, such as narcotics offences, traffic offences, environmental offences or economic offences? Please list these statutes, with their date of enactment and describe in brief their content. Should violation of these statutes be deemed an administrative infraction or transgression, please note this.

3. Procedural law statutes

3.1 Please provide a brief history of your Code of (Criminal) Procedure. When was it enacted? Has it been influenced by foreign procedural codes and, if so, by which? What have been the major reforms of the Code since 1945?

3.2 In what languages has the Procedural Code been officially published? What translations are available (English, French, German, Spanish, Russian, other)? Please provide the bibliographical references and, if available, the international standard book number.

3.3 What other main statutes contain provisions on criminal procedure? Please list these statutes, with their date of enactment and describe in brief their content. If your country has a system of administrative penal offences, please refer also to the statute which contains the applicable procedural provisions.

3.4 Is there a special statute on juvenile offenders? Please give the date of enactment and describe in brief its content.

4. The court system and the enforcement of criminal justice

4.1 Please provide a brief history of the statute on the organisation of the court system (if separate from the Code of Procedure). When was it enacted? What have been the major reforms of this statute since 1945?

4.2 In what languages has this statute been officially published? What translations are available (English, French, German, Spanish, Russian, other). Please provide the bibliographical references and, if available, the international standard book number.

4.3 What other main statutes contain provisions on the organisation of the court system? Please list these statutes, with their date of enactment and describe in brief their content.

4.4 What statutes contain provisions on the organisation of the police, the bar, and the prison and probation agency?

4.5 Is there a special statute on criminal procedure in the case of juvenile offenders? Please give the date of enactment and describe in brief its content.

5. The fundamental principles of criminal law and procedure

5.1 Is the principle of legality established in the Penal Code? If so, please annex an English translation of the relevant provision.

5.2 What division of offences (e.g. crime/delit/contravention or Vegrehen/Verbrechen) is made by the Penal Code, and on what criteria is this division based? Is the same division used in other criminal law statutes as well and, if not, what divisions are used?

5.3 What are the minimum and maximum ages at which an of-fender is dealt with as a juvenile? What is the minimum age at which an offender is dealt with as an adult offender?

5.4 Is strict liability for certain offences or categories of offences recognised in the Penal Code? If yes, for which offences?

5.5 Is strict liability for certain offences or categories of offences recognised elsewhere in criminal law? If yes, for which offences?

5.6 Is criminal responsibility restricted to individuals, or can also groups of persons be held responsible (“corporate responsibility”)?

5.7 What grounds for justification are expressed in the Penal Code? Apart from these written grounds, are other grounds recognised in case law?

5.8 What time limits bar prosecution of criminal offences?

5.9 Is the Penal Code divided into a general part and a special part? If not, is another division used? In order to provide an overview of the contents of the Penal Code, please append a table of contents that provides the titles of parts and chapters of the Penal Code.

5.10 Please provide an English translation of the legal definition of (a) murder, (b) intentional homicide, (c) robbery, (d) (ordinary, simple) assault, and (e) (ordinary, simple) theft. What aggravating circumstances are mentioned in the Penal Code in the cases of assault and theft?

6. The organisation of the investigation and criminal procedure

6.1. General issues

6.1.1 Please describe briefly the main aspects of ordinary criminal procedure (for example, how is the procedure initiated, how is evidence gathered and presented, who is summoned, what is the role of counsel, who has the right to be heard, who presents questions).

6.1.2 Does the pre-trial phase have an inquisitorial or an accusatorial character?

6.1.3 At what stage is the pre-trial phase deemed to end, and the trial stage to begin?

6.1.4 Does the trial phase have an inquisitorial or an accusatorial character?

6.1.5 Does your system recognise the role of the examining judge (juge d'instruction, Untersuchungsrichter), and if so, what is the function of the examining judge?

6.1.6 Is the Code of Judicial Procedure divided into a general part and a special part? If not, is another division used? In order to provide an overview of the contents of the Code of Judicial Procedure, please append a table of contents that provides the titles of parts and chapters of the Code.

6.2 Special issues

6.2.1 Please describe briefly the stages of apprehension, arrest and pre-trial detention as recognised in your system.

6.2.2 What are the legal prerequisites for the application of apprehension / arrest / pre-trial detention?

6.2.3 Who decides on the application of pre-trial detention?

6.2.4 Is the maximum term of pre-trial detention determined in law? Is there any trend towards shortening this maximum term?

6.2.5 Who may request a review of the decision to hold a suspect in pre-trial detention, and/or does the law prescribe an automatic review of this decision at regular intervals?

6.2.6 How is the term of pre-trial detention to be deducted from the sentence?

6.2.7 What are the general legal remedies (appeal) against a decision by the court of first instance?

6.2.8 May a case be tried in the absence of the defendant?

6.2.9 Please describe briefly the main rules of evidence (types of admissible evidence, methods of acquiring evidence and the assessment of evidence).

6.3 The organisation of detection and investigation

6.3.1 What is the composition and internal organisation of the national agency responsible for the detection and investigation of criminal offences?

6.3.2 Who supervises and controls this activity?

6.3.3 Is this agency subject to written or oral instructions by the prosecution agency in the investigation of specific offences?

6.3.4 Do special law enforcement agencies exist for the detection and investigation of (1) traffic offences, (2) narcotics offences, (3) firearms offences, (4) environmental offences, (5) economic offences, or other major offence categories?

6.4 The organisation of the prosecution agency

6.4.1 What is the composition and internal organisation of the national prosecution agency?

6.4.2 What are the main duties and powers of the prosecution agency in criminal cases?

6.4.3 Is the prosecution agency a dependent or independent body? Are its decisions subject to review by another body? Who is vested with the right to issue directives to the prosecution agency regarding (a) general prosecution policy and (b) prosecution of specific cases?

6.4.4 What possibilities exist in your system for the police or the prosecution agency to close a criminal case officially on the basis of, for example, composition, caution or simplified procedure?

6.5 Organisation of the courts

6.5.1 What is the composition and internal organisation of the court system?

6.5.2 What courts deal with criminal offences as the first instance and as the appellate level?

6.5.3 What are the main rules of jurisdiction?

6.5.4 What criminal offences are tried by a full bench and what are tried by a single judge?

6.5.5 What forms of participation by laypersons are recognised in your system? What questions are they competent to decide?

6.5.6 What is the highest court in criminal matters? Is it competent to review a decision in full, is its review limited to the issues appealed, or is it restricted to controlling due process and the fairness of the procedure?

6.5.7 What is the significance of decisions of this highest court as precedents?

6.6. The Bar and legal counsel

6.6.1 What are the legal rights of the Bar during the pre-trial stage?

6.6.2 Does the suspect have the right to counsel immediately upon apprehension / arrest by the police? Does the suspect have this right during pre-trial detention?

6.6.3 Is cost-free legal aid provided to (1) those who are apprehended / arrested by the police, (2) those held in pre-trial detention, and/or (3) those charged with an offence? If so, under what conditions is cost-free legal aid provided?

6.6.4 What qualifications must a member of the Bar or legal counsel fulfil?

6.7 The position of the victim

6.7.1 Does your system recognise a legal definition of “victim” (“injured person”, “complainant”)?

6.7.2 Does the victim have an officially recognised role in pre-trial proceedings, for example in the presentation of evidence or in questioning?

6.7.3 Does the victim have legal remedies against a decision of the police or the prosecutor not to proceed with a case?

6.7.4 Does the victim have the right to present civil claims in connection with criminal proceedings? Are there any restrictions on this right?

6.7.5 Does the victim have the right to present criminal charges and/or to be heard on the charges presented by the public prosecutor?

6.7.6 Does the victim have the right to counsel?

6.7.7 Does the victim have the right of appeal?

6.7.8 Is the victim assisted by the State in claiming compensation from the offender?

6.7.8 Does the victim have the right to State compensation for injuries or loss caused by crime? If so, please describe briefly the system used.

6.7.9 Does your country have national and/or local victim support schemes? If so, please describe these schemes briefly, including the extent to which they are supported by the State.

7. Sentencing and the system of sanctions

7.1 What classification of sanctions is given in the Penal Code?

7.2 Does the Penal Code distinguish between punishments and measures and/or between principal and additional punishments?

7.3 Does the Penal Code or another statute provide special sanctions for juveniles? If so, please describe these provisions.

7.4 Does the Penal Code or another statute provide special sanctions for civil servants, military personnel or other major groups?

7.5 Please provide information concerning the provisions on the following sanctions:

- * capital punishment;
- * imprisonment (what is the general minimum and maximum);
- * deprivation of liberty for an indeterminate period;
- * other forms of detention (what is the general minimum and maximum);
- * probation and other measures involving supervision;
- * community service;
- * compensation orders;
- * fines and/or day-fines (what is the general minimum and maximum; how is the size of the day-fine calculated)
- * (other) alternatives or substitutes for imprisonment or fine.

7.6 In case of default of payment of a fine, may a fine be converted into imprisonment or another sanction? What is the term of such imprisonment, or the severity of such sanction? Who determines the conversion?

7.7 What measures (for example withdrawal of license, restriction of rights) may be imposed on adults as a reaction to an offence? In what cases can such measures be imposed, and for how long?

7.8 Does the Penal Code (or other statute) contain general provisions on sentencing? If so, please explain them briefly.

7.9 What general or specific sanctions or measures are used for (1) traffic offences, (2) narcotics offences, (3) firearms offences, (4) environmental offences, and (5) economic offences?

8. Conditional and/or suspended sentence, and probation

8.1 Please describe the basic provisions concerning the conditional and/or suspended sentence.

8.2 For what offences and what sentences may the conditional or suspended sentence be applied?

8.3 May the court impose a sentence that is suspended only in part?

8.4 What general or special conditions may be attached to a conditional or suspended sentence?

8.5 Who supervises compliance with such conditions?

8.6 What is the procedure followed if an offender is in breach of a condition, and what are the possible consequences?

8.7 What are the main lines of the organisation of the probation service on the national and the regional level?

8.8 What are the main functions of the probation service?

8.9 What is the role of volunteers in probation activities?

9. The prison system and after-care of prisoners

9.1. Organisation of the prison system

9.1.1 Does the prison administration form part of the Ministry of Justice? If not, under which Ministry does it function?

9.1.2 What are the main lines of the organisation of the prison administration?

9.1.3 Who is responsible for the development of prison policy?

9.1.4 Please describe briefly the main legislation on the enforcement of prison sentences and fines, and on the legal position of prisoners.

9.1.5 Please describe briefly the prison system in your country (the number, size and classification of prisons: high security, semi-open, open, night prisons etc.).

9.1.6 Please describe briefly the juvenile prison system in your country.

9.1.7 Who decides on the placement of prisoners in different prisons?

9.1.8 Does your system allow more than one prisoner per prison cell?

9.1.9 What activities are convicted prisoners and pre-trial detainees required to participate in (prison work, education, other)?

9.1.10 Under what conditions can a prisoner work or pursue education outside the prison?

9.1.11 Under what conditions can a prisoner be granted a furlough?

9.1.12 Is absconding from prison deemed a criminal offence, and if so what is the minimum and maximum penalty imposed?

9.1.13 Do your prisons contain any significant minority categories of prisoners (e.g. aliens)?

9.1.14 Is your country a contracting party to an international convention on the transfer of prisoners to their home country in order to serve a prison sentence imposed by a judge abroad?

9.2 Conditional release (parole), pardon and after-care

9.2.1 Please describe the basic provisions concerning conditional release (parole).

9.2.2 Under what legal conditions may a prisoner be released conditionally, and what is the minimum term to be served?

9.2.3 What general or special conditions may be attached to conditional release?

9.2.4 Who decides on conditional release?

9.2.5 Who supervises compliance with the conditions?

9.2.6 What is the procedure followed if an offender is in breach of a condition, and what are the possible consequences?

9.2.7 Which person or agency is empowered to grant pardon or amnesty?

9.2.8 Please describe briefly how the after-care of released prisoners is organised in your country.

9.2.9 What functions does this organisation have (assistance in providing housing and employment, counselling services, etc.)

10. Plans for reform

10.1 Are there any major reforms related to the issues dealt with in this questionnaire that are now under discussion and that are planned to come into force during the following five years? If so, please describe briefly the purpose of the reforms, and what agency or committee is preparing the reforms. Please provide bibliographical references if available.

10.2 Is there a tendency in your country to reduce the use of imprisonment and/or to expand the use of non-custodial sanctions? If so, please describe briefly the reasons for this tendency and the results achieved.

10.3 Is there a tendency in your country to increase sentences for certain offences (e.g. narcotics offences, environmental offences, certain serious economic offences, certain serious violent offences)? If so, please describe briefly the reasons for this tendency and the results achieved.

10.4 Is there a tendency in your country to increase the support provided to victims of offences? If so, please describe briefly the reasons for this tendency and the results achieved.

11. Statistics and research results on crime and criminal justice

Please prepare a short (ca. 3-5 page) summary of crime trends and the operation of criminal justice in your country over the past decade, using available statistics and research results.

Such a summary might include indicators on, for example, the following:

- trends in homicide, robbery, assault and theft (NB question 5.10)
- clearance rate
- number of convicted offenders
- number of different sanctions imposed
- trends in the use of imprisonment and in the total prison population.

12. Bibliography

Please provide a list of general references in crime and criminal justice in your country, with particular attention to references available in the major international languages.