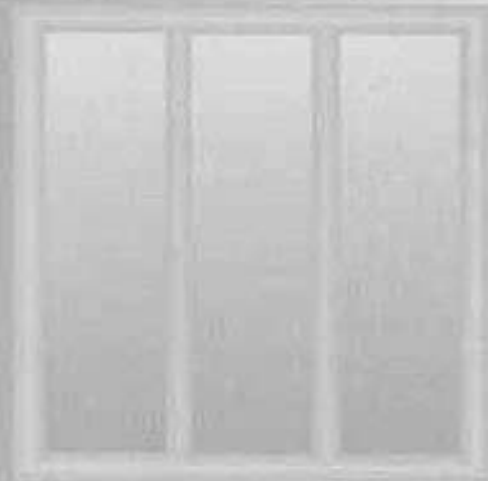


Croatian Journalists' Guide to Criminal Procedure



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1. CRIMINAL PROCEDURE

1.1 General provisions

Criminal procedure is regulated in accordance with the basic postulates of the Croatian Constitution:

- In applying repression, everything that is not explicitly allowed (by law) is forbidden
- Restrictions of fundamental rights and civic freedoms are allowed only if determined by the law and if the competent Court has reached a decision on it, based on the law.

The Criminal Procedure Act defines the possibility of temporary restriction of Constitutional rights and freedoms for the purpose of collecting data and evidence for execution of criminal proceedings (article 180-183 The Criminal Procedure Act; hereinafter CPA). The restrictions are based on four postulates according to which, the restriction must be:

- (1) based on the legal norm of the rank of the law,
- (2) substantively justified by the seriousness of the crime (criminally and politically, intense restrictions in the case of minor offences are not acceptable),
- (3) procedurally legitimated by the existence of the reasonable suspicion that a particular criminal act has been committed and
- (4) limited in time and supervised by a judicial body.

1.1.1 Definition and goal of the criminal procedure

Criminal proceeding is a set of legally regulated activities, defined by regulations, that are executed by authorities and other persons determined by the law whenever there is a suspicion that a criminal act has been committed.

The goal of the criminal procedure is to determine, by the court's decision, the soundness of the statements and claims stated in the charges:

- has the criminal act been committed
- who has committed the act, or, has it been committed by the defendant
- can a sentence or other measure set forth by criminal law be pronounced against the perpetrator

1.1.2 Two aspirations of the criminal proceedings

There are two competing aspirations in the criminal procedure (article 1, paragraph 1 CPA):

- (a) **Aspiration towards efficiency** – every perpetrator must be caught and punished (... *to pronounce the sentence against the perpetrator...*)
- (b) **Aspiration to protect the citizens' rights** – preventing criminal prosecution and conviction of an innocent person (... *no innocent person shall be convicted...*)

1.1.3 Principles of criminal procedure

The criminal procedure is governed by the provisions of the Criminal Procedure Act. Those provisions and the procedure are based on basic principles of the criminal procedure. When the CPA does not offer explicit solutions for certain procedural or legal problems, the basic principles of the criminal procedure as set forth below are used to assist judges in interpreting and applying legal provisions of the CPA.

Legality: A punishment or other criminal sanction may be imposed on the perpetrator only under conditions set forth by the law and in due process as defined by the law before a competent Court (article 1, paragraph 1, CPA).

Accusatority: Criminal proceedings may be instituted and conducted only upon the request of an authorized prosecutor (article 2, paragraph 1, CPA). Authorized prosecutor may be State Attorney, injured person as prosecutor and private prosecutor.

Mandatory Criminal Prosecution: The State attorney shall be obliged to institute the prosecution whenever there is a reasonable suspicion that a certain person committed a criminal offense which is subject to public prosecution, and when there are no legal obstacles to the prosecution of that person (Article 2, paragraph 3, CPA). This principle is valid except where otherwise prescribed by law.¹

Presumption of innocence: A person is innocent and no person may hold this person culpable until his/her culpability is established by a final judgment (article 3, paragraph 1 CPA). This principle is strengthened by two additional principles:

1. Principle *in dubio pro reo* – Doubt regarding the existence of facts which constitute the elements of the definition of the criminal offense, or which are conditions for the implementation of certain provisions of criminal law, shall be decided in favor of the defendant (Article 3, para. 2, CPA).
2. "The right to remain silent" – the defendant is not obliged to present his defense or answer any questions. It is forbidden and punishable to extort a confession or any other statement from the defendant or any other person participating in the proceedings (article 4, paragraph 3 CPA).

¹ Exceptions include: when the State Attorney needs approval for prosecution (see section 1.2.2.2), when the State Attorney may exercise his/her prosecutorial discretion according to the Principle of Opportunity (Article 175 CPA), in the case of *pentiti* (Article 176 CPA), in some cases concerning juveniles (Articles 63-65 Law on Juvenile Courts) and in case of Article 505 and 509 of the Criminal Procedure Act (NN 34/1993) – transferring the right to prosecute to another country

Substantive and Formal Defense: The defendant has the right to defend himself/herself with the assistance of the defendant's own choice of counsel. If the defendant does not retain defense counsel, such counsel shall be appointed to the defendant subject to the provisions of the CPA (article 5 CPA). The second part of this principle asserts that the defendant has to be informed at the first hearing of the charge against him/her and of the grounds for the charge. The defendant has the right to be heard on all incriminating facts and evidence, and to present all facts and evidence favorable to him/her (article 4 paragraphs 1 and 2 CPA).

Protection of Personal Freedom: Personal freedom and any other defendant's right can be restricted only subject to the provisions of the law and only if there is evidence of "probable cause" that the defendant committed a crime. This principle establishes particular rights for the defendant (article 6, paragraph 1, CPA).

Efficiency of Criminal Procedure Principle: The defendant has the right to be brought before a court in the shortest period of time (article 10, paragraph 1, CPA). Everyone is entitled to a trial without substantial delay. The court shall issue a formal ruling that denies any legal action if it is obviously aimed at delaying criminal procedure or abusing the procedural rights granted by the CPA (article 10 para. 3 CPA).

Protection of Human Personality and Dignity: It is forbidden and punishable to extort a confession or any other statement from the defendant or any other person participating in the procedure (Article 4, para. 3, CPA).

Inquisitorial maxim: The court and other authority participating in the criminal proceedings shall examine and determine with equal solicitude the facts that tend to incriminate the defendant, as well as those favorable to him/her (article 8. Paragraph 2 CPA).²

Free Evaluation of Evidence: The right of a court and other authorities participating in the criminal proceedings to assess the existence or non-existence of facts shall not be subject to or restricted by formal rules of evidence (article 8 paragraph 2 CPA).

Legal Evidence (Exclusion of Illegally Obtained Evidence): The court's decision in criminal proceedings may not be founded on illegally obtained evidence. Definition of admissible evidence in CPA is defined negatively, by defining which evidence is illegal (article 9 CPA). Illegal evidence is evidence obtained:

- In a way representing a violation of fundamental rights to defense, dignity, reputation and honor and inviolability of private and family life, as guaranteed by the Constitution, domestic law and international law;
- In violation of criminal procedure provisions expressly provided for in the CPA, and
- In any other illegal manner.³

Use of Croatian Language: The Croatian language and Latin script are officially used in criminal proceedings. The participant has the right to use his/her own language subject to provisions of the CPA (Article 7).

² "Other authorities" refers to the State Attorney's office

³ "Fruit of the poisonous tree" doctrine (evidence that is derived from the first two categories of inadmissible evidence).

Double Jeopardy and the Prohibition on the Reopening of Criminal Proceedings to the Prejudice of the Defendant: No person shall be tried again for an offense for which the person has already been convicted by a final court's decision (Article 11, para. 1, CPA). Criminal proceedings against a person acquitted by a final court's decision may not be reopened (Article 11, para. 2, CPA).⁴

Rehabilitation and Compensation of an Unjustifiably Convicted or Arrested Person: A person who was unjustifiably convicted or arrested shall be entitled to full rehabilitation, compensation and other rights established by law (Article 12 CPA).

Court's Obligation to Advise Procedural Participants: The court shall inform the defendant or other procedural participant, who is likely to omit to perform an action or fail to exercise his/her rights due to ignorance, of the rights to which he/she is entitled according to the CPA as well as about the consequences of omission (Article 13 CPA). Their ignorance may not be prejudicial.

The goal of the criminal proceedings, presumption of innocence (constitutional principle) and definition of procedural participants (see 1.5) are important for both the monitoring and reporting on procedures taking place prior to criminal proceedings, as well as for the monitoring and reporting during criminal proceedings.

Procedures prior to criminal proceedings (criminal investigation, emergency investigation prior to the formal commencement of investigation), submitting the request for investigation, decision on conducting the investigation, indictment; are all activities which shall be undertaken if there is reasonable suspicion that a person has committed a crime.

Reasonable suspicion means that there is a certain level of certainty based on gathered information and evidence that a certain person has committed a crime.

The level of certainty can vary. Still, this in no way means that a particular person has actually committed a crime. Only the court, within the criminal procedure, can determine whether a person has committed a crime. *Every person is innocent and shall not be considered guilty of a crime until proven guilty by a court's final decision.*

Reports issued by the police authority (or any other authority) that state, as a result of a criminal or similar investigation, that it is established that a crime was committed and perpetrator was caught, or that an unknown person has committed a crime, are principally and legally wrong.

In such situations, until the court's final decision that states a person is guilty of a crime, especially in the media coverage of the initial or criminal proceedings, one should use expressions that convey to the average reader or viewer the presumption of defendant's innocence. Instead of saying that "*in criminal investigation it was established that John Doe committed a crime,*" or that "*John Doe bought drugs for further sale*" one should use the terms such as "**allegedly, there is a reasonable suspicion**" or similar phrasing.

⁴ It is possible to reopen criminal proceedings to the prejudice of the defendant if the proceedings were terminated by a final judgment rejecting the charge. The conditions for these exceptions are prescribed in Article 406 CPA.

Only the authorized prosecutor can initiate a criminal procedure.

After the authorized prosecutor submits a motion that institutes criminal procedure, and provides that the legal conditions are met, the court shall issue an act that commences the criminal procedure (see 1.3). **A court never institutes criminal procedure** but decides on its commencement.

Therefore, there is a difference between institution and commencement of criminal proceedings. Without institution, criminal proceedings cannot commence, but **the authorized prosecutor never commences criminal proceedings**.

Institution of criminal proceedings depends exclusively and only on the authorized prosecutor. Whether an act ends before a court, and whether it will be taken through criminal proceedings depends only on the authorized prosecutor instituting a criminal procedure. The court shall never institute a criminal procedure *ex officio*, or issue the decision on the commencement of criminal proceedings without a motion with which authorized prosecutor institutes criminal proceedings.

1.2.1 Authorized prosecutor

- **State Attorney** – for criminal offenses subject to public prosecution
- **Private Prosecutor** – for criminal offences subject to private charge
- **Injured Person** – can replace the State Attorney if the State Attorney establishes that there is no foundation for the institution and conducting of criminal proceedings.

The Criminal Procedure Act does not state the criminal offenses prosecuted upon private charge but the Criminal Code (hereinafter CC) does. Those are:

1. Bodily injury, Article 98, para. 1 CC;
2. Coercion, Article 128, para 3. CC;
3. Criminal offenses against honor and reputation, (Article 199-202, CC);
4. Larceny, Article 216, para 2. CC;
5. Embezzlement, Article 220, para 6. CC;
6. Malicious mischief, Article 222, para 3. CC;
7. Fraud, Article 224, para 8. CC;
8. Breach of trust, Article 227, para 3. CC;
9. Larceny, Aggravated Larceny, Abstraction of Movable Property of Another, Fraud, Violation of Another Person's Right and Concealing, if they are committed against a spouse, a blood relative in a direct line, a sibling, adoptive parent, adopted person, or against the person with whom the perpetrator cohabitates, Article 237, CC;
10. Poaching Fish, Article 259, para 3. CC;
11. Failure to report a criminal offense, Article 300, para 2. CC; and
12. Self-help, Article 329, para 3. CC;

1.2.2 Motion and approval for criminal proceedings

The State Attorney is not the authorized prosecutor for criminal offenses prosecuted upon a private charge. For all other criminal offenses, the State Attorney is the authorized prosecutor, but to commence prosecution for some criminal offenses, the victim or other aggrieved party must file a motion with the State Attorney. In certain situations, in order to initiate prosecution the State Attorney must have approval to prosecute, issued by relevant authorities.

The authorized prosecutor has to obtain *approval* issued by the relevant state authority **before** filing the request to conduct the investigation, indictment or motion to indict.
State Attorney has to obtain a motion filed by the victim or aggrieved party **before** filing the request to conduct the investigation, indictment or motion to indict.

The existence of a motion or approval is a procedural prerequisite for prosecution. The absence of a motion or approval, when required by law, is a circumstance that excludes the prosecution and court shall monitor it *ex officio*. This in no way means that the court should obtain motion or approval, because the court is an independent and non-biased institution of the State that adjudicates in a dispute between two parties. A party that is interested in prosecution (Authorized prosecutor, see 1.2.1) must prove that a motion or approval for prosecution exists.

1.2.2.1 Motion for prosecution

In cases when the Law specifies that a motion filed by the victim or aggrieved party required for prosecution, the State Attorney is not allowed to file a motion for investigation nor raise direct indictment or motion to indict as long as the damaged person does not file such a motion.

The State Attorney shall initiate prosecution upon a motion filed by the victim or aggrieved party for the following criminal offenses:

1. Aggravated bodily injury if the perpetrator and the victim are related (Article 102, para. 2 CC)
2. Coercion committed as a member of a group or criminal organization (Article 128, para. 3 CC)
3. Threat committed toward a non-official person (Article 129, para. 4 CC)
4. Violating the privacy of correspondence and other pieces of mail (parcels) committed by a non-official person (Article 130, para. 4 CC)
5. Unauthorized recording and eavesdropping committed by a non-official person (Article 131, para. 4 CC)
6. Disclosure of professional secrets without authorization (Article 132, para. 3 CC)
7. Unauthorized use of personal data (Article 133, para. 2 CC)
8. Larceny or embezzlement of state property (Article 216, para. 3 and Article 220, para 6 CC)
9. Abstraction of movable property owned by the state (Article 221, para. 3 CC)
10. Damage to data and the use of data of another (Article 223, para. 3 CC)
11. Misuse of Insurance (Insurance fraud) (Article 225, para. 4 CC)
12. Misuse of Check and credit card (Article 226, para. 2 CC)
13. Violation of another person's rights (Article 228, para. 3 CC)

14. Larceny, Aggravated Larceny, Fraud, Violation of Another Person's Right and Concealing, if they are committed against a relative (Article 237, CC;)
15. Transmission of venereal disease (Article 239, para. 2 CC)
16. Preference of creditors (Article 281, para. 2 CC)
17. Self-help when a perpetrator is a member of a group or a criminal organization (Article 329, para. 3 CC).

Deadline – the authorized person or institution shall file a motion to prosecute with the State Attorney's office within three months of learning of the criminal offense and perpetrator.

1.2.2.2 Approval for prosecution

In certain cases, State Attorney is required to obtain approval for prosecution issued by the relevant state authority. In such a case, the State Attorney shall not file a motion for investigation or raise direct indictment or accusatory motion if he/she does not submit evidence of such approval.

The State Attorney must obtain relevant state authority's Approval for prosecution for:

1. Prosecution of persons enjoying immunity (Article 75, para 1 and 3 Constitution of the Republic of Croatia),
2. Prosecution of Constitutional Court judges (Article 3 Constitutional Law on Constitutional Court of the Republic of Croatia),
3. Prosecution of members of the State Judicial Council (Article 8, Law on the State Judicial Council),
4. Prosecution of judges (Article 9, Law on Courts),
5. Prosecution of State Attorneys (Article 7, Law on State Attorney Office),
6. Prosecution of perpetrators for specific criminal offenses when the approval from the State Attorney of the Republic of Croatia is needed (Articles 15, para 1, 16, para 2 and 3, 186 para 3, CC),
7. Prosecution of perpetrators for damaging the reputation of a foreign state and international organization (Article 186, para 3, CC),
8. Detention of a private attorney regarding a criminal offense committed in offering legal aid (Article 16, Law on Private Attorneys).

1.2.3 Immunity

Immunity is the right of certain categories of persons disallowing the prosecution against these persons, or conditioning the prosecution on approval of relevant state authority. Immunity is defined by internal laws of the Republic of Croatia and international laws.

Immunity is granted according to the **internal laws** (see 1.2.2.2) to:

1. **Members of the Parliament** of the Republic of Croatia. They may not be prosecuted, detained or punished for stating opinion or voting in the Parliament (absolute substantive immunity). If a member of the Parliament commits some other criminal offense, he/she shall not be detained or prosecuted without Parliament's approval (procedural immunity), unless he/she was caught committing a criminal offense that carries a punishment of five or more years imprisonment. Parliament can

give approval for prosecution only when in session. If the Parliament is not in session, the mandate-immunity commission can give approval, which shall be later confirmed by the Parliament. If the authority denies the approval the prosecution may be conducted only after the MP's mandate expires.

2. **Judges of the Constitutional Court** enjoy the same immunity as members of the Parliament.
3. **Members of the State Judicial Council** enjoy the same immunity as members of the Parliament, but the approval for prosecution or detention is issued by the State Judicial Council.
4. **Judges** enjoy the same immunity as members of the Parliament. The State Judicial Council issues approval for their prosecution or detention.
5. **State Attorneys** enjoy immunity according to the Law on State Attorney Office. The State Attorneys' Council issues approval for their prosecution or detention.
6. **Private attorneys** enjoy limited process (procedural) immunity. An attorney shall not be held in detention for the criminal offense committed in offering legal aid. The Authorized Court panel, composed of three judges, issues approval for private attorney's detention.

The Court shall observe the existence of immunity *ex officio*. Waiver of immunity right has no effect on criminal proceedings. If the state authority did not issue an approval, criminal proceedings shall not be conducted even if person enjoying immunity waives of immunity.

According to **international law**, immunity is granted to:⁵

- **A foreign country head of state** (his/her spouse and juvenile children) during his stay in the Republic of Croatia enjoys absolute (material and procedural) immunity. Members of their official escort enjoy the same right. If a foreign country head of state stays in the Republic of Croatia privately or *incognito*, his/her immunity is not valid unless he/she presents him/herself in proper role.
- **Diplomatic agents of foreign countries accredited in the Republic of Croatia** enjoy absolute (material and procedural immunity). Chiefs and members of diplomatic missions are considered diplomatic agents. Members of family of a diplomatic agent and the entire administrative and technical staff of the mission enjoy immunity.
- **Representatives, officers and experts of the United Nations**
- **NATO military personnel.**

⁵ A vast number of sources contains provisions on immunity according to international law. Therefore, only several exemplary situations of such immunity right were mentioned here.

1.2.4 Statute of limitations

Statute of limitations is concept of criminal law that, due to the time lapse, leads to the expiry of the right of the state to apply criminal legislation.

This concept of criminal law is based on criminal-political goals of criminal law, general principles of criminal law, as well as reasons and purposes of punishment. Applying a legal sanction after a significant period of time is not appropriate or purposeful. Due to the time lapse, the punishment loses its actuality and its purpose. Things are forgotten as time passes, determining crucial facts becomes harder, risk of confusion is higher, the perpetrator may have changed his ways even without sanctions. These are main reasons that justify the statute of limitations.

The criminal code knows two forms of statute of limitations: **statute of limitations for prosecution** and **statute of limitations** for execution of sanction (article 19 – 24 CC). In both cases, there are *absolute* and *relative* statute of limitations.

The criminal code defines statute of limitations deadlines for both types of statute of limitations. After the deadlines, it is not possible to initiate prosecution or execute legal sanction. That is **relative statute of limitations**, because progress of statute of limitations can be stopped by any procedural act or activity of authorized body aimed at initiating the criminal proceedings against the perpetrator or at execution of the legal sanction. **Absolute statute of limitations** represents a definite expiry of the right to prosecute/execute after a time period twice as long as the legally defined deadline has expired.

According to the Criminal code, the prosecution of certain criminal offenses and execution of punishment for the perpetrator of those criminal offenses never expires. The following criminal offenses never expire:

- **Genocide** (Article 156 CC)
- **Aggressive war** (Article 157 CC)
- **War crime against civilians** (Article 158 CC)
- **War crime against wounded and ill persons** (Article 159 CC)
- **War crime against prisoners of war** (Article 160 CC)
- Criminal offenses on which statute of limitations cannot be applied according to international law.

1.2.4.1 Statute of limitations for prosecution

After a certain time has passed since a criminal offense has been committed, prosecution shall not be instituted. Statute of limitations during criminal proceedings leads either to suspension of criminal proceedings (by the decision out of the main hearing) or to the decision by which the indictment is dismissed (during the main hearing).

The statute of limitations for prosecution represents a circumstance that excludes criminal prosecution and a reason for dismissal of the indictment at the

main hearing (so called formal judgment), and never a reason for judgment of acquittal. **It is wrong to say or write that defendant was found not guilty of charges due to the fact that statute of limitations for prosecution has occurred.**

Deadlines for the occurrence of statute of limitations for prosecution depend on the prescribed punishment for certain criminal offenses:

	PRESCRIBED PUNISHMENT FOR CRIMINAL OFFENSE	RELATIVE LIMITATION	ABSOLUTE LIMITATION
1	<i>Long term imprisonment</i> (for instance: 1 st degree murder, genocide, war crimes, aggravated drug abuse from Article 173 para. 2, aggravated sexual intercourse with a child from Article 192 para. 5)	25 years	50 years
2	<i>More than 10 years imprisonment</i> (for instance: aggravated drug abuse from Article 173 para. 2, murder, qualified rape, aggravated robbery, armed mutiny)	15 years	30 years
3	<i>More than 5 years imprisonment</i> (for instance: manslaughter, qualified forms of aggravated bodily injury, basic form of rape, basic form of robbery, aggravated fraud, infanticide)	10 years	20 years
4	<i>More than 3 years imprisonment</i> (for instance basic form of kidnapping, aggravated larceny, basic form of fraud, basic form of coercion, organizing criminal organization, article 333 para. 2)	5 years	10 years
5	<i>More than 1 year imprisonment</i> (for instance basic form of aggravated bodily injury, domestic violence, concealment)	3 years	6 years
6	<i>Less than 1 year imprisonment or fine</i> (for instance: bodily injury, insult, slander, customer misleading, unauthorized trade)	2 years	4 years

Statute of limitations for prosecution commences from the day the criminal offense was committed.

The statute of limitations shall not be counted during the time when, subject to law, prosecution may not be instituted or continued, and it will stop with each procedural act aimed at prosecution of the perpetrator. After each adjournment, the statute of limitations commences from the beginning (relative statute of limitations). The statute of limitations definitely occurs after a time period twice as long as the legally defined deadline has expired (absolute statute of limitations).

1.2.4.2 Statute of limitations for execution of punishment and precautionary measures

After certain period of time, the legal sanction rendered by a court shall not be executed. The deadline for this statute of limitation depends on the punishment level.

For **precautionary measures**, the statute of limitations occurs after a time period equal to the duration of the particular measure as ordered by the court (relative

statute of limitations for the safety measures). The absolute statute of limitations occurs after the time period twice as long as relative limitation has passed.⁶

The following times apply for the statute of limitations for **punishment**:

	RENDERED PRISON SENTENCE	RELATIVE LIMITATION	ABSOLUTE LIMITATION
1.	Long term prison sentence	25 years	50 years
2.	Prison sentence longer than 10 years	15 years	30 years
3.	Prison sentence longer than 5 years	10 years	20 years
4.	Prison sentence longer than 3 years	5 years	10 years
5.	Prison sentence longer than 1 years	3 years	6 years
6.	Fine or prison sentence shorter than 1 year	2 years	4 years

The statute of limitations commences from the day on which the rendered punishment or safety measure became final.

The statute of limitations shall not be counted during the time when, subject to law, execution may not be instituted or continued, and it will stop with each act of authority authorized for execution of punishment or safety measure.

After each adjournment, statute of limitations commences from the beginning (relative statute of limitations). Statute of limitations definitely occurs after a time period twice as long as the legally defined deadline has expired (absolute statute of limitations).

1.3 Commencement of prosecution

Prosecution commences when (Article 164 CPA):

- **Investigative Judge** issues a decision on conducting the investigation
- **Investigative Judge** issues approval to the authorized prosecutor to raise direct indictment⁷
- **President of the panel** orders the trial (main hearing) based on a direct indictment if there was no objection against the indictment or President of the panel did not demand to question the indictment
- **Indictment becomes final**
- **President of the panel or single judge** orders the trial (main hearing) in summary proceedings
- **Single judge** issues penal order.

⁶ For instance, if rendered safety measure of prohibition against operation of a motor vehicle lasts two years, deadline for relative limitation is two years, and for absolute limitation four years.

⁷ The State Attorney may raise an indictment without investigation in case of criminal offense that carries prison punishment up to 8 years and if data on criminal offense and perpetrator justifies indictment – so called direct indictment (Article 191 para. 6 CPA).

1.4 Types of the proceedings

Theory divides criminal proceedings in five phases: 1. Investigation, 2. Indictment with possible control of the indictment, 3. Trial (main hearing) with rendering and pronouncement of judgment, 4. Procedure following an appeal against a judgment and 5. Serving the judgment.

The so called **regular criminal proceedings** contains all phases and is foreseen for all criminal offenses except those that are subject to summary proceedings, according to the Criminal Code. The charging act in regular procedure is **indictment**.

The so-called **summary** criminal proceeding is foreseen for the criminal offenses sanctioned with fine or prison sentence of up to 5 years.⁸ Summary proceedings commence when a single judge or president of the panel orders the trial. Many forms of regular procedure do not exist in the summary proceedings, or are conducted in summary form. For instance, there is no investigation (but some investigative activities are possible), deadline for appeal against a judgment is shorter (8 days, instead of 15 days in regular procedure), written judgment need not contain explanation if all parties gave up the right to appeal or did not demand the delivery of judgment. The charging act in the summary proceedings is a motion to indict or private charge. In the summary proceedings a single judge can issue a penal order if the State Attorney requested so in the motion to indict. A private prosecutor cannot request a penal order to be issued in a private charge.

Criminal proceedings against juveniles (persons under 18 years of age, but older than 14 years) is a special form of criminal procedure, since it contains significant aberrations from the regular criminal procedure.

Criminal proceedings against mentally incompetent defendant can be regular or short (depending on the foreseen punishment and the title of charging act). A mentally incompetent person is a person that, at the time of committing the legally defined criminal offense, was not able to comprehend the meaning of his/her action or wasn't able to control its will due to mental illness, temporary mental disorder, insufficient mental development or other serious mental condition.

A mentally incompetent person cannot fulfill subjective features of an act, because he/she is unable to act with intention or negligence. A mentally incompetent person is not guilty (Article 40 para. 1 CC). That is why a mentally incompetent person *did not commit a criminal offense*, but rather *has fulfilled objective elements of the criminal offense*. **It is wrong to say or write that a mentally incompetent person is guilty or has committed a criminal offense.**

Prior to a main hearing a trial judge has to establish whether a mentally incompetent defendant is fit to stand trial. If the defendant is unfit, trial can be held in his absence.

If it was established that the defendant has committed objective features of the criminal offense while mentally incompetent and if the State Attorney has filed a motion to determine so, the court shall render judgment of acquittal (see section 1.11).

⁸ Change of CPA that foresees summary proceedings for the criminal offenses that bring fine or prison sentence up to 5 years applies from January 01 2003. Until then, summary proceedings is foreseen for criminal offenses that bring prison sentence up to 3 years.

1.5 Procedural participants

As a rule there are several persons who participate in criminal procedure. There is a specific term for each of them, with a particular meaning. Participants of the process, as per CPA, are:

Judge – the judicial official in a body with judicial authority, authorized to adjudicate, individually or within a panel, on issues and case files brought before the court.

Investigative judge – judge of a County court with main function to conduct an investigation and perform investigative activities.

President of the panel (Presiding Judge) – judge of a Municipal or County court that presides over the panel that adjudicates a particular case.

Single judge – judge of a Municipal court that is exceptionally legally authorized to adjudicate a certain case in a summary proceedings.

Reporting judge – judge of a second instance court that studies, prepares and reports on the cases of trial court and drafts decisions of the higher level court.

Juvenile judge – judge of a Municipal, County or Supreme court of the Republic of Croatia that has to have special inclination towards upbringing, needs and benefits of youth, and have basic knowledge of criminology, social pedagogy and social welfare for young persons.

President of the court – judge that, along with judge's duty, performs the tasks of court administration.

Lay judge – a citizen who is called to sit on the panels and decide together with the professional judge(s) on issues that need to be decided within the criminal proceedings, when so prescribed by law.

Party – In criminal procedure, the term party refers to both the prosecutor and the defendant (Article 170, para. 1 CPA).

Prosecutor – Prosecutor is the State Attorney, private prosecutor or subsidiary prosecutor.

State Attorney – judicial official in a state body charged with criminal prosecution.

Private prosecutor – authorized prosecutor for few minor offenses that legislator decided should be prosecuted only if certain persons feel injured and ask for punishment of the perpetrator.

Injured person as subsidiary prosecutor – injured person that took over the prosecution and became authorized prosecutor instead of the State Attorney.

Injured Person – The injured person is a person whose personal or financial right has been infringed upon or jeopardized by the criminal offense.

Suspect – The suspect is the person with regard to whom authorities of criminal prosecution have grounds for suspicion that he/she has committed an offense or has participated in the carrying out of the offense.

Arrested Person – a person against whom any measure or action causing his/her deprivation of freedom is applied.

Defendant – a person against whom the criminal proceeding is carried out, as well as mentally disturbed person that has special proceedings against him/her (proceedings against the mentally incompetent person).

Accused – a person against whom the indictment has become final, or against whom the private charge or motion to indict has been submitted and the trial scheduled.

Convicted person – a person found guilty by a final judgment for the commission of an offense.

The term “defendant” is used as a generic term for the defendant, the accused and the convicted person.

It is wrong to call a person that is under the criminal proceeding “*tuženik*” (*respondent*). That is a term from civil law, not criminal.

Police Authorities – The police authorities are authorized officials from the Ministry of the Interior as well as authorized officials from the Ministry of Defense (military police) within their jurisdiction to act in military buildings and on other military premises used for defense (Article 170 para. 2 CPA).

Defense counsel - lawyer, exceptionally lawyer's apprentice that assists the defendant with his/her defense using his/her legal knowledge and procedural skills. *The defense counsel is not a party in the criminal procedure.*

Witness – The witness is a person other than the defendant that seems likely to give information on the facts that are to be determined in the criminal proceedings and that was summoned by the court to give statement upon those facts.

Expert witness – The expert witness is an expert in the field other than law, summoned by the court to determine or evaluate important facts that can be established only by knowledge and skills other than legal.

1.6 Jurisdiction and composition of court panel

Jurisdiction of court is the right and obligation of the court to proceed in certain cases; the right and obligation to perform particular legal acts.

There is a difference between subject matter jurisdiction and territorial jurisdiction.

Subject matter jurisdiction refers to the jurisdiction of the court in deciding on certain types of cases or undertaking certain types of procedural activities

Territorial jurisdiction solves the issue of which of two or more courts with the same subject matter jurisdiction is to proceed in a particular case.

1.6.1 Subject matter jurisdiction

Criminal cases are adjudicated in municipal courts, county courts and the Supreme Court of the Republic of Croatia. To determine which court has the subject matter jurisdiction it is necessary to know what criminal offense is a subject of the proceedings and what sanction is it prescribed with in Criminal Code.

Municipal courts shall have jurisdiction to: (Article 17 CPA)

1. Adjudicate at first instance:

- a) Offenses punishable by a fine or imprisonment for a term of less than ten years as principle punishment;
 - b) Offenses for which the jurisdiction in municipal courts is prescribed by special law.⁹
2. Undertake urgent actions in pre-trial criminal proceedings regarding offenses committed within the territorial jurisdiction of a municipal court only if there is concern that the investigating judge shall not be able to undertake this action in due time.
 3. Decide in proceedings referred to in subparagraph 1. a) of this paragraph on objections against the indictment and on requests of the presiding judge referred to in Article 282 of the CPA;
 4. Administer other matters conferred by law.

County courts shall have jurisdiction to: (Article19 CPA)

1. Adjudicate at first instance:
 - a) Offenses punishable by imprisonment for a term of more than ten years or by long-term imprisonment, for the following offenses:
 - manslaughter (Article 92 CC),
 - kidnapping (Article 125 CC),
 - rape (Article 188 para 1 CC),
 - sexual intercourse with a child (Article 192 para 1 and 3 CC),
 - abuse of office and official authority (Article 337 para 4 CC),
 - criminal offenses from the Section XII of CC (all offenses against the Republic of Croatia) and
 - other offenses for which a special law prescribes jurisdiction of the county court .¹⁰
2. decide on appeals against the decisions of municipal courts rendered at first instance;
3. conduct investigations and undertake other actions in pre-trial criminal proceedings, decide on disagreements between the State Attorney and investigating judge on appeals filed by the parties against rulings of the investigating judge and decide on objections to the indictment or on requests of the president of the panel referred to in Article 282 of the CPA;
4. render decisions in the procedure for the infliction of imprisonment in accordance with special legislation;
5. conduct procedures for the extradition of accused and convicted persons if the law does not prescribe the jurisdiction of the Supreme Court of the Republic of Croatia;
6. administer matters of international judicial assistance in criminal matters including the recognition and execution of a foreign criminal judgment;
7. decide on disputes over the territorial jurisdiction of municipal courts within its territorial jurisdiction;
8. administer other matters as provided by law.

The Supreme Court of the Republic of Croatia shall have jurisdiction to: (Article21 CPA)

1. decide on appeals against decisions of the county courts rendered at first instance;

⁹ Municipal Court jurisdiction is prescribed in Article 56 Act on Juvenile Courts.

¹⁰ County Court jurisdiction is prescribed in Articles 29 para. 1, 37, 44 – 53 Act on Protection of Mentally Disturbed Persons.

2. decide, at third instance, on appeals against the judgments rendered at second instance as provided in CPA (Article 394)
3. decide on extraordinary judicial remedies as provided in CPA
4. administer other matters as provided by law.

1.6.2 Territorial jurisdiction (most frequent situations)

As a rule, the court within whose territory the offense is committed or attempted shall have the territorial jurisdiction over the case.

If the offence is committed or attempted within the territorial jurisdiction of several courts or on their border, or if it is uncertain within which jurisdictional territory the offence has been committed or attempted, jurisdiction shall be in the court which, on the request of the authorized prosecutor, has first instituted the proceedings, and, if the proceedings have not yet been instituted, in the court to which the request for commencement of proceedings was first submitted.

A private charge may also be filed with the court within which court's jurisdiction the defendant has a domicile or residence.

For offenses committed through the Press, the court with the territorial jurisdiction on the territory where the paper was printed shall have jurisdiction. If this location is unknown or the paper was printed abroad, jurisdiction shall have the court within which's territorial jurisdiction the paper is distributed. This should be interpreted accordingly in cases when text or statement was published through radio or TV broadcast.

If, according to law, the compiler (author) of the paper (text) is responsible, the court with the territorial jurisdiction over the territory where the compiler (author) has domicile or the court with the jurisdiction over the territory where the event referred to in the paper (text) took place shall have the jurisdiction.

If the offence is committed on a domestic ship or aircraft while it is in a homeport or airport, the court within whose jurisdiction this port or airport is located shall have jurisdiction. In all other cases where an offence has been committed on a domestic ship or aircraft, the court within whose territory the home port or home airport of the ship or aircraft is located or within whose territory a home port or airport which the ship or aircraft first reaches is located shall have jurisdiction.

If a person has committed offences both in the Republic of Croatia and abroad, the court that has jurisdiction over the offence committed in the Republic of Croatia shall have jurisdiction.

If according to the CPA it cannot be established which court has territorial jurisdiction, the Supreme Court of the Republic of Croatia shall designate one of the courts with the subject matter jurisdiction to conduct the proceedings.

1.6.3 Composition of the Court

Municipal courts sit in panels of one judge and two lay judges (article 18 CPA). Offenses punishable by a fine or imprisonment of a term of less than three years as principle punishment shall be adjudicated by a municipal judge sitting alone. A single judge shall not adjudicate in the following criminal acts: (such cases shall be adjudicated by the panel; article 18 para. 2 CPA):

- Negligent homicide (Article 95 CC),
- Impulsive bodily injury resulting in death (Article 100 para. 3 CC),
- Negligent bodily injury resulting in death (Article 101 para. 3 CC),
- Injury of an Intermediary (Article 164 CC),
- Brutal treatment of the wounded, sick and prisoners of war (Article 165 CC),
- Misuse of international symbols (Article 168 CC),
- Endangering the safety of internationally protected persons (easiest (light) form, Article. 170 para. 4 CC),
- Misuse of nuclear materials (Article 172 para.1, 2 and 3 CC),
- Sexual intercourse by duress (Article 190 CC),
- Sexual intercourse by abuse of position (Article 191 CC) and
- Causing traffic accident resulting in death (Article 272 para. 4 CC).

Prior to the trial, in case of criminal offences punishable by imprisonment of less than ten years, the parties may agree to have the president of the panel conduct a main hearing as a single judge, unless the court composition is prescribed by special law. Parties cannot revoke that agreement. (Article 18 para. 3 ZKP).

Municipal courts shall sit in panels of three judges when rendering a decision out of the trial (main hearing).

County Courts, when deciding in first instance are composed of (Article 20 para.1 CPA):

- A panel of one judge and two lay judges when considering offenses punishable by imprisonment of up to fifteen years;
- A panel of two judges and three lay judges when considering offenses punishable by imprisonment of more than fifteen years or the long-term imprisonment.

When deciding in second instance and out of the trial (main hearing) the County Courts adjudicates in a panel composed of three judges (Article 20 para. 2 CPA).

When deciding in second instance and within the main hearing the County Court adjudicates in a panel composed of two judges and three lay judges (Article 20 para. 3 CPA).

The county court judge (investigative judge) shall perform investigatory actions (Article 20 para. 4 CPA).

The Supreme Court of the Republic of Croatia decides in panels composed of (Article 22 CPA):

- A panel of three judges

- A panel of five judges when considering offences punishable by imprisonment for a term of more than fifteen years or long-term imprisonment;
- A panel of two judges and three lay judges when deciding at trials of second instance for offenses punishable by imprisonment for a term of fifteen years;
- A panel of three judges and four lay judges when deciding at trials of second instance for offenses punishable by long-term imprisonment;
- A panel of five judges when rendering decisions as the third instance court of judgments rendered by its own panel at the second instance;
- A panel of three judges when it decides on extraordinary legal remedies for offenses punishable by up to fifteen years; and
- A panel of five judges when it decides on extraordinary legal remedies for offenses punishable by long-term imprisonment.

1.6.3.1 Judge disqualification (recusal)

A judge shall be disqualified (recused) from adjudicating in a particular criminal case, or from performing other procedural activities, due to circumstances which render doubt on his/her impartiality.

A judge or a lay judge shall be excluded from the exercise of the judicial office for the following reasons (Article 36, para. 1, CPA):

- If he/she has been injured by the criminal offense;
- If he/she is the spouse, relative by blood, lineal, descending or ascending, or collateral to the fourth degree, or related by affinity to the second degree to the defendant, his/her defense counsel, the prosecutor, the injured person, their legal guardian or legal representative;
- If he/she is the legal guardian, ward, adopted child or adoptive parent, foster-parent or foster-child to the defendant, his/her defense counsel, the prosecutor, or the injured person;
- If in the same criminal case, he/she has carried out investigatory actions, or has taken part in deciding on an objection to the indictment or if he/she has taken part in the proceedings as a prosecutor, defense counsel, legal guardian or legal representative of the injured person or the prosecutor, or if he/she testified as a witness or as an expert witness; and/or
- If in the same case he/she has taken part in passing a decision of a lower court or in passing a decision of the same court being challenged by an appeal or extraordinary legal remedy.

The judge and lay judge may be recused from exercising judicial office in a particular case if, apart from the cases enumerated in the previous paragraph, it shall be stated and proven that there are circumstances which render his/her impartiality to be doubtful (in practice this is the most frequent reason for which parties request the recusal of a judge). When a request for recusal is grounded on this reason, and until the final decision on this request, a judge may undertake only procedural activities when there is a danger of delay.

The judge or lay judge, as soon as he/she discovers grounds for exclusion listed under 1 - 5, shall discontinue all activity on the case and report this to the president

of the court who shall appoint a substitute judge (Article 37 para. 1 CPA). When a judge or lay judge learns that a petition challenging his/her impartiality was submitted, he/she shall discontinue all activity on the criminal case.

If a judge or a lay judge holds that other circumstances exist which would justify his/her recusal, he/she shall inform the president of the court about this matter.

The parties may submit a petition challenging a judge's impartiality at any time up to the beginning of trial (main hearing),¹¹ and if they learn of a reason for exclusion later (Article 36 para. 1), they shall submit the petition immediately after they have learned of that reason.

The party may challenge only an individually designated judge, lay judge or higher court judge, exercising his/her judicial office in that particular case. The party is obligated to state in its petition circumstances supporting its allegation that a legal ground for the challenge exists. It is not permitted to state the same reasons that were already rejected in a previous petition on the same matter (Article 38 para. 4 and 5 CPA).

If the petition for recusal due to circumstances that render a judge's impartiality doubtful was submitted after the beginning of trial, or if the petition does not comply with the provisions of Article 38 para. 4 and 5 CPA, the petition shall be dismissed entirely or partially. The ruling that dismisses the petition during the trial shall be rendered by the trial panel (in summary proceedings by a single judge), and outside of the trial by the president of the court. The judge who is challenged may participate in the decision about his/her disqualification (Article 39 para. 5 CPA).

1.7 Measures for providing the presence of a defendant

These measures are procedural means that serve the purpose of securing the defendant's presence at the performance of a certain proceeding act.

When deciding on the measures for providing the presence of a defendant and on other precautionary measures the court shall apply, the main interpreting principle should be the principle of **proportionality**. The court shall be cautious not to apply a more severe measure if a milder measure may achieve the same purpose. The court shall, by virtue of the office, vacate the measures or replace them with milder measures when the legal conditions for their application have ceased to exist, or when the conditions are met for achieving the same purpose with a milder measure.

¹¹ The trial (main hearing) begins with the reading of the charges (Article. 319 para. 1 CPA).

1.7.1 Summons

Summons is the mildest measure. It is a written order to the defendant requesting his/her presence at a particular time and place where a particular procedural activity shall be carried out. (Article 88 CPA).

The court shall also issue a summons to other participants in the proceedings (witnesses, expert witnesses, defense counsels, authorized persons etc.). If a defendant ignores a duly delivered summons, that is a presumption for use of a more severe measure – compulsory appearance.

1.7.2 Compulsory appearance

Compulsory appearance is a measure of procedural enforcement against the defendant, witness or expert witness, consisting of forced appearance of these persons in front of the bodies conducting the proceedings (Article 89 CPA)

A warrant for compulsory appearance shall be issued by a court and executed by police authorities. The warrant for compulsory appearance may be issued by a court if a ruling on detention is issued or if a duly summoned defendant fails to appear and fails to justify his absence or if it is not possible to duly serve the summons and the circumstances clearly indicate that the defendant is evading the receipt of the summons.

The person to whom the execution of the warrant is conferred shall serve it to the defendant and shall invite the defendant to accompany him. If the defendant refuses to comply he shall be brought in by force.

The warrant for compulsory appearance shall not be issued against military personnel, members of the police authorities and judiciary police, but their command or institution shall be required to take them to the court.

1.7.3 Precautionary measures

Precautionary measures are legal measures aimed at securing the defendant's presence and are used as a substitute for detention. Precautionary measures may be in the form of certain prohibitions, measures or obligations imposed on the defendant. (Article 90 CPA).

There are four prohibitions, two measures and one obligation that may be imposed on the defendant. Precautionary measures shall not be used against other participants in the criminal proceedings.

- Prohibition to leave residence;
- Prohibition to visit certain places or areas;
- Obligation of the defendant to report periodically to a certain person or authority;

- Enjoining (prohibiting) an individual from approaching certain person(s) or from having any contacts with certain person(s);
- Prohibition to engage in certain business activities;
- Temporary seizure of a passport or another document which serves to cross the state border;
- Temporary seizure of a driving license.

The investigating judge shall order precautionary measures prior to the commencement of the criminal proceeding and in the course of the investigation. The single judge or the president of the panel shall order precautionary measures after the motion to indict. Parties may appeal the ruling that orders, defines or prolongs a precautionary measure. Appeal shall not stay the execution of the ruling.

Police authorities may temporary seize a driving license for up to three days if the following criteria were met (cumulative):

- If it is likely that an offense against safety in traffic has been committed;
- If police authorities are at the scene of the act
- If there is reasonable suspicion that the person whose driving license has been seized is the perpetrator.

1.7.4 Bail

Bail is a legal measure aimed at securing defendant's presence and is used instead of detention. Bail shall consist of depositions of cash or other material valuables that can be cashed if the defendant absconds (Article 91 CPA).

Bail is not the right of the defendant but a means to substitute the detention that was ordered or was supposed to be ordered because of the danger of flight, and not because of other reasons. Bail and precautionary measures shall be determined only by the court (investigating judge, single judge or president of the panel, depending on the phase of the proceedings in which it is being ordered).

Bail is a legal measure aimed at securing the presence of the defendant and shall not be used against other participants in the criminal proceedings (witnesses, expert witnesses).

1.7.5 Arrest

Arrest is a measure of legal enforcement that consists of every act or measure that includes forceful detention of a person under suspicion of committing a criminal act. (Article 94 CPA).

Only police authorities are entitled to arrest a person. Any person may prevent the flight of a person who is caught in the act of committing a criminal offense subject to public prosecution. Such prevention represents a milder restriction of freedom than arrest. A person that was prevented from flight shall be immediately brought before an investigating judge or police authorities.

Police authorities are entitled to arrest:

- A person against whom they execute a ruling for compulsory appearance
- A person against whom they execute a ruling on detention
- A person who is in the act of committing a criminal offense subject to public prosecution
- A person against whom there are grounds for suspicion¹² of having committed an offense subject to public prosecution, if any of the grounds for ordering detention exists.

An arrested person has no freedom of movement. Police authorities have the authority over the detained person and he/she shall behave in accordance with their verbal orders, or, if necessary, use of force.

The defendant's arrival at the police station and his/her holding at the police station are not arrest as long as police personnel do not warn him that he is not allowed to leave, or that he should wait in the corridor, or in any other way restrict his freedom of movement within the station (for instance, lock him into a room).

The arrested person must be immediately be informed by the police authorities of the reasons for arrest, unless this is impossible due to the circumstances. The police authorities shall be bound to inform the family of the arrested person (except if he/she opposes to this).

In the event of the arrest, only force absolutely necessary to effect the arrest may be used and the consequences of such force must be proportionate to the gravity of the offense. Force that may endanger life or seriously impair the health of the arrested person may be used to effect the arrest only:

- For offenses punishable by imprisonment for a term of ten years or more and if it is necessary to stop the person to be arrested from flight;
- If the resistance of the person to be arrested endangers someone's life, or may seriously impair someone's health.

Police authorities shall use force only after a previous warning has been given, unless it is necessary to use force without warning due to the circumstances of the event.

Police authorities shall take the arrested person immediately, and at the latest within 24 hours from the moment of arrest, to the investigating judge or release him. The delay shall be specifically explained.

The investigating judge shall immediately warn the arrested person brought before him of the reasons for his arrest, that he is under no obligation to testify and that he is entitled to the legal assistance of a defense counsel of his own choice. If necessary, the investigating judge shall assist the arrested person in obtaining a defense counsel. These activities shall be noted on the record.

¹²The investigating judge is obliged to carefully study such grounds and if there is a suspicion of abuse of the authority, he is obliged to file criminal charges.

1.7.6 Provisional confinement

Provisional confinement is a measure of legal enforcement that the investigating judge orders against the defendant. It may consist of a provisional confinement for a duration of 24 hours in order to allow police to determine data and evidence, or provisional confinement for a duration of 48 hours in order to allow the State Attorney to examine the case and submit a motion to indict and motion to order detention. (Article 98 CPA).

There are two forms of provisional confinement. On the motion of the police authorities or the State Attorney, the investigating judge may order **investigative confinement**. It may last up to 24 hours and it allows the police authorities to complete successfully their investigations (checking the alibi, collecting data on evidence). In the motion to order confinement, the police authorities shall provide to the investigating judge the existence of *grounds for suspicion* that the arrested person committed the offense of which he is suspected. Grounds for suspicion **must** be based on the results of the investigation that the police already have and **not** on the evidence to be collected in the future. Police authorities may not appeal the investigating judge's ruling on the provisional confinement. Provisional confinement may be ordered one more time, provided that information that the arrested person committed another offense is collected. That provisional confinement shall not be related to the offense for which the provisional confinement was motioned and ruled upon.

The investigating judge may, by virtue of the office or on the motion of the State Attorney, order **preventive confinement**. It may last up to 48 hours and it allows the State Attorney to submit the motion to indict that shall institute the criminal proceedings, if it hasn't been instituted already. In order to submit the motion to order confinement, there has to be **reasonable suspicion** that the arrested person has committed the offense of which he is suspected. The State Attorney may file an appeal against this ruling. *Police authorities may not require provisional confinement to be ordered*, but, simultaneously with arrested person's compulsory appearance and with a motion for an investigative confinement of the arrested person, may file criminal charges to the State Attorney's office that will contain information that will "urge" the State Attorney to submit a motion for provisional confinement.

Preventive confinement may follow after investigative confinement. Confinement may last up to 48 hours. The arrested person always has the right to appeal against the ruling that prescribes the confinement. Appeal shall not hold execution of the ruling and shall be judged, immediately after it was submitted, by the non-trial panel of the County court.

After the deadline of 24 or 48 hours has expired, the arrested person shall be released, unless the State Attorney includes within the motion to indict a proposal for detention. In that case, the investigative judge shall¹³ confine the arrested person until the expiry of the first subsequent working day, and within this term the court shall render a decision on the request for investigation and the need for detention. If the court does not order detention before the expiry of the first subsequent working day, following the expiry of confinement deadlines (24 or 48 hours), the arrested person shall be immediately released.

¹³ Within legal text, word "shall" means "must".

This *additional* confinement (until the expiry of the first subsequent working day) may happen only if the arrested person did not file an appeal against the ruling on the confinement. If the arrested person filed an appeal and the non-trial panel has granted it, the arrested person shall be released, regardless of the State Attorney proposal for detention in the motion to indict.

1.7.7 Detention

Detention is the most severe measure of the legal enforcement ordered by the court. It consists of the accused person's detention in order to fulfill certain procedural goals (preventing flight, preventing obstruction of evidence gathering procedure, preventing new criminal activities, and for the special goals arising from the severe nature of the criminal act; Article 101 – 118 CPA).

Detention shall always be ordered by the investigating judge, on a motion of the State Attorney to order detention, or by virtue of the office. It is wrong to say or write that the State Attorney or the Police authorities ordered detention.

Detention shall always be ordered against a person suspected on well-founded grounds of having committed a criminal offense. If there exists reasonable suspicion that a person committed an offense, detention against this person may be ordered:

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

After the indictment becomes final, detention may also be ordered against a duly summoned defendant who evades appearance at the trial.

These are situations when detention *may* be ordered (facultative detention). When pronouncing the judgment of imprisonment for a term of five years or more, detention against the defendant **shall** be ordered (obligatory detention).

When deciding on detention, especially regarding its duration, the court shall take into consideration the proportionality between the gravity of the offense, the sentence which, according to data at the disposal of the court, may be expected to be imposed, and the need to order and determine the duration of detention.

The judicial authorities conducting the criminal proceeding shall proceed especially urgently if the defendant is in detention and take care, by virtue of the office, whether the ground and legal conditions for detention have ceased to exist, in which case detention shall be immediately vacated.

Detention shall be ordered or vacated:

- Investigating judge – during investigation, when conducting some investigatory actions in summary proceedings or when the State Attorney has requested consent to prefer indictment without investigation
- Court panel referred to in Article 18 para 3 of CPA (non-trial panel) – after an indictment or motion to indict has been submitted to the court, outside the trial
- Single judge or judicial panel – pending trial
- Appellate panel – when it decides on an appeal against a judgment
- When the judicial panel deciding on extraordinary judicial remedies vacates the contested judgment and returns the case to renewed proceedings, it may order detention if terms for detention have not yet expired.

Maximum duration of detention, regardless of the grounds for it, depends on the punishment prescribed for the offense in question in criminal proceeding. In any case, the whole duration of detention until the first instance judgment has been reached (and counting from the time of arrest) may not be longer than (article 109 CPA):

- **Six months** if the offense is punishable by imprisonment for a term of *less than three years*
- **One year** if the offense is punishable by imprisonment for a term of *less than five years*
- **One year and six months** if the offense is punishable by imprisonment for a term of *less than eight years*
- **Two years** if the offense is punishable by imprisonment for a term of *more than eight years*
- **Three years** if the offense is punishable by *long-term imprisonment*.

If the first instance judgment is not final, total term of detention may be prolonged for an additional period, until the judgment becomes final:

- **One month** if the offense is punishable by imprisonment for a term of *less than three years*
- **Two months** if the offense is punishable by imprisonment for a term of *less than five years*
- **Three months** if the offense is punishable by imprisonment for a term of *less than eight years*
- **Six months** if the offense is punishable by imprisonment for a term of *more than eight years*
- **Nine months** if the offense is punishable by *long-term imprisonment*

The whole duration of detention may be additionally prolonged just once more, for the period of:

- **Six months at the longest** if the offense is punishable by imprisonment for a term of *less than eight years*, or
- **One year at the longest** if the offense is punishable by imprisonment for a term of *more than eight years*.

On the motion of the State Attorney, after the first instance judgment has been vacated upon a judicial remedy, the panel of the Supreme Court of the Republic of Croatia may rule on such an order.

If an appeal court has rendered a judgment that allows an appeal¹⁴, detention may be prolonged until the judgment is final, but three months at the longest.

1.7.7.1 House arrest

House arrest is a measure of the legal enforcement ordered by the court that forbids the accused person to leave home in order to fulfill certain procedural goals (preventing flight, preventing new criminal activities, Article 102 CPA).

House arrest is (as well as bail) a means of substitute to the detention that was ordered or was supposed to be ordered because of the danger of flight, or iteration danger, and not because of other reasons

During house arrest, a court may order electronic or video surveillance on all entrances to the accused person's home, if the accused person gives permission.

The court shall supervise house arrest. The police authorities shall also supervise house arrest as ordered by the court, but also without court order (Article 111 para. 3 CPA).

The court may exceptionally approve leave from the house arrest:

- 1) If necessary for medical treatment or
- 2) If there are special circumstances that may cause severe consequences to life, health or property.

The court shall order detention against the defendant who has been ordered house arrest:

- If he leaves house arrest contrary to the courts order,
- If he fails to return to house arrest within certain term,
- If he fails to comply with prohibition to communicate with certain persons,
- If he fails to comply with the prohibition to use means of communication,
- If he avoids or obstructs the conduct of video or electronic surveillance measures.

¹⁴ An appeal may be taken from the judgment of a court at second instance only in the following cases (Article 394 CPA):

- 1) If the court at second instance has imposed a punishment of long-term imprisonment or if it has affirmed the judgment at first instance which imposed such a punishment;
- 2) If the court at second instance, after conducting a trial, has determined the factual situation differently from the court at first instance and has based its judgment on the factual situation determined in this way;
- 3) If the court at second instance has revised the judgment of acquittal rendered by the court at first instance and rendered a judgment of conviction.

1.8 Investigation

Investigation is a group of procedural actions that shall be conducted by the investigating judge, upon the request of the authorized prosecutor, when reasonable suspicion exists that a certain person has committed a criminal offense (Articles 187 CPA, and so forth).

The purpose of investigation is to collect evidence and information necessary for a decision on whether to refer an indictment or to discontinue proceedings as well as evidence that may not be possible to repeat at the trial or if its examination may involve some difficulties.

The investigation is instituted by the ruling on the opening of the investigation. Upon receiving the request for investigation submitted by the authorized prosecutor, the investigating judge shall render a ruling. The investigating judge shall conduct the investigation, only in respect to the criminal offense and the defendant specified in the ruling on the opening of the investigation. If in the course of the investigation the proceedings should be expanded to another criminal offense or against another person, the investigating judge shall inform the State Attorney thereof. In such a case, urgent investigatory actions may be undertaken, but the State Attorney shall be notified of all the actions undertaken (Article 195 CPA).

In the course of the investigation, the investigating judge may entrust the performance of particular investigatory actions to the police authorities (search of dwellings and persons, temporary seizure of objects (article 193 para. 4 CPA)). The police authorities and other offices of authority are obliged to provide necessary help to the investigating judge upon his request.

Investigating judge (or the official of the police authorities entrusted to undertake certain investigatory action) shall order the persons who are being interrogated, are present while investigatory actions are being carried out, or inspect the files of the investigation to keep certain facts or information they have learned in the proceedings confidential. The reasons for keeping facts confidential may be (article 207 CPA):

- benefit of the proceeding
- keeping information confidential
- reasons of public order or
- moral considerations.

Breach of secrecy of proceedings is a criminal offense punishable by fine or imprisonment not exceeding three months (Article 305 CC).

The investigation judge shall conclude the investigation when he finds that the case has been sufficiently clarified so that the indictment may be preferred or the proceedings discontinued (Article 203 CPA). If the investigation is not concluded within a term of six months, the investigating judge is bound to notify the president of the court of the reasons that hinder its conclusion. If necessary, the president of the court shall undertake measures in order to conclude the investigation (Article 204 CPA).

1.8.1 Investigatory actions

Investigatory actions are procedural actions that collect information and evidence relevant to the criminal proceedings.

Search of dwellings and persons is an investigatory action used to find and capture the defendant or to find objects relevant to the criminal proceedings (article 211 CPA).

Temporary seizure of objects is an investigatory action to seize objects which, according to the Criminal Code, have to be seized or which may be used to determine facts in proceedings. Whoever is in possession of such objects shall be bound to surrender them upon the court's request. A person who refuses to surrender them may be fined to an amount not exceeding 20.000 kuna, and in the case of further refusal may be imprisoned. Imprisonment shall last until the object is surrendered or until the conclusion of criminal proceedings, but not longer than one month (article 218 CPA).

State authorities may refuse to present or surrender their files and other documents if it appears to them that disclosure of their contents would compromise the public good. Banks may refuse to reveal data which represent a bank secret. The final decision thereon shall be made by the panel of the county court (article 219 para. 1 CPA).

The investigating judge may require a bank to deliver him information on the bank accounts of a defendant or another person against whom proceedings for the confiscation of pecuniary benefit obtained in consequence of the commission of an offense are being conducted. If following the decision of the panel of the county court the bank does not deliver to the investigating judge the data requested, the investigating judge shall immediately inform thereof the National Bank of Croatia and undertake other lawful measures (article 219 CPA para. 3 and 4). The National Bank of Croatia shall undertake measures towards the bank according to the Law on Banks and Savings.

The investigating judge may order that postal, telephone and other communication agencies retain and deliver to him against a receipt, letters, telegrams and other shipments addressed to the defendant or sent by the defendant if circumstances exist which indicate that it is likely that these shipments can be used as evidence in the proceedings (article 221 CPA).

Interrogation of defendant is a formal procedural action that asks the defendant to present his defense (article 225 CPA). Defense includes the statement of the legal grounds of the indictment and the statement of facts.

When the defendant is interrogated for the first time, after taking personal information, the defendant shall be informed of the offense he is being charged with and of the grounds for suspicion and shall be instructed that he need not present his defense or answer any questions and that he is entitled to have a defense counsel present at the interrogation.

The trial court shall not exclude any conclusions unfavorable to the defendant from the defendant's right not to answer questions. If the defendant refuses to answer that does not indicate his guilt.

The defendant may be interrogated in the absence of a defense counsel only if he has expressly waived this right, and if defense is not mandatory. If defense is mandatory, the defendant shall not be interrogated in the absence of a defense counsel.¹⁵ It is forbidden to use force, threat or other similar means to obtain a defendant's statement or confession.

The examination of witnesses is a formal procedural action in which a witness gives information regarding the offense, the perpetrator and other relevant circumstances (article 232 CPA). Every person summoned as witness is bound to appear at the court and to testify, unless it is a person that may not testify as witness or exempted from the duty to testify.

The following persons **may not** testify as witnesses (article 233 CPA):

- A person who, by giving testimony, would violate the duty of keeping an official or military secret until the competent authority releases him from this duty;
- A defense counsel cannot testify with regard to information the defendant has confided to him in his capacity as defense counsel, except if the defendant so requests;
- A defendant in proceedings where the provisions on joinder and severance of cases are applied (article 29 CPA)
- A minor who due to his age and mental development is unable to understand the meaning of the right to exemption from testifying (article 234 para. 4 CPA)¹⁶
- A religious confessor regarding information which the defendant has confessed to him.

The following persons are **exempted** from the duty to testify (article 234 CPA):

1. The defendant's spouse or common-law spouse;
2. The defendant's linear relatives by blood, collateral relatives by blood to the third degree and relatives by affinity to the second degree;
3. The defendant's adoptive parent and adopted child;

¹⁵ **The defendant must have a defense counsel** (article 65 CPA):

- 1) If he is deaf, mute or otherwise unable to defend himself, he must have a defense counsel even at his first interrogation,
- 2) If the proceedings are carried out for an offense punishable by long-term imprisonment, the defendant must have a defense counsel even at his first interrogation,
- 3) As soon as the ruling on detention has been rendered
- 4) After he is indicted for an offense punishable by imprisonment for a term of eight years the defendant must have a defense counsel at the time the indictment is served,
- 5) If the defendant is tried in his absence, he must have a defense counsel as the ruling on the trial in absence is rendered,
- 6) If the defendant who does not have defense counsel should be served with a judgment imposing a sentence of imprisonment and this judgment cannot be served at his present address
- 7) In proceedings toward juveniles
- 8) In proceedings regarding mentally disturbed persons, persons who have committed an offense without mental capacity or with diminished mental capacity after the indictment or motion to indict requests that the court determines by a judgment that the defendant committed an offense without mental capacity;
- 9) In extradition proceedings

¹⁶ But the information obtained from a juvenile person through expert personnel, relatives or other persons that were in contact with him/her may be used as evidence

4. Attorneys, notaries public, tax consultants, physicians, dentists, pharmacists, midwives and social workers regarding information coming to their knowledge in performing their respective professions;
5. Journalists and their editors in the media regarding sources of information and data coming to their knowledge in the performance of their profession and provided that their sources were used in the editorial process, except for offenses against honor and reputation committed by the means of the media.

Persons stated above may not refuse to give a statement if criminal proceedings are for the criminal act of legal protection of children and juveniles from article 117 Juvenile Courts Act (article 234 para. 6 CPA, total of 20 criminal acts; article 188 to 198, article 209 to 215, article 175 and article 178 CC).

Persons stated above may not refuse to give a statement if a legal ground exists exempting them from their duty to keep information confidential (article 234 para. 2 CPA).

Before the examination, the witness shall be informed (by the president of the panel) of his duty to tell the truth and not to withhold anything, and afterwards he shall be warned that giving false testimony is an offense punishable by imprisonment term not longer than three years.

If a witness, after being informed of the consequences, refuses to testify without legal cause, he may be fined to an amount not exceeding 20,000.00 Kn and if thereafter he still refuses to testify, he may be imprisoned. Such imprisonment may last until the proceedings are concluded, but not longer than one month.

Military persons and members of the police authorities may not be imprisoned, but their competent command shall be informed of their refusal to testify in order to impose a punishment therefore.

Recognition is a procedural action that is conducted to determine if the defendant or witness knows the person or an object (article 243b CPA). Citizens are obliged to personally participate in the recognition or give at the disposal the objects to be recognized, unless there is a justified reason for exemption of this duty. A citizen that refuses to participate in the recognition without valid cause shall be fined to an amount not exceeding 20,000.00 Kn (article 243b para. 2 CPA).

Judicial view is a procedural action that is conducted when direct observation is necessary for the determination or an explanation of some relevant fact in the proceedings, and the results of determination are entered in the record (article 244 CPA).

Reconstruction is a procedural action taken in order to test the evidence examined or to determine the facts relevant for the clarification of the matter (article 245 CPA). It is conducted in a manner to repeat the acts or situations in the conditions as, according to the evidence examined, they existed at the time when the event took place.

Taking fingerprints and prints of other body parts is a procedural action for establishing whom the fingerprints or prints of other body parts found on certain objects originate from. Prints may be taken from persons against whom there is a probability they could have been in touch with certain objects, even without the assent of those persons (article 246a CPA).

Expert witness testimony is a procedural action when an expert witness in his findings and opinion states circumstances necessary to determine or assess relevant facts in the proceedings (article 247 CPA). The trial court shall assess and determine the credibility of the expert witness findings and opinion, the same as with any other evidence.

A person summoned as an **expert witness** is bound to appear and to give his findings and opinion.

The following persons **may not** be appointed as an expert witness (article 250 CPA):

- A person who may not testify as a witness
- A person exempted from testifying
- A person against whom the offense was committed
- As a rule, a person examined as a witness
- A physician who treated the deceased person
- A person who is employed by the same state authority or by the same employer as the defendant or the injured person (article 250 para 2 CPA).

Frequent expert witness testimonies are:

Court-medical – to establish the cause of death (a postmortem examination and autopsy shall be performed whenever there is suspicion, or if it is evident, that death was caused by an offense or that it is related to the commission of the offense; in certain situations exhumation shall be ordered), and bodily injuries (type, nature of injury, severity, the way in which way injury was inflicted)

Psychiatric – if suspicion arises that the defendant's mental capacity is excluded or diminished due to temporary or permanent mental illness, temporary mental disorder or mental deficiency

Toxicological – if there is suspicion of poisoning, and to determine the level of alcohol in blood, and determine and analyze circumstances related to drug abuse

Biological – expert witness testimony on biological traces (blood, sweat, saliva, tears), DNA tests, tests and analysis on traces of clothing, fibers

Traffic – expert witness testimony on traces related to traffic accidents

Dactiloscopic – determining the sameness or difference between persons by using papillary lines on people's fingertips, palms and soles

Graphological – determining similarity or difference of handwriting

Ballistic analysis, fire and explosion analysis – determining important facts by examination and analysis of firearms, ammunition, the cause of a fire or explosion

Book-keeping and auditory expert witness testimony – partial or complete analysis of business activities by examination of business records, giving opinion and findings on certain business situations, relations and financial situation

Physical examination of the suspect or defendant shall be carried out without this consent if it is necessary to determine facts relevant to the criminal proceedings. A physical examination of other persons may be carried out without their consent only if it is necessary to determine whether there is certain trace or consequence of an offense on their body (article 265 para. 1 CPA).

Taking blood samples and other medical procedures in order to analyze and determine facts relevant to the proceedings may be carried out even without the consent of the suspect or defendant provided no detrimental consequences for

his health ensure therefrom. The court shall order these procedures, unless there is danger of delay. (Article 265 para 2 CPA).

Basic genetic material of a living person may be taken without his consent if there are grounds for suspicion that he committed an offense punishable by imprisonment as well as if a probability exists that by such analysis data important for successfully conducting proceedings shall be obtained. (Article 265 para. 5 CPA).

1.9 Indictment

Indictment is an indicting act of the State Attorney or the subsidiary prosecutor in the regular criminal proceedings (article 267 CPA).

The proceedings before the court shall be conducted only on the basis of the indictment. The court shall serve the indictment to the defendant and his defense counsel. They are entitled to submit an objection to an indictment within a term of eight days from the day it is served. The president of the panel may make the request for examination of the indictment up until the trial is scheduled and not later than two months from the day when the indictment is submitted to the court. Such request may be submitted and served to the non-trial panel if an objection to an indictment is not submitted or if it is rejected. The request may contain any issue that is to be decided upon an objection. Non-trial panel shall decide on the objection and the request of the president of the panel.

An indictment shall become final when an objection is rejected (article 283 CPA). If an objection is not submitted or is dismissed, an indictment shall become final on the day when the non-trial panel, deciding on the request from the president of the panel, agrees with the indictment. If such a request does not exist, an indictment shall become final on the day when the president of the panel schedules the trial. If an objection to the indictment was not submitted, and if there was no request from the president of the panel, an indictment shall become final after the lapse of the term of one month from the day the indictment was submitted at the court.

The moment when an indictment becomes final is important regarding commencement of the criminal proceedings, regarding informing the Ministry of Defense that an indictment becomes final against active military persons, military officials and military employees, and regarding the restriction of certain rights (article 14 CPA).

In summary proceedings, the indicting act is a motion to indict or private charge and there is no right to object to the indicting acts.

1.10 The trial

The trial is a part of the criminal proceedings before a court in first instance where the procedural materials needed to reach the judgment are considered publicly, orally, contradictorily and directly.¹⁷

The trial shall be held in the seat of the court and in the courthouse (article 285 para. 1 CPA). The conditions for relocation of the trial are:

- If the premises of the courthouse are considered inappropriate for the trial
- If the president of the court gives an order that the trial is to be held in another location.

The president of the panel shall order the day, hour and place of the trial with an order. The president of the panel shall direct the trial. It shall be the duty of the president of the panel to ensure that the case is thoroughly discussed and that any matter delaying the proceedings without contributing to the clarification of the case shall be removed (article 297 CPA). The president of the panel should intervene if the interrogation of the defendant, witness or expert witness made by the parties was wrongful or insufficient.

The president of the panel has a duty to maintain order and to protect the court's dignity. In exercising this duty, the president of the panel may take the following actions (article 299 para. 1 CPA):

- Remind those attending the trial to behave properly and not to disturb the proceedings immediately after the opening of the session;
- Order a search of persons attending the trial; and
- Warn a person disturbing order or failing to comply with the directions of the president of the panel.

If there is disturbance of the order or failure to comply with the directions of the president of the panel at the trial, there are three disciplinary measures to be taken (article 300 CPA):

- Warning,
- Fine not exceeding 20,000.00 Kn and
- Removal from the courtroom.

These three disciplinary measures may apply to the defendant, defense counsel, injured person, legal representative, witness, expert witness, interpreter or other person attending the trial.

A ruling imposing punishment is subject to appellate review. The panel may revoke such a ruling. Other decisions concerning the maintenance of order and the direction of the trial are not subject to appellate review (article 301 CPA).

¹⁷ In a broader sense, the trial is a basic part of the criminal proceedings consisting of the preparation for the trial, the trial itself and the rendering and pronouncement of the judgment.

1.10.1 Recording with technical devices

The president of the county court may permit a photographic recording and the president of the Supreme Court of the Republic of Croatia may permit a television or other recording of a particular trial.

The panel may decide certain portions of the trial may not be recorded (article 299 para. 3 CPA).

The parties and the defense counsel may make an audio recording of a trial held in open court. **Personal data about the defendant, injured persons or witnesses recorded are confidential, and may be used only in the course of the criminal proceedings** (article 299 para. 4 CPA). This audio recording is not part of the trial record, although the president of the panel is bound to supervise it. The president of the panel shall forbid recording if legal grounds exist, such as:

- Delays in proceedings (article 297 para. 2 CPA)
- Disturbing order or failing to comply with the directions of the president of the panel (article 300 para. 1 CPA)
- Committing a criminal offense (article 302 CPA).

For the ruling regarding audio recording, the president of the panel shall give a short oral justification and include it in the trial record. This ruling is not subject to appellate review because it is a decision concerning the maintenance of order and the direction of the trial.

1.10.2 Public nature of the trial

The trial shall be held in open court. Any person 18 or over the age of 18 may be present at the trial. Persons attending the trial must not carry arms or dangerous instruments, except the defendant's guard, who may be armed (article 292 CPA). **The president of the panel** may order a search of persons attending the trial (article 299 para. 1 CPA).

From the opening of the session to the conclusion of the trial, **the panel** may exclude the public from the entire or from the portions of the trial, at any point.

This decision shall be rendered by a ruling by virtue of the office, or on the motion of the parties, but always after hearing the statement of the parties. Exclusion of the public is possible if it is necessary for the following circumstances (article 293 CPA):

- Protecting the security and defense of the Republic of Croatia;
- Maintaining confidentiality of information which would be jeopardized by a public hearing;
- Keeping public order and peace;
- Protecting the personal or family life of the defendant, the injured person or of another procedural participant; and/or

- Protecting the interests of a minor.

Exclusion of the public does not relate to the parties, the injured person or the representatives of the public counsel. **The panel** may grant permission for certain officials, scholars or public figures to be present at a trial close to the public. This permission may be granted also to the defendant's spouse or common-law spouse or relatives, if the defendant so requests (article 294 para. 1 and 2 CPA).

The president of the panel shall instruct the persons attending a closed trial that they are obliged to keep information learned at the trial confidential and that failure to do so is a criminal offense.

A ruling on exclusion of the public must be substantiated and publicly pronounced. Parties may file an appeal that does not stay the execution of the trial.

1.10.3 Examination of files

Anyone having a justified interest may be permitted to examine, transcribe and copy particular criminal files (article 155 para. 1 CPA).

When proceedings are pending, examination, transcribing and copying of the files shall be permitted by the authority conducting the proceedings and when proceedings are terminated, examination, transcribing and copying of the files shall be permitted by the president of the court or an official designated by him. If the files are kept by the State Attorney, permission to examine, transcribe and copy shall be granted by him (article 155 para. 2 CPA).

The investigating judge shall, on the request of the State Attorney, witness or by the virtue of the office, in the appropriate manner, protect the confidentiality of the data about persons whose statements and declarations are in the files if there is concern that finding out that information could endanger those persons' or other persons' life, health, physical integrity, freedom or substantial property (article 155 para. 6 CPA).

1.10.4 Commencement of the trial

When the panel decides to hold the trial:

1. **Establishing the identity of the accused** – The president of the panel shall call on the defendant to give his/her personal data, except data about prior convictions, in order to determine the identity of the defendant.
2. **Designate a place for the witness** – After the identity of the defendant is established, the president of the panel shall direct the witness and expert witness to a designated place where they shall wait until called upon to testify. The president of the panel may allow the expert witness to remain in the courtroom to follow the course of the trial. This circumstance shall be entered in the trial record.

3. **Removal of subsidiary prosecutor or private prosecutor if they are witnesses** – If the subsidiary prosecutor or private prosecutor must testify as a witness, they shall not be removed from the courtroom (article 318 para. 3 CPA).
4. **Indemnification Claim** – If the injured person is present and has not yet submitted a claim for indemnification, the president of the panel shall remind the injured person that he/she may submit a motion for the consideration of such a claim in criminal proceedings. If the injured person presents his/her claim for indemnification, the president of the panel shall order that claim to be entered in the trial record. The president of the panel shall instruct the injured person of the rights stated in the article 55 CPA.
5. **Prevention of collusion** – The president of the panel may undertake measures necessary to prevent collusion between the witnesses, expert witnesses and parties (article 318 para. 4 CPA). This shall be done by an order that is not subject to appellate review. The president of the panel may order the witnesses and expert witnesses to wait in separate rooms until called upon.
6. **Reading the indictment** – The trial begins with the reading of an indictment, private charge or motions to indict (article 319 para. 1 CPA).
7. **Ensure the defendant understands the charge** – After the charge is presented, the president of the panel shall ask the defendant if he/she understands the charge. If the president of the panel is convinced that the defendant does not understand the charge, he/she shall present its contents in such a manner that is understandable to the defendant.
8. **Warning to the defendant** - When the president of the panel is certain that the defendant understands the charge, he/she shall instruct the defendant according to the provisions of Article 4 CPA. If the defendant has not retained a defense counsel, the president of the panel shall instruct the defendant according to the provisions of Article 5, para. 2 CPA.
9. **Defendant enters a plea** - The president of the panel shall ask the defendant to enter his/her plea on each count of the charge. The defendant is not bound to give a statement. The defendant may plead guilty or not guilty. The defendant's plea is not an evidentiary source for factual determination; it just determines the course of the trial. If the defendant pleads guilty, he/she may be interrogated immediately after the guilty plea. If the defendant pleads not guilty he/she shall be interrogated after the presentation of evidence is complete, unless he/she demands it to be immediate.
10. **Presentation of evidence** –The presentation of evidence extends to all facts deemed by the court to be important for a correct adjudication. The president of the panel shall decide which facts are deemed important. The panel shall decide what evidence is to be provedeni (performed, presented), and which is not. The examination of witnesses, expert witnesses and the defendant shall be in the manner of *cross examination*. In the course of testimony given by the witness or expert witness, the parties as well as president and members of the panel may ask questions directly. The president of the panel shall forbid the question if it is impermissible or not related to the case, or reject the answer to an already asked question. Suggestive and “kapciozna” (captive??) questions are not allowed. Suggestive question is the one that contains the answer. Kapciozno question is the one that assumes the person being examined stated something that he/she did not.

11. **Amendments and extension of the charge** – In the course of the trial, if the prosecutor establishes that the evidence examined alters the factual situation as described in the indictment, he/she may amend the indictment orally or submit a new indictment at the trial. The parties may request a recess of the trial for the purpose of the preparation of a new indictment or a new defense.
12. **Closing arguments** – After the presentation of evidence is completed, the president of the panel shall call on the parties, the injured person and the defense counsel to present their oral arguments. The order of presentation is as follows: the prosecutor, the injured person, the defense counsel and the defendant. Duration of closing arguments of the parties may not be limited. The president of the panel may, subject to a previous warning, interrupt a person in his/her closing if this person is offending public order and morality, offending another person, being repetitious or expounding upon about obviously irrelevant matters.
13. **Deliberation and voting** – if, after hearing all closing arguments, the panel establishes that no additional evidence needs to be examined, the president of the panel shall announce that the trial is closed. The panel shall retire for deliberation and voting for the purpose of rendering a judgment.

1.11 The judgment

The judgment is the most important act in criminal procedure. It can be rendered only by a court from the commencement of the trial until the completion of the criminal proceedings.

A defendant can be pronounced a punishment only by a judgment. According to the CPA, there are four types of judgment (Articles 352 and 461 CPA):

1. Judgment rejecting the charge
2. Judgment of acquittal
3. Judgment of conviction
4. Judgment of “determination” (article 461 para. 1 CPA).

I. Judgment rejecting the charge shall be rendered by the court (article 353 CPA) if:

- The court lacks subject matter jurisdiction (articles 16 - 22 CPA)
- The proceedings were conducted without request of the authorized prosecutor.
- The prosecutor withdraws the charge in the course of the trial¹⁸
- The required motion of approval for prosecution is lacking or the authorized person or state attorney withdraws the motion or approval
- The defendant has already been convicted for or acquitted of the same offense by a final ruling, except in the case of a ruling discontinuing the proceedings as referred to in Article 403 CPA¹⁹

¹⁸ Once the trial begins, the presiding judge may not discontinue the proceedings with a ruling. If the authorized person enters a *nolle prosequi* during the course of a trial, the court shall render a judgment rejecting a charge.

¹⁹ Article 403 of the CPA deals with a discontinuing of the proceedings if the perpetrator, after having committed the offense, becomes afflicted with a permanent mental illness.

- The defendant has been exempted from prosecution by an amnesty (article 87 CC) or pardon (article 88 CC), the statute of limitations for prosecution has run or other circumstances barring prosecution exist, such as double jeopardy, immunity or extradition of the defendant.

Judgment by which indictment is being rejected is also called *the formal judgment* since by such judgment it is being determined that no formal, i.e. procedural preconditions for a court to decide on the *meritum* of the case exist. **It is wrong to say or write that due to the existence of reasons for rejection of the indictment (for example, due to the statute of limitations) the defendant was acquitted.**

II. Judgment of acquittal shall be rendered by a court (article 354 CPA) if:

- The act for which he/she is charged is not a criminal offense according to law.

Examples: minor offense (article 28 CC), self-defense (article 29 CC), necessity (article 30 CC), coercion or threat (article 31 para. 1 CC), lawful use of force (article 32 CC), mistake of fact (article 47 para. 3 CC).

- Circumstances excluding culpability exist.

Examples: Mental incapacity (article 40 CC), punishment for intentional and negligent conduct (article 43 CC), mistake of law (article 46 para. 1 CC), mistake of fact (article 7 para. 1 and 2 CC).

There are exceptions in cases involving criminal offenses committed through the use of public media (article 48 CC) and in cases of specific criminal offenses in which special reasons for the exclusion on unlawfulness exist.²⁰

- It has not been proven that the defendant committed the offense with which he/she is charged.

III. Judgment of conviction. In a judgment of conviction the court shall state (article 355 CPA):

- The act for which the accused is found guilty, stating the facts and circumstances which constitute the elements of the definition of the offense as well as those on which the application of certain provisions of the Criminal Code depends;
- The legal name term and description of the offense as well as the provisions of the Criminal Code which were applied;
- The punishment to which the accused is sentenced, or whether the punishment is remitted according to the provisions of the Criminal

²⁰ Participation in a fray (article 103 para. 2 CC), assistance to the perpetrator following the perpetration of criminal offenses against the Republic of Croatia (article 154 para. 2 CC), against honor and reputation (article 103 para. 2 CC), unauthorized medical treatment (article 241 para. 3 CC), failure to report a criminal offense (article 300 para. 3 CC), assistance to the perpetrator following the perpetration of a criminal offense (article 301 para. 4 CC), duress against officials engaged in the administration of justice (article 309 para. 3 CC), refusal to receive and use arms (article 352 para. 3 CC), responsibility for a criminal offense committed on orders by a superior (article 388 CC).

Code, or whether the punishment of imprisonment is replaced with community service work;

- The decision on a suspended sentence;
- The decision on security measures and the confiscation of pecuniary benefit;
- The decision on including the time spent in detention or served under an earlier sentence;
- The decision on the costs of the proceedings, on the claim for indemnification and on the publication of the final judgment in the media.

IV. The court shall render a **judgment of “determination”** if:

- If the State Attorney submitted the request referred to in Article 457 para. 1 CPA.
- It is determined that the accused was mentally incompetent when fulfilling the objective elements of the definition of the criminal offense(s).

In that case, the court shall order by a ruling compulsory psychiatric treatment in duration of six months (article 461 para. 1 CPA).

If the court determines that the accused was mentally incompetent when fulfilling the objective elements of the definition of the criminal offense, but there is no reason to impose compulsory psychiatric treatment, the court shall render the judgment of acquittal and the ruling that denies the motion to impose compulsory treatment (article 461 para. 3 CPA).

If the court finds that the reasons for issuing a judgment of acquittal exist, it shall render such judgment, notwithstanding the mental competency of the accused (article 461 para. 4 CPA).

If the court finds that the reasons for issuing a judgment of acquittal exist, other than the reasons of exclusion of culpability due to mental competency of the accused, it shall render a judgment rejecting the charge (article 461 para. 5 CPA).

If the court does not find the accused mentally incompetent at the time the offense was committed, it shall render the judgment rejecting the charge. The State Attorney may immediately after the pronouncement of the judgment give oral statement of giving up the right to appeal and submit a new motion to indict for the same offense. The trial shall be held before the same panel. The evidence presented before shall be presented again only if the panel finds it necessary for certain pieces of evidence (article 461 para. 6 CPA).

1.11.1 Pronouncement of the judgment

Pronouncement of the judgment consists of reading of the judgment and brief statement of reasons for the judgment.

The president of the panel shall present the judgment by reading the ordering part of the judgment (article 356 CPA). All those present in the courtroom shall rise to hear the pronouncement of the judgment, including the president of the panel. After reading of the ordering part of the judgment the president of the panel shall briefly orally state the reasons for such a judgment.

If the trial was closed to public, the judgment shall always be read aloud in open court. If is possible to exclude the public from the entire or from part of the pronouncement of the justification for the judgment, but only if the trial was closed to the public (article 356 para. 4 CPA). The court may render that ruling by virtue of the office or on the motion of the parties but always after hearing the parties' statements.

It is **not possible** to exclude the public from the pronouncement of the justification for the judgment if the trial was not closed to the public.

1.11.2 The final judgment

The final judgment means that the judgment cannot be recalled or altered within the proceedings, but it shall be enforced.

The judgment shall become final after it can no longer be challenged by an appeal or when it is not subject to appellate review (article 156 para. 1 CPA). Unauthorized appeal is the one filed by an unauthorized person; the person that waived the right to appeal or the person that withdrew an already filed appeal. The final judgment refers to the ordering part of the judgment, and not its statement of reasons. The final judgment becomes executable upon serving.

If there was no appeal, the first instance judgment shall become final after the expiry of the term for appeal. If an appeal was filed and the second instance court confirmed or revised the first instance judgment, it shall become final on the day the second instance court reached the decision (the day when the panel had a session on which the decision was reached).

1.12 Appeal

Appeal is the only ordinary all-encompassing judicial remedy against the judgment (article 362 CPA).

An appeal shall be reviewed in the second instance by the higher court than the one that rendered the judgment (devolutive quality of an appeal). A filed appeal shall stay the execution of the judgment (suspension quality of an appeal).

An appeal from a judgment in the regular proceedings may be taken within a term of fifteen days from the day the copy of the judgment is served and within 8 days in the summary proceedings.

A judgment may be challenged (article 366 CPA; grounds for challenging a judgment):

- For substantial violation of the criminal procedure provisions;
- For violation of the Criminal Code
- For erroneous or incomplete determination of the factual situation

- In regard to the decision on criminal sanctions, confiscation of pecuniary benefit, costs of criminal proceedings, claims for indemnification as well as the decision to publish the judgment in the media.

1) Law recognizes two kinds of substantive violation of criminal procedure provisions (article 367 CPA):

Absolutely substantial violation is a violation of criminal procedure that the law sees as always relevant to the outcome of the proceedings. If the second instance court finds the existence of an absolutely substantial violation, it shall always vacate the judgment of the first instance court. The law states twelve substantial violations.²¹

Relatively substantial violation is a violation of criminal procedure in the course of preparation for the trial, in the course of the trial, when rendering the judgment, or violation of right of the defense at the trial, provided that this influences or could have influenced the rendering of the judgment.

2) **A violation of the Criminal Code** exists if criminal law is violated (article 368 CPA). The law states six violations of the Criminal Code.²²

3) **An erroneous determination of the factual situation** exists if the court determines a relevant fact (article 369 para. 2 CPA). It usually happens if the court wrongfully, superficially or in the similar manner evaluated the presented evidence.

An incomplete determination of the factual situation exists if the court fails to determine a relevant fact (article 369 para. 3 CPA). It usually happens if the court failed to collect or present all the available evidence.

4) Grounds for appeal as stated above under # 4) exist if the court renders incorrectly or does not order, and should have had, the provision of the Criminal Code regarding the choice of criminal sanction, confiscation of pecuniary benefit, the costs of the criminal proceedings, claims for indemnification and the decision to publish the judgment in the media.

A court at the second instance shall by the virtue of the office monitor the violation of the criminal proceedings against the benefit of the accused and some absolutely substantial violations²³, regardless of the party stating them in the appeal. A court at

²¹ Wrong composition of the court; violations related to disqualification of a judge; if the trial was held in the absence of a person whose presence was mandatory; unlawful exclusion of the public from the trial; violations related to existence of the charge of an authorized prosecutor; violations related to subject matter jurisdiction of a court; if the court did not completely decide on allegations set forth in the charge; if the accused who pleaded non guilty was interrogated before the presentation of evidence was completed without his request; if the judgment exceeds the charge; violation of the prohibition of *reformatio in peius*; mistakes in drafting up the judgment and if the judgment is founded on illegal evidence.

²² If the accused was found guilty of an act that is not a criminal offense; if there are circumstances excluding the culpability; if there are circumstances excluding prosecution; if a law which cannot be applied is applied; if a court exceeded its statutory power in decision on a punishment and if the provisions on including the time spent in detention or for previously served sentence were violated.

²³ A court at the second instance shall by the virtue of the office monitor the following absolute substantial violations: Wrong composition of the court, violations related to existence of the charge of an authorized prosecutor; violations related to subject matter jurisdiction of a court; if the accused who pleaded non guilty was interrogated before the presentation of evidence was completed; if the judgment exceeds the charge; violation of prohibition of *reformatio in peius* and mistakes in drawing up the judgment

the second instance shall review all other grounds for appeal only if the party stated them in the appeal as the reason for appeal.

When deciding on the appeal, a court at the second instance may render the following decisions:

- **Dismiss an appeal as belated or impermissible by a ruling.** An appeal is belated if it was taken after the legal term for an appeal had expired. Impermissible appeal (see section 1.11).
- **Reject an appeal and uphold the judgment** when it establishes that the reasons for an appeal are lacking and that the violations of law monitored by virtue of the office do not exist.
- **Reverse the judgment at the first instance** if the court at the first instance correctly determined the factual situation but incorrectly applied the law.
- **By a ruling, vacate the judgment at the first instance and remand the case for retrial** if it establishes a substantial violation of the criminal procedural provisions or if it considers that, for reasons of erroneously and incompletely determined factual situation, a new trial should be held before the court at the first instance.

The judgment at the first instance, can therefore be affirmed, revised or vacated. It is wrong to say or write that the judgment at the first instance was annulled.

1.13 Extraordinary judicial remedies

Extraordinary judicial remedies may be stated only against a judicial decision that has become final.

1) **Reopening of criminal proceedings** returns the criminal proceedings to an earlier stage and repeats its conduct from that stage on. There is difference between a full, proper reopening and quasi-reopening of trial (articles 401 – 413). Criminal proceedings may be reopened to the prejudice of the defendant if proceedings were terminated by a final judgment rejecting the charge only in certain cases. Criminal proceedings terminated by the defendant being acquitted (found not guilty) may not be reopened

A request can be submitted by the parties and the defense counsel, and after the death of a convicted person, by his relatives. A request may be submitted regardless of a statute of limitations, pardon or abolition. Non-trial panel of the court in first instance shall decide on the request.

The provisions on the reopening of criminal proceedings shall also be applied in the case where a request to alter a final court's decision is submitted on the basis of a decision of the Constitutional Court of the Republic of Croatia which annulled or vacated the on the basis of which the final decision was rendered, or on the basis of a decision of the European Court for Human Rights which refers to some ground for the reopening of criminal proceedings or for an extraordinary review of the final judgment.

2) **Extraordinary mitigation of punishment** is an extraordinary judicial remedy aimed at mitigation of the final punishment when, after the judgment becomes final, circumstances appear which were unknown to the court at the time the judgment was rendered, provided that they would clearly lead to a more lenient sentence (article 414 CPA).

A request may be submitted by the convicted person, and, subject to his consent, by his defense counsel, as well as his relatives. A request shall be submitted to the court at first instance, and the Supreme Court of the Republic of Croatia shall decide on it.

3) **Request for the protection of legality** is an extraordinary judicial remedy made to correct important violations of law in a final court's decision or point to such violations in the judicial proceedings which proceeded such final decisions (article 418 CPA).

The request may be submitted by the State Attorney and only if the law was violated. The Supreme Court of the Republic of Croatia shall decide on this request by a decision that may refuse the request, revise the final judgment or vacate it in whole or in part. If a request was submitted to the prejudice of the defendant, and the court establishes that it is founded, it shall only determine that the violation of law exists, without effecting the final decision.

4) **Request for extraordinary review of final judgment** is an extraordinary judicial remedy made to correct important violations of law in a final court's decision or the criminal proceedings (article 425 CPA).

A request may be submitted by the convicted person and the defense counsel within a term of one month from the day the defendant receives the final judgment. A defendant who does not take an appeal from the judgment is not entitled to submit a request for the extraordinary review of the final judgment, unless the judgment at second instance imposed a punishment of imprisonment instead of a suspended sentence, judicial admonition or fine. A request may not be submitted against a judgment of the Supreme Court of the Republic of Croatia.

A request shall be submitted to the court in first instance that can reject it if the formal conditions for request were not met, and the Supreme Court shall decide on the request. When deciding on this request, the Supreme Court may render the same kinds of decisions as when deciding on the request for the protection of legality.