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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

SLOVENIA

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Table of Contents

1. Demographic issues

According to the 2002 census the total population of Slovenia was almost 2 million; 1,964,919 to be exact. The minimum age of criminal responsibility is 14 years. This is the absolute limit and courts are not allowed any discretion on a case-by-case basis. The total population that had reached this minimum age in 2002 was 1,661,867. The age of full adult criminal responsibility is 18 years. According to the 2002 census 1,559,159 people had reached this age. The total number of non-natives (i.e. legal aliens) in Slovenia as of December 2002 was 44,693. The major nationalities represented among these non-native residents were citizens of Bosnia and Herzegovina, Serbia and Montenegro, Croatia and Macedonia. The total number of the population living in urbanised areas in 2002 was 997,772. For the purposes of statistics, "urban area" is determined on the basis of four criteria, of which the requirement of 3,000 inhabitants or more is the primary formal criterion. In 2002 the number of people who were employed in Slovenia was 922,000. The percentage of the male population in 2002 who were employed was 54%. The unemployment rate in 2002 was 5.9%.

2. Criminal law statutes

2.1 A brief history of the Slovenian Criminal Code

The present Slovenian Criminal Code (abbreviated in the following as CC)[1] was enacted in October 1994 and entered into force on 1 January 1995. Since 1995 it has been amended twice, in March 1999 and in April 2004. To a considerable extent these amendments were due to the growing requirements of bringing Slovenian legislation in line with the EU *acquis communautaire* and with international criminal law.

The Republic of Slovenia became an independent state after the dissolution of the Socialist Federal Republic of Yugoslavia in 1991. Up to 1918 Slovenia had been part of the Austrian-Hungarian Empire.[2] The Austrian Criminal Code of 1852 was in force. After the disintegration of the Hapsburg monarchy the state of Slovenes, Croats and Serbs was proclaimed on 29 October 1918. Approximately one month later, on 1 December 1918 unification of the state with the Kingdom of Serbia was declared in Belgrade. The new state was called the Kingdom of Serbs, Croats and Slovenes.

Until the introduction of the uniform Criminal Code in 1929, the new Kingdom had six separate legal sectors in the area of criminal justice. In the Slovene lands (as well as in Dalmatia) the old Austrian Criminal Code of 1852 (as subsequently amended) continued to be in force. In addition, the validity of chapters IX and X of the Serbian Criminal Code was extended throughout the entire territory of the state, as was the case with the uniform military criminal law. Also some other related statutes were in force throughout the entire state, most notably the law on the protection of public security and order of the state, since 1921.

On 6 January 1929 King Aleksander Karadjordjevič introduced a dictatorship. Among other acts, he renamed the state the Kingdom of Yugoslavia. On 27 January 1929, the new uniform Criminal Code of the Kingdom of Yugoslavia was enacted. It entered into force on 1 January 1930. The Criminal

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1 Official Journal of the Republic of Slovenia (hereinafter O.J.), 63/94, 70/94, 23/99, 40/04.

2 This short historical preview is based on the textbook presentations that can be found in Dolenc, M., Maklecov, A., *Sistem celokupnega kazenskega prava kraljevine Jugoslavije*, Tiskovna zadruga, Ljubljana, 1934 and Bavcon, L., Šelih, A., Filipčič, K., Jakulin, V., Korošec, D.; *Kazensko pravo, splošni del*, Uradni list RS, Ljubljana, 2003.

Code of 1929 was, for the time, a modern criminal statute drafted under the influence of the eclectic school.

In April 1941 the Kingdom of Yugoslavia was attacked and occupied by the Axis forces. What is today Slovenia was occupied by Germany, Italy and Hungary. The three occupying powers annexed the occupied territories into their states and declared that their legal order, including their criminal law, was valid. However, it did not take long before the Slovenian national struggle for liberation (*narodnoosvobodilna borba*) began, and in the course of armed resistance (together with the pan-Yugoslav resistance movement) new state institutions and an alternative legal order were gradually established.

For example in September 1941, the Slovene National Liberation Committee, as the highest representative body of the national struggle for liberation, issued the "Decree on the protection of the Slovene nation and its movement for liberation and unification." This legal source was the first substantive criminal law provision issued during the fight against the occupying powers in Slovenia and in all of Yugoslavia.

This particular Decree, together with the Decree on martial courts issued in May 1944 by the Central Command of the liberation movement in Slovenia, represented the most important written source of Slovenian criminal law during the war. The Decree on martial courts consisted of provisions on the organization of martial courts, criminal procedure, the definition of certain criminal offences, penalties, security measures as well as enforcement of sentences.

Towards the end of the war, in February 1945, the Anti-Fascist Parliament of the National Liberation of Yugoslavia, as the highest legislative body of the new Yugoslavia, issued a "Decree on the invalidity of legal regulations enacted prior to 6 April 1941 and during enemy occupation. Later on, in October 1946, the decree was enacted as a law. This decree/law pragmatically allowed for the use of legal provisions dating from the pre-war period, provided they were not contrary to the legal order of the new state (called at that time the Federal People's Republic of Yugoslavia). Earlier, pre-war criminal law provisions of various kinds could be used in this way. Also immediately after the war various statutes defining specific criminal offences and other elements of substantive and procedural criminal law were enacted. Nonetheless, this was not yet a comprehensive criminal law.

The effort to enact a new comprehensive criminal code was gradual. In December 1947 the Federal Parliament enacted only the general part. This general part was drafted under the heavy influence of the Soviet criminal law doctrine. Soon afterwards, however, Tito's confrontation with Stalin and the Eastern block resulted in a shift away from the Soviet model of criminal law. A new Criminal Code, one that was considered modern and comprehensive for its time, was enacted in 1951. It was soon followed in 1953 by the new Code on Criminal Procedure.

The 1951 Criminal Code was in force for 26 years and was amended several times, most importantly in 1959 under the heavy influence of the ideas of the new social defence movement.

The new federal Constitution of 1974 strengthened the federal system and introduced a division of legislative competence in the area of substantive criminal law between the Federation and the Republics (and two Autonomous Provinces). The Code of Criminal Procedure remained a federal prerogative and, in harmony with the new Constitution, was enacted in 1977. Under the Constitution of 1974, almost the entire general part and some particular chapters of the special part (defining criminal offences against the State, against the international law, against the armed forces and the like) remained the prerogative of the Federation. However, most of the special part was regulated by the Republics. Based on this Constitutional mandate, the Parliament of the Republic of Slovenia enacted its first Criminal Code in 1977. This criminal code was in many ways different from the codes of other federal republics. These differences became even stronger after the Slovenian amendments of the code in 1984 and in 1989, inspired by the ideas of a more democratic and humane criminal law.

In 1991, Yugoslavia disintegrated and the independent Republic of Slovenia was established. The new Constitution was adopted the same year. The present Criminal Code and the Code of Criminal Procedure, which were brought in line with the new Constitution, were enacted in September 1994, and became valid on 1 January 1995.

2.2 Official language and translations of the Criminal Code

The official language of the Criminal Code and the Code of Criminal Procedure is Slovenian. The Criminal Code has recently been translated into two foreign languages: into Italian (*Il Codice Penale Sloveno*, Cedam, Padova, 1998, translated by Ljubo Bavcon, Zvonko Fišer) and into French (*Code Criminal Slovene*, Editions Cujas, Paris, forthcoming, translated by Ivanka Sket).

2.3 Other statutes containing definitions of criminal offences

In order to preserve (as much as possible) the coherence of the substantive law provisions, virtually all definitions of criminal offences are at present contained in the Criminal Code. Nonetheless the general part of the Criminal Code in principle allows for other statutes containing definitions of criminal offences. The only exception in this respect so far is the definition of one criminal offence contained in the Law on the conclusion of the ownership transformation and privatisation of legal persons owned by the Slovenian agency for development.[3] This criminal offence covers specific acts in the course of the privatisation of previously State-owned property or "social capital." Apart from this exception all other criminal offences are defined in the Criminal Code.

3 O.J. RS 30/98, 67/98, 72/98, 12/99, 16/99, 50/99, 6/00, 12/01, 79/01.

3. Procedural law statutes

3.1 A brief history of the Code of Criminal Procedure

The recent Code of Criminal Procedure (abbreviated in the following CCP), which is the first Slovenian CCP after the disintegration of former Yugoslavia, was adopted by the National Assembly of the Republic of Slovenia in September 1994. It has already been amended five times,[4] the most important amendments being the ones in October 1998, December 2001 and June 2003. In most of the important respects the present CCP maintains the structure of the last Yugoslav CCP adopted in 1967 although some significant changes in the adversarial direction have been made.

The first CCP after the Second World War was adopted in 1948. It followed the model of Soviet legislation, with the police being the main investigator in pre-trial proceedings, and the criminal proceedings were conducted almost exclusively along the lines of the inquisitorial principle. However, soon after the break with the Soviet Union (1951) a new CCP came into force in 1953, creating a mixed type of criminal proceedings. It introduced (again, following the 1929 CCP) the concept of the investigating judge (*judge d'instruction*), reducing the authority of internal affairs officers in pre-trial proceedings. In the judicial phase of the proceedings the defendant was given certain procedural rights, such as the right to remain silent and the right to counsel. Even some exclusionary rules were introduced.

The most important and democratic change in the history of Yugoslav legislation that strengthened the shift from a mixed inquisitorial system to a more adversarial one was the amendment made in 1967 to the 1953 CCP. That was also the last theoretically coherent model of criminal procedure, the basic structure of which is still evident today in Slovenian criminal procedure. The strict accusatorial principle for the beginning of the prosecution was introduced. The state prosecutor was bound by the principle of legality, and the judiciary was bound by the inquisitorial maxim (the search for the truth).

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4 Official Journal of RS (O.J.) 63/94, 72/98, 6/99, 66/00, 111/2001 and 56/03.

The underlying (and continuing) goal was to disengage the role of the police from the formal criminal proceedings, the so-called "separation doctrine." The preliminary proceedings and the judicial phase of the proceedings were separated. In line with that doctrine, the *dominus litis* of non-formal activity in preliminary proceedings was the police, and the formal judicial phase (including the phase of the investigation) was conducted only by the members of the judiciary. The preliminary procedure was *not* considered part of the formal (judicial) proceedings, thus allowing the police the right to investigate "informally" (without formal limitations). This weakness was overcome by relatively strict exclusionary rules: most of the evidence gathered by the police in a non-formal way had to be excluded in the investigation phase. One of the important consequences of this doctrine was that the defendant could exercise all of his or her procedural rights from the moment that the judicial phase began (usually the beginning of the investigation phase). The trial was conducted on the basis of the adversarial model. The last Yugoslav CCP from 1977 brought only some minor changes.

3.2 Official language and translations of the Code of Criminal Procedure

The official language of the CCP is Slovenian. No other official translations have been made.

3.3 Other statutes containing provisions on criminal procedure

Apart from the CCP, the most important legal act containing provisions on criminal procedure is the Constitution of the Republic of Slovenia.[5] Slovenia is also bound by international conventions (such as the European Convention of Human Rights and Fundamental Freedoms, and the United Nations Declaration of Human Rights), which are implemented as internal law under article 8 of the Slovenian Constitution. Misdemeanours are considered a part of criminal legislation in broader terms. Thus, the Misdemeanour Act is a statute that contains provisions on criminal law and criminal procedure (articles 58-224).[6] The procedure used for misdemeanours is

5 O.J. 33-1409/91.
6 O.J. 25/83, 42/85, 47/87, 5/90, 10/91.

somewhat simplified. There are also some provisions on criminal procedure in the Act on the Fight Against Money Laundering[7] and the Act on the Liability of Legal Persons for Criminal Offences.[8] The Act on European Arrest Warrant[9] sets up the procedure for issuing of European Arrest Warrants, the procedure for transfer of defendants and convicts between the Republic of Slovenia and other EU member states, and the transport of defendants and convicts between EU member states over the territory of the Republic of Slovenia (Art. 1). The Act envisages subsidiary use of CCP for all questions not covered or particularly defined by the Act.

3.4 Special procedure for juvenile offenders

Provisions on special criminal proceedings for juvenile offenders are contained in the Code of Criminal Procedure (articles 451-490). These provisions apply to proceedings involving juveniles who have committed a criminal offence as minors (between the ages of 14 and 18) and have not attained the age of 21 at the time of the proceedings. Cases are tried by a panel of three judges: one professional who specialises in juvenile offenders and two lay assessors who are appointed from among persons who have experience in the education of minors.

The juvenile has not only all the rights guaranteed to the adult offender, but also some additional ones, designed to diminish the possible detrimental effects of the procedure on the juvenile's development. A minor may not be tried *in absentia*. His or her case is always tried separately according to the special procedure for juveniles. The agencies participating in the proceedings have to act with due regard for the sensitivity and personal characteristics of the juvenile, and for the stage of his or her mental development. The social welfare agency takes part in the proceedings, and has the right to become acquainted with the case, attend the trial, and make motions during the proceedings. In case of a criminal offence punishable by up to three years of imprisonment, the state prosecutor may decide not to prosecute if he or she finds that the proceedings are not appropriate in view of the totality of the circumstances. No part of the proceedings or of the judgment may be published in the media without the consent of the court.

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7 O.J. 36/94.
8 O.J. 59/99.
9 O.J. 37/2004.

The juvenile proceeding starts with the preliminary phase, which may be initiated only on the request of the state prosecutor. The request is filed with the juvenile judge. The judge first has to determine the facts and obtain evidence in order to decide whether there are sufficient grounds to proceed. Second, the judge has to determine all the facts necessary for the assessment of the juvenile's mental and personal development and his or her living conditions. When necessary, the juvenile may be questioned with the assistance of a person trained in education. In exceptional cases the judge may order that a juvenile defendant be held in pre-trial detention, but the juvenile has to be kept separated from adult defendants. At the end of the preliminary proceedings the file is sent to the state prosecutor for a decision on whether to file charges or drop the case. A panel of judges decides the case at a panel session or at a main hearing, depending on the severity of the sentence proposed by the state prosecutor. The public is always excluded from the hearing and the main hearing. All other rules concerning the trial and legal remedies are the same as in proceedings against adult offenders.

4. The court system and the enforcement of criminal justice

4.1 A brief history of the statute on the organization of the court system

The judicial system is regulated by the Constitution and special laws concerning the judiciary: the Act on Courts (the main act, enacted in 1994, which provided the basis for major reorganisation of the court system in 1995), the Judicial Service Act and the Constitutional Court Act. (For further details, see section 6.5, below.)

4.2 Official language and translations

The official language of all of the codes is Slovenian. Only the Constitutional Court Act has been translated into English.

4.3 Statutes regulating the organization of the police, the bar, the prison and the probation agency

The statutory basis for police activity[10] is provided by the Police Act.[11] The Act on the Implementation of Penal Sanctions[12] regulates the enforcement of penal sanctions. The Attorneys Act[13] regulates the Bar.

10 Since the new Act on the Police has been adopted (in 1998) the term "police" replaced the old expression "internal affairs officers" still found in the CCP.
11 O.J. 49/98.
12 O.J. 22-973/2000.
13 O.J. 18-817/93 and 24-1465/96.

5. The fundamental principles of criminal law and procedure

5.1 The fundamental principles of Slovenian substantive criminal law

The *principle of legitimacy* and the *principle of the minimum use of repression* proclaim that the repressive means of criminal law – the ultimate power to which society can turn – may only be used when justified in the framework of respect for and protection of basic human rights. According to these principles the repressive means of criminal law is to be used sparingly, i.e., as *ultima ratio*. These principles are reflected first of all in various constitutional provisions that declare Slovenia to be a democratic state governed by the rule of law and based on the guarantee and protection of human rights and liberties. The principles of legitimacy and the minimum use of repression bind the legislator in the codification of the specific provisions of criminal law. They also bind various institutions and bodies of the criminal justice system in so far as they provide general guidance for the implementation of criminal law. On the level of the Criminal Code, these principles are reflected in article 2, which is entitled 'Grounds for and limits to criminal law repression': "Defining criminal offences and imposing sentences is justified only when and to the extent that the protection of human life and other basic values cannot be assured otherwise."

The *principle of legality* (or *nullum crimen nulla poena sine lege previa et certa*) as one of the fundamental principles of modern criminal law is guaranteed on the level of the Constitution and the Criminal Code. Article 1 of the CC declares that "No sentence or other criminal sanction shall be imposed on any person for committing an act that did not constitute a criminal offence under the statute prior to being committed and for which a sentence was not prescribed by the statute."

The *principle of humanity* reflects the concern for inherent human dignity and seeks to ensure its respect (as far as possible) on the level of substantive criminal law as well as in criminal procedure. Various constitutional provisions relate to this, including article 17 (the prohibition of the death penalty), article 18 (the prohibition of torture), article 21 (respect for human personality and an individual's dignity in criminal and other proceedings, in the de-

privation of liberty and in the enforcement of sentences), and article 34 (the right to personal dignity and safety).

On the level of substantive criminal law, the principle of humanity is reflected primarily in the area of criminal sanctions (i.e. in various provisions governing the selection and imposition of a sentence). In addition, this principle is reflected in various provisions concerning the enforcement of criminal sanctions. For example article 108 of the Criminal Code states that "Offenders shall be subjected to humane treatment respecting their inherent human dignity as well as their physical and mental integrity." In addition, unjustified methods of treatment are prohibited. Also, various provisions on the effect and duration of the legal consequences of conviction, rehabilitation and erasure of criminal records on the conditions for release of information from the criminal record express the values postulated by this principle (articles 99-105 of the Criminal Code).

The *principle of subjective responsibility or responsibility based on guilt* (*nullum crimen sine culpa*) reflects the fundamental rule that an individual may not be convicted unless he or she not only has committed the forbidden act (*actus reus*) but is also criminally liable. The offender is criminally liable if he or she is sane and had committed the act with intent or negligence (*mens rea*). This negates the possibility of strict (objective) liability or collective liability, neither of which is possible under Slovenian criminal law.

The *principle of the individualisation of criminal sanctions* requires that the sanction imposed is to fit the gravity of the offence, the degree of the offender's criminal responsibility and the personality of the offender (bearing in mind the purpose of the sanction). The individualisation of sanctions takes place on three levels, i.e. on the legislative level, on the level of adjudication and on the level of enforcement of the sentence. On the level of the Criminal Code, the type of punishment and its range are defined for every criminal offence. In the process of adjudication the court sentences the offender within these limits with respect to the gravity of his or her offence and the degree of his or her guilt (article 41(1) of the Criminal Code). The principle of individualisation is in fact nowhere explicitly promulgated in its entirety but nonetheless serves as a rationale for many provisions of the Criminal Code, in particular article 41 (general rules on sentencing), articles 42-43 (mitigation of sentence and its limits), articles 44-45 (discharge of sentence), article 46 (aggravated sentence in cases of recidivism), articles 50-60 (suspended sentence), article 61 (judicial admonition), articles 62-69

(safety measures), and articles 70-94 (educational measures and sentences for juvenile offenders).

Individualisation on the level of enforcement is important in particular in case of imprisonment and also in the execution of safety and educational measures (in the case of minors).

5.2 The classification of offences

Slovenian criminal law has only one category of criminal offences. It does not classify offences into various groups along the lines of, for example, the French *crimes, delicts* and *contraventions.* It is true that apart from criminal offences there are administrative offences, but these are subject to the special law on administrative offences, which is a related but separate branch of law and is not part of the criminal law. Criminal law and the law on administrative offences together form what the Slovenian doctrine calls "criminal law" in the broader sense (*kaznovalno pravo*).

5.3 Juveniles and adult offenders

Offenders can be divided into five categories:

1) *Children* below the age of 14 may not be held criminally liable (article 71 of the Criminal Code).
2) Juveniles who at the time of the commission of an offence had reached the age of 14 but not yet 16 (*minors*) are criminally liable, but only educational measures may be applied. Safety measures (with the exception of a prohibition to engage in certain occupations) may also be ordered.
3) Juveniles who at the time of the commission of an offence had reached the age of 16 but not yet 18 (so-called *"older juveniles"*) are criminally liable. In general educational measures may be applied, but in exceptional cases the court may impose juvenile detention or a fine. In addition a driving license may be revoked and banishment from the country may be imposed as accessory sentences. Also all safety measures except for a prohibition to engage in certain occupations may be ordered.
4) In case the offender is a so-called "*young adult"*, i.e. he or she has committed an offence as an adult but has not yet reached the age of

twenty-one by the end of the trial, the court may (bearing in mind the circumstances of the case) instead of imposing an imprisonment sentence, order that he or she be placed under the supervision of the social services or may impose any institutional measure (these two are educational measures primarily reserved for juveniles) (cf. article 94 of the Criminal Code).

5) *Adult offenders*.

5.4 Strict liability on the basis of the Criminal Code

Strict liability is not recognized in Slovenian criminal law.

5.5 Strict liability outside of the Criminal Code

As noted above, strict liability is not recognized in Slovenian criminal law.

5.6 Corporate responsibility

Article 33 of the new Slovenian Criminal Code of 1991 introduced the notion of criminal responsibility of legal persons only in a general way. According to this provision a legal person is criminally liable for offences which the offender commits in its name, on its behalf or in its benefit. Details regarding this responsibility were issued in 1999 by a special Law on the responsibility of legal persons for criminal offences.[14] Apart from regulating the general and special part of the substantive provisions, this law also regulates some specific issues of criminal procedure in these cases. The responsibility of legal persons is accessory in nature.

14 O.J. 59/99.

5.7 Grounds for justification

Under Slovenian criminal law an act that would normally constitute an offence is not an offence if it is legally justified. The general grounds for justification (*izključitev protipravnosti*) under Slovenian criminal law are:

a) *Self-defence*: defence that is absolutely necessary for the perpetrator in order to avert an immediate and unlawful attack on himself or herself or on any other person. In the event the perpetrator acts beyond the limits of justifiable self-defence, his or her sentence may be reduced, while if he or she has acted in such a manner due to great excitement or fright provoked by the attack, the sentence may be waived (article 11 of the Criminal Code).

b) *Necessity*: this covers situations in which the perpetrator has committed an act that otherwise contains all the elements of a criminal offence but was required in order to avert an immediate threat to himself or herself or to any other person which he or she has not caused himself or herself and which could not have been averted in any other way, provided that the harm thus incurred does not exceed the harm which threatened him or her (article 12 of the Criminal Code).

c) *Duress*: an act committed under coercion or threat which the perpetrator was not able to withstand is not a criminal offence (article 13 of the Criminal Code)

d) *De minimis* offence: an act that contains all the elements of the criminal offence but is of low significance. An act or conduct is deemed to be of low significance when the danger thereby involved is insignificant, owing to the nature or gravity of the conduct; the fact that the harmful consequences are insignificant or do not exist; the circumstances in which the conduct was performed; the low degree of the criminal liability of the perpetrator; or the personal circumstances of the perpetrator (article 14 of the Criminal Code).

Apart from these general grounds for justification which are specifically defined in the Criminal Code, *other grounds* exist that may provide justification for a specific act or conduct that would otherwise be a criminal offence. The potential special grounds for justification most frequently mentioned in the literature and jurisprudence are the consent of the injured party, self-in-

flicted injury, medical/surgical intervention, sports injuries, performance of an official duty, and command responsibility. These grounds for justification may or may not be relevant in specific cases and concerning different criminal offences. Many aspects of these grounds for justification are theoretically disputed.

5.8 Time limits that bar prosecution

Unless otherwise provided in the Criminal Code, criminal prosecution is barred within the following time limits:

a) twenty-five years from the commission of an offence for which a prison sentence of thirty years may be imposed by the statute;
b) fifteen years from the commission of an offence for which a prison sentence exceeding ten years may be imposed;
c) ten years from the commission of an offence for which a prison sentence exceeding five years may be imposed;
d) five years from the commission of an offence for which a prison sentence exceeding one year may be imposed;
e) three years from the commission of an offence for which a prison sentence of up to one year or a fine may be imposed

Regardless of the above provisions, in case of offences against sexual integrity and offences against marriage, family and youth committed against a minor, criminal prosecution is not barred until the victim has reached the age of twenty-three (article 111 of the Criminal Code).

If more than one sentence is prescribed for a criminal offence, the time limit referring to the most severe punishment applies.

Other provisions of the Criminal Code prescribe the interruption and suspension of these time limits (article 112), time limits that bar the enforcement of the sentence and their interruption (articles 113 and 115) and time limits that bar the enforcement of accessory sentences and safety measures (article 114). Article 116 provides in particular that genocide and war crimes do not fall under the statute of limitations. This is the case also in respect of other offences that, under international agreements, have no time limits that bar prosecution.

5.9 The structure of the Criminal Code

The Slovenian Criminal Code is divided into two parts, with a total of 36 chapters. The general part is contained in articles 1–126 and the special part in articles 126–396. The division of the Criminal Code by chapters is the following:

General part

Chapters		Articles
1)	Fundamental provisions	1-6
2)	Criminal offence and criminal liability	7-33
3)	Sentences	34-49
4)	Admonitory sanctions	50-61
5)	Safety measures	62-69
6)	Educational measures and sentences for juveniles	70-94
7)	Confiscation of the proceeds of crime	95-98
8)	Legal consequences of conviction	99-101
9)	Rehabilitation, annulment of conviction and conditions for release of information from the criminal record	102-105
10)	Basic provisions on the enforcement of criminal sentences	106-110
11)	Statute of limitations	111-116
12)	Amnesty and pardon	117-119
13)	Applicability of the Criminal Code	120-125
14)	Definitions of statutory terms	126

Special part

15)	Offences against life and limb	127-140
16)	Offences against human rights and liberties	141-160
17)	Offences against voting rights and elections	161-168
18)	Offences against honour and reputation	169-179
19)	Offences against sexual integrity	180-187
20)	Offences against public health	188-197
21)	Offences against marriage, family and youth	198-204
22)	Offences against employment relations and social security	205-210
23)	Offences against property	211-230
24)	Offences against economy	231-255
25)	Offences against legal transactions	256-260
26)	Offences against official duties and public authorisations	261-272

5.10 Legal definitions of selected criminal offences

a) *Murder (intentional killing, intentional homicide):* "Whoever takes the life of another human being shall be punished by imprisonment for not less than five years" (article 127(1) of the Criminal Code).
   Murder is committed in aggravating circumstances if:
   – it is committed in a cruel or perfidious manner;
   – it is committed out of greed, in order to commit or conceal another criminal offence, out of unscrupulous vengeance or from other base motives;
   – it is committed against an officer or member of the military safeguarding public or State security, public order, pursuing an offender or keeping a person in custody, or against the investigating judge or the judge at a trial, a state prosecutor or his or her representative in the procedure against criminal association;
   – it is committed by two or more persons colluding with the intention of committing murder (article 127(2) of the Criminal Code).

b) *Robbery:* "Whoever, by using force against another person or by threatening another person with an imminent attack on life or limb, takes the movable property of another with the intention of unlawfully appropriating it, shall be sentenced to imprisonment from one to ten years" (article 213 of the Criminal Code).

Robbery is committed in aggravating circumstances if:

- the stolen property is of high value and if the offender's intention was to appropriate the property of such value;
- it is perpetrated by two or more persons (article 213(2-3) of the Criminal Code).

c) *Assault* (ordinary, simple): An offence directly corresponding to the English concept of "assault" does not exist in Slovenian criminal law. The nearest similar offences would be:

- *Minor bodily harm*: "Whoever inflicts bodily harm on another person resulting in the temporary weakness or impairment of an organ or part of his body, his temporary inability to work, the impairment of his looks or temporary damage to his health shall be punished by a fine or by imprisonment for not more than one year" (article 133(1) of the Criminal Code).
  This offence is committed in aggravating circumstances if the injury has been inflicted by means of a weapon, a dangerous implement or any other instrument capable of causing serious bodily harm or grave damage to health (article 133(2) of Criminal Code).
- *Aggravated bodily harm*: "Whoever inflicts bodily harm on another person or damages his health to such an extent that this might place the life of the injured person in danger or cause the destruction or permanent serious impairment of an organ or part of the body, the temporary serious weakness of a vital part or organ of the body, the temporary loss of his ability to work, the permanent or serious temporary diminution of his ability to work, his temporary disfigurement, or serious temporary or less severe but permanent damage to the health of the injured person, shall be sentenced to imprisonment for not less than six months and not more than five years" (article 134(1) of the Criminal Code).
  This offence is committed in aggravating circumstances if the injury results in the death of the injured person (article 134(2) of the Criminal Code).
- *Grievous bodily harm*: "Whoever inflicts bodily harm on another person or damages his health so gravely that this results in a risk to the life of the injured person, the destruction or substantial permanent impairment of any vital part or organ of the

body, permanent loss of his ability to work, or serious permanent damage to his health shall be sentenced to imprisonment for not less than one and not more than ten years" (article 135(1) of the Criminal Code).

This offence is committed in aggravating circumstances if the injury results in the death of the injured person (article 135(2) of the Criminal Code).

d) *Theft* (ordinary, simple): "Whoever takes another's movable property with the intention of unlawfully appropriating it shall be sentenced to imprisonment for up to three years" (article 211(1) of Criminal Code).

Aggravated theft: "The perpetrator of theft shall be sentenced to imprisonment for not more than five years if the offence was committed:

- by entering into a closed building, room or opening a strong-box, wardrobe, case or other enclosure by way of burgling, breaking into or surmounting larger obstacles;
- by at least two persons who colluded with the intention of committing thefts;
- in a particularly audacious manner;
- with a weapon or dangerous implement which was intended for use in attack or defence;
- during a fire, flood or similar environmental catastrophe;
- by taking advantage of the helplessness or accident of another person (article 212(1) of the Criminal Code);
- and the stolen property is of special cultural or historical significance or of high value and if the offender's intention was to appropriate such property or property of such value (article 212(2) of the Criminal Code).

This offence is committed in aggravating circumstances if the property was stolen in a way defined in article 212(1) of the Criminal Code and is either of special cultural or historical significance or of high value and the offender's intention was to appropriate such property or property of such value (article 212(3) of the Criminal Code).

6. The organization of the investigation and criminal procedure

6.1 General issues

6.1.1 The main aspects of ordinary criminal procedure

The initiation of the criminal procedure depends on the type of criminal offence in question. Most criminal offences are prosecuted *ex officio*, which means that only the state prosecutor may initiate the procedure. (This applies also to all proceedings regarding criminal offences committed by juvenile offenders.) However, if the state prosecutor finds that there are no grounds to prosecute for a criminal offence *ex officio* he or she has to instruct the injured party within eight days that the injured party may initiate or continue the prosecution by himself or herself.

For some offences, also the victim, functioning as the private prosecutor, may initiate the procedure. Some other criminal offences may be prosecuted only upon the victim's motion to prosecute. The initiator in these latter cases is therefore the victim, and without his or her motion the criminal procedure may not begin. After the victim files a motion for prosecution, the state prosecutor becomes the competent prosecutor, and the victim assumes the role of an injured party in the criminal procedure. Both types of criminal offences are usually the pettiest ones, or ones where the personal element is predominant (e.g. slander and spousal rape).

Slovenian criminal procedure consists of four phases: the pre-trial procedure, the filing of the charges (indictment), the trial and the judicial review procedures (appeal against judgments of the court of first instance and the so-called extraordinary remedies). Pre-trial procedure consists of two parts: preliminary proceedings (with the police as the *dominus litis*) and the investigation phase as the predominantly judicial phase, with the investigating judge in charge.

The criminal procedure usually starts with the filing of a report of an offence to the police or state prosecutor. After the police investigation (usually informal interviews with the suspect and witnesses, the investigation of the scene of the crime, the examination of the real evidence, search of the premises, etc.) the matter is transferred to the state prosecutor. The state prosecutor de-

cides whether there exists well-grounded suspicion (a standard similar to *probable cause*) to call for a formal investigation (in cases of serious or complex criminal offences) or to file the so-called direct indictment (without the investigation phase).

In case the investigating judge starts the investigation, the investigation is conducted with the purpose of gathering evidence for the prosecutor to decide whether to file an indictment or drop the case. The investigating judge, who is bound by the inquisitorial maxim, conducts the investigation at his or her own initiative. In the investigation phase, the investigating judge has most of the investigative powers, although he or she may transfer these to the police for the execution of certain investigative acts. The state prosecutor does not have any investigative powers himself or herself, but he or she may request that the police conduct certain investigative acts.

After the investigation phase is concluded, the file is submitted to the state prosecutor who may decide either to file an indictment or drop the case. After filing the indictment, the defendant or the trial judge may file an objection to the charging document if in his or her view there are no grounds to proceed. The objection is then decided by a panel of three judges (not including the trial judge). When the indictment becomes final the case is submitted to trial.

The trial is organized mostly in the accusatorial manner; however, the court is bound to seek the truth. The trial closes after the pronouncement of the judgment, which can be a finding of guilt, acquittal or rejection of the charge. If there is no appeal, the judgment becomes final in fifteen days after the judgment has been served on the accused in regular proceedings and after eight days after summary proceedings.

The appeal may be filed by the accused, certain of his or her relatives, the state prosecutor and the injured party. The appeal is decided by the court of second instance. The final judgment may also be reviewed, usually by the Supreme Court, through extraordinary legal remedies.

The investigation in preliminary proceedings is primarily conducted by the police; therefore, the police collect most of the evidence. Some of the police investigative acts may be conducted on their own initiative (e.g. investigation of the scene of the crime, identity check, fingerprinting). However, the investigating judge, whose activity is otherwise rather limited in this phase,

has to issue written orders for the police to conduct certain investigative acts encroaching upon the rights and freedoms of citizens (e.g. telephone tapping and search of the premises).

Defendants are to be informed of their rights at the beginning of every formal interrogation (conducted either by the police or by the investigating judge), immediately after they are deprived of their liberty in the preliminary proceedings, and when reasons for suspicion exist that the person being questioned by the police is a suspect in a criminal case.[15] They are to be informed of the offence for which they are charged and of the grounds on which the charges have been brought against them, of their right to an attorney, of the right to remain silent, and of their right not to incriminate themselves or confess guilt.

The general rule states that the defendant and the prosecutor have the status of equal parties. (For example, during the investigation both may propose that certain investigative acts are to be conducted by the investigating judge, both may attend the investigative acts conducted by the investigating judge, and both may produce evidence, produce rebuttal evidence, object to the evidence submitted by the other side, examine the witnesses and experts, and file appeals.) The defendant has the right to confront a hostile witness.[16]

The right to a fair and speedy trial is provided under article 23(1) of the Constitution. The general rule of article 11 CCP provides that it is forbidden to extort a confession or any other statement from the accused by means of threats, coercion or any similar method.[17] Generally speaking, the court may not base its decision on a statement that had been taken without the defendant being informed of his or her rights or without information regarding the rights being noted on the record.

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15 Art. 19 (3) of the Constitution, art. 4 (1), 5 CCP and art. (4) 148 CCP.

16 There are two exceptions to this rule, both added in 1998: (1) protection of the identity of a witness whose life (or the life of his or her close relatives) could be endangered by testifying (art. 240 (5), (6), (7) CCP); and (2) protection of a child victim who is also a witness in cases involving sexual or physical abuse (art. 331 (5), (6), (7) CCP). In the first case the defendant may not discover the identity of the witness, and the examination is conducted by means of certain electronic devices. In the second case only the statement of the child witness given to the investigating judge is read at the trial.

17 Art. 29 (1) (c) of the Constitution: "Any person charged with a criminal offence shall be afforded absolute equality in implementation of the following additional rights:
– the right to have sufficient time and opportunity to prepare his defence;
– the right to be tried in his own presence and to conduct his own defence or to be defended by a legal representative;
– the right to produce all evidence assisting his case;

Defendants have the right to know the content of the charges against them and to examine and copy the files and to inspect items of evidence since the file has been established. Accordingly, they undoubtedly have the right to inspect the file as of the beginning of the investigation phase. In case some formal investigative acts have been conducted before the investigation phase, defendants also have the right to inspect files (e.g. after a search of the premises). Defendants may also inspect the file in the proceedings for deciding on pre-trial detention (since these proceedings are organised in an adversarial manner), which may be ordered before the investigation phase. Defendants may not inspect police records or the file of the state prosecutor. It may generally be said that what is true for the defendant is also true for his or her counsel.

The Constitution provides any person charged with a criminal offence the right to be present when charges against him or her are being considered. However, if a duly summoned defendant fails to appear at the main hearing, the trial court may order that the trial be held *in absentia* under the conditions that his or her presence is not indispensable, that he or she has already been questioned and that his or her defence counsel is present at the trial.[18]

6.1.2 The character of the pre-trial phase

The character of the pre-trial phase depends on the investigation phase in question. During the entire investigation (in broader terms) the investigative powers are monopolised by law enforcement authorities. Private citizens have no investigative powers themselves, which is a clear reflection of the strict inquisitorial principle.

In preliminary proceedings the police may act as an autonomous investigating agent when carrying out so-called informal investigative acts. In this sense, the preliminary proceeding is organized on the basis of the inquisitorial principle. For all the formal investigative acts (e.g. search of the premises and telephone tapping) a written order of the investigating judge is needed, which could be viewed as an accusatorial element limiting the investigative powers of the police. Whenever suspects are deprived of their liberty, they are to be informed of their rights.

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18 Art. 307 (3) CCP.

The investigation phase is basically also organized on the basis of the inquisitorial principle, since the investigating judge has the task of establishing completely and according to the truth the facts relevant for issuing a lawful decision (the inquisitorial maxim). The investigation phase also involves some accusatorial elements. For example, the defendant is presumed innocent, he or she may exercise all of his or her rights, he or she may attend all of the investigative acts conducted by the investigating judge, and may suggest that certain investigative acts be conducted. The whole process of deciding on pre-trial detention is organized in an adversarial manner, with the obligatory presence of the defence lawyer. There are strict rules providing the legal conditions under which the formal investigative acts may be conducted. In case the police do not adhere to those rules the evidence thus gathered is subject to exclusion.

6.1.3 The end of the pre-trial stage

The stage of trial in the narrow sense begins with the prosecutor's submission of the indictment to the court. In the wider sense, the pre-trial stage is deemed to have been concluded when the indictment filed by the competent prosecutor becomes final. After that moment the trial court is seized and preparations for the trial begin.

6.1.4 The character of the trial phase

The trial is organized in an adversarial manner with the (important) exception of the inquisitorial maxim, according to which the court is obliged to seek the truth and may therefore produce evidence.

6.1.5 The role of the investigating judge

The investigating judge has a dual function. Firstly, he or she exercises the investigative function in which he or she collects the evidence for the prosecutor to decide whether to file an indictment or drop the case. The investigating judge therefore has many *ex officio* investigative powers. In the course of his or her investigative duties, the investigating judge interrogates offenders, examines the witnesses and obtains other evidence. The second function, one which has been expanding of late, is the protection of the rights and liberties of the defendant, since more and more of the powers of the investigating judge also concern the issuing of orders (e.g. for searches of the premises

and telephone tapping) on the proposal of the state prosecutor. The investigating judge also decides on pre-trial detention. The investigating judge may never be the trial judge in the same case.

6.1.6 The structure of the Code of Criminal Procedure

The CCP has three major sections: general provisions, the course of the proceedings and special proceedings. The first section has chapters on the following: fundamental principles, jurisdiction of the courts, disqualification of a judge, the state prosecutor, the injured party and the private prosecutor, the defence counsel, submissions and records, time limits, costs, claims for indemnification, rendering and announcing of decisions, service of documents, enforcement of decisions, and various articles defining the meaning of certain legal terms used in the Code.

The second section consists of chapters establishing in detail the course of criminal procedure: the preliminary proceedings (pre-trial procedure, investigation, measures to secure the presence of the accused, acts of investigation, the indictment), the main hearing (preparations for the main hearing, the main hearing, the judgment), the procedure for judicial review (ordinary legal remedies, extraordinary legal remedies), the summary procedure, and the procedure for petty offences. The third section consists of provisions regulating some special procedures connected with criminal procedure (the procedure for the application of safety measures, confiscation of material benefits, the procedure for mutual legal assistance, the procedure for extradition, the procedure for compensation and rehabilitation, and the procedure for the issuing of wanted notices and public announcements).

6.2 Special issues

6.2.1 Brief description of the stages of apprehension, arrest and pre-trial detention and legal prerequisites for the application of apprehension, arrest and pre-trial detention

Article 19(2) of the Constitution establishes the general rule that no person may be deprived of liberty except in such cases, and pursuant to such procedures, as are laid down by statute. The coercive measures in Slovenian criminal proceedings involving deprivation of liberty are arrest, detention and pre-trial detention (remand in custody).

Any person has the right to arrest a person found in the act of committing a criminal offence subject to prosecution *ex officio*. The suspect has to be handed over to the police or the investigating judge immediately. The police may deprive a person of his or her liberty (arrest) in order to bring him or her in, detain him or her or conduct some other activity in accordance with the law. Arrest also includes stop and frisk measures. The police may also arrest a person if there are grounds for pre-trial detention, but are bound to take him or her to the investigating judge without delay.[19]

The police may detain persons found at the scene of crime for up to six hours if such persons may be presumed to be able to supply information relevant for criminal procedure. Exceptionally, the police may detain a person (for up to 48 hours) if there are grounds to suspect that this person has committed a criminal offence subject to state prosecution, if detention is necessary for identification, the checking of an alibi, the collection of information and items of evidence regarding the criminal offence in question, and if grounds for pre-trial detention exist. After six hours a written decision has to be issued for the detainee concerning the grounds on which he or she has been deprived of liberty. The detainee may appeal the decision. After 48 hours the detainee has to be released or sent before the investigating judge for a hearing.

Pre-trial detention may be ordered only when there is well-grounded suspicion (probable cause) that a certain person has committed a criminal offence prosecuted *ex officio* and for one or more of the following reasons:[20]

- the person is hiding, his or her identity cannot be established, or other circumstances exist which point to the risk that he or she will attempt to flee;
- there are grounds to believe that he or she will destroy the traces of crime, or specific circumstances indicate that he or she will obstruct the criminal procedure by influencing witnesses or accomplices; or
- the seriousness of the criminal offence, the way in which the criminal offence was committed, the personal characteristics of the person in question, or any other special circumstances give rise to con-

19 Art. 157 (1) CCP. Police may detain a person who disrupts or threatens public order for 24 hours if order cannot be restored otherwise and/or if the disruption cannot be prevented otherwise. A person handed over to the police by foreign law enforcement authorities who is to be handed over to a competent authority may only be detained for 48 hours (art. 43 (1), (2) of the Police Act).

20 The general provision is article 20 of the Constitution and a more specific provision is article 201 CCP.

cern that he or she will repeat the criminal offence, bring to completion an attempted criminal offence or commit the criminal offence that he or she is threatening to commit.[21]

The investigating judge orders pre-trial detention upon the request of the state prosecutor.[22] The hearing is organized in an adversarial manner.

The detainee may remain in pre-trial detention for a maximum of three or six months from the date on which he or she was arrested, depending on the seriousness of the charges. Based on the decision of the investigating judge, the detainee may be held in pre-trial detention for one month. A panel of three judges may extend the detention for two more months. If there are reasonable grounds to believe that the detainee committed a criminal offence subject to five years imprisonment, a panel of judges of the Supreme Court may extend the detention by another three months. Before the filing of a summary charge in summary proceedings, the pre-trial detention may not last longer than fifteen days.

The investigating judge may terminate the pre-trial detention with the consent of the state prosecutor. If they cannot reach an agreement on the issue, a panel of three judges decides the matter. The defendant and his or her counsel may request a review at any time during the duration of the detention. The panel of judges is also bound to review the matter every two months in order to determine whether grounds for the remand in pre-trial detention still exist. In case of a judgment by which the defendant is found guilty, the trial court has to deduct the entire period spent in pre-trial detention from the sentence.

6.2.2 Other coercive measures

Another form of coercive measures is so-called special operative methods and means. Special operative methods and means are investigative acts that may yield results that are admissible as evidence in court (articles 150-154 CCP). They may be conducted only upon the written order of the investigat-

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21 In the summary proceedings before the district court, a person may be placed in pre-trial detention if there is well-grounded suspicion (probable cause) that he or she has committed a criminal offence liable to State prosecution or one prosecuted upon a motion in existence of one or more of the following circumstances: he or she is hiding, his or her identity cannot be ascertained or if other circumstances point to an obvious risk of flight;

22 The general provision is article 20 (1) of the Constitution and a more specific provision is article 201 (1) CCP.

ing judge, when strict standards of proof that certain illegal activity is being conducted exist and only for an offence that is listed. The legal provisions regarding special operative methods and means were amended in 1998, after the Constitutional Court annulled earlier provisions on special operative methods and means.[23] The Constitutional Court had deemed that these earlier provisions were not in line with the standard demanded by the constitutional rights of the accused (*inter alia*, the standard of proof was too low, and the requirement of an order issued by the investigating was not sufficiently specific).

The following special operative methods and means can be used: the taping and recording of telecommunications, inspection of letters and other consignments, inspection of the computer system of a bank or similar institution, and the tapping of a telephone with the consent of at least one of the parties involved. These measures may be conducted when there is a well-grounded suspicion[24] that a certain person has committed, is committing, is preparing to commit, or is organizing the commission of certain criminal offences[25] and upon the existence of well-grounded suspicion that certain communications devices or a computer system are being used while preparing or committing one of the criminal offences on the list. Furthermore, there is the condition that it may be reasonably concluded that evidence may not be discovered by using other (less invasive) measures or if their discovery in some other way could threaten life or health. Tapping and surveillance of the premises with the use of technical devices for documenting and if necessary with the right to access the premises may be ordered in the existence of stricter conditions.

Special operative methods and means are ordered by the investigating judge in writing upon the justified proposal of the state prosecutor. Exceptionally, special operative methods and means may be ordered orally by the investigating judge under strict conditions provided by the law. In such cases, a

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23 Constitutional Court decision U-I-25/95, which annulled the earlier articles 150 and 156.

24 The legislator introduced the new standard of proof, "well-grounded reasons for suspicion," which is somewhere between the lowest standard of "reasons for suspicion" (necessary e.g. for the beginning of the preliminary proceedings) and the standard of "well-grounded suspicion" (necessary for the beginning of the investigation phase or pre-trial detention).

25 These are: unjustified acceptance of gifts (article 247 CC), unjustified giving of gifts (article 248 CC), money laundering (article 252 CC), acceptance of a bribe (article 267 CC), giving of a bribe (article 268 CC), undue influence (article 269 CC), criminal association (article 297 CC), or another criminal offence punishable by eight or more years of imprisonment.

written order has to be issued within twelve hours after the oral order has been given and it has to specify the reasons why the order was given orally. Special operative methods and means may be ordered for a maximum duration of one month. Upon well-founded reasons the order may be prolonged for a month at a time, not exceeding a maximum duration of six months. If special operative methods and means were conducted without the written order of the investigating judge or in violation of the issued order, the court may not base its decision on any evidence obtained in this way.

The police may conduct a sham purchase or sham acceptance or giving of gifts, or a sham acceptance or giving of a bribe (entrapment; article 155 CCP). The police may apply such measures on the basis of a written order by the state prosecutor in the existence of a well-justified belief that a certain person is involved in criminal activity specified on a list of offences.[26]

6.2.3 The decision on the application of pre-trial detention

The investigating judge orders pre-trial detention upon the request of the state prosecutor.[27] The hearing is organized in an adversarial manner.

6.2.4 The maximum term of pre-trial detention

The detainee may be kept in pre-trial detention for a maximum of three or six months from the date on which he or she was arrested, depending on the seriousness of the charges. Based on the decision of the investigating judge, the detainee may be held in pre-trial detention for one month. A panel of three judges may extend the detention for two more months. If there are reasonable grounds to believe that the detainee committed a criminal offence subject to five years imprisonment, a panel of judges of the Supreme Court may extend the detention by another three months. Before the filing of a summary charge in summary proceedings, the pre-trial detention may not last longer than fifteen days.

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26 See footnote 20.
27 The general provision is article 20 (1) of the Constitution and a more specific provision is article 201 (1) CCP.

6.2.5 Review of the decision to hold a suspect in pre-trial detention

The investigating judge may terminate the pre-trial detention with the consent of the state prosecutor. If they cannot reach an agreement on the issue a panel of three judges decides the matter. The defendant and his or her counsel may request a review at any time during the duration of the detention. The panel of judges is also bound to review the matter every two months in order to determine whether grounds for the remand in pre-trial detention still exist. In case of a judgment by which the defendant is found guilty, the trial court has to deduct the entire period spent in pre-trial detention from the sentence. The so-called extraordinary legal remedy "request for the protection of legality", which is otherwise reserved for the final judgment, may be filed at the Supreme Court in respect of a decision on pre-trial detention.

6.2.6 Deduction of pre-trial detention from the sentence

In case of a judgment by which the defendant is found guilty, the trial court has to deduct the entire period spent in pre-trial detention from the sentence.

6.2.7 General legal remedies against a decision by the court of first instance

The general legal remedy is an appeal against the judgment of the court of the first instance. The appeal may be filed by the accused, the authorised prosecutor, the defence counsel or the injured party. An appeal in support of the defendant may also be filed by his or her spouse or domestic partner or his or her closest relatives.

The judgment may be challenged on the grounds of: (1) substantial violation of provisions of criminal procedure, (2) violation of criminal law, (3) erroneous or incomplete determination of the factual situation, and (4) on the account of the decision on criminal sanctions, confiscation of property benefits, costs of criminal proceedings, indemnification claims and the publication of the judgment in the press or on the radio or television. Depending on the reasons for the appeal, the court of appeals may dismiss an appeal as belated or inadmissible, reject an appeal as unfounded, annul the judgment and return the case to the court of first instance for retrial, or modify the judgment.

6.2.8 Proceedings in the absence of the defendant

The Constitution provides that any person charged with the criminal offence has to be afforded the right to be tried while present. However, if a duly summoned defendant fails to appear at the main hearing, the trial court may order that the trial be held in his or her absence under the conditions that his or her presence is not indispensable, that he or she has already been questioned, and that his or her defence counsel is present at the trial.

6.2.9 The main rules of evidence

There are no specific rules as to what may be admitted as evidence in court. The general orientation of the CCP is the so-called principle of the free evaluation of evidence. Evaluation of the evidence is the prerogative of the court. Because of the mixed (accusatorial / inquisitorial) nature of the procedure, the court also has the responsibility to seek the truth in the criminal case and is therefore responsible for the outcome of the criminal case and for discovering evidence that reveals the truth. There is no special law of evidence as is known in countries with a common law tradition. However, this does not of course mean that Slovenian law contains no rules on evidence.

Evidence may be gathered in different ways: directly by the police or the judiciary (investigation of the scene of the crime, reconstruction, searches etc.) or through other means (witnesses, experts, physical evidence etc.). Some of the investigative acts may be conducted without any special procedure provided for in the legislation, and the evidence obtained in such a manner is admissible at the trial (e.g. investigation of the scene of the crime, and the fingerprinting of a person).

If evidence is obtained in a manner that could invade privacy or infringe other rights of citizens, it has to be obtained in a strict way provided by the law. This is exemplified by a special group of investigative acts, so-called special methods and measures (e.g. telephone tapping and inspection of letters). Special operative methods and means are investigative acts that may yield results that are admissible as evidence in court. They may be applied only upon the written order of the investigating judge, when strict standards of proof that certain illegal activity is being conducted have been met and only for specific offences. Furthermore, a personal search and a search of the premises may be conducted by the police only upon the written order of the investigating judge.

Earlier CCP provisions regarding the suspect's rights in the preliminary procedure have been severely criticised during the last decade. The police had a right to gather information from citizens, including the suspects, without an authorisation to formally question them. As a result, the suspect could de facto be interrogated without being informed of his or her status and without being aware of his or her rights. The legislator tried to remedy this situation by mandatory exclusion of such a statement by the investigating judge in the investigation phase. Although all the evidence thus obtained had to be excluded from the file in the investigation phase and could not be produced as evidence in court, these provisions have been a target of criticism both for violating the suspect's rights and for prolonging the proceedings. Firstly, the investigating judge became acquainted with the suspect's statements given to the police, and therefore the exclusion of those statements was not an effective remedy (psychological contamination). Secondly, in order to obtain the admissible evidence, the investigating judge had to conduct the act of interrogation once again, this time adhering to all of the procedural rules (cf. the *Miranda warning*). Finally, the Constitutional Court found the regime for gathering the information from the suspect by the police and the ineffective exclusionary rules unconstitutional.[28]

As a result, the CCP was amended in June 2003 to provide that the police may engage in so-called informal gathering of information from citizens. When suspicion existed or arose in the process of the gathering of the information that a certain person had committed a criminal offence, the police have to inform this person, who then becomes a suspect and has certain rights. The suspect has to be informed of the offence with which he or she is charged, of the grounds on which the charge has been brought against him or her, of his or her right to an attorney, of the right to remain silent and that he or she is not obliged to incriminate himself or herself or to confess guilt. In case the suspect requests the presence of an attorney in the questioning, the police conduct the formal interrogation. The evidence thus obtained may be produced in court. If the suspect does not ask for an attorney, he or she is questioned by the police and a record of that questioning is made. Such a record may not be produced as evidence in court, but may be used by the police and the investigating judge for further inquiries. All of the statements made by a person before becoming a suspect have to be excluded from the file by

28 Constitutional Court decision U-I-92/06-27.

the state prosecutor. The formal act of interrogation or examination may also be conducted in the investigation phase (by the investigating judge) or during the trial.

As far as witnesses are concerned, they may be questioned by the police during the preliminary procedure, by the investigating judge during the investigation phase or by the parties or court during the trial. A general duty to testify exists, with the only exception of so-called privileged witnesses: some persons may not be examined as witnesses at all (e.g. the defence counsel on matters confided to him or her by the accused) and some persons may exercise their right not to testify (e.g. a spouse, close relatives, members of certain professions if they are bound by the duty to maintain the confidentiality of what they have learned in the course of exercising their profession (e.g. psychiatrists)).

Slovenian law provides for two types of sanctions in respect of illegally obtained evidence: (1) a milder one stating that the court may not base its decision on certain evidence or on evidence obtained in a certain way, and (2) the strict exclusion of evidence.

The investigating judge has to exclude *ex officio* or upon the motion of the parties at the latest at the end of investigation the following evidence: (1) statements of the suspect or the accused made without him or her being informed of his or her rights or without the possibility to exercise them, (2) any statements extorted by force or by other prohibited means, (3) evidence obtained by violating the rules of procedure when conducting a search of the premises, a search of the person or special methods and measures, (4) any information which has been given to the police officers in the preliminary proceedings by persons who may not be questioned as witnesses, who have exercised their right not to witness, and persons who under the CCP may not be appointed as experts.

In 1994, article 18(2) CCP was drafted to introduce a version of the "*fruit of the poisonous tree doctrine*" providing that "The court may not base its decision on evidence obtained in violation of human rights and basic freedoms provided for by the Constitution, nor evidence obtained in violation of the provisions of criminal procedure and which under the present Code may not serve as the basis for court decision, or which were obtained on the basis of such inadmissible evidence."

A violation of any of the rights mentioned above may also result in an appeal against the judgment passed in the first instance. If the court of appeals finds the appeal founded it returns the case for retrial, excluding the illegally obtained evidence.

6.3 The organization of the detection and investigation of offences

6.3.1 Composition and internal organization of the national agency responsible for the detection and investigation of criminal offences

The police are organised in a centralised and hierarchical manner and are a constituent body of the Ministry of the Interior. The Ministry of the Interior sets fundamental guidelines for the operation of the police force. The police are in particular responsible for the protection of the safety of persons, the prevention and the investigation of criminal offences and misdemeanours, the maintenance of public order, supervision and direction of traffic, and the protection of State borders.

The police have an internal hierarchical system. This consists of the general police directorate under the Director General, other police directorates (overseen by directors) and police stations (overseen by the station commanders). The Director General of the Police is appointed by the Government on the recommendation of the Minister of the Interior. The higher-level police unit directorate may take over a task under the jurisdiction of a lower-level unit and the lower level head of the unit is responsible to the higher-level one.

6.3.2 Supervision and control of the detection and investigation of offences

The investigative activity of the police is firstly limited by the investigating judge who issues orders for investigative acts that may infringe upon human rights and liberties. The Code of Criminal Procedure provides for the right of any person against whom an informal police action in preliminary proceedings has been undertaken to lodge a complaint with the competent state prosecutor. Inside the Ministry of Interior there is a special Office for Police Guidance and Control, which is responsible for the supervision of all police

activities. Its special task is the supervision of respect for human rights and liberties in police procedures. The police force contains a special commission (including members representing the public interest) that handles complaints lodged by citizens against the police. Also a special parliamentary commission has been set up to supervise some of the most sensitive police activities (e.g. the tapping of telephones).

6.3.3 Control of the police by the prosecution agency in the investigation of specific offences

The connection between the police and the state prosecutor is loosely defined under the Code of Criminal Procedure, which stipulates as one of the basic rights of the state prosecutor the "directing of preliminary criminal proceedings." In the exercise of his or her powers, the state prosecutor co-operates with other investigating authorities, directs their work and takes steps necessary for the detection of offences and offenders. A complaint that was filed with the police should immediately be submitted to the state prosecutor. The law, therefore, vaguely suggests that there should be constant co-operation between the police and the state prosecutor during the preliminary proceedings.

In December 2001 an agreement was signed between the police and the State Prosecutor's Office, specifying the forms of co-operation between the two institutions. The state prosecutor may demand that the police conduct certain investigative acts. In practice, however (except in complicated cases), the police usually conduct the investigation at their own initiative without any "directing" by the state prosecutor for about one month before submitting the complaint or the results of the investigation to the state prosecutor. In more complicated cases co-operation between the state prosecutor and the police is more common.

Other investigative authorities mentioned above and all State agencies and organizations with public authority have the duty to report to the state prosecutor any criminal offences liable to public prosecution of which they have been informed or which have been brought to their notice in some other way. In such a case they may request that the police conduct an investigation according to their powers provided for by law. The state prosecutor may also request that other investigative authorities (e.g. inspections) conduct an in-

vestigation according to their powers, if there is a suspicion that a criminal offence has been committed which is connected with their competence.

6.3.4 Special law enforcement agencies

Slovenia does not have any special law enforcement agencies. However, a special governmental Office for Money Laundering Prevention was established in 1995 as a constituent part of the Ministry of Finance. It has some investigative authorities and may use them in case of criminal offences concerning money laundering.

6.4 The organization of the prosecution agency

6.4.1 The composition and internal organization of the national prosecution agency

The most important legal acts regulating the work of the State Prosecutor's Office are the Constitution, the Code of Criminal Procedure, the Office of the State Prosecutor Act,[29] and in part, the Judicial Service Act.[30]

The Office of the State Prosecutor is organised hierarchically. The supreme office is the State Prosecutor's Office (located in Ljubljana, the capital of Slovenia) which is headed by the Attorney-General. On the lower level there are several District (regional) State Prosecutor's Offices.

All State Prosecutor's Offices send an annual report to the State Prosecutor's Office. All prosecutors are bound by the general instructions issued by the head of the higher-level Prosecutor's Office. The Attorney-General also issues general instructions on the activities of the state prosecutors relating to the uniform application of the law and to the coordination of prosecution policy. The important rule indicating the internal hierarchical structure is the right of the superior state prosecutor to take over an individual matter or task for which a lower-level state prosecutor is otherwise competent. Higher State Prosecutor's Offices conduct inspections of the operations of the lower-level Prosecutor's Offices.

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29 O.J. 63-2169/94.
30 O.J. 19-781/94, 8-383/96.

6.4.2 The main duties and powers of the prosecution agency in criminal cases

The basic duty of the state prosecutor is the prosecution of the perpetrators of criminal offences that are subject to prosecution *ex officio*. The state prosecutor may take the necessary steps concerning the detection of criminal offences and the tracing of the offenders, request the investigation, file an indictment, file appeals and apply the so-called extraordinary legal remedies against judgments.

6.4.3 The independence of the prosecution agency

The State Prosecutor's Office is an independent State agency. State prosecutors are independent in the performance of their duties in that they do not seek or take any instructions from the Government. One of the expressions of their independence is the fact that the term of office is permanent. They are not responsible to the executive power, nor may the executive power direct their work or give any guidelines for their work. In this sense the prosecution agency is similar to the judiciary, since state prosecutors are bound only to perform their tasks according to the Constitution and the law.

Otherwise, the status of the state prosecutor is somewhere between the executive and the judicial branch. State prosecutors are appointed by the Government on the proposal of the Minister of Justice, except for the Attorney-General who is appointed by the National Assembly. State Prosecutor's Offices report to the Ministry of Justice and to the National Assembly.

6.4.4 Closing a criminal case

Following a 1994 amendment, the state prosecutor may, with the consent of the accused and the injured party, decide to refer petty cases (criminal offences punishable by a fine or a prison term of up to three years) to one of two forms of alternative procedures (diversion). These two forms are mediation and deferment of prosecution, both of which may take place before the filing of the indictment. If diversion is concluded successfully, the injured party does not have the right to continue (or enter) the proceedings instead of the state prosecutor. The injured party is to be informed of this before consenting to diversion proceedings.

6.5 Organization of the courts

6.5.1 The composition and the internal organization of the court system

With the changes in the political system and the new constitution in 1991, a clear system of separation of state powers was established in Slovenia, where the judiciary plays its role as one of three independent branches of government.

The organization of the court system is provided in the Act on Courts.[31] The court system in Slovenia consists of three instances. In the first instance, criminal cases may be tried either by regional courts or by district courts. In regional courts, cases involving criminal offences punishable by a fine or imprisonment for up to three years are heard by a single judge following the rules on summary proceedings. The most prominent features of summary proceedings are identical to those in regular proceedings, with the exception that summary proceedings do not contain the investigation phase. Instead, only certain investigative acts are conducted, when necessary.

District courts try cases involving criminal offences punishable by fifteen or more years of imprisonment before panels of five judges (two professional and three lay judges), and cases of criminal offences punishable by three to fifteen years of imprisonment before panels of three judges (one professional or presiding judge and two lay judges). The same applies to special cases of criminal offences committed by the press or other mass media.

The *dominus litis* of the investigation phase in district courts is the investigating judge. The investigating judge has a dual function. Firstly, the investigating judge exercises the investigative function in which he or she collects the evidence for the prosecutor to decide whether to file an indictment or drop the case. The second function, one which has been expanding of late, is the protection of the rights and liberties of the defendant, since more and more of the powers of the investigating judge also concern the issuing of orders (e.g. searches of the premises and telephone tapping) on the proposal of the state prosecutor. The investigating judge also decides on pre-trial detention.

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31 O.J. 19-779/94 in 45-2161/95.

In the second instance cases are heard by higher courts (appellate courts), where a panel of three professional judges decides on appeals against decisions of the regional and district courts.

Article 160 of the Constitution provides that the Constitutional Court decides (*inter alia*) upon matters relating to the conformity of statutes with the Constitution and matters relating to complaints of breaches of the Constitution involving individual acts infringing human rights and fundamental freedoms. Any person who considers that his or her rights and freedoms have been violated through the criminal proceedings may file a complaint of breach of the Constitution to the Constitutional Court after the final judgment has been passed and all other legal remedies have expired.

6.5.2 The main rules on jurisdiction

The court in the territory of which a criminal offence was committed or attempted has jurisdiction. If the criminal offence was committed in the territory of different courts or the territory can not be established, the court that had first instituted proceedings is the competent court. In case the territory in which the criminal offence was committed or attempted is not known or is outside of the Republic of Slovenia, the court in the territory of which the accused permanently or temporarily resides is the competent court. If the residence of the accused cannot be established, the court in the territory of which the accused was apprehended is competent. If it is not possible to determine which court has territorial jurisdiction in a specific case, the Supreme Court designates one of the courts trying criminal matters as the competent court.

6.5.3 Participation of lay persons

Lay persons participate in the judicial process as lay judges in the district courts, as members of a panel of three judges composed of one professional judge and two lay judges or as members of a panel of five judges composed of two professional judges and three lay judges. Any person who is a citizen of the Republic of Slovenia, actively speaks Slovenian, is at least 30 years old, has never been found guilty of committing a criminal offence that is subject to prosecution *ex officio* and is healthy and personally suitable for the performance of the duties of the lay judge may serve as a lay judge.

As members of panels of judges, lay judges have the same rights as the presiding (professional) judge except the right to direct the main hearing, which is the sole competence of the presiding judge. The presiding judge has to ensure that a case is elucidated in all its aspects and that the truth is discovered. For this purpose the presiding judge calls on the parties, the expert, attorneys and counsel, and interrogates the defendant and questions witnesses and experts, while the panel decides on the motions of the parties and objections to measures taken by the presiding judge. Every judge in the panel has an equal vote when deciding on the case.

6.5.4 The highest court in criminal matters

According to the Constitution, the Supreme Court is the highest court in the state. In criminal matters it decides on so-called extraordinary legal remedies: (1) a request for the protection of legality (in a panel of five judges), and (2) a request for the extraordinary mitigation of sentences (in a panel of three judges). It also decides on appeals against the decisions of courts of second instance (in a panel of five judges).

A request for the protection of legality against the final decision may be filed by the state prosecutor, the convicted person and his or her counsel on grounds of violation of criminal law, substantial violations of provisions on criminal proceedings, and other violations of provisions on criminal proceedings if such violations affected the lawfulness of a judicial decision. The state prosecutor may submit the request on grounds of any violation of law. The state prosecutor, the convicted person, his or her counsel, and some close relatives may file a request for extraordinary mitigation of punishment. Such a request may be filed against the final decision in case certain circumstances appear after the final judgment has been passed and which would have led to a less severe punishment had it been known to the court before the judgment was passed. When deciding on any of the extraordinary legal remedies the Supreme Court has to limit itself to verifying only those violations that the requested party alleges in the request.

Appeal against the judgment of the court of second instance may be filed at the Supreme Court in the following cases: (1) the court of second instance has passed or confirmed the highest sentence of 30 years of imprisonment, (2) the court of second instance has conducted the main hearing and based its judgment on newly discovered facts, and (3) the court of second instance has

modified an acquittal passed by the court of first instance and rendered a judgment of conviction. The Supreme Court may partly broaden the scope of the appeal by *ex officio* verifying some elements of the fairness of the procedure.

6.5.5 The significance of its precedents

When deciding cases the courts in Slovenia apply legal norms to the facts of the case. For this reason court decisions cannot be used as precedent for other cases. However, decisions of the Supreme Court and sometimes also of the courts of second instance have *de facto* influential impact on lower courts since it is very likely that future decisions of lower courts that might be contrary to a law that has been considered uniform and constant would be annulled by higher courts. Therefore, a *de facto* function of the higher courts is to provide uniform and consistent interpretation of the law.

6.6 The Bar and legal counsel

6.6.1 The legal rights of the Bar during the pre-trial stage

The accused has the right to be assisted by an attorney from the moment he or she has been deprived of liberty, which usually happens in pre-trial proceedings. Article 4 CCP based on article 19(3) of the Constitution, in following a doctrine related to the *Miranda* warnings, provides that the arrested person has to be advised immediately in his or her mother tongue or in a language he or she understands of his or her rights. One of these rights is the right to the assistance of a lawyer of his or her own choosing. A suspect who does not have the means to retain a lawyer may be appointed one at the expense of the State if this is in the interest of justice. Until the Constitutional Court ruling, there was an open question about whether a person who has been deprived of liberty could have a private conversation with his or her lawyer. The ruling states that the right to a confidential relationship between a person who has been deprived of liberty and his or her legal representative is, under the Constitution, the constitutive part of the right to legal assistance rendered by a legal representative.[32]

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32 Constitutional Court decision Up-101/96.

In case the defendant was not deprived of liberty he or she may exercise the right to an attorney without limit from the beginning of the formal criminal procedure, which is the beginning of the phase of the investigation. The defendant may exercise this right already before the beginning of the phase of the investigation when certain coercive measures are being taken against him or her (e.g. search of the premises). The accused may waive the right to an attorney, except in the cases where defence counsel is mandatory.

The question still remains whether a suspect who is being summoned in the preliminary proceedings to the police station for the gathering of information without being deprived of his or her liberty is also entitled to defence counsel and other rights provided by the CCP. It has to be emphasized that the police have no duty to inform the summoned person of his or her rights, not even if he or she is already considered a suspect. Therefore, in case of the informal gathering of information from the suspect by the police, the suspect is not informed of any rights nor of his or her status even though the investigation already might be focused on this person.

6.6.2 The right to counsel

After the beginning of the judicial phase of the investigation the defendant has an unlimited right to be assisted by an attorney. Defence counsel has to be appointed to the accused *ex officio* (mandatory presence of the defence lawyer) in certain cases. The presence of defence counsel is mandatory from the first interrogation on (1) if the defendant is deaf, dumb or otherwise incapable of defending himself or herself efficiently; (2) if criminal proceedings conducted against him or her are for a criminal offence punishable by thirty years of imprisonment; or (3) if he or she was deprived of his or her liberty and taken before the investigating judge.

The presence of defence counsel is mandatory during proceedings for determining whether to place the suspect in pre-trial detention and during the time that he or she is in pre-trial detention. In case the charges have been served on the suspect, he or she is bound to have defence counsel if he or she is accused of a criminal offence punishable by eight years of imprisonment or more. If, in the above-mentioned cases, the accused does not have a lawyer of his or her choosing, one is appointed to him or her *ex officio* by the

court for the further course of criminal proceedings until the judgment becomes final.[33]

The defence counsel has full power to act in the interests of his or her client. The counsel is to be served with all of the documents that are to be served on the defendant. During the investigation he or she has to be informed by the investigating judge of when and where certain investigative acts shall be conducted so that he or she may attend the investigative acts (e.g. search of the premises, and interrogations of the accused and witnesses). The presence of defence counsel is mandatory when the defendant is being interrogated for the first time after being deprived of liberty. What is true for the defendant is also true for his or her counsel. The defence counsel has the right to examine and copy the files and to inspect items of evidence from the moment a motion for criminal prosecution has been made by the competent prosecutor or when some individual investigative acts have been performed by the investigating judge before the investigation. During the trial the defence counsel may question his or her client, examine the witnesses and experts, produce evidence etc. After the judgment has been passed, the counsel may file an appeal, or have recourse to extraordinary legal remedies when the judgment has become final.

6.6.3 The cost of legal aid

If a suspect who has been deprived of liberty does not have the means to retain counsel by himself or herself, the police, upon his or her request, have to appoint one at the expense of the State, if this is in the interest of justice. The payment of legal aid for the defendant depends on (1) whether or not defence counsel was appointed *ex officio* and (2) the sort of judgment passed by the court. In case of an *ex officio* appointment, the State pays all of the expenses until the final judgment has been passed. In case of acquittal all of the expenses are paid by the State. In case of a conviction the offender has to pay the expenses, except in case the payment of the fees would endanger the sustenance of the accused or of persons he or she is bound to support.

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33 If the accused has been sentenced to 30 years in prison, defence counsel shall be appointed for the extraordinary judicial review as well.

6.6.4 Qualifications for entry to the Bar

A lawyer who wants to enter the Bar needs to pass the Bar exam and have at least four years of experience as a practising lawyer and at least one year of practice at an attorney's office. Once a person is registered in the register of attorneys kept by the Slovenian Chamber of Attorneys, he or she has the right to act as an attorney.

6.7 The position of the victim

6.7.1 The legal definition of the victim

The injured party (the victim) is defined as the person whose personal or property rights have been violated or jeopardised.

6.7.2 The role of the victim in pre-trial proceedings

During the investigation, the victim has the right to call attention to all the facts and offer evidence relevant to establishing the commission of a criminal offence, the perpetrator and the property rights claims. However, the victim does not have the right to attend the interrogation of the accused or searches. The injured party may attend the examination of a witness only if the witness is not likely to appear at the main hearing; he or she may attend the investigation of the crime scene and the examination of experts. The injured party may ask questions with the permission of the investigating judge and has the right to inspect the file and physical evidence. However, he or she may be denied this right until he or she has been examined as a witness. The injured party may at all times turn to the presiding judge of the court before which an investigation is conducted in order to complain against irregularities in procedure.

6.7.3 The victim's remedies against a decision not to proceed with a case

The victim does not have the legal remedy to appeal a decision not to proceed with a case. However, in such a case the victim has to be instructed that he or she may start prosecution by himself or herself. Courts apply the same procedure when the state prosecutor abandons prosecution. The injured party in the capacity of prosecutor has the right to continue prosecution within eight days

from the day he or she had been informed about the dismissal of the case. He or she may exercise his or her rights through the service of an attorney. The injured party in the capacity of prosecutor has all the rights of the state prosecutor (except the rights which the state prosecutor has as a State agency) and has the position of an equal party in criminal procedure.

6.7.4 The scope of the right to present civil claims

In the position of the injured party the victim has the right to file a claim for compensation through the criminal proceedings under the condition that the determination of those claims does not significantly protract the criminal procedure. Claims for compensation may consist of a demand for compensation of damage, the recovery of property or the nullification of a legal transaction. The motion has to be made before the end of the main hearing and should be specified and based on evidence proposed in the motion. The injured party may withdraw the motion before the end of the main hearing and seek satisfaction in civil procedure. Once withdrawn, such a motion may not be filed again. A temporary securing of compensation may be adjudicated within criminal proceedings upon the motion of the injured party.

Claims for compensation are decided by the court as a part of the verdict concerning the criminal case that is being tried. If the defendant is found guilty, the court may grant the claim for compensation in full, or it may grant the claim in part and direct the injured party to sue in civil proceedings. If the accused is acquitted of the charges, or the indictment is rejected, or if the court renders a ruling by which criminal proceedings are discontinued, or the charge is rejected, the court instructs the injured party that he or she may satisfy the claim for compensation in civil proceedings. As a result of the *res judicata* effect of a judgment incorporating a decision on compensation, the judgment may be amended only through so-called extraordinary legal remedies, in other words by reopening the criminal proceedings or a petition for the protection of legality.

6.7.5 The victim's right to present criminal charges and/or to be heard on the charges presented by the public prosecutor

The injured party has to be summoned to appear at the main hearing. He or she is subject to legal consequences for not appearing at the trial only to the extent that such absence establishes the *presumptio iuris* that the injured

party does not intend to assume prosecution in case the state prosecutor withdraws the charges. During the trial he or she may attend the main hearing, has the right to produce evidence, pose questions to the witnesses and experts with the permission of the presiding judge, comment on and clarify their depositions and make other motions. The investigating judge and the presiding judge have the duty to inform him or her of these rights. However, there is no sanction for omitting to do so.

6.7.6 The victim's right to an appeal

The injured party has the right to appeal, but only with respect to the court decision on the costs of criminal procedure. Such a provision has long been the target of criticism, since it would be logical that the injured party would have an interest in challenging the court's decision on compensation for injury, or the lack of it. Under the present legislation nobody, not even the injured party, may file an appeal on the grounds of a violation of law concerning the decision on compensation.

6.7.7 Assistance to the victim in claiming compensation from the offender

The victim is not assisted by the State in claiming compensation from the offender.

6.7.8 The victim's right to State compensation

At present, victims have no rights to State compensation in Slovenia.

6.7.9 National and/or local victim support schemes

In all major towns in Slovenia there are centres that offer help to the victims of criminal offences. They are organized as non-governmental agencies fully supported by the State. They offer professional psychological support (individual and support groups), legal information and counselling.

7. Sentencing and the system of sanctions

7.1 The classification of sanctions in the Criminal Code

Slovenian criminal law provides for a plurality of criminal sanctions which should as far as possible make possible the individualisation of sentencing (regarding the principle of individualisation, see chapter 5, above):

1) *Sentences* (imprisonment, a fine, disqualification from driving, and deportation of a foreign citizen)
2) *Admonitory sanctions* (suspended sentence, suspended sentence with custodial supervision, and judicial admonition)
3) *Safety measures* (compulsory psychiatric treatment and custody in a medical institution, compulsory psychiatric treatment in the community, compulsory treatment of persons addicted to alcohol and drugs, a prohibition to engage in certain occupations, revocation of a driver's license, confiscation of objects used for or gained through an offence)
4) *Educational measures* (reprimand, instructions and prohibitions, supervision by a social service, committal to an educational institution, committal to a juvenile detention centre, committal to an institution for physically and mentally handicapped youth).

7.2 Distinctions in the conceptual framework of sanctions

The Criminal Code distinguishes between sentences and measures (see above) and among sentences between *principal* and *accessory* sentences. For example, a term of imprisonment may only be imposed as a principal sentence. A fine may be imposed both as a principal and as an accessory sentence. The disqualification from driving as well as the deportation of a foreign citizen may only be imposed as an accessory sentence to imprisonment, a fine or a suspended sentence. One or more accessory sentences may be imposed alongside the principal sentence (article 35 of the Criminal Code).

7.3 Special sanctions for juveniles

The following sanctions may be imposed on juveniles:

- educational measures (reprimand, instructions and prohibitions, supervision by a social welfare agency, committal to an educational institution, committal to a juvenile detention centre, committal to an institution for physically or mentally handicapped youth), and
- sentences (a fine and juvenile prison).

The age of the offender is the fundamental criterion in the decision of a court whether to impose an educational measure or a sentence. A sentence may be imposed only on an older juvenile (aged 16-18), and only exceptionally. When imposing a sentence the court has to specify why it did not impose an educational measure in the individual case. In addition, the evaluation is also crucial in respect of how intensive care and help are needed for a juvenile to reach a goal – education and re-education.

Data show that in approximately 98% of all cases involving juveniles the courts decide to impose an educational measure. As regards the selection among the six educational measures (one of them - instructions and prohibitions - has eleven different forms), it should be emphasised that for the purpose of educational measures the seriousness of a criminal offence, which is of substantial importance when determining a sentence for adult offenders, as a rule does not influence the selection of an educational measure. The deciding factor is the need established by the court for further education and re-education of a juvenile. The seriousness and nature of a criminal offence are only some criteria in the selection of an educational measure, and their effect is shown only when there is an issue regarding whether a juvenile is to be committed to a juvenile detention centre.

Juvenile prison, as the most severe sanction for juveniles, may be imposed only if two formal conditions are fulfilled:

- the offender is an older juvenile (aged 16-18), and
- the juvenile has committed a serious criminal offence (a criminal offence punishable by five years of imprisonment or more).

In addition the court has to establish a high degree of criminal liability. The court determines the criminal liability of a juvenile by evaluating whether the juvenile was capable of understanding the meaning of his or her act, and whether he or she controlled his or her conduct. Furthermore, the court has to establish whether the juvenile was acting with intent or negligence.

Thereby the court has to consider these capacities as constituent parts of the juvenile's personality.

Notwithstanding the statutory scale of punishment for the offence, the court imposes juvenile prison for not less than six months and not more than five years. For criminal offences for which a sentence of thirty years imprisonment may be imposed (e.g. aggravated murder), the maximum sentence of juvenile prison is ten years.

As shown in Table 5 (see the chapter on statistics) a fine and juvenile prison are rarely used, only in exceptional cases. After the adoption of the new Criminal Code in 1995 the following trends can be seen in the imposing of sanctions on juveniles:

- a decrease in the number of reprimands imposed. According to judges, reprimands have been imposed as an emergency measure, due to the lack of other adequate educational measures;
- distinctive enforcement of a new educational measure (instructions and prohibitions) which after only five years accounts for one fifth of all the sanctions imposed on juveniles,
- with the introduction of instructions and prohibitions, also the use of supervision by a social welfare agency has increased. This measure is often combined with some concrete instructions or prohibitions.

7.4 Special sanctions for civil servants and military personnel

No special sanctions for civil servants, military personnel or other separate professional groups exist in Slovenia.

7.5 Specific sanctions

The system of criminal sanctions in Slovenian criminal law includes four types of criminal sanctions: penalties, admonitory sanctions, safety measures, and educational measures. The penalty system consists of four types of penalties: imprisonment, fines, disqualification from driving, and deportation of foreign citizens. Imprisonment is a principal penalty, while the fine may be imposed as both a principal and an accessory penalty. The disqualification from driving as well as the deportation of foreign citizens may only be

imposed as an accessory sentence to imprisonment, a fine or a suspended sentence.

The last death penalty to be enforced in Slovenia was in 1957, and so it can be said that since then Slovenia has adopted an abolitionist policy with respect to the death penalty. *Capital punishment* was abolished by an amendment to the Constitution in 1989.

Imprisonment is a custodial sentence. Its general minimum is fifteen days and the general maximum is fifteen years. However, imprisonment for 30 years is alternatively prescribed for the intentional commission of the most serious offences (such as murder committed out of greed, genocide, and war crimes against the civilian population). A sentence of imprisonment is always of fixed length; the court establishes this length within the specific minimum and maximum sentence set by the criminal provision for the offence in question.

In addition to imprisonment, compulsory psychiatric treatment and custody in a mental institution is also a *form of deprivation of liberty* (article 64). This measure may be applied only on a perpetrator who commits an offence in a state of highly reduced mental capacity, or in a state of mental incompetence. Although it is pronounced as an independent sanction for mentally incompetent offenders, those offenders whose responsibility is highly reduced are sentenced with a penalty, and the same measure is executed prior to the penalty. This measure is pronounced for an indefinite time. The decision on release from a medical institution is made by the court, which decides after each consecutive one-year period whether further treatment and custody are necessary. (For offenders who are deemed to be mentally incompetent, this measure may not exceed ten years.)

Since 1999, the court may impose a fine in two forms: in daily amounts or in absolute amounts. A fine may be imposed in an absolute amount only if it is not possible to impose it in daily amounts. The general minimum of a fine in daily amounts is five and the maximum is three hundred and sixty daily amounts, except for criminal offences committed out of greed, for which the maximum is one thousand five hundred daily amounts. The court calculates the size of the daily amount by taking into account the offender's daily income computed on the basis of three months salary and other income, as well as with respect to his or her family expenditure. The Criminal Code also determines the lowest and the highest daily amount.

Community service entered the Slovenian legal system in 1995 as an educational measure for juvenile offenders (article 77) and as a form of serving a prison sentence not exceeding three months, when ordered by the court which imposed the sentence in the first instance (article107). However, community service has been used very rarely.

7.6 The conversion of fines into imprisonment

The period of time allowed for the payment of a fine is to be determined in the sentence. This period may not be shorter than fifteen days or longer than three months. In justifiable circumstances the offender may be allowed to pay in instalments, and the period of payment may be extended. In the case of default of payment, a fine may be converted into imprisonment at the rate of one day of imprisonment for two day-fines. The maximum length of converted imprisonment is six months.

7.7 Measures that may be imposed on adults

The criminal code provides for six *safety measures:*

- compulsory psychiatric treatment and confinement in a mental institution,
- compulsory psychiatric treatment in the community,
- compulsory treatment of persons addicted to alcohol and drugs,
- a prohibition to engage in certain occupations,
- revocation of a driver's licence, and
- confiscation.

7.8 General provisions on sentencing

Article 41 of the Criminal Code contains certain general provisions on sentencing. The offender is to be sentenced within the limits provided for such an offence and with respect to the seriousness of the offence and his or her culpability. More specifically, the court is to consider all circumstances which have an influence on the assessment of the sentence (the mitigating and aggravating circumstances): the degree of the offender's culpability, the motives for which the offence was committed, the intensity of the danger or injury caused to the property, the circumstances in which the offence was committed, the offender's past behaviour, his or her personal and financial

circumstances, his or her conduct after the commission of the offence and especially whether he or she compensated any damage caused, and other circumstances related to the personality of the offender. The court may also take into consideration any other circumstance that is not classified under those stated above. Depending on the concrete case, a specific circumstance may be either mitigating or aggravating.

7.9 Specific sanctions or measures for certain offences

Traffic offences: For criminal offences against the safety of public traffic (chapter 31 of the Criminal Code), the Code stipulates imprisonment or a fine. In addition, the accessory sentence of "disqualification from driving" may be imposed for a period not less than three months and not more than one year. If a sentence, suspended sentence or judicial admonition was imposed on the offender, or if the sentence was discharged, the court may also impose the safety measure of revocation of a driver's licence for a period of one to five years, if it finds that further participation of the offender in public traffic might be dangerous due to his or her inability to drive safely.

Narcotics offences: The offences of "unlawful manufacture of and trade in narcotic drugs" and "enabling the consumption of narcotic drugs" lead to a sentence of imprisonment. In such cases the imposition of the safety measure of "confiscation of objects used for or gained through an offence," in this case the narcotics and the means for their manufacture, is mandatory.

Firearms offences: The offences of "manufacture and acquisition of weapons and instruments intended for commission of an offence" and "illegal manufacture of and trade in weapons or explosives" are punishable by imprisonment.

Environmental offences: Imprisonment or a fine are provided as the principal sentences for criminal offences against the environment and natural resources (chapter 32 of the Criminal Code).

Economic offences: Imprisonment or a fine are provided as the sentences for criminal offences against the economy (chapter 24 of the Criminal Code). In many cases the imposition of the safety measure of "confiscation of objects used for or gained through an offence" is mandatory.

8. Conditional and/or suspended sentence and probation

8.1 Basic provisions

In Slovenian criminal law there are three kinds of admonitory sanctions: a suspended sentence, a suspended sentence with custodial supervision, and a judicial admonition. The first, a suspended sentence, may be applied by the court against the perpetrator of a criminal offence instead of a sentence (article 50(1)). It consists of the pronounced punishment and the term within which such a punishment shall not be executed, unless the offender, within a term of not less than one and not more than five years (the term of suspension), commits a further criminal offence. Safety measures applied in addition to the suspended sentence are, nevertheless, enforced (article 50(4)). Also, if the suspended sentence includes any accessory sentences, the court may decide that such sentences are to be carried out (article 51(4)).

In "suspended sentence with custodial supervision" (article 56), the court decides that an offender who has been given a suspended sentence has to undergo custodial supervision for a certain period of time during the period of suspension. Custodial supervision involves assistance, supervision and custody. This sentence is usually imposed when the conditions for imposing a suspended sentence exist but "the court deems that, during the term of suspension, the implementation of any such measure is necessary" (article 57(1)). In applying custodial supervision, the court may also issue one or more instructions, according to which the offender has to conduct himself or herself (article 58(1)). When the court assesses that custodial supervision is no longer required, it may order that such a measure be discontinued even before the expiry of the term of suspension (article 57(2)).

8.2 Conditions

If the sentence is imprisonment for a term not exceeding two years or a fine, this sentence may be suspended. The sentence may not be suspended for criminal offences for which a prison sentence of more than three years is prescribed by the statute. Apart from these objective conditions, there are also subjective conditions to be met in order for the sentence to be suspended. The court suspends a sentence only if, in considering the personality of the offender, his or her past behaviour, his or her conduct after commit-

ting the offence, his or her degree of criminal liability and other circumstances under which the offence was committed, it concludes that it is reasonable to expect that the offender will not commit any further criminal offence (article 51(3)).

8.3 Suspended sentence only in part

A partial suspension of sentences is not possible.

8.4 Attached general or special conditions

The court may condition the suspension of the sentence upon:

- restitution by the offender of property obtained through the commission of the criminal offence,
- indemnification for damages caused by the offence, or
- the performance of other obligations prescribed under criminal law.

The period for the fulfilment of such obligations is determined by the court within the limits of the term of suspension (article 50(3)).

In the case of "suspended sentence with custodial supervision", the court may also issue one or more instructions, according to which the offender has to conduct himself or herself (article 58). In selecting these instructions, the court, in particular, considers the age of the offender, his or her psychological characteristics, the motives for which the offence was committed, the personal circumstances of the offender, his or her past behaviour, the circumstances under which the offence was committed as well as his or her conduct after the commission of the offence. The choice of instructions may not in any way affect the human dignity of the offender and may not cause him or her unreasonable hardship. The court's instructions may include the following tasks to be performed by the offender:

- to submit himself or herself to a course of medical treatment at an appropriate institution,
- to attend sessions of vocational, psychological or other consultation,
- to qualify for a job or to take up employment suitable to his or her health, skills and inclinations,
- to make payments according to the duty of family support (duty of alimony).

8.5 Supervision of compliance

The convicted person's compliance with the imposed obligations is supervised by the court. After the lapse of the period in which the convicted offender was obliged to comply with the court's conditions, the judge (or rather in practice, a member of his or her staff) makes inquiries (talks to the victim, the institutions where the offender was obliged to submit to treatment, etc., depending on the type of the obligation imposed) to determine whether or not the offender has fulfilled his or her obligations. If not, a new procedure will be instigated to deal with the breach of the court's conditions (see section 8.6, below).

In the case of a "suspended sentence with custodial supervision", the custodial supervision is exercised by a counsellor appointed by the court. The Penal Sanctions Enforcement Act stipulates that the responsible centre for social work shall, within 30 days of receiving the judgment, propose to the court a counsellor to conduct supervision (article 143(2)). The counsellor provides assistance to the offender and supervises his or her compliance with the court's instructions. In so doing, the counsellor is under obligation (a) to provide aid and supervision as well as to give directions and practical advice to the offender on how to comply with the court's instructions, with a view to preventing the offender from committing further criminal offences, (b) to perform these duties and to maintain relations with the offender in a careful and convenient manner, and (c) to report to the court, from time to time, on the exercise of custodial supervision and to propose appropriate modifications or repealing of instructions or the discontinuation of custodial supervision (article 59 of the Criminal Code). The counsellor's tasks are described in more detail in the Penal Sanctions Enforcement Act.

8.6 The procedure after a breach of a condition and the consequences

The suspended sentence is revoked *(mandatory revocation)* in the following cases:

- if, during the term of suspension, the offender commits one or more criminal offences for which the court has imposed a prison sentence of not less than two years (article 52(1)); and
- if the court, after imposing the suspended sentence, finds that the offender had committed a criminal offence prior to being given a

suspended sentence and when it considers that there would not have been sufficient reasons for the imposition of such a sentence had the existence of the prior offence been known (article 53(2)).

The court *may* revoke the suspended sentence also in the event of the offender committing one or more criminal offences during the time of suspension, for which a prison sentence of less than two years or a fine has been imposed, after considering all the circumstances relating to the offences committed and to the offender, and in particular the similarity of the offences committed, their significance and the motives for which they were committed (article 52(2)).

If the performance of a certain obligation has been imposed on the offender under the terms of the suspended sentence and if he or she fails to fulfil such an obligation within the period of time determined by the judgment, the court *may* either prolong the time for the discharge of such an obligation or revoke the suspended sentence. If the court finds that the offender is not able to perform the obligation imposed under the terms of the sentence for justified reasons, the requirement of the performance of such an obligation may be withdrawn or replaced by another obligation (as specified by the statute) which the court considers more appropriate (article 54).

In the case of a "suspended sentence with custodial supervision," if the offender for whom custodial supervision has been ordered does not perform the obligations imposed by the court, he or she may be admonished, his or her former obligations may be replaced with others, custodial supervision may be prolonged within the limits of the term of suspension, or the suspended sentence may be revoked (article 56(3)). If the offender does not comply with the instructions during the term of suspension, or if he or she avoids interaction with the appointed guardian, the court may admonish him or her, modify the instructions, prolong the custodial supervision within the limits of the term of suspension, or revoke the suspended sentence (article 60).

8.7 Social services and the criminal justice system

There is no probation service in Slovenia. Social work centres established under the Ministry for Labour, Family and Social Affairs are the main bodies responsible for providing social services to all citizens and for some activities in the criminal field. Centres for social work are public services

funded by the government. They offer (a) assistance to prisoners after release, (b) community service jointly with the prison service, in respect of suspended sentences with supervision, (c) supervision by social services for juveniles, (d) a mediation system for juveniles, (e) supervision of community service for juveniles, and (f) organisation of courses of social training for juveniles.

Other organisations involved in criminal justice and the probation/social services system are:

- private organisations (firms) and non-governmental organisations involved in victim support,
- mediators (at the prosecution stage, under the State Prosecutor-General's Office, funded by the government),
- state prosecutors, who supervise compliance with their instructions, and
- the national prison service, which supervises community service jointly with centres for social work.

8.8 The role of volunteers

In the case of a "suspended sentence with custodial supervision", the counsellor designated by the centre for social work and appointed by the court, may be one of the social workers employed at the centre for social work or any other person suitable for carrying out the duties of a counsellor, providing he or she consents to the designation. Volunteers may thus participate as counsellors. Article 143(4) of the Penal Sanctions Enforcement Act envisages a bylaw that would prescribe in detail the conditions and other issues relating to the work of a counsellor. As of yet, there is no such bylaw.

9. The prison system and after-care of prisoners

9.1 Organisation of the prison system

The Prison Administration of the Republic of Slovenia was founded in 1995 as a body within the Ministry of Justice. The Administration is headed by a Director General, who is appointed by the Government on the proposal of the Minister. The Administration performs administrative and professional assignments concerning the enforcement of prison sanctions, the organisation and management of prisons and the correctional facility, personnel training, ensuring the fulfilment of financial, material, personnel and other conditions for the functioning of the prisons and the correctional facility, and the enforcement of rights and obligations of persons who have been deprived of their liberty.

The Central Office (Headquarters) of the Prison Administration encompasses the Sector for General, Legal and Economic Affairs (consisting of the Legal Department, the Financial Department, and the Public Procurement Department) and the Treatment Sector (consisting of the Education Department and the Safety and Security Department). Apart from these two sectors, the Administration has seven other sectors, six of them prisons and one a correctional facility. The prisons are organised in more or less the same way, with an Education Department, a Safety and Security Department, a Commercial Unit Department, a General and Legal Department, and a Financial and Accounting Department.

Slovenia has six prison facilities operating in thirteen locations for the enforcement of prison sentences and juvenile prison sentences, prison sentences passed down in misdemeanours procedures and prison sentences passed down under other regulations. Three of the six prisons are central prisons, which are intended for those with sentences over eighteen months; the other three are regional prisons. There is also one correctional facility for juveniles who have been sent to the correctional facility as an educational measure. The prisons and the correctional facility are the internal organisational units of the Administration.

The largest prison is Dob prison (the central prison in Dob, near Ljubljana), where male prisoners serve sentences that are longer than one and a half years, and up to 20 or 30 years. The central women's prison is situated in Ig

(Ig prison), and the juvenile prison is situated in Celje, and there are regional prisons where sentenced prisoners serve sentences of up to a year and a half, in Koper, Maribor and Ljubljana. The correctional facility for juveniles is situated in Radeče.

Each prison has an open, a semi-open and a closed unit, which differ in the degree of security and in the restrictions placed on the freedom of movement of inmates. If the offender has been sentenced to imprisonment for a term not exceeding three years, the court may order that the sentence be served in an open penal institution. If a prison sentence of up to five years has been imposed, it may be ordered enforced in a semi-open penal institution (article 107(3) of the Criminal Code). A prison sentence not exceeding three months may also be enforced in such a way that the offender, instead of serving the sentence, is placed under the obligation to perform work for humanitarian organisations or a local community for a period of not more than six months, whereby the total period of work may range from a minimum of eighty to a maximum of two hundred and forty hours. The schedule of such work may not interfere with the offender's regular work obligations. This form of sentence is ordered by the court that imposed the sentence in the first instance. The court considers the objective and subjective circumstances relating to the offender as well as his or her consent to such a form of sentence. If the offender does not perform the tasks relating to work for humanitarian organisations or local communities, the court may order that a prison sentence be enforced (article 107(4)).

Prisoners fall into five categories: sentenced prisoners, remand prisoners (pre-trial detainees), persons sentenced to prison in misdemeanours procedures, juvenile prisoners, and young people in the correctional facility. Different categories of prisoners are separated from one another: persons imprisoned for a misdemeanour are kept separate from other convicted prisoners, juveniles from adults, and men from women.

The majority of prisons are over 100 years old. The largest prison (Dob) was built 40 years ago. Due to the lack of modern prison institutions and the problem of overcrowding, a new prison was built in Koper, which was opened in 2004.

The trends in the number of prisoners may be seen from Table 8. After 1984 the number of prisoners dropped steadily until 1996, when the number reached 25.6 prisoners per 100,000 inhabitants, and started increasing after that. In 2002, the prison population rate reached 49.9 per 100,000. Slovenia has traditionally had a low imprisonment rate, comparable with the rates in Croatia, but much lower than the rates in Italy, Austria and Hungary.

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

Prisoners may be *conditionally released* after serving half of their sentence under the condition that he or she does not commit another criminal offence during the remaining portion of the sentence. An offender who has been sentenced to twenty years of prison may be released on parole after he or she has served fifteen years (article 109 of the Criminal Code). The decision is taken by the conditional release committee, appointed by the Minister of Justice, and in certain cases by the director of the penal institution (article 105 of the Penal Sanctions Enforcement Act). The offender may be released when it is reasonable to expect that he or she will not offend again, taking primarily into account recidivism, possible pending trials against the convicted person for offences committed prior to his or her stay in prison, the attitude of the offender towards the offence that had been committed and to the victim, his or her conduct when serving the sentence, progress in his or her treatment for addiction, and conditions for reintegration of the offender to life in the community.[34]

In exceptional cases, an offender who has served only one third of his or her sentence may be released on parole if he or she complies with the general condition (i.e. it is reasonable to expect him or her not to offend again) and if special circumstances relating to his or her personality indicate that he or she will not commit any further criminal offence (article 109(5)). Older young offenders (16-18 years old) serving a sentence in the juvenile prison may be conditionally released after having served one third of the sentence but not before six months have elapsed. The court may order supervision by the social services during the conditional release period (article 109(6)).

34 Prior to the amendments to the Criminal Code enacted on 30 March 2004, the only circumstance that was taken into account was the conduct of the convicted person when serving the sentence.

If the conditionally released prisoner commits at least one criminal offence for which a prison sentence of more than one year may be imposed or if he or she is convicted of a criminal offence that he or she had committed prior to being released on parole, the court revokes the conditional release (mandatory revocation). The court may revoke a conditional release if the conditionally released prisoner commits at least one criminal offence for which a prison sentence for a term of up to one year may be imposed. In deciding whether to revoke conditional release, the court takes into account in particular the similarity between the offences committed, their seriousness, the motives for which they were committed and other circumstances indicating whether it is reasonable to revoke the conditional release. If the conditionally released prisoner is sentenced to imprisonment for a term not exceeding one year and the court does not revoke the conditional release, then the period of conditional release is prolonged for the time of serving the sentence. If the conditionally released prisoner commits a criminal offence which results in revocation of parole, and yet the commission of such an offence is not established by the court before the expiry of the release period, the conditional release may be revoked within one year from the expiry of the release period.

By means of a *pardon*, a specified person (as opposed to an amnesty, for which the beneficiaries are not specified) is granted immunity from prosecution, complete or partial remission of sentence, mitigation of the imposed sentence by the application of a less severe type of sentence or by the suspension of the sentence or the annulment of the conviction, or a cessation of the application of a particular legal consequence of conviction. If the sentence is modified by a pardon, the general provisions of the present Code apply to such a modification (article 118 of the Criminal Code). Whereas amnesties are granted by law, pardons are granted by the President of the Republic (article 1 of the Law on Pardon and article 7 of the Constitution). The procedure is initiated *ex officio* or by petition. The court and the relevant state prosecutor give their opinion on the justifiability of pardon to the Ministry of Justice which then sends a report to the President on the petitioner's statements, with the information and opinions and the Minister's proposal for pardon.

After-Care: so-called "post-penal help" is stipulated in the Penal Sanctions Enforcement Act, requiring that the relevant centres for social work, employment centres, housing, health and education services prepare, jointly with the penal institution, a programme of necessary support measures for the prisoner, at least three months prior to his or her release (article 111). The penal institution co-ordinates the joint action and prepares a proposal of concrete forms of professional support that the prisoner will need after his or her release, and sends it to the social work centre of the prisoner's permanent or temporary residence. The post-penal support mostly includes help in finding accommodation and food, social help with reintegration into his or her family, arranging necessary treatment, help in finding employment, vocational training, and the basic material help.

10. Plans for reform

10.1 Major reforms under discussion

In 2003, most of the amendments and changes to the *Criminal Code* that were proposed had been made in light of Slovenia's accession to the European Union in May 2004, and in light of several signed or already ratified international conventions (on organised crime, including trafficking and smuggling of persons, on the financing of terrorism, on corruption, on cybercrime, on the protection of the financial interests of the EU[35], the Rome Statute, Directive 2003/6/EC on insider dealing and market manipulation, etc.). There was also the need to harmonise the terminology of the Criminal Code with the new domestic statutes.[36]

On 30 March 2004 these amendments were enacted[37], which envisaged a few new offences ('giving of gifts for undue influence', 'trafficking in human beings', 'financing of terrorist acts'), some old offences were differently arranged (the previous offences of 'pimping' and 'procuring for prostitution' were joined into one offence called the 'abuse of prostitution'), some offences have harmonised the terminology with the changed domestic laws and the signed or ratified international documents, an aggravated circumstance "if the proscribed conduct was committed through criminal organisation" was introduced to many already existing offences, the sentence latitudes were increased for several offences (if the offence was committed through criminal organisation, for the offences of 'unauthorised exploitation of copyright work', 'sexual abuse of a defenceless person', 'sexual assault on a person under 15 years old', 'money laundering', 'acceptance of a bribe', 'giving of a bribe', 'illegal manufacture of and trade in weapons or explosives', 'illegal crossing of a State border or State territory', etc.), some

35 The Convention of 26 July 1995 on the protection of the European Communities' financial interests (Official Journal of the European Union C 316, 27.11.1995), in Art. 12, stipulates that any country, once it becomes a member state, can accede to it. In the light of the above, Slovenia has not yet acceded to the Convention, but before it does it had to modify certain provisions of the Criminal Code.

36 Scholars have been opposed to many of the proposed changes on the grounds, *inter alia*, that they are unnecessary, unjustifiably repressive and expansive of the scope of criminality, or that they are international obligations inappropriately transformed into domestic law. Some of their criticism seems to have been taken into consideration, since fewer amendments were passed than had been proposed (and criticised). A considerable number of the remaining criticised amendments, have, nonetheless, made it into law.

37 Published in the O.J. RS, no. 40/2004, on 20 April 2004.

offences were expanded or became more detailed (e.g. the abuse of internal information), an offence of 'criminal association for purposes of perpetrating criminal offences against the constitutional order and security of the Republic of Slovenia' was deleted from the Code, etc.

The *Code of Criminal Procedure* has been frequently criticized by academics and legal practitioners. There is no coherent model of the procedure. Its basic idea of a separation between the preliminary proceedings and the judicial proceedings, designed during the 1960s, is obviously an obsolete one. Major political and social changes also occurred in the period of so-called transition: the mentality of all the institutions involved in criminal proceedings changed, there is much more serious crime including organized crime, and a once stable social system has been diminished. On the other hand, the Code has been amended much too frequently because of the Constitutional Court's otherwise welcome liberal decisions, but partial amendments only tear apart what was left of the once coherent model. The system is also inefficient mostly when dealing with the serious criminal offences. For this reason, in 2001 the Ministry of Justice financed a research project with the task of designing a new model of criminal procedure. The model research concluded at the end of 2003 and the new, much more adversarial model is now under discussion.

In the last coherent model of the Code of Criminal Procedure (from 1967), the police was the *dominus litis* of the procedure, and the state prosecutor played a relatively insignificant role in the preliminary phase of the proceedings. In the investigation phase it was the investigating judge who was in charge. With the last ten years of change, the relationship and therefore the balance among those authorities began to change. The state prosecutor is slowly becoming more important and should become even more active since he or she is getting more and more authorisations, giving the state prosecutor the position of the leading authority in the procedure. With the proposed changes to the role of the state prosecutor, who had had most of the investigative authorisations at his or her own initiative (*ex officio*) before, the role of the investigating judge would also change immensely.

The investigating judge is partly losing the role of the investigator and is gaining the function of protecting the rights and liberties of the defendant, since more and more of his or her authorisations also concern the issuing of orders for e.g. searches of the premises and the tapping of telephones on the state prosecutor's proposal. He or she is therefore becoming the analogue to

the justice of freedoms. These two functions have been severely criticised since it is not possible that the one, who is responsible for the investigation in a certain phase of the procedure (again a manifestation of the inquisitorial maxim) may act as an impartial judge in the same proceedings. The institution of the investigating judge is therefore one of the serious weak points of our procedure. It either does not investigate properly, since it becomes the impartial judge, or it does not function as the guarantor of rights and liberties of citizens. The latter is much more frequently the case, since it is not possible to start from the neutral point, when one (later on) has to be active in the investigation. Also the mentality of the investigating judges, who sometimes view themselves as the helping hand of the prosecutors, is contradictory to the role of the "pure" judiciary.

However, on the other hand, even defence attorneys often claim that by losing the institution of the investigating judge, poor defendants would often lose the only authority that would collect evidence in favour of the accused. We could therefore say that as much as its role is schizophrenic, the answer to the question of abolishing the institution itself is not simple. In a way, the investigating judge still corrects the perhaps too enthusiastic police investigation, by collecting evidence also for the defence (in search of the truth) and by suggestions to drop the case when there are no grounds to prosecute.

The trial stage would also have to be changed since now it is the judge who, in fact, proves the case to himself or herself. He or she mostly produces the evidence proposed in the indictment, questions the witnesses and interrogates the defendant. The judge thus does most of the work on his or her own. The attorneys often point out that it is counterproductive to claim that the defendant is not guilty and at the same time argue, should the defendant be found guilty, that mitigating circumstances should be taken into consideration in the sentencing. Therefore, the unified main hearing in which the questions of guilt is discussed at the same time as the circumstances influencing the severity of punishment is one of the dysfunctions of the trial stage. The other critical point is the impossibility of focusing on the critical points, since it is not the prosecution or defence which bring up the most important factual or legal questions, but the court. Therefore, neither the prosecution nor the defence knows in which direction the trial would be going.

10.2 The tendency to expand the use of non-custodial sanctions

The use of alternative sanctions and measures is increasing, as may be seen from the statistics in Table 4. Especially the use of the alternative sanction of suspended sentence has been steadily increasing. In 1975, 40.8 % of all penal sanctions were suspended sentences; in 2001 the proportion was 74 %. However, courts and prosecutors still do not use the alternatives as much as they could, especially fines. In 2001, out of 7,061 convicted adults only 473 (6.7 %) were fined (with the fine being the principal sanction), and an additional 30 were fined under the suspended sentence.

10.3 The tendency to increase the sentences for certain offences

With the raised awareness among the general public about violence towards women and children, and, in particular, with the media coverage of some concrete cases, the pressure for higher sentences (and new incriminations) for sexual offences and offences, protecting children and women, in general, has increased. The recent changes and amendments to the Criminal Code (passed at the end of March 2004) mirror these changes in several increased sentences. The sentences for 'sexual abuse of a defenceless person', 'sexual assault on a person under 15 years old', and 'violation of sexual integrity by abuse of position' have been increased.

The same applies to organised crime. The aggravated circumstance "if the offence was committed through criminal organisation" was attached to many offences, and the sentence was increased for the offences of 'unauthorised exploitation of copyright work', 'money laundering', 'acceptance of a bribe', 'giving of a bribe', 'illegal manufacture of and trade in weapons or explosives', etc. (See also section 10.1, above.)

10.4 The tendency to increase the support provided to the victims

There is a tendency to increase support to victims of criminal offences, even though it is not organised as a part of criminal justice, but instead, in the form of non-governmental organisations and societies. The first SOS telephone line for women and children was established in 1989, and the first shelter for women and children opened in 1991. Several anti-violence projects, organised by societies, ensued, arousing awareness among the public regarding the problem of violence. In 1997, a project called "Psychosocial assistance to victims of crime" was developed, in order to offer more comprehensive, overall support to all victims. Under this programme, several Crime Victim Assistance Centres were established throughout the country.

The programme provides services around the clock to all victims of all criminal offences. These services include counselling the victim (at the Centre or, if necessary, in some other location) as well as providing more concrete and practical (medical, social and material) help, helping the victim to cope with the situation and organising preventive activities by informing the public and raising general awareness about violence and victims' rights. The services also include a telephone hotline, advocacy and self-help groups. The support is provided by trained counsellors, who are sometimes assisted by trained volunteers. The number of victims seeking help and the number of services provided to victims are increasing every year.

There are also a number of safe houses in several towns across the country, where the victims may take shelter in urgent cases.

11. Statistics and research results on crime and criminal justice*

Table 1. Convicted adults by type of offence, Slovenia, 1980–2001

Criminal offences		1980	1985	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Total		11040	13528	9842	8278	7618	6871	6289	3462	3942	4975	5729	5783	6304	7061
Against property		4082	6489	4703	3978	3805	3442	2885	1453	1493	1899	2112	2189	2449	2932
	%	37.0	47.8	47.8	48.0	50.0	50.1	45.9	42.0	37.9	38.2	36.9	37.9	38.8	41.5
Against the safety of		3225	2507	1480	1105	972	764	773	543	662	769	831	705	811	785
public traffic	%	29.2	18.5	15.0	13.3	12.6	11.1	12.3	15.7	16.8	15.5	14.5	12.2	12.9	11.1
Against life		1000	1176	992	988	814	705	810	405	443	616	638	655	691	736
and body	%	9.0	8.6	10.0	12.0	10.7	10.3	12.9	11.7	11.2	12.4	11.1	11.2	11.0	10.4
Against public order and		316	412	418	362	366	372	301	164	209	310	369	472	479	579
peace	%	2.9	3.0	4.2	4.4	4.8	5.4	4.8	4.7	5.3	6.2	6.4	8.2	7.5	8.2
Other criminal		2417	2944	2249	1844	1661	1588	1216	897	1135	1381	1779	1762	1874	2029
offences	%	21.9	22,2	23.0	22,3	21.9	23.1	19.3	25.9	28.8	27.7	31.1	30.5	29.8	28.8

Sources:

– 1980-1994: Statistični letopis Republike Slovenije 1995. Statistical office of the Republic of Slovenia, Ljubljana 1995, p. 180.

– 1995-2001: Crime 2001. Results of surveys (1995, 1996, 1997, 1998, 1999, 2000, 2001). Statistical office of the Republic of Slovenia, Ljubljana 2003, p. 12.

* The tables have been kindly provided by Prof. Dr. Franci Bring.

Table 2. Juveniles on whom an educational measure or a sentence was imposed, by type of offence, Slovenia, 1980–2001 (in %)

Criminal offences	1980	1985	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Total number	856	1098	1183	997	1076	1115	1095	1027	499	500	617	636	706	591	571
Against property	85.9	88.2	87.0	89.7	86.0	89.6	88.9	88.4	81.0	83.0	75.9	76.1	70.0	75.3	70.6
Against the safety of public traffic	4.3	3.0	6.3	3.2	2.7	2.1	1.9	2.4	3.2	2.2	4.1	3.8	1.6	1.5	1.4
Against life and body	1.6	2.3	1.9	1.6	2.5	1.7	2.7	2.5	5.8	5.2	8.4	6.9	11.2	6.8	8.2
Others	8.2	6.5	4.8	5.5	8.8	6.6	6.5	6.7	10.0	9.6	11.6	13,2	17.2	16.4	19.8

Sources:

- 1980: Kazensko sodna statistika 1984. Rezultati raziskovanj. Zavod SR Slovenije za statistiko, Ljubljana 1986, s. 16.
- 1985-1989: Pravosodje 1989. Rezultati raziskovanj. Zavod RS za statistiko. Ljubljana 1990, s. 14.
- 1990-1994: Pravosodje 1994. Rezultati raziskovanj. Zavod RS za statistiko. Ljubljana 1995, s. 12.
- 1995-2001: Crime 2001. Results of surveys (1995, 1996, 1997, 1998, 1999, 2000, 2001). Statistical office of the Republic of Slovenia, Ljubljana 2003, p. 13.

Table 3. Number of adjudicated adults and juveniles in Slovenia in 1950–2001, per 100,000 inhabitants

Year	Sentenced persons			Inhabitants in Slovenia in thousands	Rate of sentenced persons per 100,000 inhabitants
	Adult	Juvenile	Total		
1950	8434	654	9088	1467	619
1955	16204	840	17044	1534	1111
1960	10595	495	11090	1580	702
1965	9546	866	10412	1650	631
1970	10452	972	11424	1727	661
1975	12472	831	13303	1800	739
1980	11040	856	11896	1901	626
1985	13528	1098	14626	1973	741
1990	9842	997	10839	1998	542
1991	8278	1076	9354	2002	467
1992	7618	1115	8733	1996	438
1993	6871	1095	7966	1991	400
1994	6289	1027	7316	1989	387
1995	3462	499	3961	1988	199
1996	3942	500	4442	1991	223
1997	4975	617	5592	1987	281
1998	5729	636	6365	1983	321
1999	5783	706	6489	1986	349
2000	6304	591	6895	1990	347
2001	7061	571	7632	1992	383

Sources:

- 1950-1985: Kazenska sodna statistika 1985. Zavod SRS za statistiko, Ljubljana 1988, p. 14.
- 1986-1991: Rezultati raziskovanj. Pravosodje 1991, p. 13.
- 1992-1996: Statistical Yearbook of the Republic of Slovenia 1997. Statistical office of the Republic of Slovenia 1997.
- The size of the population on 30 June is taken from the Statistical Yearbook of the Republic of Slovenia 2003. Statistical office of the Republic of Slovenia, Ljubljana 2003. p. 79.

Table 4. Convicted adults by penal sanction, Slovenia, 1975–2001

Year	Total	Judicial admonition		Fine		Imprisonment		Suspended sentence			
								Total		Fine	Imprisonment
	N	N	%	N	%	N	%	N	%	N	N
1975	12472	303	2.4	4765	38.2	2615	21.0	5093	40.8	338	4755
1980	11040	321	2.9	2004	18.2	2004	18.2	5291	47.9	378	4918
1985	13528	269	2.0	4607	34.1	2424	17.9	6113	45.2	241	5862
1988	11986	267	2.2	4245	35.4	2148	17.9	5281	44.1	202	5079
1989	12718	172	1.6	3889	30.6	2157	17.0	6378	50.1	311	6067
1990	9842	253	2.6	2112	21.5	1637	16.6	5762	58.5	134	6128
1991	8278	195	2.4	1155	14.0	1337	16.2	5565	67.2	88	5477
1992*	7618	178	2.3	....	....	....	....	....	....	….	....
1993	6871	269	3.9	779	11.3	1078	15.7	4685	68.2	243	4442
1994	6289	168	2.7	556	8.8	917	14.6	4614	73.4	183	4431
1995	3462	140	4,0	329	9.5	550	15.9	2409	69.6	11	2398
1996	3942	139	3.5	308	7.8	601	15.2	2843	72.1	31	2812
1997	4957	143	2.9	427	8.6	630	12.7	3923	78.9	40	3683
1998	5729	132	1.8	382	6.7	842	14.7	4321	75.4	40	4281
1999	5783	97	1.7	386	6.7	978	16.9	4344	75.1	43	4301
2000	6304	120	1.9	346	5.5	1099	17.4	4693	74.1	38	4655
2001	7061	100	1.4	473	6.7	1197	16.9	5225	74.0	30	5195

Sources:

– 1975: Statistički godišnjak Jugoslavije 1977. Savezni zavod za statistiko, Beograd.

– 1985-1989: Kazensko sodna statistika (1985, 1986, 1987, 1988, 1989). Zavod SRS za statistiko. Ljubljana.

– 1990-1991: Pravosodje (1990, 1991). Rezultati raziskovanj. Zavod SRS za statistiko. Ljubljana.

* 1992: There are no data on suspended sentences due to a technical error in form SK-2.

– 1993-1995: Pravosodje (1993, 1994, 1995). Rezultati raziskovanj. Zavod RS za statistiko. Ljubljana.

– 1996-2001: Kriminaliteta 11996,1997, 1998, 1999, 2000, 2001). Rezultati raziskovanj. Statistični urad RS, Ljubljana.

Table 5. Juveniles on whom an educational measure or a sentence was imposed, by type of measure or sentence, 1980–2000

Year	Total	Reprimand	Instructions and prohibitions*	Supervision by a social assistance institution	Commitment to a juvenile institution	Juven. Prison	Fine*
		(%)	(%)	(%)	(%)	(%)	* (%)
1980	856	36.4	-	39.5	13.8	1.1	-
1985	1098	48.6	-	33.1	7.9	1.0	-
1990	997	58.3	-	28.8	6.1	0.3	-
1995	499	58.1	2.8	29.3	8.2	1.4	0.2
1996	500	53.4	9.6	29.8	5.6	0.6	1.0
1997	617	42.8	16.2	33.5	5.8	0.2	1.5
1998	636	35.2	15.4	39.5	7.9	0.1	1.9
1999	706	33.6	18.4	40.4	5.1	0.5	1.8
2000	591	29.5	22.7	40.8	4.6	1.5	0.8

* Introduced by the Criminal Code in 1995.

Sources:

– Statistical Office of the Republic of Slovenia, 2001.

Table 6. Crime in the Republic of Slovenia (according to the police data), 1986–2002*

Year	Number of criminal offences	Size of the population on 30 June (in thousands)	Number of criminal offences per 100,000 inhabitants
1986	38,118	1,981	1924
1987	35,421	1,989	1781
1988	38,735	2,000	1937
1989	39,967	1,999	1999
1990	38,353	1,998	1919
1991	42,250	2,002	2115
1992	54,085	1,996	2709
1993	44,278	1,991	2224
1994	43,635	1,989	2194
1995	38,178	1,988	1910
1996	36,587	1,991	1838
1997	37,173	1,987	1871
1998	55,473	1,983	2797
1999	61,693	1,986	3106
2000	67,617	1,990	3398
2001	74,795	1,992	3755
2002	77,218	1,996	3869

* Criminal offences against road traffic are not included.

Sources:

- 1980-1984: Statistični podatki o kriminaliteti v letu 1984. Republiški sekretariat za notranje zadeve. Uprava za informatiko. Ljubljana 1985, s. 1.
- 1985-1987: Statistični podatki o kriminaliteti v letu 1989. Republiški sekretariat za notranje zadeve. Uprava za informatiko. Ljubljana 1990, s. 1.
- 1988-1990: Statistični letopis ONZ 1995. Ministrstvo za notranje zadeve RS. Ljubljana 1996, s. 47.
- 1991-1997: Statistični letopis MZ 1999 Ministrstvo za notranje zadeve RS. Ljubljana 1999 s. 59.
- 1998-2002: Svetek, S.: Kriminaliteta in kriminalistično delo v letu 2002. Revija za kriminalistiko in kriminologijo, Ljubljana 54/2003/2, s. 115-124, podatek s. 118.
- ŠTEVILO PREBIVALSTVA: 1986-1997: Statistični letopis Republike Slovenije 2003. Statistični urad Republike Slovenije. Ljubljana 2003, s. 79.

Table 7. Adults and juveniles admitted to prisons per 100,000 inhabitants, 1980-2002

Year	No. of adults and juveniles admitted to prison	Number of inhabitants, in thousands (on 30 June)	Number of convicts admitted to prison per 100,000 inhabitants
1980	1875	1901	98.6
1981	1650	1917	86.1
1982	1737	1925	90.2
1983	1887	1933	97.6
1984	1986	1943	102.2
1985	1787	1973	90.6
1986	1774	1981	89.6
1987	1569	1989	78.9
1988	1498	2000	74.9
1989	1428	1999	71.4
1990	1127	1998	56.4
1991	1060	2002	52.9
1992	1031	1996	51.7
1993	1027	1991	51.6
1994	949	1989	47.7
1995	543	1988	27.3
1996	510	1991	25.6
1997	578	1987	29.1
1998	694	1983	35.0
1999	855	1986	43.1
2000	980	1990	49.2
2001	1023	1992	51.4
2002	996	1996	49.9

Sources:

– 1980-94: Poročila zavodov za prestajanje kazni zapora. Arhiv Franc Brinc.
– 1995-2002: Letno poročilo (1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002). Ministrstvo za pravosodje RS. Uprava za izvrševanje kazenskih sankcij, Ljubljana.
– Prebivalstvo 30.6.: 1980-2002: Statistični letopis Republike Slovenije 2003. Statistični urad Republike Slovenije. Ljubljana 2003, s. 79.

Table 8. Total prison capacity and occupancy, on a particular day, 1968–2002 (pre-trial detainees, persons convicted for criminal offences and administrative offences)

Date	Prison capacity	Prison occupancy	%
01 Jan 1968	2184	1512	69.2
01 Aug 1988	2616	1331	50.9
01 Dec 1992	2257	886	39.3
15 Nov 1994	1796	844	47.0
01 Oct 1995	1555	652	41.9
31 Dec 1997	993	733	73.8
31 Dec 1998	927	823	88.8
31 Dec 1999	988	924	93.5
31 Dec 2000	988	1128	114.2
31 Dec 2001	1072	1203	112.2
31 Dec 2002	1058	1147	108.5

Sources:

– 1988-1995: Poročila kazenskih zavodov. Arhiv Franc Brinc.
– 1997-2002: Letno poročilo (1997, 1998, 1999, 2000, 2001, 2002). Ministrstvo za pravosodje RS. Uprava za izvrševanje kazenskih sankcij, Ljubljana.

Table 9. The percentage of adults serving imprisonment, for criminal offences and administrative offences, per 100,000 inhabitants in Slovenia, 1975-2002

Year	Imprisoned persons 1.1.			No. of inhabitants in thousands	Convicted, in penal institutions per 100,000 inhabitants	
	convicted for criminal offences	convicted for administrative offences	total		for criminal offences	for criminal and administrative offences
1975	1478	152	1630	1800	82.1	90.6
1980	957	93	1050	1901	50.3	55.2
1985	867	93	960	1973	43.9	48.7
1990	595	65	660	1998	29.8	33.0
1995	545	14	559	1988	27.5	28.2
1996	425	16	441	1991	21.4	22.2
1997	439	23	462	1987	22.1	23.3
1998	478	23	501	1983	24.1	25.3
1999	579	20	599	1986	29.2	30.2
2000	658	45	703	1990	33.1	35.3
2001	738	45	783	1992	37.1	39.3
2002	709	46	755	1996	35.5	37.8

Sources:

- 1973-94: Statistični podatki Republiškega sekretariata za pravosodje in upravo SR Slovenije.
- 1995-2002: Letno poročilo (1995, 1996, 1997, 1997, 1998, 1999, 2000, 2001, 2002). Ministrstvo za pravosodje. Uprava za izvrševanje kazenskih sankcij. Ljubljana.
- Srednje število prebivalstva na dan 30.6: Statistični letopis RS 1998. Statistični urad RS. Ljubljana 1998, s. 87.

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