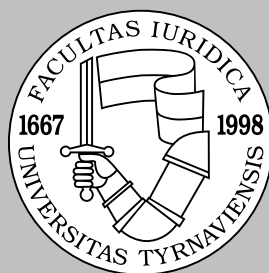


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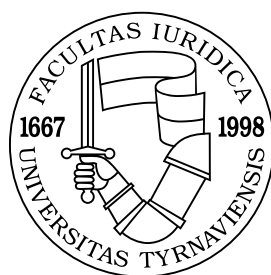


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Miroslava Vráblová

SLOVAK SUBSTANTIVE CRIMINAL LAW



Slovak Substantive Criminal Law

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Content

PREFACE	7
1 CONCEPT, SUBJECT MATTER, SYSTEM, PRINCIPLES AND FUNCTIONS OF CRIMINAL LAW.....	8
1.1 Sources of criminal law	9
1.2 Scope of application of the Criminal Code	10
2 CONCEPT, PRINCIPLES AND FOUNDATIONS OF CRIMINAL RESPONSIBILITY	14
2.1 Concept of criminal responsibility	14
2.2 Principles of criminal responsibility	14
2.3 Foundations of criminal responsibility.....	16
2.3.1 Criminal offence and its characteristics.....	16
2.3.2 Categorization of criminal offences	19
3. SUBJECT MATTER OF A CRIMINAL OFFENCE.....	23
3.1 Concept of subject matter.....	23
3.2 Subject-matter characteristics of a criminal offence	23
3.2.1 Mistake in criminal law	28
3.3 Classification of subject matters	29
4 DEVELOPMENT STAGES OF CRIMINAL OFFENCES.....	32
4.1 Preparation to commit a crime	32
4.2 Attempt to commit a criminal offence.....	34
4.3 Consummated criminal offence	37
5 CIRCUMSTANCES EXCLUDING ILLEGALITY OF AN ACT	40
5.1 Extreme necessity.....	40
5.2 Necessary defence	41
5.3 Justified use of a weapon	42
5.4 Permitted risk.....	42
5.5 Exercise of a right or a duty	43
5.6 Injured person's consent.....	43
5.7 Discharge of an agent's function	44
6 CRIMINAL COMPLICITY AND PARTICIPATION	46
6.1 Participation	46
6.2 Certain forms of criminal complicity under the Special Part of the Criminal Code	48

6.3 Dangerous groupings.....	48
6.4 Principles of participation.....	49
7 CONCURRENCE OF CRIMINAL OFFENCES AND RECIDIVISM.....	51
7.1 Concept and types of concurrence.....	51
7.2 Cases of exclusion of concurrence by one act.....	52
7.3 Concept and types of recidivism.....	53
8 SENTENCING	54
8.1 Concept of sentencing and system of sentences	54
8.2 General and fundamental principles of imposition of sentences.....	55
8.3 Brief description of various types of sentences	57
8.4 Extinction of sentence and expungement of conviction	63
9 PROTECTIVE MEASURES.....	66
9.1 Concept, purpose and principles of protective measures	66
9.2 Types of protective measures.....	67
10 CRIMINAL RESPONSIBILITY AND SANCTIONING OF JUVENILE OFFENDERS	72
10.1 Criminal responsibility of juvenile offenders.....	72
10.2 Sanctioning juvenile offenders	73
11 SELECTED CRIMINAL OFFENCES FROM THE SPECIAL PART OF THE CRIMINAL CODE	76
11.1 Introduction to the Special Part of the Criminal Code	76
11.2 Brief description of selected criminal offences	77
Conclusion.....	98
Sources.....	99
Legislation.....	100

PREFACE

Slovak criminal law has undergone numerous legislative modifications since 1989. The most significant milestones were the adoption of Act No. 300/2005 Coll. (Criminal Code) and of Act No. 301/2005 Coll. (Code of Criminal Procedure) completing the process of recodification of criminal law. The recodification involved introduction of new elements in Slovak criminal law required both by practice and by legislative developments.

The textbook provides an overview of the significant institutions of substantive criminal law. It explains the concept, object, system and functions of criminal law, deals with the concept and classification of criminal offences, with the stages of criminal offences, circumstances excluding illegality, forms of criminal complicity, concurrence of criminal offences and recidivism, as well as with the system of sentences and protective measures, concentrating on their purpose, imposition and enforcement and on related restrictions and duties. The criminal prosecution of juvenile offenders is covered as well. Finally, selected criminal offences and their basic characteristics are developed more fully. At the end of the textbook there is a list of selected sources for those interested in further reading.

Trnava, December 2012

Author

1 CONCEPT, SUBJECT MATTER, SYSTEM, PRINCIPLES AND FUNCTIONS OF CRIMINAL LAW

Slovak criminal law, a part of the Slovak legal order, is a branch of public law. Its purpose is to protect the rights and legitimate interests of natural and legal persons, the interests of society and the constitutional order of the Slovak Republic against serious illegal conduct. It defines criminal offences and the legal bases of criminal responsibility, establishes sentences and protective measures thus encouraging citizens and other persons to obey the law and to observe societal rules.

Criminal law includes both **substantive (material) criminal law** which defines criminal offences as well as the sentences that may be imposed for such offences and **procedural (formal) criminal law** which regulates the procedural steps of the authorities acting in criminal proceedings and the courts and other persons involved with criminal proceedings including detecting criminal offences, judging them, enforcing decisions and preventing and avoiding criminal conduct. Both of these branches of criminal law are inseparably intertwined since implementation of substantive criminal law may take place only by means of procedures laid down by procedural criminal law.

Substantive criminal law provides the basis for state intervention when a criminal offence has been committed thus establishing a criminal law-based relation between the State and the perpetrator, a material relation created by committing such criminal offence. Specifically, these criminal law-based relations are implemented via and governed by the rules of criminal procedure and involve the authorities acting in criminal proceedings and the courts on the one hand and the person against whom a criminal procedure is instigated on the other hand, on the basis of an accusation of a criminal offence.

The **system of substantive criminal law** consists of a general part establishing rules regulating the foundations of criminal responsibility, sentencing and protective measures, imposition of these sentences and protective measures and a special part defining the subject matters of criminal offences. The system of procedural criminal law is comprised of general principles, institutions, persons and parties and establishes the rules governing the procedural steps during the different stages of a criminal proceeding.

Interpretation and application of the rules of criminal law must conform to constitutional principles of criminal responsibility. Article 49 of the Constitution of the Slovak Republic provides: "Only law shall lay down which conduct is a criminal offence and which punishment and/or other restrictions of rights or property may be imposed for the committing thereof". This article establishes the principle of legality providing that no conduct is criminal unless it is designated as such by the law. Hence, no criminal

offence or punishment exists without a law. Other important principles of substantive criminal law include the principle of subsidiarity of criminal repression, the principle of humanity, the principle of individual responsibility for an offence committed and the principle of responsibility based on a finding of guilt.

In our society, criminal law fulfils a *protective* function, a *preventive* function, a *regulatory* function and a *repressive* function. It protects society against illegal conduct infringing or endangering the interests protected by the Criminal Code; it prevents criminal conduct, it defines the limits and conditions of criminal responsibility and, by means of instruments of State enforcement (sentences and protective measures), it prevents and deters perpetrators from further criminal conduct.

Criminal law protects the fundamental rights and freedoms enshrined in the Constitution of the Slovak Republic as well as the relations governed by rules of other branches of law, in particular constitutional law, civil law, commercial law, administrative law and international law.

In dealing with criminal cases, criminal law draws on a number of related scientific disciplines, in particular on criminology, penology, criminalistics, forensic medicine, forensic psychology, psychiatry, forensic engineering and other scientific disciplines.

1.1 Sources of criminal law

The sources of substantive criminal law are all statutory instruments containing rules of substantive criminal law. The fundamental source of Slovak criminal law is the Constitution of the Slovak Republic which is at the top of the hierarchy of legislation. Other sources include promulgated and ratified treaties (e.g., the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention on the Rights of the Child, the European Convention on Mutual Assistance in Criminal Matters). Since the accession of the Slovak Republic to the European Union the scope of sources of criminal law has been extended by the law of the European Communities and of the European Union.

The main source of Slovak substantive criminal law is the Criminal Code, Act No. 300/2005 Coll., as amended. The Criminal Code is comprised of three parts. The *General Part* of the Criminal Code defines its scope of application, the foundations of criminal responsibility, sanctions, special provisions on criminal responsibility of juvenile offenders and interpretation of certain terms. The *Special Part* defines individual criminal offences. It is comprised of 12 titles each of which deals with a specific category of offences. The last part is entitled *Common, Transitory and Final Provisions*. The Criminal Code has been in effect since 1 January 2006.

Besides the Criminal Code the rules of substantive criminal law can be found also in other acts, e.g., in the Act on Execution of Prison Sentences, the Act on Execution of Community Work Sentences, the Code of Criminal Procedure, the Prosecution Office Act, the Police Corps Act and the Act on Probation and Mediation Officers. The decisions of the Constitutional Court of the Slovak Republic and the decisions on amnesty granted by the President of the Slovak Republic are regarded also as sources of criminal law.

1.2 Scope of application of the Criminal Code

For the purposes of determining criminal responsibility it is crucial to determine the scope of application of the Criminal Code and the jurisdiction of courts and of the authorities acting in criminal proceedings. The scope of application of the Criminal Code may be defined as the scope of societal relations determining its application. According to the time when and the place where a criminal offence was committed and according to who committed it, temporal, territorial and personal scope of application may be distinguished. The Criminal Code has also specific provisions relative to its application under international treaties.

Temporal scope of application refers to the law in effect at the time when an act was committed and is relevant for determining whether the act is a criminal offence and for imposing a sentence. If between the moment the act was committed and the judgment is rendered, multiple laws come into effect, the law that is most favourable to the accused will be relevant for determining whether the act was a criminal offence and for imposing a sentence. The *principle of non-retroactivity* is also very important. This principle requires that the Criminal Code not be applied to criminal offences committed before it took effect, unless such rules are more favourable to the accused. For determining the temporal scope of application, the time when the act was committed is the crucial criterion. A criminal offence is committed once it is consummated. In the case of continuing, cumulative and lasting criminal offences, it is the moment when the last act or the last partial conduct is terminated or when the illegal state is terminated. In case of development stages of a criminal offence (preparation to commit a crime and attempt to commit a criminal offence) as well as in the case of participation (in case of an organizer, solicitor, instigator or aider), the time of commission of the criminal offence coincides with the time when the actual perpetrator acted. A sentence may be imposed only if it is permitted by the law in effect at the time judgment is rendered on the commission of the criminal offence. Protective measures are imposed as provided by the law in effect at the time of the decision on the protective measure, unless provided otherwise by the Criminal Code. A protective measure may be imposed under the Criminal Code if it is relevant for assessing the criminality of an act, in conjunction with which the protective measure is to be imposed. For purposes of determining the temporal scope of a law's application it is important to distinguish between the force and the effect of a law. A law *comes into force* once it is part of the legal order, i.e., once it is promulgated as required. A law *takes effect* once it is applied to cases defined by its scope of application.

The *territorial scope of application* of the Criminal Code defines the limits of the geographic application of the Code based on the place of commission of the criminal offence. The fundamental principle of territorial application of the Criminal Code is the *territoriality principle*. Under this principle, criminality of all acts committed on the territory of the Slovak Republic irrespective of the status of the person who committed the act must be assessed in accordance with the Slovak Criminal Code. As defined in the Criminal Code, the territoriality principle applies also to distance offences since a criminal offence is deemed to have been committed on the territory of the Slovak Republic if the perpetrator

- acted, at least partly, on Slovak territory if the violation of or the threat to an interest protected by the Criminal Code occurred or should have occurred entirely or partly outside its territory, or
- acted outside the territory of the Slovak Republic if the violation of or the threat to an interest protected by the Criminal Code should have occurred on Slovak territory or if such a result should, at least partly, have occurred on Slovak territory.

Thus, the place of commission of a criminal offence is any place where the perpetrator acted or any place where the result envisaged by the Criminal Code occurred or, according to the perpetrator's intent, should have occurred. In case of offences of omission, the place of commission of an act is the place where the act should have taken place but also the place where the perpetrator should have acted as required. In case of transit offences, the places of commission of an act include any place where the perpetrator acted or where the envisaged result occurred or should have occurred.

The territoriality principle applies also to certain places outside the territory of the Slovak Republic, namely aboard vessels navigating under the flag of the Slovak Republic and aboard aircraft registered in the registry of aircraft of the Slovak Republic (*flag principle*).

The *personal scope of application* of the Criminal Code defines those persons to whom the code applies. It is based on the *personality principle*, which means that criminality of an act committed outside the territory of the Slovak Republic by a citizen of the Slovak Republic or by a foreigner having a permanent residence on the territory of the Slovak Republic is also assessed under the Slovak Criminal Code. For the purposes of the personality principle, it is irrelevant where the criminal offence was committed.

The protection principle is also important. Under this principle, the Slovak Republic protects its citizens by means of the Criminal Code against perpetrators of particularly serious crimes also outside its territory, provided that the act is also a criminal offence where it was committed or no criminal jurisdiction applies to the place of commission. The passive personality principle applies regardless of by whom and where the crime was committed. The only prerequisite is that the particularly serious crime was committed against a citizen of the Slovak Republic. The protection principle applying to the protection of important national interests is closely intertwined with the passive personality principle. Under the protection principle, the state has the right to prosecute criminal offences endangering its existence irrespective of the place of commission of the act and the nationality or permanent residence of the perpetrator. Criminality of offences enumerated exhaustively in Section 5a of the Criminal Code is also assessed under the Slovak Criminal Code even if such criminal offence was committed outside the territory of the Slovak Republic by a foreigner not having a permanent residence in the territory of the Slovak Republic.

If neither the territorial scope of application nor the personal scope of application under the criteria set forth above applies, criminality of an act committed outside the territory of the Slovak Republic by a foreigner not having a permanent residence on the territory of the Slovak Republic may be assessed under the Slovak Criminal Code if

- the act is a criminal offence also under the law in effect on the territory where it was committed,

- the perpetrator was detained or arrested on the territory of the Slovak Republic,
- the perpetrator was not extradited for criminal prosecution to a foreign country.

Application under international treaties means that criminality of an act is assessed under the Slovak Criminal Code if an international treaty, duly ratified and promulgated as required and binding on the Slovak Republic so stipulates. An international treaty may exclude the application of the Slovak Criminal Code although it would otherwise apply based on the constitutional principle of supremacy of certain international treaties over national legislation.

The Criminal Code and its scope**Section 2****Applicability in time**

(1) The criminality of an act shall be determined and punishment shall be imposed according to the law applicable at the time of its commission. Where several new laws entered into force between the time of commission of the act and the delivery of judgement, the criminality of the act shall be determined and the punishment shall be imposed according to the law which is more favourable to the offender.

(2) Where it is more favourable to the offender, he may receive a sentence provided for in the law which is in force at the time of the criminal proceedings.

(3) Protective measures shall always be imposed pursuant to the legal provisions effective at the time of taking the decision on the relevant protective measure.

Commentary to on section 2:

Section 2(1) stipulates the principle that the liability to punishment for a crime is considered under the provisions which are in effect at the time when the crime was committed, unless the application of subsequently amended provisions is more favourable to an offender.

Section 3**Territorial applicability**

(1) This Act shall be applied to determine the criminal liability for criminal offence committed in the territory of the Slovak Republic.

(2) A criminal offence shall be considered as having been committed on the territory of the Slovak Republic even if the offender

a) performed the action, in the whole or in part, on its territory, even if the actual breach of or the threat to an interest protected under this Act took place or was intended to take place, in whole or in part, outside of its territory, or

b) committed the act outside of the territory of the Slovak Republic, if the actual breach of or the threat to an interest protected under this Act took place or was intended to take place, in whole or in part, on its territory.

(3) The Act shall be also applied to determine the criminality of an act committed outside of the territory of the Slovak Republic aboard a vessel registered under the flag of the Slovak Republic or aboard a plane entered in the aircraft register of the Slovak Republic.

Commentary to on section 3:

Slovak criminal law applies only on the territory of the Slovak Republic, but in some specific cases Slovak law may also be applied to offenders committing crimes abroad. The citizenship of a person is not decisive if the person committed a crime on the Slovak territory.

2 CONCEPT, PRINCIPLES AND FOUNDATIONS OF CRIMINAL RESPONSIBILITY

2.1 Concept of criminal responsibility

Criminal responsibility may be defined as a relationship between the State and the person having committed a criminal offence as defined by a law. Criminal responsibility is the result of the perpetrator's illegal conduct endangering or violating an interest protected by law and satisfying the characteristics of a criminal offence.

Criminal responsibility includes, on the one hand, the right and the duty of the authorities acting in criminal proceedings and the courts to establish that a criminal offence has been committed, to prove the accused's guilt, to impose an appropriate sentence on him and, on the other hand, the accused's duty to submit to such criminal proceedings.

2.2 Principles of criminal responsibility

Principles of criminal responsibility are relevant for determining the statutory conditions, prerequisites and limits of criminal responsibility. The principles of criminal responsibility include the following; principle of legality, principle of a primarily formal definition of a criminal offence, principle of individual subjective criminal responsibility, principle of prohibition of retroactivity to the perpetrator's detriment, principle of prohibition of analogy to the perpetrator's detriment, the *ne bis in idem* ("not twice in the same") principle to the perpetrator's detriment and the subsidiarity principle.

Under the *principle of legality* no act is a criminal offence unless defined as such by the law, i.e., there is no criminal offence without a written law and no sentence without a written law. The *principle of a primarily formal definition of a criminal offence* is reflected in the definition of a criminal offence according to which a criminal offence is an illegal act, the characteristics of which are stipulated in the Criminal Code, unless the Code provides otherwise. The formal definition is complemented by a material corrective element in order to define the boundary between criminal offences and other illegal acts. The *principle of individual subjective criminal responsibility* is based on

statutory conditions of criminal responsibility of offenders and on statutory forms of fault. Criminal responsibility is the individual responsibility of a specific natural person for his own actions. The *principle of non-retroactivity* gives the perpetrator of a criminal offence legal certainty that he will not be punished with a more severe sentence under a new Criminal Code for an act committed before the new code took effect. With respect to temporal application, criminality of an act is assessed under the law in effect at the time when the criminal offence was committed. Criminality is assessed and punishment is imposed under a subsequent law only if it is more favourable to the perpetrator.

Another principle applicable in criminal law is the *prohibition of analogy to the detriment of the perpetrator of a criminal offence*. The conditions of criminal responsibility and of imposing sanctions may not be extended by analogy and no subject matters of new criminal offences may be created by analogy. Moreover, in criminal law the same circumstance may not be ascribed to a perpetrator several times and the same person may not be tried twice for the same act. Another important principle is the *principle of subsidiarity of criminal law* which applies in conjunction with the repressive function of law. Repression should be the last (subsidiary) tool for protecting societal relations and should not be used unless the tools of other branches of law are insufficient.

The principles applied for the purposes of defining the limits of criminal responsibility include the following: the principle of differentiation of criminal responsibility, the principle of individualization of criminal responsibility, the principle of classification of offences and the principle of classification of offences and their perpetrators. These principles complement the principles relevant for determining statutory conditions of criminal responsibility applied for the purposes of determining the conditions and prerequisites of criminal responsibility. The *differentiation principle* with respect to the societal importance of protected interests and to the gravity of illegal conduct, categorizes criminal offences into titles and chapters. The *individualization principle* distinguishes various forms of criminal conduct or various groups of perpetrators or participants in criminal offences. The *principle of classification of offences* divides criminal offences according to their seriousness into contraventions, crimes and particularly serious crimes. The *principle of classification of judicial offences and their perpetrators* classifies criminal offences, according to their characteristics into certain groups, e.g., criminal offences of commission and of omission, criminal offences of violation and of threat, intentional and negligent criminal offences, continuing, cumulative and lasting criminal offences. This principle also classifies perpetrators into criminally liable juvenile offenders, adult offenders, recidivists and persons not criminally responsible having committed an act otherwise constituting a criminal offence.

2.3 Foundations of criminal responsibility

2.3.1 Criminal offence and its characteristics

The basis of criminal responsibility is the commission of a criminal offence. Criminal offence is the pivotal concept of substantive criminal law.

A criminal offence is an illegal act the characteristics of which are defined in the Criminal Code, unless provided otherwise by such code. In broad terms, criminal offences are not limited to consummated criminal offences. Unless provided otherwise, preparation to commit a crime, attempt to commit a criminal offence, organizing, instigating, soliciting and aiding in a criminal offence are criminal offences as well. Criminal offence is defined primarily as a formal concept, which, in the case of contraventions, is complemented by a material corrective element. Thanks to this material corrective element, an illegal act formally satisfying the characteristics of a contravention will not be deemed a contravention if its seriousness is negligible or, in case of juvenile offenders, small. In principle, it is assumed that an act satisfying the characteristics defined in the Special Part of the Criminal Code (formal characteristics) is illegal.

With respect to criminal responsibility, for a criminal offence to be committed, the following characteristics defined by law must be satisfied:

- a) *illegality of the act,*
- b) *seriousness of the act,*
- c) *fault,*
- d) *a criminally responsible perpetrator,*
- e) *criminality, and*
- f) *subject-matter characteristics.*

Illegality of an act means that the perpetrator's conduct is contrary to law (contrary to a rule of criminal law). A criminal offence is an act that is illegal, prohibited and harmful to society, by which the perpetrator jeopardizes or violates an interest protected by the Criminal Code.

Seriousness of an act is a material corrective element relating exclusively to illegal acts otherwise meeting the characteristics of contraventions which is intended to help distinguish between contraventions and administrative infractions, i.e., to define the boundary between criminal responsibility and other types of legal responsibility.

Fault is the perpetrator's internal mental state with respect to certain facts that, in conjunction with other characteristics, constitute a criminal offence. Fault, as a characteristic of a criminal offence, consists of a knowledge (intellectual) element, which is based on perception and imagination of objects and phenomena by means of sense organs and the will element based on the will to act illegally or to refrain from legal conduct and/or on the acceptance of the results of such conduct.

Fault can take the form of either intention or negligence.

A common characteristic of intentional fault is the existence of both the knowledge (intellectual) element and the will element. Two types of intentional fault are distinguished; direct intent and oblique intent. Another form of fault is negligence. It is based solely on the knowledge element. Thus, advertent and inadvertent negligence may be distinguished. In the case of negligent fault, the will element is absent. Negligent fault is based on knowledge, ignorance and possible knowledge. In the case of a perpetrator having committed a criminal offence by inadvertent negligence, criminal responsibility will be based on one's duty to foresee certain consequences and, therefore, a certain degree of caution will be required.

For an act to be a criminal offence, intentional fault is required unless the Criminal Code expressly provides that negligent fault is sufficient. With respect to the construction of subject matters, in principle, basic subject matters require intentional fault unless the law expressly provides that negligent fault is sufficient. The opposite principle applies to circumstances justifying a more severe sentence and aggravating circumstances, in which case negligent fault is sufficient unless stipulated otherwise.

A perpetrator of a criminal offence is a person who commits a criminal offence in his individual capacity. In addition to the person having by his conduct fulfilled all the characteristics of a criminal offence, a perpetrator is also a person qualified by the Criminal Code as a co-perpetrator or a participant. Under the Criminal Code, a **criminally responsible perpetrator (offender)** may only be

- *a natural person;*
- *having attained the age of 14 at the time the act was committed. For the purposes of the criminal offence of sexual abuse under Section 201, only a person having attained the age of 15 can be criminally responsible;*
- *having mental capacity at the time the act was committed.*

Slovak criminal law is based on the principle of individual criminal responsibility and does not recognize responsibility for another's fault or criminal responsibility of legal persons. With respect to age, a minimum age limit for criminal responsibility is set. It is defined in negative terms; anyone not having attained, at the time of committing an act otherwise constituting a criminal offence, the age of 14, is not criminally responsible. In case of persons under 14, criminal responsibility is totally excluded. Criminal responsibility of a juvenile offender depends also on his individual intellectual maturity. The law requires a juvenile offender to be able to realize that his conduct constitutes a substantial breach of the rules of the society of which he is a member (intellectual element) and to be able to control his conduct accordingly (will element). In case of a juvenile offender not having attained the age of 15 at the time the act was committed, it is always necessary to examine whether he was capable of discerning the illegality of his conduct and of controlling his conduct.

The age of the perpetrator is crucial for assessing his criminal responsibility. With respect to age, the law distinguishes several age categories of perpetrators enjoying a special position and privileges with respect to sentences to be imposed (mitigating circumstances). For instance, a *child* is a person under 18 not having acquired majority

earlier; a *juvenile* is a person between 14 and 18; a *person of age close to the age of juvenile persons* is a person between 18 and 21; a *person of higher age* is a person over 60. A *person between 12 and 14* having committed an act that may be sanctioned under the Criminal Code by life imprisonment also has a special position. For such an act, otherwise constituting a criminal offence, protective custody must be imposed on such person in civil proceedings.

Another necessary prerequisite for the perpetrator's criminal responsibility is his mental capacity. Mental capacity is the capacity of being a perpetrator of a criminal offence which depends on the perpetrator's mental abilities. Both lack of age and mental incapacity are circumstances excluding criminal responsibility. Under the Criminal Code a person is mentally incapable if

- *due to his mental disorder*
- *existing at the time the act otherwise constituting a criminal offence was committed*
- *he could not discern the illegality of the act or*
- *he could not control his conduct.*

A mental disorder can be caused by a mental disease, by consumption of addictive substances, or it can be a certain condition of a syndrome (e.g., pathological gambling syndrome). Mental disorders include schizophrenia (a mental disease), oligophrenia (a pathological mental condition) or epileptic seizures. For criminal responsibility to be excluded on the basis of mental incapacity, the person concerned must have been suffering from the mental disorder at the time of committing the act.

Lack of *discerning capacity* means that one is not able to discern the fact that his conduct is contrary to a rule of criminal law and to understand the societal value of the interest being protected by the law. Lack of the perpetrator's *controlling capacity* with respect to violating an interest protected by the law means that, even though the perpetrator is aware of the illegality of his conduct, he is not able to control his actions, e.g., because of an epileptic seizure, dementia or other impulsive action. Lack of discerning and controlling capacity need not concur. The absence of one of these capacities is sufficient.

In practice, cases of **diminished mental capacity** occur as well. In such cases, due to a mental disorder, the discerning element or the controlling element is substantially debilitated. Diminished mental capacity is not considered a mitigating circumstance. Diminished mental capacity is relevant for the purposes of an exceptional reduction of sentence, a waiver of sentence or imposing protective treatment.

With respect to mental incapacity, cases of **pathological drunkenness** occur as well. This condition is caused by consuming alcohol in combination with a mental disorder. If the perpetrator could have foreseen that the consumption of an alcoholic beverage would, due to his previous nervous system disorder or mental disorder, result in mental incapacity, he will be responsible for the act committed in his mental incapacity.

The characteristic of criminality is connected with the constitutional principle enshrined in Article 49 of the Constitution of the Slovak Republic which stipulates that only the Criminal Code provides what conduct constitutes a criminal offence and

which punishment may be imposed for committing it. **Criminality** is a tool of state repression for the commission of a criminal offence.

2.3.2 Categorization of criminal offences

Criminal offence is defined generally as an illegal act the characteristics of which are defined in the Criminal Code. Illegality of an act is a manifestation of will by which a person violates the orders and prohibitions imposed by applicable law. In criminal law, illegal conduct is described as antisocial conduct the characteristics of which are defined in the Criminal Code as criminal offences. The Criminal Code is based on a division of criminal offences into **contraventions** and **crimes**. The decisive criterion for defining these two categories of criminal offences is the subjective element of subject matters of criminal offences (the formal characteristic consisting in fault) and the term of imprisonment that may be imposed for each criminal offence in accordance with the Special Part of the Criminal Code. **Particularly serious crimes** constitute a subcategory of crimes.

A **contravention** is

- a) *a criminal offence committed by negligence, or*
- b) *an intentional criminal offence for which the Special Part of the Criminal Code imposes a prison sentence with a maximum limit of prison term not exceeding five years.*

However, such criminal offence is not a contravention if, with respect to the manner of committing the act and its consequences, the circumstances under which the act was committed, the degree of fault and the perpetrator's motive, its seriousness is negligible. This rule is an exception to the formal understanding of criminal offences defined as contraventions. If the evaluation of these criteria leads to the conclusion that the seriousness of the act is negligible, the act will not be a contravention although it may be an administrative infraction.

A **crime** is a more serious a criminal offence. It is

- a) *an intentional criminal offence for which the Special Part of the Criminal Code imposes a prison sentence with a maximum limit of prison term exceeding five years,*
- b) *a qualified intentional contravention with a maximum prison term exceeding five years.*

Particularly serious crimes constitute a specific subcategory of crimes. These crimes have a minimum limit of prison term of 10 years.

When assessing the manner of commission of an act, the authorities acting in criminal proceedings and the court must take into account the type and nature of illegal conduct and of the instruments used. For instance, they must examine whether the criminal offence was committed with a weapon, by burglary, by force, by coercion, by trick, in public, in a dwelling, etc. When assessing the consequences for the purposes

of determining the degree of seriousness, it must be examined whether the consequence took the form of damage to property, health or only of a threat to an interest protected by law. When assessing the seriousness, regard must be had to the amount of damage caused by the criminal offence, to the intensity of injury and to the injured party. In the case of criminal offences of endangerment, it must be assessed what was yet to be done to cause damage. When assessing the circumstances under which the act was committed, account must be taken of the circumstances pertaining to the place of commission of the act, the time of commission of the act, whether the act was committed during a natural disaster, in great agitation, in distress, etc. When assessing the degree of fault, it is necessary to determine the form of fault and to establish who contributed to the commission of the criminal offence and to what extent. When determining the perpetrator's specific motive, it is necessary to establish whether the criminal offence was committed for remuneration, out of revenge, national, ethnic, racial or other hatred or infidelity, for a wrong suffered, for profit or for other motives.

A crime is a more serious form of criminal conduct than a contravention and is associated with a more serious impact on health and property with respect to the violation of an interest protected by law and this is reflected in a longer prison sentence.

Criminal offences may be classified according to the following criteria:

1. *seriousness of criminal offence* – into contraventions, crimes and particularly serious crimes;
2. *importance of the interest protected by law* – property criminal offences, economic criminal offences, criminal offences against freedom and human dignity (see, Special Part of the Criminal Code, Titles 1-12);
3. *form of fault* – into intentional criminal offences and negligent criminal offences;
4. *manner of action* - into criminal offences committed by an act (criminal offences of commission) and criminal offences committed by failure to act (criminal offences of omission);
5. *consequence caused* – damaging criminal offences and endangerment criminal offences;
6. *duration of criminal offence* – continuing, cumulative and lasting criminal offences.

Duration of a criminal offence is relevant with respect to the perpetrator's age, for determining temporal and territorial scope of application and for assessing prescription. Continuing, cumulative and lasting criminal offences are each assessed as one act and one criminal offence.

Continuing criminal offences are offences where the perpetrator continues committing the same criminal offence. Criminality of all partial acts is assessed as one criminal offence providing that all partial acts of the perpetrator have an objective link (time and manner of commission and object of act) and a subjective link, in particular the perpetrator's intent to commit the criminal offence concerned. For example, a shop assistant regularly appropriates a certain amount of cash from the shop with a view to

buying a house. By his conduct, he fulfils the subject matter of the criminal offence of embezzlement.

Cumulative criminal offences are offences committed by multiple acts which are not criminal offences when assessed individually. These acts are aggregated to determine criminality. Plurality of partial acts is an element of the subject matter and it is only in the aggregate that these acts establish criminal responsibility for such criminal offence. For example, the criminal offence of serving alcoholic beverages to minors requires that alcoholic beverages be served “continuously” or “in a larger quantity”. Another example is the criminal offence of unauthorized possession of weapons and trade in weapons, which provides that it is a criminal offence “to accumulate, without authorization, firearms, weapons of mass destruction, ammunition or explosives”. A single act would not be a criminal offence since the law requires multiple acts.

Lasting criminal offences consist in causing and maintaining an illegal state or maintaining it only. Examples of lasting criminal offences include criminal offences of restricting personal freedom and deprivation of personal freedom.

Causation

Section 15

Intentional criminal offences are those where the offender

- a) acting in a manner defined in this Act, had the intent to infringe or prejudice an interest protected under this Act, or
- b) was aware that this act was likely to cause such infringement or prejudice and was prepared to accept that consequence should it occur.

Section 16

Criminal offences committed by negligence are those where offender

- a) knew that by acting in a manner defined in this Act he could infringe or prejudice an interest protected under this Act, but presumed without good reasons that no such infringement or prejudice would be caused, or
- b) did not know that he could cause such infringement or prejudice although, considering the circumstances and his personal situation, he could and should have been aware of it.

Commentary on sections 15, 16:

Culpability is an obligatory feature of a crime, which stipulates that an act is considered a crime if it involves intentional culpability, unless this Code expressly provides that an act committed through negligence is also considered a crime. When a crime is committed through negligence, its offender does not commit the crime intentionally. The Criminal Code distinguishes between whether an offender was aware or unaware of his negligence.

Circumstances extinguishing criminal liability**Section 22****Age**

(1) Any person who had not reached the age of fourteen at the time of the commission of a criminal offence shall not be criminally liable.

(2) A person shall not be criminally liable for a criminal offence of sexual abuse pursuant to Section 201, if he had not reached the age of fifteen at the time of its commission.

Section 23**Insanity**

Any person who could not recognize the unlawfulness of an act or could not control his acting due to mental disorder at the time of the commission of a crime, is not criminally liable for the act, if this Act does not provide otherwise.

Commentary on sections 22, 23:

A person who is not yet 14 years old when committing an act which otherwise has the requisites of a crime is not criminally liable for his conduct. Insanity denotes a degree of mental illness which negates the individual's legal responsibility or capacity. Problems arise in practice if it is necessary to determine the sanity or insanity of an offender who suffered from a mental illness in the past. A particular individual's lack of competence (legal capacity) under the civil law provisions is not decisive in criminal proceedings where insanity is strictly determined according to the provisions of the criminal law.

3. SUBJECT MATTER OF A CRIMINAL OFFENCE

3.1 Concept of subject matter

Subject matter of a criminal offence may be defined as a set of formal characteristics that, in combination with other characteristics, define a criminal offence. Subject matters distinguish individual criminal offences enumerated in the Special Part of the Criminal Code (e.g., theft, robbery, murder) from each other. The definitions of subject matters state in a clear and precise manner the conditions and statutory limits of criminal responsibility and thus guarantee legality and respect of rights and freedoms in criminal proceedings. The concept of a subject matter should not be confused with the concept of an act. In criminal law an act is any external manifestation of the perpetrator's will causing the result relevant for criminal law provided that fault exists. The subject matter of a criminal offense is the reflection of any such act.

3.2 Subject-matter characteristics of a criminal offence

Subject-matter characteristics of a criminal offence are defined in the Criminal Code both in the General Part and in the Special Part. The mandatory characteristics are those that must be found in the subject matter of every criminal offense whereas optional characteristics need not be present in all subject matters. **Mandatory subject-matter characteristics are the subject matter's object, objective element, subject and subjective element.**

Object of a criminal offence is the scope of societal relations protected by the Criminal Code. According to the scope of protection accorded societal relations, general object, type object, group object and individual object are distinguished in criminal law.

General object encompasses all societal relations protected by the Criminal Code. These are the rights of natural and legal persons, interests of society and the constitutional order of the Slovak Republic. **Type object** is a group of similar protected interests included in specific titles of the Special Part of the Criminal Code. **Group object** is intended to protect societal interests protected by the provisions included in specific chapters. For instance, the criminal offences included in Title II of the Special Part of

the Criminal Code are listed in two chapters, the object of criminal offences in Chapter 1 being freedom and the object of criminal offences in Chapter 2 being human dignity. **Individual object** is an individual interest protected by a particular provision of the Special Part of the Criminal Code. For instance, the individual object of murder is human life and the individual object of theft is the interest in protecting property of another.

In addition to an object, certain criminal offences have also a **material object of the criminal act** which is an optional subject-matter characteristic of criminal offences. The material object of the criminal act is defined as people or things directly attacked by the perpetrator, who, by doing so, encroaches upon the individual object of the subject matter of a criminal offence. In the case of the criminal offence of murder, the object of the criminal act is not all living persons but only one individual living person who the perpetrator wants to kill. The object of the criminal act must be distinguished also from the instrument by which the criminal offence was committed.

The objective element of the subject matter is the manner of illegal action and its consequences. Its mandatory characteristics which must be present in any criminal offence are **act (omission), result and a causal link between the act and the result**. Optional characteristics, which are also present in this subject-matter characteristic in the case of certain subject matters, are the material object of the criminal act, effect, place, time and manner of committing an act.

An action is a manifestation of human will in the outer world. In criminal law, action means a wilful action of the perpetrator directed at achieving a certain objective, e.g., illegal seizure of a thing of another, killing another, restriction of another's personal freedom, etc. It is a physical or verbal manifestation endangering or violating an interest protected by law. Under the Criminal Code, action includes also failure to act in a way determined by the circumstances and the perpetrator's situation. The extent of duty to act may be determined by legislation or by another generally binding legal instrument, e.g., the statutory duty of parents for their children's upbringing and maintenance is imposed by the Family Act or a duty may be imposed by a contract, e.g., a lifeguard's duty to help a person whose life is in danger or by a decision of a court or of another authority, e.g., the duty of a guardian to take care of the person in his care. The duty may be imposed also by other legal instruments, e.g., by an internal regulation relative to the operation of a nuclear power plant. Thus, a criminal offence may be committed not only by action, but also by a failure to act, provided that the perpetrator had a duty to act in a certain way. A more serious manner of commission of a criminal offence is a characteristic of qualified subject matters.

Result in criminal law is defined as a violation of or a threat to interests protected by the Criminal Code. The result takes the form of an injury to health or property or of a threat to an interest protected by law if no injury has occurred. The extent of result is determined by killing, by the intensity of injury, by the amount of damage caused and, in case of endangerment criminal offences, by the gap between the risk and the violation of an interest protected by law. Various types of results are distinguished in criminal law:

- **result** as the main characteristic differentiating criminal responsibility from other types of legal responsibility, e.g., amount of damage caused by a crimi-

nal offence exceeding €266 or an injury to health requiring a sick leave longer than seven days,

- **harmful result** – if it is eliminated on a voluntary basis in due time, the act may not be a criminal offence,
- **serious result, particularly serious result, other particularly serious result** cause more serious violations of and threats to interests protected by law. They increase the seriousness of an act in a substantial way and are characteristics of qualified subject matters of criminal offences.

Causal link between an act and result is also a subject-matter characteristic. This link exists between the act and the violation of or the threat to an interest protected by law or between the act and the effect, between the act and the result justifying a more severe sentence or an aggravating circumstance.

The cause is any phenomenon essential for the result. An act is the cause of a result only if the result would not have occurred without it. If a result, e.g., a death caused by another, occurs, the authorities acting in the criminal proceedings must prove the causal link between the act and the result. They must prove by whom and how the victim was killed. With respect to assessing the causal link, a person is criminally responsible only if the result (the death of another) was caused by such person's illegal conduct.

In criminal offences against property the result is injury to property – *damage*. Under the Criminal Code damage means injury to property or real loss of property or injury to the injured person's rights or other injury caused to the injured person having a causal link with the offence, regardless of whether it is injury to property or to rights. Damage is also the acquisition of unjustified benefit as a result of a criminal offence, as well as the loss of the injured person's profit. In case of environmental criminal offences, the damage is the sum of ecological harm and material damage. The Criminal Code establishes the following types of damage:

- **small damage** – exceeding €266,
- **greater damage** – at least ten times the small damage,
- **substantial damage** – at least one hundred times the small damage,
- **damage of great extent** - at least five hundred times the small damage.

In cases where the result takes the form of harm/injury to health, bodily harm and grievous bodily harm are distinguished.

In order to satisfy the subject-matter objective element, optional characteristics such as **place and time of action** and **effect**, may also be relevant. The place of commission of a criminal offence is any place where the perpetrator acted illegally or where the result envisaged by the Criminal Code occurred or where the perpetrator intended it to occur. Certain subject matters require the criminal offence to be committed in a certain place, e.g., in a dwelling, in a public area, on a battlefield, in an occupied area. In certain criminal offences the act must be committed during a certain period, at a certain time, e.g., during war, in a combat situation. An optional characteristic is also the effect, which is a change to the material object of the criminal act.

Perpetrator is the person who commits a criminal offence alone. The perpetrator of a criminal offence must have mental capacity and must be at least 14 years old. When assessing the person of the perpetrator, two types of perpetrators are distinguished; criminally responsible perpetrators and perpetrators not criminally responsible for having committed an act otherwise constituting a criminal offence.

With respect to their subject, certain criminal offences require a certain quality, a specific position or capacity of the perpetrator. The subject, as a subject-matter characteristic, can be:

- **a general subject** – the criminal offence can be committed by anyone,
- **a special subject** – the criminal offence as defined by the Criminal Code can be committed only by a perpetrator having a certain quality, capacity or position. The special subject can be only a perpetrator or a co-perpetrator having this quality, capacity or position as required by law. An example is the criminal offence of abuse of power by a public official. The perpetrator or co-perpetrator can be only a subject holding the position of a public official. The same applies to cases where the special subject must have a certain quality, e.g., the perpetrator of the criminal offence of sexual intercourse between relatives (incest) can be only a person having the quality required by law, i.e., being the injured person's relative. In certain criminal offences, the perpetrator must have a certain capacity e.g., in case of the criminal offence of false testimony and perjury, the perpetrator must be a witness in a court or in criminal proceedings.
- **a particular subject** – for certain criminal offences, the perpetrator must have a particular quality. An example is the definition of the subject matter of murder of a new-born child by its mother (infanticide), which can be committed only by a particular subject, i.e., not by any mother, but only by the new-born child's mother. Similarly, in the case of the criminal offence of failure to provide assistance, the perpetrator cannot be any driver, but only the driver who was a party to a traffic accident and failed to provide assistance to a person having suffered bodily harm as a result of such traffic accident.

The theory of criminal law distinguishes also the concept of *an indirect perpetrator*. It is a perpetrator using another person for committing the crime, the other person becoming a "living instrument" in the perpetrator's hands. An indirect perpetrator of a criminal offence is a person who intentionally uses a person devoid of mental capacity or not criminally responsible due to his age or a person acting based on an error of fact for committing a crime; a person using physical violence or a threat of violence to force a person to commit an act otherwise satisfying the characteristics of a criminal offence as well as a person abusing his right to give orders if the person who obeyed the order was obliged to do so. The indirect perpetrator is responsible for an intentional criminal offence committed by means of his living instrument.

The subjective element of a subject matter of a criminal offence reflects the mental relation of the perpetrator to the facts characterizing the criminal offence. It is characterized by the mandatory characteristic of fault and by the optional characteristics of motive, objective and design. Fault must, in principle, pertain to all of the facts that are characteristics of a subject matter of a criminal offence. It pertains to a violation

of or a threat to an interest protected by law; to the manner of committing an act; to statutory subject-matter characteristics; to the course of an act in objective reality and to other circumstances of a criminal offence.

Under the Criminal Code, for an act committed by a natural person to be a criminal offence intentional fault is required unless the law expressly provides that negligent fault is sufficient. In criminal law, fault denotes the perpetrator's internal mental relation to the illegal conduct constituting a criminal offence. A **criminal offence may be committed by intentional fault or by negligent fault.**

Intentional fault can take the form of direct intent or oblique intent. **Direct intent (*dolus directus*)** means that the perpetrator wanted to violate or to endanger an interest protected by the Criminal Code in a way defined in the Criminal Code. For instance, the perpetrator procured a gun and intentionally killed two people with this gun, thereby committing the criminal offence of murder. **Oblique intent (*dolus eventualis*)** means that the perpetrator knows that by his act he could violate or endanger an interest protected by the Criminal Code and, in the event that he does so, accepts it. For instance, the perpetrator knew and accepted that once he turned on electricity in a broken circuit, he could kill the people repairing it.

Negligence (*culpa*) is defined as a failure to comply with a certain standard of caution, statutory duty or discipline governed by legal rules. Negligent criminal offences can be based on advertent and inadvertent negligence. **Advertent negligence (*culpa lata*)** means that the perpetrator knew that he could violate or endanger an interest protected by the Criminal Code in a way defined in the Criminal Code but, without reasonable grounds, relied on not violating or endangering it. For instance, a car driver decides to overtake a tractor driving in front of him, assuming that he will not collide with a car driving in the opposite direction. **Inadvertent negligence (*culpa levis*)** means that the perpetrator did not know that he could violate or endanger an interest protected by law by his actions even though, given the circumstances and his personal situation, he should and could have known it. For instance, a crane operator must comply with safety regulations. If, when transporting building material to a construction site, he breaches his duty by incorrect crane manipulation causing some material to fall on workers, he will be responsible for the criminal offence of bodily harm caused by negligence.

Optional subject-matter characteristics are motive, objective and design. **Motive**, in criminal law, is the perpetrator's internal motivation to commit a criminal offence. It is a certain idea, need or desire of the perpetrator to come to terms with someone or something. Motive is the perpetrator's internal incentive, stimulus or reason to commit a criminal offence. If the motive is directly expressed in a provision of the Criminal Code, it is another mandatory characteristic of the criminal offence's subject matter. For instance, the subject matter of the criminal offence of premeditated murder requires intentional killing of another with a premeditated motive. The motive can be an aggravating or a mitigating circumstance or a circumstance of a qualified or of a privileged subject matter. The **objective** is the aim that the perpetrator sought to achieve by committing a criminal offence. The objective is closely intertwined with the **design**, which is determined by the perpetrator's will to commit a criminal offence. If the perpetrator satisfies, with a single design, one and the same subject matter with

respect to action or result, the design is a mandatory characteristic of a continuing criminal offence.

3.2.1 Mistake in criminal law

Mistake in criminal law is closely intertwined with the subjective element of a criminal offence's subject matter. Mistake is defined as a discrepancy between the perpetrator's state of mind and reality causing him to be totally unaware of a certain fact or to have a wrong idea about it. For the purposes of assessing criminal responsibility, mistake in criminal law can pertain to legal or factual circumstances and it can be expressed as a positive, negative or particular mistake. **Mistake of fact** means that the perpetrator has a wrong idea of a fact or an incorrect perception of the factual circumstances establishing or excluding criminal responsibility. **Mistake of law** consists in ignorance or wrong interpretation of rules of criminal law or other rules of law relevant for assessment of criminal responsibility.

Accordingly, criminal law distinguishes:

A. mistake of fact

- a) **negative** – The perpetrator does not know a fact relevant for criminal responsibility but the fact exists. For instance, a man does not know that the woman he had sexual intercourse with is under 15 although, in light of other circumstances and his personal situation, he should and could have known. Negative mistake of fact excludes criminal responsibility for an intentional criminal offence and a criminal offence committed by advertent negligence. It can establish criminal responsibility only for a criminal offence committed by inadvertent negligence.
- b) **positive** – A person wrongly assumes a fact establishing criminal responsibility but this fact does not exist. For instance, a person wrongly assumes that he is paying with a counterfeit banknote but, in fact, the banknote is genuine. Thus, the perpetrator acts with intent to commit a criminal offence which, however, cannot be committed due to the mistake. This act can be qualified as an attempted criminal offence or preparation to commit a crime.
- c) **particular cases of mistake of fact**
 - *mistake in object of criminal act (error in objecto, in persona)* – if the perpetrator's attack is directed against B, who is injured by the act, but the perpetrator assumes that the criminal offence was committed against A (mistake in persons), or the perpetrator's act is aimed at damaging A's vehicle, but, in fact, he damages a thing belonging to B (mistake in things). Such a mistake is irrelevant for legal qualification.
 - *mistake in causal course – "mistake of the bullet" (aberratio ictus)* – the perpetrator aims at A but, suddenly, at the moment he fires, B stands up in front A and B is hit and injured. This is an example of a consummated negligent

criminal offence against B and an attempted intentional criminal offence against A.

- *a particular case of mistake in causal course (dolus generalis)* – if the perpetrator's act is directed against A, and hits A but in a manner different than that envisaged by the perpetrator before committing the criminal offence. For instance, the perpetrator shoots at a person with the intent to kill that person. Assuming that the victim is already dead, he throws the victim into a nearby pond in order to hide the traces of his crime. The victim dies by drowning. If the killing by drowning was part of the chain of events intended to bring about the person's death, it will be the consummated criminal offence of murder. However, if the perpetrator wanted to get rid of the assumedly dead victim by throwing him into water, it will be a concurrence of an attempted criminal offence of murder and killing by negligence pertaining to the same material object of a criminal act.

B. mistake of law

- a) *negative* – A person assumes that his act is not a criminal offence but the opposite is true. For instance, a person finds out that another person is committing the criminal offence of corruption but is not aware that by failing to prevent this criminal offence, he can satisfy the subject-matter characteristics of the criminal offence of failure to prevent a criminal offence, providing that he fulfils all other conditions of criminal responsibility. In this case, the "ignorance of the law does not excuse" principle applies.
- b) *positive* – The person believes he has committed a criminal offence although the opposite is true because his action cannot be subsumed under any criminal offence's subject matter. For instance, a wife cheating on her husband has a wrong idea that her infidelity is a criminal offence. The "no criminal offence without law" principle applies here.

3.3 Classification of subject matters

Classification of subject matters is crucial to qualifying an act and to subsuming it under the relevant provision of the Special Part of the Criminal Code. Subject matters can be classified according to various criteria.

A. According to how they are expressed in law: Descriptive, delegatory or blanket subject matters:

- a) *descriptive subject matters* contain a more or less detailed description of all statutory characteristics
- b) *delegatory subject matters* refer to another subject matter defined in the Criminal Code, i.e., to a specific rule,

- c) *blanket subject matters* refer to other laws or to generally binding legal instruments of other branches of law.

B. According to their structure: Simple or compound subject matters

- a) *simple subject matters* contain only one statutory characteristic each. For instance, the subject matter of the criminal offence of murder contains only one object – human life –, one illegal act consisting in killing another and only one form of fault – intentional.
- b) *compound subject matters* are characterized by plurality of characteristics. Compound subject matters of criminal offences contain either multiple objects or multiple actions, results or two forms of fault.

Plurality of characteristics of compound subject matters means that all characteristics must be satisfied cumulatively (*cumulative subject matters*). An example of a cumulative compound subject matter is the criminal offence of robbery. With respect to its object, this criminal offence has a cumulative subject matter, since the perpetrator must use force or a threat of imminent force (thereby attacking another's personal freedom), but he must do so with intent to appropriate a thing of another. This criminal offence has two objects; another's personal freedom and property. If the perpetrator restricted only personal freedom, it would be the criminal offence of restricting personal freedom. If he only appropriated a thing of another by seizing it, it would be the criminal offence of theft.

It is necessary to distinguish compound subject matters including alternative characteristics of the same kind (*alternative subject matters*). An example of an alternative subject matter is the criminal offence of endangering public safety which, with respect to its object, protects human life or health or property of another. It follows from the subject-matter construction that it is sufficient to satisfy any of the objects mentioned. Another example is the criminal offence of robbery where the illegal act can consist either in using force or in using a threat of imminent force.

C. According to their seriousness: Basic, qualified or privileged subject matters

- a) *basic subject matters* contain ordinary characteristics; usually mentioned in the first paragraphs, where the basic sentence is indicated as well (e.g., the subject matter of the criminal offence of murder). Exceptionally, the basic subject matter may be contained in the second or third paragraph of a specific provision.
- b) *qualified subject matters* are comprised of the characteristics of a basic subject matter and of certain additional characteristics. The basic subject matter is combined with a more serious result or another circumstance stipulated by law substantially increasing the seriousness of the act. For example, a murder will be a qualified murder if it is committed against two people; in case of a qualified subject matter of theft, greater damage is caused.
- c) *privileged subject matters* contain characteristics substantially decreasing the seriousness of an act, leading to less severe sentences. An example is the subject matter of the criminal offence of the murder of a new-born child by its mother (infanticide), which is a privileged subject matter with respect to mur-

der. Even though the same societal interest, namely human life, is protected by both provisions, the perpetrator (the child's mother) of an intentional killing of a new-born child will be punished with a less severe sanction.

4 DEVELOPMENT STAGES OF CRIMINAL OFFENCES

The development stages of criminal offences are stages (phases) typical for accomplishing the perpetrator's intent to commit a criminal offence. With respect to time sequence, the following development stages of intentional criminal offences may be distinguished; the idea of committing a criminal offence, the manifestation of the idea of committing a criminal offence, preparation, attempt and a consummated criminal offence. The first two stages, namely the idea of committing a criminal offence and its manifestation, are not relevant for criminal law, unless the manifestation satisfies a subject matter of a criminal offence. The intent to commit a criminal offence is not punished (*cogitationis poenam nemo patitur*).

With respect to criminal responsibility, only the following development stages of a criminal offence are relevant; *preparation to commit a crime, attempt to commit a criminal offence and a consummated criminal offence*. The stages preceding the consummation of a criminal offence constitute criminal offences in cases stipulated by law and under conditions stipulated by law in order to effectively protect societal relations, even though the criminal offence has not been consummated. The development stages are limited to intentional criminal offences and preparation is a criminal offence only for crimes. With respect to the relationship between the development stages of criminal offences, each of the prior stages is subsumed in the more advanced stage. Only the most advanced stage (the stage closest to consummation) will be attributed to the perpetrator. Accordingly, if the perpetrator consummated the criminal offence, the preceding preparation and attempt to commit a criminal offence will not be attributed to him for the purposes of qualification of his act. He will be criminally responsible only for the consummated criminal offence.

4.1 Preparation to commit a crime

Preparation is the first legally relevant stage of criminal activity. Under the Criminal Code, preparation to commit a crime is an act consisting in intentionally organizing a crime, procuring or adapting the means or instruments for committing it, in associating, grouping, instigating, soliciting or assisting in such a crime or in otherwise intentionally creating conditions for committing it, unless the crime was attempted or consummated. Broadly speaking, preparation is intentional action creating conditions for accomplishing a crime and causing a distant risk of producing the result as a stat-

utory characteristic of the subject matter of the criminal offence that the preparation leads to.

Preparation has the following characteristics:

1. **intentional action** – the intent must pertain to all facts constituting the characteristics of forms of preparation. Preparation leads to a specific crime and the perpetrator's intent must lead to it as well.
2. **illegal action leading to committing a crime** – the law enumerates the following typical forms of preparatory action:
 - *organizing a crime* – processing and setting up a plan, determination of procedures for best preparation for the commission of the crime;
 - *procuring or adapting the means or instruments for committing a crime* – producing, purchasing, borrowing or stealing instruments necessary for committing a criminal offence (e.g., procuring a gun, an explosive and an electrical fuse, a false passport) or adjusting things for their use or adapted use in the commission of a criminal offence (furnishing a gun with a silencer, adapting a tool for breaking a lock). Other intentional creating of conditions for committing a criminal offence may be finding a place of action, gathering information about a prospective hostage, obtaining a plan of the bank to be robbed or finding a flat to be broken into;
 - *associating* – an agreement between two or more persons to commit a particular crime in the future which need not be specified in detail;
 - *grouping* – an instantaneous gathering of three or more persons, which need not be based on an express agreement, with a view to committing a particular crime or a factual meeting of three persons in a certain place, with a view to committing a particular criminal activity to be committed at present. A person having joined the grouping is also a member of the grouping;
 - *instigating* – the perpetrator incites another person to commit a particular crime with a view to making the person decide to commit a crime (e.g., by persuading, advising, counselling)
 - *soliciting* – the perpetrator hires another person to commit a crime or expressly asks another person to commit a crime in cases stipulated by law and under conditions stipulated by law;
 - *aiding in committing a crime* – the perpetrator intentionally attempts to make the commission of a crime by another person possible or easier;
3. **the crime was not attempted or consummated** (subsidiarity principle) – otherwise the perpetrator would be sanctioned for a more serious form of criminal activity.

4.2 Attempt to commit a criminal offence

Another development stage of criminal activity is an attempt to commit a criminal offence. It is regarded as a general form of criminal activity. It is possible both in the case of contraventions and crimes. Under the Criminal Code an attempt consists in an activity immediately leading to the consummation of a criminal offence by the perpetrator with intent to commit a criminal offence, unless the criminal offence is consummated.

The basic characteristics of an attempt to commit a criminal offence are:

1. **act immediately leading to the consummation of a criminal offence** - the perpetrator started the act described in the criminal offence's subject matter (objective element) but this did not lead to the result envisaged by this subject matter. Auxiliary criteria for determining whether the perpetrator's act has immediate relevance for the consummation of the criminal offence are determination and/or relation of the attempt with respect to time and place. It means that an act immediately leading to the consummation of a criminal offence is also an act that is not part of the act described in the criminal offence's subject matter but has immediate relevance for the consummation of the criminal offence because it has the closest temporal link with the result to be caused (temporal determination of attempt) and is usually committed in a place where the criminal offence ought to be consummated (territorial determination of attempt). Eliminating obstacles precluding the consummation of the criminal offence (e.g., breaking a door lock, destroying a watch dog) in the final stage of the perpetrator's act, using tools to achieve the criminal aim (e.g., using a tool to open a door) or acting with respect to the material object of attack (e.g., tying up the victim with intent to kill him later) are also of immediate relevance for the consummation of the criminal offence.
2. **the perpetrator acted with intent to commit a criminal offence** – attempt is possible only in the case of intentional criminal offences. The perpetrator's intent must include all facts constituting the criminal offence's characteristics, including the criminally relevant result.

If the perpetrator's intent was aimed at causing a more serious result which, owing to circumstances independent of the perpetrator, did not occur, it will be an attempted criminal offence with respect to this more serious result. However, an *attempt to commit a criminal offence with a qualified subject matter* is not possible if the application of a more severe sentence is conditional upon causing a more serious result by negligence, caused to the same type of thing protected in the basic subject matter and if the intentional causing of a more serious result satisfies the characteristics of a different intentional criminal offence sanctioned with a more severe sentence.

3. **the criminal offence was not consummated** – unlike a consummated criminal offence, an attempt is characterized by the absence of result that is the subject matter characteristic of the criminal offence. An attempt creates only the risk of causing such a result.

A particular case of attempt is an attempt on an ineligible object of a criminal act – e.g., an attempt of murder on a corpse; attempt by ineligible means – e.g., attempt of murder with an unloaded gun (relatively ineligible attempt), attempt of murder by incantation (absolutely ineligible attempt); attempt by an ineligible subject – e.g., an attempt of endangerment via a sexually transmitted disease by a perpetrator wrongly assuming he suffers from such a disease; sui generis cases of ineligible attempt – e.g., criminal offences of supporting, failure to report and failure to prevent a criminal offence if the perpetrator's action is directed at an act of a mentally incapable person regarded by him as a mentally capable person.

Preparation and attempt are not possible:

- *in case of criminal offences where the offence is consummated already in the course of preparation or attempt (e.g., the criminal offence of terror);*
- *in case of criminal offences where the manner of action is expressed in the subject matter in such broad terms that it overlaps with preparation or attempt (e.g., the criminal offence of establishing and plotting a criminal group or a terrorist group);*
- *in case of negligent criminal offences, in case of criminal offences consisting in an intentional failure to perform required activity (true offences of omission – e.g., the criminal offence of failure to provide assistance). Since the perpetrator can still comply with his duty to act, attempt is impossible or it was entirely neglected which means that the criminal offence was consummated;*
- *in case of verbal criminal offences, i.e., criminal offences committed by a verbal expression.*

Sanctioning preparation and attempt

Under the general principle preparation to commit a crime is sanctioned under the sentencing guidelines stipulated for the crime that was intended and an attempt to commit a criminal offence is sanctioned under the sentencing guidelines stipulated for the consummated criminal offence that was intended. When a sentence is imposed, in addition to the general principles, particular criteria for determining the type of sentence are also taken into consideration. The court takes into account also how close the perpetrator's action was to consummating the criminal offence, as well as the circumstances and reasons why the offence was not consummated.

Preparation and attempt are cases justifying an *exceptional reduction of the sentence*. The court can reduce the sentence below the minimum sentencing guidelines stipulated by the Criminal Code if the perpetrator is sentenced for preparation to commit a crime or for an attempt to commit a criminal offence if, having regard to the nature and seriousness of the preparation or the attempt, the court comes to the conclusion that the application of the sentence for the criminal offence would be unduly severe for the perpetrator and a sentence of shorter duration is sufficient for the protection of society. The right to reduce the sentence imposed on a perpetrator of preparation or attempt under the sentencing guidelines applies only to a sentence of imprisonment and not to other types of sentences.

The Criminal Code regulates also the **conditions of extinction of criminality of preparation and attempt**. Under the following conditions, criminality of preparation and attempt is extinguished:

- if the perpetrator voluntarily desists from further action leading to committing a crime or to consummating a criminal offence and eliminates the risk to interests protected by the Criminal Code resulting from the preparation or from the attempt,
- if the perpetrator, voluntarily and in a timely manner, reports the preparation or the attempt to the authorities acting in criminal proceedings or to the Police Corps; a soldier can report to his superior officer or service authority and a person serving a prison sentence or a person in custody can report to an officer of the Corps of Prison and Court Guard.

Extinction of criminality is intended to motivate the perpetrator to desist voluntarily from further action leading to the consummation of the criminal offence or to report it voluntarily which also protects the interests of society. The decision to desist from further action must be, from the very beginning, permanent, final and it must continue until the risk is fully eliminated. The condition of voluntary desistance from further action is not satisfied if the perpetrator desisted from further action because he was not able to overcome an obstacle, because he believed a trick, because he was afraid of being detected or betrayed when his co-perpetrator was accused.

The voluntary desistance from further action leading to the commission or consummation of a criminal offence does not, in itself, guarantee that the perpetrator will not be criminally responsible unless the perpetrator takes all necessary steps to eliminate the risk to the interests protected by law. Similarly, a voluntary report only extinguishes criminal responsibility if the risk can still be eliminated. Thus, it must be reported at a time when the competent authorities can still eliminate the risk.

With respect to extinction of criminality, *completed attempt and inchoate attempt* are distinguished. An inchoate attempt is possible only when the perpetrator accomplishes only part of the action necessary for consummating the offence but for a result to occur further action is necessary. By voluntarily desisting from further action, the perpetrator eliminates also the risk to the interests protected by the Criminal Code. A completed attempt is possible only when the perpetrator accomplishes all that is necessary for consummating the criminal offence but it is not consummated because of objective or subjective reasons. In such cases, voluntary desistance from consummating a criminal offence is possible only in exceptional situations depending on the nature of the instrument used and on the perpetrator's design; where there is a lapse of time between the perpetrator's action and his intended result and the result can be avoided. Thus, in case of a completed attempt, the mere desistance from further action is not sufficient. The perpetrator's voluntary action to avert the imminent risk is required as well.

Voluntary desistance from further action or voluntary reporting means that the perpetrator is not criminally responsible for the preparation or the attempt to commit the criminal offence his intentional action was directed at. However, this does not preclude his criminal responsibility for his accomplished actions satisfying a subject matter of a consummated criminal offence. This is called a qualified attempt or qualified

preparation. Consequently, the perpetrator is criminally responsible for the consummated criminal offence he committed.

4.3 Consummated criminal offence

A consummated criminal offence is the ultimate development stage. A criminal offence is consummated if the act is illegal and all subject-matter characteristics of a criminal offence have been satisfied. In certain cases, the law provides that a consummated criminal offence is also an action materially (factually) being only preparation or attempt. These cases are called *prematurely consummated criminal offences*. Due to their specific nature they prevail over the general provisions concerning preparation and attempt.

Consummation of a criminal offence must be distinguished from *termination of criminal activity*. For instance, in case of a continuing theft, the criminal offence is consummated once all characteristics of the subject matter of theft are satisfied during the first criminal act but the continuing criminal activity is terminated by the last criminal act being part of the continuing activity. The same applies to cumulative criminal offences. In case of lasting criminal offences, the criminal offence is terminated once the illegal state is eliminated. Termination of criminal activity is relevant also in certain cases of premature consummation of criminal offences. For instance, the criminal offence of robbery is consummated by using force or a threat of imminent force with the intent to seize a thing of another but it is not terminated until the thing of another is actually seized. The temporal aspect is very important for criminal offences, not only with respect to the development stages of criminal offences but also when it comes to assessing temporal application of the Criminal Code or prescription of a criminal offence.

Criminality of a consummated criminal offence

Both basic and qualified subject matters of criminal offences listed in the Special Part of the Criminal Code provide for a prison sentence defined by a maximum and a minimum term. On the basis of the facts of the case and taking into account the principles of imposing sentences and protective measures and the mitigating and the aggravating circumstances, the court determines the type and the term (extent) of punishment or imposes a protective measure within the sentencing guidelines established by the Criminal Code for the criminal offence.

Criminal proceedings for the criminal offence in question may not be initiated if, after the criminal offence is consummated, certain circumstances arise and if they have been already initiated, they must be discontinued. *Criminality can be extinguished* by circumstances causing the criminal proceedings to lose their justification because they extinguish with final effect the right of the State to punish the perpetrator of the criminal offence. Criminality is extinguished by *change of the law, effective repentance, prescription of criminal prosecution, the perpetrator's death*.

By *change of the law*, criminality of an act having at the time of its commission the characteristics of a criminal offence is extinguished, if a subsequent law provides that this act is not a criminal offence.

Criminality is extinguished by *effective repentance* only in the case of criminal offences specifically enumerated in the Criminal Code and it is possible only in the case of consummated criminal offences, provided that statutory conditions are met. Effective repentance gives the perpetrator of a criminal offence a guarantee of extinction of criminality if he actively and voluntarily averts or mends the harmful result or reports the criminal offence at a time when the harmful result still can be averted. The criminal offence must be reported to an authority acting in criminal proceedings or to the Police Corps. A soldier can report to his superior officer or service authority and a person serving a prison sentence or a person in custody can report to an officer of the Corps of Prison and Court Guard. The Criminal Code regulates also specific cases of effective repentance in case of criminal offences of neglecting obligatory maintenance; non-transfer of tax or insurance payments or non-payment tax; establishing, plotting and supporting a criminal group; establishing, plotting and supporting a terrorist group; bribing and indirect corruption – provided that statutory conditions are met.

By *prescription of criminal prosecution*, the criminality of an act is extinguished once the prescription period expires. This period varies according to the seriousness of criminal offences as expressed by the sentences for criminal offences. If the statutory period elapses after the criminal offence was committed and during this period the perpetrator does not commit another criminal offence sanctioned with the same or a more severe sentence, he is deemed to have reformed and therefore the State no longer has an interest in imposing a criminal sanction on him. The prescription period can be lengthened by circumstances stopping or interrupting the prescription period. The Criminal Code provides an exception to prescription. It does not apply to offences enumerated in Title XII of the Special Part of the Criminal Code (criminal offences against peace and humanity, criminal offences of terrorism and extremism and war criminal offences), except for those criminal offences specifically enumerated.

Criminality of a criminal offence is extinguished also by the *perpetrator's death* which follows from the principle of individual criminal responsibility. Criminal prosecution of a dead person or of a person declared dead is impermissible.

Section 13**Preparation of crime (felony)**

(1) Conduct which consists in organizing of an felony, the acquisition or adaptation of means or tools for the purpose of committing a crime or associating, assembling, instigating or giving assistance for such purpose, or other intentional creation of conditions for committing a crime shall be considered as preparation of a crime, even if such crime is not attempted or committed.

(2) Preparation of a crime shall be punishable within the sentencing guidelines for the crime which was prepared.

(3) Preparation of a crime shall not be punishable if the offender voluntarily:

a) abandons any further conduct aimed at committing the crime and eliminates the threat represented by the preparation he has made to an interest protected by this Code, or

b) reports the preparation of criminal act at a time when the threat represented by its preparation to an interest protected by this Code could still be eliminated. The report must be made to the prosecutor or (an organ of) the police or, in the case of a soldier, to his commander or superior officer instead.

Section 14**Attempt to Commit Crime**

(1) Conduct which directed towards the completion of a crime, and which had been undertaken by offender with intent to commit such crime, shall be considered an attempt to commit the crime, if the crime was not completed.

(2) Attempt to commit a crime shall be punishable within the sentencing guidelines for the crime at which it was aimed.

(3) An attempt shall not be subject to punishment if the offender voluntarily:

a) desists from further activity to complete the crime and eliminates the threat represented by his attempt to the interest protected by this Code;

b) reports his attempt at the time when the threat represented by it to the interest protected by this Code could still be eliminated. Such a report (notification) must be made to a prosecutor or an organ of the police, in the case of a soldier, to his commander or superior officer instead.

Commentary on sections 13, 14:

The preparatory stage involves intentional creation of the conditions for the committing of a particular crime. An attempt to commit a particular crime is subject to sentencing guidelines stipulated for the crime. However, since the crime in question has not been completed, the punishment imposed is less than if the crime was completed.

5 CIRCUMSTANCES EXCLUDING ILLEGALITY OF AN ACT

In case of **circumstances excluding illegality**, an act otherwise constituting a criminal offence, whose statutory characteristics are similar to a criminal offence, is not a criminal offence because it lacks illegality. Following the definition of a criminal offence as an illegal act the characteristics of which are defined in the Criminal Code, in case of circumstances excluding illegality, the act is not a criminal offence, but an “act otherwise constituting a criminal offence”. Circumstances excluding illegality must be distinguished from circumstances excluding criminal responsibility in case of which a criminal offence is committed but, due to the perpetrator’s lack of age or mental capacity, he cannot be punished.

The Criminal Code expressly regulates the following circumstances excluding illegality; extreme necessity, necessary defence, justified use of a weapon, permitted risk, exercise of a right or a duty, the injured person’s consent and discharge of an agent’s function.

5.1 Extreme necessity

An act otherwise constituting a criminal offence by which someone averts an imminent risk to an interest protected by the Criminal Code is not a criminal offence. This is an example where two interests protected by law collide. One of them is at risk of being violated and this violation can be averted only by violating the other interest. For instance, if a fire breaks out in a flat where a child was left and a neighbour breaks the safety door by force in order to save the child’s life, he will not be deemed to have committed a criminal offence. Extreme necessity can be invoked by the person whose interests protected by law are at imminent risk as well as by another person who acts in circumstances of extreme necessity. The risk can be caused by a natural disaster (fire, lightning, flood), by man or by an animal. The risk must concern an interest protected by law, for instance life, health, property, freedom or the environment. The act creating the risk must be in immediate danger of violating a protected interest.

In the case of extreme necessity, the *subsidiarity principle* (the risk cannot be averted otherwise under given circumstances) and the *proportionality principle* (the result caused cannot be obviously more serious than the result based on the risk) apply. The result based on the risk and the result caused must be in a certain proportion. Anyone at risk should attempt to avert the risk. Extreme necessity cannot be invoked by a

person bound by a duty to sustain such risk, provided that such a duty results from a generally binding legal instrument or from a contract (e.g., a nurse in a mental facility, a lifeguard aiding a drowning person, etc.).

An act in excess of extreme necessity occurs when:

- the result caused is more serious than the result based on the risk;
- the action in extreme necessity is accomplished prematurely or too late with respect to the imminent risk;
- the risk could have been averted otherwise, without prejudice to other interests protected by law;
- the person concerned is obliged to sustain such a risk.

5.2 Necessary defence

An act otherwise constituting a criminal offence by which someone averts an imminent or a lasting act against an interest protected by the Criminal Code is not a criminal offence. The objective of necessary defence is to allow individuals to participate in protecting interests protected by law, which may be their own interests or interests of other persons, with respect to protection of life, health, property and freedom. Necessary defence means that law is asserted in the face of injustice, i.e., to avert an act against an interest protected by the Criminal Code providing that this act is imminent or lasting. An act is an intentional and illegal action committed by a person. Not only the person whose interest was harmed by the illegal act but another person may act in necessary defence. The *subsidiarity principle* does not apply in the case of necessary defence. The person whose interests are at risk can decide either to actively defend himself or to escape from the imminent harm. A person has the right to defend himself against an assaulter in a way that is not obviously disproportionate to the illegal act. If the defence is to avert the harm and overcome the assaulter's resistance, to a certain extent it must be more intense. The proportionality of defence to the harm is assessed, in particular, with respect to the manner, place and time of attack, circumstances concerning the assaulter and the person defending himself.

The Criminal Code regulates a specific case of acting in necessary defence where the person partially exceeding the conditions of necessary defence is, under certain circumstances, not criminally responsible. For this purpose, the person defending himself must act in a strong agitation caused by the attack; this agitation can be caused by confusion, fear or fright of the person acting in necessary defence.

An act in excess of necessary defence occurs when:

- the defence was obviously disproportionate to the attack (*intensive excess*), e.g., shooting at children picking cherries in a neighbour's garden,
- the defence was premature or too late (*extensive excess*), the defending person continued the defence, although the attack was already over,
- the defending person wrongly assumed that there was an imminent attack (*putative defence*).

Putative defence occurs only, when based on the circumstances of the case, the erroneous assumption about the illegal act is justified. If there is no justification for the erroneous assumption of the risk of an illegal act and, in fact, the illegal act did not exist at all, the defending person's act can be regarded as intentional, with full criminal responsibility.

An act against protected interests is also a provoked attack. However, necessary defence cannot be used in every case of a provoked attack. If the defending person acts with intent to provoke an attack in order to commit a criminal offence against the assaulter in necessary defence, it is not necessary defence. In this case provocation is being used as a justification for committing a criminal offence.

5.3 Justified use of a weapon

Justified use of a weapon in accordance with the law is not a criminal offence. In essence, justified use of a weapon, as one of the circumstances excluding illegality, means that under certain circumstances defined by law, a weapon may be used in accordance with its purpose, although it is not a case of necessary defence or extreme necessity. The legal use of a weapon is regulated and subject to strict conditions defined in various legal instruments, e.g., in the Firearms and Ammunition Act, the Police Corps Act, the Community Police Act, the Corps of Prison and Court Guard Act, etc. For the purposes of justified use of a weapon, a weapon is defined as a weapon in the technical sense. It can be a firearm, a stabbing weapon or a weapon of mass destruction. The Criminal Code does not distinguish between official and private weapons.

Use of a weapon against another in one's home for the protection of life, health or property is also deemed to be a justified use of a weapon provided that the intruder entered the home or remained there without legitimate reasons and it is not necessary defence. This does not apply if death is caused intentionally to another. This special regulation of justified use of a weapon in a home is based on the right to protect one's home guaranteed by the Constitution and on the prohibition of entering and remaining in a home without the consent of the residents.

5.4 Permitted risk

An act otherwise constituting a criminal offence is not a criminal offence if someone, in compliance with the current state of knowledge, performs an activity of social benefit in the field of production and research if the result of social benefit expected from the activity performed cannot be achieved without the risk of endangering an interest protected by the Criminal Code. In this instance illegality is excluded even though the activity poses a risk to an interest protected by the Criminal Code in order that new techniques may be introduced or new products tested, thus eliminating a risk associated with current production methods or research.

Permitted risk means that an act otherwise constituting a criminal offence is not contrary to law or to other generally binding legal instruments. Permitted risk may not be an act contrary to the public interest, to principles of humanity or to good morals prevailing when it was performed. The result envisaged by the act in permitted risk and expected from this act must correspond to the degree of risk that cannot be achieved without the risk otherwise than by endangering an interest protected by law. In the case of permitted risk it is crucial that human life not be put at risk during research and that the individuals who agree to sustain the risk be informed in advance about any possible threats to life and health.

Permitted risk is excluded if the result envisaged by the act is obviously disproportionate to the degree of risk or its accomplishment is contrary to a generally binding legal instrument, public interest, principles of humanity or good morals. In this case, if the conditions of permitted risk are not entirely fulfilled, such an act can be a mitigating circumstance.

5.5 Exercise of a right or a duty

This circumstance excluding illegality is based on the principle that if a rule being part of the legal order imposes a certain duty or permits certain action, such action cannot be illegal and, accordingly, cannot be a criminal offence.

In the case of exercising a right or a duty resulting from a generally binding legal instrument, a decision of a court or another public authority, from the discharge of employment duties or other functions or from a contract not contrary to a legal instrument, an act otherwise constituting a criminal offence is not a criminal offence if the exercise of this right or duty is not contrary to a legal instrument and does not circumvent it. For instance a judge ordering that an accused be taken into custody because statutory conditions of custody are fulfilled, cannot by doing so commit the criminal offence of restriction of personal freedom. Sometimes a duty to act can be specified by an order pursuant to law. The person bound by the order is obliged to comply with it. Otherwise, he risks being criminally responsible for the criminal offence of disobedience. Under certain conditions the person can refuse to comply with the order – if the order is contrary to a generally binding legal instrument and, if by complying with it, the person would commit a criminal offence.

Discharge of a professional duty or of a job is similar to exercising a right. For example, if a doctor amputates both of a patient's extremities during surgery, he cannot be criminally responsible for the patient's bodily harm.

5.6 Injured person's consent

Once consent is given, an act that would otherwise constitute a prohibited interference with the injured person's rights becomes a permitted act. *An act otherwise con-*

stituting a criminal offence is not a criminal offence if it was accomplished with the injured person's consent and is not directed at his life or health.

The injured person's consent must be given prior to the act, must be serious and voluntary, must not constitute another criminal offence, must not concern directly the rights of others, must not be directed at the injured person's life or health and the injured person must have the capacity for giving consent, unless consent is given by his statutory representative.

The injured person cannot consent to a criminal offence against life and property. Accordingly, if the injured person asks the doctor to kill him, it is not a circumstance excluding illegality. Another criminal offence must not be committed in association with the consent. Thus, the injured person cannot consent to his house being demolished by using explosives since the person using explosives would endanger other people and surrounding buildings, thereby committing the criminal offence of endangering public safety.

5.7 Discharge of an agent's function

An act otherwise constituting a criminal offence is not a criminal offence if, by the act, an agent appointed under special rules for the purposes of detecting criminal offences and their perpetrators violates or endangers an interest protected by the Criminal Code only because he was forced to do so by a criminal group or by a terrorist group infiltrated by him and where he is active, or if he committed such act in a justified concern for his or a close relation's life or health.

Having infiltrated the criminal environment, the agent must not commit, while discharging his functions, any of the criminal offences listed exhaustively in the Criminal Code, including murder, rape, treason, terror, terrorism and certain forms of participation in terrorism or any act causing grievous bodily harm or death. The Criminal Code regulates a specific circumstance excluding illegality of the agent's acts with respect to criminal offences such as bribing and indirect corruption. Illegality of these acts will be excluded only if they are committed for the purposes of detecting or ascertaining the perpetrator of the criminal offences of abuse of power by public officials, of accepting a bribe or of indirect corruption.

Circumstances excluding unlawfulness of an act**Section 24****Extreme Necessity**

An otherwise criminal act, by which a person averts a danger directly threatening an interest protected under this Code, shall not be considered a crime. However, it shall not be regarded as a matter of extreme necessity if, in the given circumstances, the danger could have been averted otherwise, or if the resulting consequence is more serious than the one which had threatened.

Section 25**Necessary Defence**

An otherwise criminal act whereby a person averts a directly threatening (imminent) or persistent attack on an interest protected by this Code shall not be considered a crime. However, it shall not be regarded as a matter of necessary defence if the defence was obviously quite inappropriate to the manner of the attack in question.

Section 30**Performing the duties of an agent**

(1) An act otherwise considered as criminal, whereby an agent appointed in compliance with this Act endangers or infringes an interest protected under this Act in the course of disclosing a criminal offence or identifying its perpetrator, shall not constitute a criminal offence if he was forced to perform such act by the criminal group or terrorist group in which he operates, or performed it out of fear for his life or health, or the life or health of a close person.

6 CRIMINAL COMPLICITY AND PARTICIPATION

Criminal complicity denotes illegal activity involving multiple perpetrators or, in addition to the perpetrator, other persons intentionally causing, soliciting or facilitating the perpetrator's or the co-perpetrator's criminal offence or assisting the perpetrator, the co-perpetrators or other persons participating in the criminal offence in escaping criminal prosecution or punishment.

Criminal complicity includes:

- a) *participation (co-perpetration, organizing, soliciting, instigating and aiding);*
- b) *collective forms of preparatory action (associating, grouping, organizing a crime, instigating, soliciting, aiding);*
- c) *certain forms of criminal complicity under the Special Part of the Criminal Code (encouraging, condoning a criminal offence, supporting, failure to report a criminal offence, failure to prevent a criminal offence);*
- d) *dangerous groupings;*
- e) *organized crime and international organized crime.*

6.1 Participation

Participation is a qualified form of criminal complicity of two or more persons. In the extensive sense, participation includes co-perpetration and in the restrictive sense, various forms of participation including organizing, instigating, soliciting and aiding.

Co-perpetration means that the criminal offence was committed by the intentional joint action of two or more perpetrators (co-perpetrators), each of them being criminally responsible as if he had committed the criminal offence alone. The objective condition of co-perpetration is *joint action* and the subjective condition is the *intent leading to the commission of a criminal offence by joint action*. Joint action can take various forms including:

- each co-perpetrator satisfies all subject-matter characteristics with his action (e.g., all of them break into a shop and steal goods);
- each co-perpetrator satisfies some of the subject-matter characteristics but the subject matter of the criminal offence is satisfied only by their joint action. Examples of this type of co-perpetration are the subject matters of criminal offences where the subject matter requires multiple actions, e.g., one co-per-

petrator makes a woman defenceless and the other co-perpetrator has sexual intercourse with her;

- each co-perpetrator's action is a link in a chain; these links operate simultaneously and they are aimed at committing a criminal offence, e.g., one co-perpetrator selects a flat and opens the door, another co-perpetrator steals specific things and the third co-perpetrator transports the items to their car.

An *organizer* is a person having plotted or directed the commission of a criminal offence, thereby playing a decisive role in the commission of the criminal offence as a participant without directly taking part in it as a co-perpetrator. Plotting a criminal offence includes, in particular, offering an agreement to commit it, plotting it, selecting the object or the victim, procuring participants to take part in the criminal offence. Directing the course of commission of a criminal offence denotes giving specific instructions to participants, assigning functions in the commission of a criminal offence, determining the manner and procedure for committing it and for transporting stolen goods and giving instructions for hiding the traces of the criminal offence.

An *instigator* is a person causing another to decide to commit a specific intentional criminal offence. One may incite another to commit a criminal offence by convincing, persuading, instructing, provoking or in similar ways. Instigation must be addressed to a specific person and it must concern a specific criminal offence. Instigation is consummated once the person concerned attempts to commit a crime or commits a criminal offence.

A *solicitor* is a person hiring another (usually for remuneration) to commit a criminal offence. In this case, it is not necessary to cause the person concerned to decide to commit a criminal offence because such a "professional" perpetrator is, in principle, ready to commit a criminal act and often also offers such services. Only the object of the criminal act is specified.

An *aider* in a criminal offence is a person intentionally making the commission of a criminal offence by another possible or easier. Aiding pertains to a specific criminal offence committed by the perpetrator. It can consist of physical assistance such as procuring the means for committing a criminal offence, eliminating an obstacle, unlocking a safe, turning off the alarm system, or in psychological assistance such as advising, confirming the perpetrator's determination or promising to provide help after the criminal offence is committed.

Criminal responsibility of participants is assessed in accordance with the provisions governing criminal responsibility of the participants unless the Special Part of the Criminal Code provides otherwise, i.e., participation is treated as a consummated criminal offence. A participant in a criminal offence will be punished for a certain form of participation if the participant attempted to commit the criminal offence or consummated it. Otherwise, he will be sanctioned for preparation to commit a criminal offence.

6.2 Certain forms of criminal complicity under the Special Part of the Criminal Code

The Special Part of the Criminal Code regulates certain forms of criminal complicity as specific criminal offences. These include *criminal offences of encouraging, condoning a criminal offence, supporting, failure to prevent a criminal offence, failure to report a criminal offence*. Other criminal offences are *establishing, plotting and supporting a criminal group, establishing, plotting and supporting a terrorist group, sharing proceeds from criminal activity and legalizing proceeds from criminal activity*.

Encouraging is committed by a person publicly encouraging the commission of a criminal offence or publicly proposing the collective non-performance of an important duty imposed by law or on the basis of law or to a serious violation of public order.

Condoning a criminal offence means that someone publicly condones a criminal offence or publicly praises the perpetrator for his criminal offence or, with intent to express agreement with the criminal offence, remunerates the perpetrator or his close relation or reimburses him for his sentence.

Supporting is committed by someone who helps the perpetrator of a criminal offence with intent to enable him to escape criminal prosecution, punishment or a protective measure or their enforcement.

Failure to report a criminal offence is committed by a person having learned from reliable sources that someone has committed a crime sanctioned with a maximum prison sentence of at least 10 years or a criminal offence of corruption and not reporting this offence without any delay to an authority acting in criminal proceedings or to the Police Corps (a soldier can report it to his superior officer or service authority and a person serving a prison sentence or a person in custody can report it to an officer of the Prison and Court Guard Corps) without putting himself or his close relation in a danger of death, bodily harm, other serious harm or criminal prosecution. If a person learns from reliable sources that another is preparing or committing a crime sanctioned by the Criminal Code with a maximum prison term of at least 10 years or a criminal offence of corruption and does not prevent this crime or criminal offence himself or seek to prevent it by means of another eligible person or the competent authority, he commits the criminal offence of *failure to prevent a criminal offence*.

The criminal offence of sharing proceeds from criminal activity is also a form of criminal complicity. This offence is committed when a person hides, transfers to himself or to another, rents out or accepts as a pledge a thing obtained by a criminal offence committed by another or anything obtained in exchange for such a thing.

6.3 Dangerous groupings

Criminal complicity in the form of participation in an organized group, criminal group or a terrorist group can be a circumstance justifying the application of a more severe sentence. A member of one of these groups includes any person involved, as a co-participant in the organizational structure of these groups or in committing crimi-

nal activity. Membership in a group is a circumstance establishing a qualified subject matter and a more severe sanction. Under the Criminal Code, a dangerous grouping is a criminal group or a terrorist group.

Under the Criminal Code an *organized group* is an association of at least three persons with the aim of committing a criminal offence. This group is characterized by the division of the functions among the members of the group and its activity is based on planned and coordinated criminal activity. A *criminal group* is a structured group of at least three persons existing for a certain period and acting in a coordinated way with the aim of committing one or more crimes, the criminal offence of legalization of proceeds from criminal activity or a criminal offence of corruption in order to obtain, directly or indirectly, financial or other advantage. A *terrorist group* is also a structured group of at least three persons existing for a certain period for the purposes of committing the criminal offences of terror or terrorism.

Dangerous groupings are usually associated with organized crime or international organized crime and are characterized by the high level of professionalism of the co-perpetrators and participants, extensive criminal activity, a sophisticated organization and a high level of division of labour and excellent connections with important national and international authorities and organizations. Criminal complicity committed in this way is called *organized crime* which involves accumulation of resources and means for committing criminal offences, hiding traces and receiving benefits from criminal activity.

6.4 Principles of participation

The following principles are common to all forms of participation:

- a) all forms of participation require intentional fault; participation requires intent to participate in a specific criminal offence;
- b) individual subjective criminal responsibility is required;
- c) provisions concerning criminal responsibility of perpetrators apply to criminal responsibility of participants, i.e., participation in a criminal offence is punished in the same way as perpetration of a criminal offence. This does not apply to a perpetrator who commits a more serious criminal offence than the criminal offence that was the subject of the organizing, instigating, soliciting or aiding. The instigator will be responsible for the less serious criminal offence, whereas the perpetrator will be responsible for the more serious criminal offence and for the more serious result of such criminal offence;
- d) if the action satisfies the characteristics of multiple forms of participation in the same act, participants will be sanctioned only for the most serious form of participation; e.g., if the organizer becomes one of the co-perpetrators of the criminal offence, he will be sanctioned as a co-perpetrator and his activities as an organizer will be qualified as an aggravating circumstance under the Criminal Code;

- e) the principle of accessory participation means that a participant's criminal responsibility is conditional on the criminal responsibility of the principal participant, i.e., the organizer, instigator, solicitor or aider will be sanctioned for participation only if the principal perpetrator attempted to commit the criminal offence or consummated it;
- f) extinction of criminality of participation is governed by analogy by the provisions regulating extinction of criminality of preparation and attempt. A participant ceases to be criminally responsible if he voluntarily prevents the participant from committing the criminal offence. Responsibility of participants is assessed separately. Only the participants having prevented the criminal offence will not be criminally responsible.

Section 19**Offender**

- (1) An offender is a person who himself commits a crime.
- (2) The offender shall be an individual person.

Section 20**Accomplice**

If a crime is committed by the joint conduct of two or more persons, each of them shall be criminally liable as if he alone had committed the crime.

7 CONCURRENCE OF CRIMINAL OFFENCES AND RECIDIVISM

7.1 Concept and types of concurrence

Concurrence of criminal offences means that the perpetrator commits two or more criminal offences before he is sentenced for one of them by a court of first instance, unless one of them is no longer a criminal offence. The timeline dividing concurring criminal offences is the judgment convicting the perpetrator rendered by the court of first instance, provided that the judgment later becomes final.

In theory *concurrence by one act* and *concurrence by multiple acts* are distinguished since criminal offences can be committed by one act or by multiple acts. One act includes all manifestations of the perpetrator's will expressed externally, being the cause of the criminally relevant result, provided that each manifestation is based on fault. Every criminal offence must be an act, but not every act is a criminal offence. Concurrence can pertain to one type (*concurrence of one type*) or various types (*concurrence of various types*) of criminal offences (multiple criminal offences of the same or various subject matters).

Concurrence by one act and of one type: By one act the perpetrator fulfils multiple times the same subject matter of a criminal offence, e.g., by detonating an explosive system he kills several people. *Concurrence by one act and of various types* means that by one act the perpetrator commits multiple criminal offences of various subject matters, e.g., by causing a traffic accident, he kills a person, injures another person and damages property of a third person.

Concurrence by multiple acts means that by multiple acts the perpetrator commits multiple criminal offences. *Concurrence by multiple acts and of one type* means that by multiple acts the perpetrator commits criminal offences of the same subject matters, e.g., he breaks into a cottage where he seizes a thing of another and three months later he breaks into a shop where he steals a large quantity of alcohol. *Concurrence by multiple acts and of various types* means that by multiple acts the perpetrator commits multiple criminal offences of various subject matters, e.g., he burglarizes a store (theft) and, when carrying the stolen goods away, he injures a pedestrian and causes him a serious bodily harm (injury).

In case of concurring criminal offences, sentences are not imposed for the individual criminal offences, but an aggregate sentence or a total sentence is imposed based

on the most severe sentence of the concurring criminal offences pursuant to the principle that a more severe sentence includes punishments for other criminal offences. In case of concurrence by multiple acts, if at least one of the criminal offences is a crime, the court will impose an aggregate prison sentence, the maximum term of the most serious criminal offence being increased by one third and the sentence imposed exceeding one half of this term. If the perpetrator commits multiple concurring criminal offences, it is qualified by the court as an aggravating circumstance under the Criminal Code. With respect to criminal procedure, concurrence means that all criminal offences can be dealt with in joint proceedings.

7.2 Cases of exclusion of concurrence by one act

The perpetrator's act is the decisive criterion for distinguishing between concurrence by one act and concurrence by multiple acts. Each act is assessed according to statutory provisions pertaining to it. However, given the relation between various subject matters, there are exceptions to this rule. *Cases of exclusion of concurrence of criminal offences by one act* include relation of specialty, relation of subsidiarity, factual consumption of subject matters, and continuing, cumulative and lasting criminal offences.

Relation of specialty exists between provisions intended to protect the same interests where a special provision specifically sanctions a certain type of action against the same object. Special provisions exclude the application of general provisions, e.g., the provision concerning the criminal offence of murder of a new-born child by its mother (infanticide) takes preference over the provision governing the criminal offence of murder. There is a relation of specialty between qualified and privileged subject matters and the basic subject matter. A similar relation exists between compound subject matters and subject matters that may be regarded as their parts.

Relation of subsidiarity exists between provisions intended to protect the same societal relations and interests. Subsidiary provisions complement the protection provided by a primary provision with respect to protection against less serious acts. Relation of subsidiarity exists also between provisions sanctioning less serious forms of criminal activity and provisions sanctioning more serious forms of criminal activity. In particular, this applies to

1. more remote development stages of criminal activity in relation to the stage closest to consummation of a criminal offence, i.e., a consummated criminal offence includes preparation and attempt;
2. provisions concerning a criminal offence of endangerment and provisions concerning a criminal offence of violation;
3. less serious forms of criminal complicity in relation to more serious forms.

Factual consumption of subject matters is associated with the actual course of the act. In this case, the endangerment or violation of interests protected by one provision in a specific case is either an instrument or a by-product of the principal criminal

activity sanctioned by another provision. Examples of factual consumption include damaging a lock during burglary and destroying clothes during murder.

Continuing, cumulative and lasting criminal offences are regarded as one criminal offence and one act. Therefore, concurrence by one act is excluded in the case of these offences.

7.3 Concept and types of recidivism

Recidivism is a special type of plurality of criminal offences committed by an offender, i.e., one offender commits two or more criminal offences. Recidivism means that the offender commits another criminal offence after a prior final conviction for a criminal offence defined in the Special Part of the Criminal Code. In case of a fiction where the perpetrator is deemed not to have been convicted despite his conviction, it cannot be regarded as a final conviction. Recidivism does not occur in the case of a sanction being previously imposed for an administrative infraction. In certain subject matters of criminal offences this fact is expressed as a statutory subject-matter characteristic and in other subject matters as a circumstance justifying the application of a more severe sentence.

Criminal law distinguishes general, typical and individual recidivism. *General recidivism* means that the offender, having been convicted of a criminal offence, commits another criminal offence of any type, e.g., after his conviction for the criminal offence of theft becomes final, he commits the criminal offence of murder. If the offender, after his conviction for a specific criminal offence becomes final, commits another criminal offence of the same or similar type, it is called *typical recidivism*. For instance, after his conviction for the criminal offence of sexual violence becomes final, the offender commits another sexual offence, e.g., the criminal offence of sexual abuse. *Individual recidivism* means that, after his conviction for a criminal offence becomes final, the offender commits the same criminal offence.

With respect to time, recidivism limited in time and recidivism unlimited in time can be distinguished. *Recidivism limited in time* means that the time aspect is regarded by law as one of the principal conditions of criminal responsibility. For instance, a qualified subject matter of the criminal offence of theft is fulfilled by an offender committing this offence within 24 months of being convicted for this offence. *Recidivism unlimited in time* means that the time aspect is not decisive, and a previous conviction for such a criminal offence is sufficient, providing that it has not been expunged.

There are two time limits between concurrence and recidivism. The first limit is the date when the judgment of conviction, which is not yet final, is rendered by the court of first instance and the second limit is the date when the judgment of conviction becomes final. In practice, an offender may commit another criminal offence after the judgment of conviction is rendered by the court of first instance but before it becomes final. This case is not qualified as concurrence or recidivism, but as *false recidivism*.

8 SENTENCING

8.1 Concept of sentencing and system of sentences

Sanctions under the Criminal Code are sentences and protective measures which are the legal consequences of a criminal offence having been committed or of an act otherwise constituting a criminal offence. Sentences are defined by law and enforceable by the State. Unlike protective measures, sentences reflect a negative evaluation of the criminal offence that has been committed and of its perpetrator. Imposition and execution of a sentence causes a certain injury to the convict's protected civil rights and freedoms (e.g., infringement on personal freedom, property). The injury itself is not the objective or sense of the sentence imposed but it should be an inevitable means of achieving the purpose of punishment. Sentences should ensure protection of interests protected by law, restoration of violated relations. Moreover, sentences are also a means of educational rehabilitation of the offender. The aim of imposing a sentence is not only to cause a certain injury to the offender for having committed a criminal offence but also to ensure the social, resocializing and preventive functions of sentences. Sentences should sanction the offender so as to ensure the least possible effect on his family and his close relations.

The purpose of sentences is defined in the provisions of the Criminal Code concerning fundamental principles of imposing sentences. The purpose of sentences is to ensure effective protection of society against the perpetrator who commits a criminal offence (*protective function*), to prevent the offender from committing further criminal offences (*repressive function*), to create conditions for rehabilitating the convict so that he leads a regular life (*individual prevention*) and to deter other potential offenders from committing criminal offences (*general prevention*). Last but not least sentences are a moral condemnation of the offender by society.

The system of sentences is comprised of different types of punishment, their structure and the relationships between them. Most sentences can be imposed both separately and with another sentence, e.g., sentences of imprisonment, community work and prohibition of a certain activity. Other sentences can be imposed only in addition to another sentence (auxiliary punishments), e.g., sentence of loss of honorary titles and decorations. The system of sentences includes also absolutely certain sentences and relatively certain sentences; substitutable sentences and non-substitutable sentences. According to the system of sentences under the Criminal Code, once the facts

are ascertained and guilt is established, according to the degree of violation of interests protected by law, seriousness of the offender's action and the consequences of the criminal offence and pursuant to the principles of imposition of sentences, the court can impose the right type of sentence and to an appropriate extent.

Under the Criminal Code, the following sentences may be imposed on a perpetrator of a criminal offence: *sentence of imprisonment, sentence of home detention, sentence of community work, pecuniary penalty, sentence of forfeiture of property, sentence of forfeiture of things, sentence of prohibition of a certain activity, sentence of prohibition of residence, sentence of loss of honorary titles and decorations, sentence of loss of military rank and other ranks, sentence of expulsion.*

The enumeration of types of sentences is exhaustive and may not be extended. This reflects Article 49 of the Constitution providing that only law shall lay down which conduct is a criminal offence and which punishment and/or other restrictions of rights or property may be imposed for the committing thereof.

In the system of sentencing, *alternative sentences* prevail. Alternative sentences are not connected with imprisonment and isolation of the offender from society. Alternative sentences are substituted for sentences of imprisonment because they require lower costs and they do not impede the offender's reintegration into society. Alternative sentences allow the judge to apply the principle of individual imposition of sentences and should the offender not comply with the alternative sentence, a prison sentence may be imposed, instead. Alternative sentences are, in the case of certain less dangerous offenders, substantially more effective with respect to prevention of recidivism than an unconditional sentence of imprisonment which usually makes the convict feel that society is not interested in his fate and induces a feeling of frustration and injustice which, consequently, leads to the convict's negative attitude towards fundamental values of the society he lives in.

8.2 General and fundamental principles of imposition of sentences

Imposition of sentences must be based on the following general principles:

- *no punishment without a law*, as far as both the type and the extent of punishment are concerned;
- *non-retroactivity* (sentence is imposed under the law in effect at the time when the offence was committed. If it is more favourable to the offender, a sentence of a type permitted by the law in effect at the time of deciding on the criminal offence may be imposed);
- *proportionality of punishment* – the sentence imposed must correspond with proven guilt;
- *ne bis in idem* – the offender may not be punished for the same offence twice and a sentence of the same type and extent may not be imposed twice;

- *prohibition of analogy* – the list of sentences may not be extended to other sentences not provided for by law and only the sentences permitted by law may be imposed;
- *humanity of punishment* – no one may be tortured or subject to cruel, inhumane or humiliating treatment or punishment;
- *inevitability of punishment* – if someone commits a criminal offence the punishment imposed should be a just punishment;
- *punishment may be imposed only on a convict* having committed the criminal offence, and may not be extended to his family members or other persons;
- *sentence of imprisonment is imposed as a sanction of last resort (an ultima ratio sanction)* – a sentence connected with imprisonment is applied only in serious and exceptional cases where less severe sanctions or measures are not effective or sufficient.

The fundamental principles of imposition of sanctions specify the statutory rules that are binding on the court imposing individual types of sentences and determining their extent. The offender may be punished only with a sentence of a type and to the extent appropriate given the manner of commission of the offence, its result, fault, motive, aggravating and mitigating circumstances, the offender's person, his situation and possibilities for his reform. In case of co-offenders, the type and extent of punishment must be determined by the court on the basis of their contribution to the commission of the criminal offence. In case of an organizer, an instigator, a solicitor or an aider, a sentence must be imposed on the basis of the importance and nature of his participation in an offence committed and the degree of fault. With respect to development stages, specifically in the case of preparation to commit a crime and an attempt to commit a criminal offence, regard must be had to the proximity of the action to the consummation of the criminal offence, as well as to the circumstances and reasons why the criminal offence was not consummated.

The Criminal Code defines also the conditions of an *exceptional reduction of sentence below its minimum limit*. If the court, given the circumstances of the case or the offender's situation, is satisfied that application of the sentence imposed by the Criminal Code would be unduly severe for the offender and protection of society can be achieved also by means of a sentence of shorter duration, the offender may be punished also with a sentence below the minimum limit of sentence laid down by the Criminal Code.

Exceptional reduction of a prison sentence is possible in the following cases:

- if the offender is sentenced for preparation to commit a crime or an attempt to commit a criminal offence;
- if the offender considerably contributed to detection of a criminal offence committed in favour of a criminal group or a terrorist group or helped to prevent the commission of a criminal offence;
- if the offender committed a criminal offence in a state of diminished capacity;

- in a procedure concerning an agreement on admission of guilt and acceptance of punishment (a plea agreement),
- if the offender considerably contributed to the detection of a criminal offence of corruption, of establishing, plotting and supporting a criminal group, of establishing, plotting and supporting a terrorist group or of a particularly serious crime committed by an organized group, criminal group or terrorist group or if the offender contributed to detecting the offender of such crime or proving his guilt by providing evidence of such a criminal offence in criminal proceedings.

In case of recidivists repeatedly committing particularly serious crimes, when imposing an aggregate sentence or a total sentence, the court may impose also a prison sentence of longer duration.

Waiver of punishment is a particular case of a reaction of criminal law to a criminal offence that has been committed. The rationale of this institution consists in the assumption that the effects of imposing and enforcing a punishment can, under certain circumstances, be achieved also by a protective measure or by the criminal proceedings themselves. A waiver of punishment is an educational instrument. In case of such a waiver, the court finds the offender guilty of a contravention, but imposes no sentence. The decision on waiver of punishment is a judgment of conviction containing a ruling by which the offender is found guilty of committing a contravention and a ruling on sentencing by which the sentence is waived.

Waiver of punishment of an offender guilty of a contravention is possible where

- the offender confessed to the commission of a contravention, regrets committing it and displays an effective effort of restoration if, given the nature of the contravention committed and the offender's person, it may be reasonably expected that the trial itself is sufficient for his reform,
- the court accepts a guarantee of the offender's reform and is satisfied that, given the educational influence of the guarantor, the nature of the contravention committed and the person of the offender, imposition of punishment is not necessary,
- the contravention was committed in a state of diminished capacity and the court is satisfied that the protective treatment imposed will be more effective for the protection of society and for the offender's reform than a punishment.

Waiver of punishment cannot be applied to adult offenders where death or grievous bodily harm was caused by the contravention. Waiver of punishment implies a legal fiction of expungement of conviction, which means that if the court applied a waiver of punishment, the offender is regarded as not having been convicted, even though he was declared guilty in the operative part of the judgment.

8.3 Brief description of various types of sentences

Types of sentences can be characterized on the basis of their statutory conditions and prerequisites.

Sentence of imprisonment is the universal and the most severe type of sentence. The Criminal Code allows the sentence of imprisonment to be imposed for any criminal offence. In the hierarchy of sanctions, it is the instrument of last resort (*ultima ratio*), which means that it should be imposed only in cases where the purpose of punishment cannot be achieved by less severe types of sentence. Sentence of imprisonment has three forms: *conditionally suspended sentence of imprisonment*, *unconditional sentence of imprisonment* and *sentence of life imprisonment*.

Sentence of imprisonment can be imposed as:

- *a fixed-term sentence* – the duration of a fixed-term of imprisonment is defined by the Criminal Code either in general terms, as not exceeding 25 years, or specifically, where a specific prison term for a specific criminal offence is defined by a maximum and a minimum term. The court imposes a sentence within the applicable sentencing guidelines.
- *a sentence of life imprisonment* – it is a sentence of unlimited duration.

The court may impose a sentence of life imprisonment for a criminal offence only if the Special Part of the Criminal Code so stipulates and providing that the following statutory conditions are met:

- a) imposition of this sentence is required for the protection of society, and
- b) there is no hope of the offender being reformed by means of imprisonment not exceeding 25 years.

The court will also impose the sentence of life imprisonment in cases where the **“three strikes” principle** applies. This principle is aimed at a more severe sanctioning of recidivists, i.e., persons committing criminal offences repeatedly. The three strikes principle applies if the following cumulative conditions are met:

- the court sentences the offender for one of the criminal offences exhaustively listed in the relevant provision of the Criminal Code (e.g., premeditated murder, murder, bodily harm, illicit manufacture and possession of or trafficking in narcotic drugs and psychotropic substances, poisons or precursors, trafficking in children, robbery, extortion, rape, endangerment of public safety, terror, terrorism, etc.), provided that it is a consummated criminal offence;
- the offender has already been sentenced twice for such criminal offences to an unconditional sentence of imprisonment (the two previous convictions can also pertain to attempted criminal offences);
- the offender satisfies the general conditions for the imposition of a sentence of life imprisonment. If these general conditions are not met, the court will impose a punishment of imprisonment for 25 years unless there are circumstances worthy particular attention. However, the court may not impose a punishment of imprisonment of less than 20 years.

A sentence of imprisonment is served in an institution for serving such sentences of imprisonment (penitentiary) with minimum, medium or maximum level of security. In the case of a sentence of life imprisonment, the convict will be placed in a prison facility with a maximum level of security. The serving of a sentence of life imprisonment

deprives the convict of the possibility of resocialization. The Criminal Code eliminates this consequence by allowing conditional release from imprisonment after 25 years of the sentence has been served.

Rehabilitation of perpetrators of less serious criminal offences can be facilitated by a **conditional suspension of execution of sentence of imprisonment**. In this case, the court renders a judgment of conviction and imposes a sentence of imprisonment but suspends the execution of the sentence on the condition that the convict behaves well and complies with the conditions imposed during the probationary period.

Conditional suspension is possible only in the case of a sentence of imprisonment not exceeding two years provided that

- the court is reasonably satisfied that serving the sentence of imprisonment is not necessary for ensuring the protection of society and for reforming the offender, or
- the court is satisfied that serving the sentence of imprisonment is not necessary due to the educational influence of the guarantor (the person having offered a guarantee of the offender's reform).

In the case of a conditional suspension of execution of a sentence of imprisonment, the court may determine a probationary period of one to five years. This period is intended to ensure the offender's rehabilitation or to demonstrate that the aim of punishment has been achieved even without its execution because the offender led a regular life during that period.

Another alternative to the unconditional sentence of imprisonment is the **conditional suspension of execution of sentence of imprisonment with probationary supervision (probation)**. Probationary supervision is intended to provide the offender with assistance, professional guidance and positive motivation with a view to facilitating his resocialization, to supervise the offender's behaviour during the probationary period and to reduce the risk of other criminal offences being committed by the offender. Probationary supervision is executed by probation and mediation officers. Probationary supervision may involve also certain restrictions and duties. In particular, restrictions can be a prohibition against attending sporting events, a prohibition against consuming alcoholic beverages or other addictive substances, a prohibition against meeting people having a negative influence on the offender or a prohibition against gambling. Duties can be an order not to come closer than five meters to the injured person, an order to move out of a house or a flat, an order to pay damages, an order to submit to treatment for addiction to addictive substances or to submit to psychotherapy.

If the convict has led a regular life during the probationary period, complied with the conditions of probationary supervision and fulfilled the restrictions and duties imposed, the court will declare that the convict has passed probation. If the convict does not pass probation, the court will order an unconditional sentence of imprisonment which will be enforced. If the court fails to render any of the decisions mentioned above within one year of expiration of the probationary period without the convict being at fault, the convict is, by operation of law, deemed to have passed probation.

Sentence of home detention is another alternative punishment. During the term of this sentence, the convict must remain in his home for the period determined by the court, lead a regular life and submit to supervision by technical means if such supervision is ordered. The serving of this sentence is supervised by an authority managing technical means of supervision or by a probation and mediation officer. Under the Criminal Code, a sentence of home detention for a period not exceeding one year may be imposed only on an offender having committed a contravention.

Sentence of community work has been introduced in the system of sentences imposed under the Criminal Code as of 1 January 2006. Accordingly, the list of alternative sentences imposed both on juvenile and adult offenders has been extended. A sentence of community work may be imposed if:

- the offender is sentenced for a contravention punishable under the Criminal Code with a sentence of imprisonment with a maximum term not exceeding five years. Consequently, the sentence of community work should be imposed in the case of less serious criminal offences such as petty property criminal offences, vandalism or rioting;
- the sentence of community work includes a convict's duty to perform community work as defined by the court. The type of work is not defined but includes, in particular, cleaning public areas in municipalities or parks, simple or auxiliary work in facilities such as hospitals, charitable facilities, retirement homes, libraries, social facilities, etc.;
- a sentence of community work may be imposed only with the offender's consent.

A sentence of community work ranges from 40 to 300 hours. With respect to concurrence with other sentences, the Criminal Code provides that this sentence is incompatible with the sentence of imprisonment. The community work must be performed by the convict within one year of the execution of sentence being ordered. If the sentence of community work is not performed at all or if it is not performed in due manner and time, the sentence (or its remainder) will be converted into a sentence of imprisonment. The effectiveness of a sentence of community work depends on the effectiveness of supervision, not only with respect to the performance of work as such but also with respect to verification of a juvenile offender leading a regular life and respecting educational measures. Supervision is performed by probation and mediation officers.

Pecuniary penalty – since this sentence affects property, it is an appropriate sanction for criminal offences against property. It should be imposed in response to an activity consisting in obtaining unjust enrichment. A pecuniary penalty may be imposed separately or in combination with another sentence, except that a pecuniary penalty may not be imposed in addition to a sentence of forfeiture of property.

A pecuniary penalty may be imposed under the following statutory conditions:

- the offender committed an intentional criminal offence by which he obtained or sought to obtain enrichment;
- the amount of pecuniary penalty ranges from €160 to €331,930;

- given the amount of pecuniary penalty and the offender's personal and property situation, the court may decide that the pecuniary penalty is to be paid in monthly instalments. In this case, the court will determine both the amount of monthly instalments, which must be proportionate to the offender's personal and property situation, and the period of payment. This period may not exceed one year starting from the date the judgment becomes final.

The court imposing a pecuniary penalty must impose also a substitute punishment of imprisonment of up to five years in the event that the execution of the pecuniary penalty is intentionally frustrated. The substitute sentence combined with the sentence of imprisonment imposed may not exceed the permitted limit of the sentence term.

Sentence of forfeiture of property – involves a transfer of the convict's entire property to the State by virtue of a court decision as of the date the judgment becomes final. The court may impose this type of sentence having due regard for the circumstances of the offence and for the offender's situation if the offender is sentenced to life imprisonment or to an unconditional sentence of imprisonment for a particularly serious crime, providing that by committing the offence, the offender obtained or sought to obtain a benefit of great extent or caused a damage of great extent.

This sentence must be imposed on perpetrators of certain criminal offences listed exhaustively in the Criminal Code if it is established that the perpetrator obtained his property or a part of it from illegal sources, even if the conditions mentioned above are not met. The State becomes the owner of the forfeited property unless the court, pursuant to a promulgated international treaty, decides otherwise.

Sentence of forfeiture of things – this sentence involves a passage of title to a certain thing belonging to the convict to the State by virtue of a court decision as of the date the judgment becomes final. The purpose of this sentence is to destroy a thing that may be used for further criminal offences or to deprive the offender of the benefit obtained from his criminal activity. Things include proceeds from criminal activity, profits, interests and other benefits from these proceeds or things.

The court will impose a sentence of forfeiture of things:

- used for committing a criminal offence, e.g., a firearm,
- intended for committing a criminal offence, e.g., tools adapted for opening a safe,
- obtained by the offender by committing a criminal offence or as remuneration, e.g., jewels, paintings,
- obtained by the offender in exchange for a thing obtained by committing a criminal offence, e.g., an amount obtained from selling a stolen motorcycle.

The court may not impose this sentence if the injured party is entitled to damages and his right to damages would be frustrated by this sentence; if the value of the thing in question is obviously disproportionate to the seriousness of the contravention committed and, finally, if the court refrained from punishing the offender (waiver of punishment).

Sentence of prohibition of a certain activity – The aim of this sentence is to prevent the offender from committing further criminal offences which would be facilitated by the activity in question and to educate the offender and other citizens. If this sentence is imposed, the offender has a duty to refrain from performing a certain activity which can be a job, a profession or a function or an activity requiring specific authorization or governed by special rules. The activity in question must have a link with the criminal offence. Accordingly, a driver having injured someone may be punished with a prohibition against driving or a teacher having sexually abused a child may be punished with a prohibition against performing his profession. This sentence may be imposed for a period ranging from one to ten years. If, at the time of execution of sentence, the convict proves by leading a regular life, that continued enforcement of this sentence is no longer necessary, the court may refrain from enforcing the remainder of the sentence once half of it has been executed. Non-compliance with the sentence of prohibition of a certain activity is qualified as a criminal offence of obstructing the enforcement of official decisions under the Criminal Code.

Sentence of prohibition of residence – This sentence prohibits the offender from living in a designated place or district for a certain period. A temporary stay in such place or a district, if required for necessary personal purposes, requires an authorization. Sentence of prohibition of residence may not pertain to the place or district of the offender's permanent residence.

Sentence of prohibition of residence may be imposed

- for an intentional criminal offence,
- if it is, with respect to the offender's way of life and the place where the offence was committed, required to protect public order, family, health, morality or property.

Sentence of prohibition of residence may be imposed for a period ranging from one to five years. If, during the execution of the sentence, the convict proves by leading a regular life that continued enforcement of this sentence is no longer necessary, the court may refrain from enforcing the remainder of the sentence once half of it has been executed.

Sentence of loss of honorary titles and decorations – This sentence deprives the convict of decorations and other honorary titles awarded on the basis of special legislation. This sentence protects the integrity of public, scientific and artistic life by depriving the offender of non-property rights based on recognition of his personality or activity.

This sentence is auxiliary, i.e., it may not be imposed separately but only in addition to another sentence. It is a permanent sentence which means that the convict is deprived of his honorary titles and decorations without the possibility of reinstatement.

The court may impose a sentence of loss of honorary titles and decorations in case of an offender sentenced to prison for a period exceeding five years. If, given the nature of the particularly serious crime it is required in order to protect the honorary title or decoration previously awarded to the offender, the court may also impose this sentence in addition to a prison sentence of a shorter term or in addition to a different sentence.

Sentence of loss of military rank and other ranks – If this sentence is imposed, the convict's rank in the military forces is degraded to the rank of private and in the case of a member of a different corps, the convict is deprived of his rank.

This sentence may be imposed only on a person holding a military rank or other rank or a member of military forces or of a different corps. It is an auxiliary sentence which may be imposed only in addition to another sentence and it is a permanent sentence resulting in a permanent loss of rank.

Loss of military rank and other ranks will be imposed on an offender holding such rank and sentenced for an intentional criminal offence to a prison term of at least two years without conditional suspension. This sentence may be imposed also in addition to a prison sentence of shorter duration or, in addition to a different sentence, if, with respect to the nature of the criminal offence, it is required to maintain discipline and order in the military forces or in a different corps.

Sentence of expulsion – This sentence results in a non-citizen of the Slovak Republic, of another member state of the European Union or of a contracting state to the Agreement on the European Economic Area or a person recognized as an asylum-seeker being prohibited from remaining on the territory of the Slovak Republic. The purpose of this sentence is to deprive the offender of the right to remain on the territory of the Slovak Republic and to prevent him from committing further criminal offences on this territory. This sentence may be imposed only if it is necessary for the security of persons, property or for a different public interest.

The sentence of expulsion may be imposed for a period ranging from 1 to 15 years. The expulsion applies to the entire area of the Slovak Republic.

A sentence of expulsion may not be imposed on an offender:

- a) whose nationality or country of origin can not be established;
- b) who is to be expelled to a country where his life or personal freedom would be at risk because of his race, colour, ethnic origin, religion, national origin or membership in a certain social group or because of his political opinions;
- c) who is to be expelled to a country where he has been or is likely to be punished with capital punishment in pending criminal proceedings or exposed to the risk of torture.

8.4 Extinction of sentence and expungement of conviction

A sentence is extinguished by circumstances occurring after the judgment imposing sentence has become final and which impede the enforcement of the sentence.

The Criminal Code provides the following causes of extinction of sentence:

- **pardon or mitigation of sentence** – The sentence will not be enforced if it was pardoned or mitigated by the President of the Slovak Republic on the basis of his constitutional prerogative. Under the Constitution of the Slovak Republic the President is entitled to pardon and to mitigate sentences imposed

by courts in criminal proceedings and to expunge convictions by individual acts of clemency or by amnesty. By virtue of his constitutional prerogative of clemency, the President may pardon the entire sentence or a part of it or he can pardon one of the sentences imposed, commute the sentence into a lesser sentence or commute an unconditional sentence of imprisonment to a conditional sentence of imprisonment;

- **prescription of enforcement of sentence** – Once the prescription period has expired the sentence imposed by a final judgment cannot be enforced. The State loses its right to enforce the sentence even though the sentence imposed by a final judgment has not yet been completed. Prescription of enforcement of a sentence is conditional upon expiration of the statutory prescription period, which may not be shortened. Prescription periods vary with the type and extent of sentence, ranging from 5 to 20 years. The *prescription period* runs from the date the judgment or the decision ordering enforcement of the sentence becomes final. The prescription period is *suspended* as long as there are statutory obstacles impeding it. Once the obstacle is eliminated, the prescription period continues and the period elapsed before the obstacle occurred is included in the prescription period. Prescription of enforcement of the sentence is interrupted if the convict stays abroad with the intention of evading the sentence or the enforcement of a sentence of imprisonment. If the prescription period is interrupted, the prescription period elapsed becomes irrelevant for prescription and a new prescription period commences. Interruption occurs when the court adopts a measure leading to enforcement of the sentence in question or if the convict commits an intentional criminal offence during the prescription period.

On the basis of international obligations, the law excludes prescription of enforcement of sentences imposed for the criminal offences enumerated in Title XII of the Special Part of Criminal Code, i.e., for criminal offences against peace and humanity, criminal offences of terrorism and extremism and war offences except for criminal offences listed exhaustively in the Criminal Code.

- **offender's death** – If the convict dies, no-one can be required to serve the sentence imposed on him by the court. Under the principle of personality of punishment, the right of the State to enforce the sentence imposed by the court is extinguished.

Expungement of conviction – If statutory conditions are met, this allows the negative consequences of a conviction, persisting after the sentence has been completed which are likely to make the convict's life more difficult, to be erased. If the conviction is expunged, the offender is regarded as not having been convicted. Conviction may be expunged either by a court decision under the Criminal Code or by a decision of the President based on his constitutional prerogatives.

Conviction may be expunged by the court if the convict has proved by his exemplary conduct during the execution of his sentence or after pardon of sentence or prescription of enforcement of sentence that he has reformed. Conviction is expunged

also if it is so ordered by the President of the Slovak Republic on the basis of his prerogative to expunge convictions by acts of clemency or by amnesty.

Certain types of sentences are expunged once they have been executed. Special conditions of expungement of convictions apply to juvenile offenders.

9 PROTECTIVE MEASURES

9.1 Concept, purpose and principles of protective measures

Protective measures are instruments of state enforcement and legal consequences of a criminal offence or of an act otherwise constituting a criminal offence imposed by the court on the basis of the law in the interest of protection of society and of prevention. The purpose of protective measures is to prevent offenders from committing further criminal offences, to isolate dangerous offenders from society and to prevent dangerous illegal conduct.

The following differences between protective measures and sentences may be identified:

- if a protective measure is imposed, the gravity of the offence need not be proportionate to the sanction imposed;
- unlike sentences, protective measures do not imply a negative moral condemnation;
- protective measures are imposed also on persons not criminally responsible for acts otherwise constituting criminal offences;
- the harm caused by a protective measure is only an auxiliary element of the sanction;
- unlike sentences, protective measures are characterized by their treatment element, therapeutic element and security element;
- protective measures are of indeterminate duration;
- unlike sentences, protective measures are not subject to prescription, expungement or pardon.

Protective measures are intended to eliminate or, at least, to reduce the risk constituted by persons who, under certain circumstances, could be dangerous if at large, in particular by means of isolation, treatment, supervision and rehabilitation in special facilities offering appropriate conditions for successful achievement of protective measures.

The fundamental principles of imposition of protective measures under the Criminal Code provide that:

- protective measures may be imposed on an offender in addition to a sentence or in case of waiver of sentence if a protective measure ensures a more effective protection of society against the offender than a sentence;
- the effect of protective measures imposed on the offender, his family and close relations must be minimized;
- protective measures may be imposed also on a perpetrator of an act otherwise constituting a criminal offence or on another person if it is necessary for ensuring protection of society against new criminal offences;
- when imposing protective measures, the court is not bound by the principle of proportionality to the offence but by the need to protect society, also taking account of the necessity of treatment, education or reform of the offender or other person,
- execution of protective measures is terminated when their objective is achieved, when the period prescribed expires or when the convict or other person attains the age defined by the law.

Protective measures may be imposed only by the court, either in addition to a sentence or separately. Protective measures are imposed in accordance with the law in effect at the time the court decides on the protective measure.

9.2 Types of protective measures

The Criminal Code provides for the following protective measures: *protective treatment, protective custody, protective supervision, detention, confiscation of things, confiscation of pecuniary amounts and confiscation of property.*

Protective treatment is a protective measure imposed on a dangerous person who, due to his mental incapacity, may not be prosecuted, on offenders committing an offence in a state of diminished capacity, as well as on persons addicted to addictive substances. Protective treatment not only ensures protection of society against such persons, but it ensures also protection and medical treatment of these persons.

The court must impose protective treatment in the following cases;

- if the offender committed a criminal offence in a state of diminished capacity and the court applied a provision concerning exceptional reduction of sentence or refrained from sentencing the offender, or
- if the perpetrator of an act otherwise constituting a criminal offence is not criminally responsible because of his mental incapacity but would be dangerous if at liberty.

Protective treatment may be imposed;

- on a person having committed a criminal offence in a state of diminished capacity who would be dangerous if at liberty,
- on a person having committed a violent criminal offence against a close relation or a person in his care if, given the person of the offender, it can be reasonably expected that he will continue the violent conduct,

- on a person having committed a criminal offence under the influence of an addictive substance or in connection with its abuse.

Protective treatment will not be imposed if given the person of offender it is obvious that its objective cannot be achieved. With respect to modes of execution of protective treatment, it can be institutional treatment or outpatient treatment. At any stage of treatment, the mode of execution can be changed from institutional to outpatient and *vice versa*. If protective treatment is imposed in addition to an unconditional sentence of imprisonment, it is executed in a penitentiary. The duration of protective treatment depends on its objective being achieved. Release from protective treatment is by order of the court.

Protective custody is a protective measure that may be imposed only on a juvenile or a minor. The objective of protective custody is to exert positive influence on the mental, moral and social development of a juvenile person, to protect him against negative influence and to protect society against criminal activity and to eliminate the juvenile person's negative tendencies and habits by means of reeducation.

The principal condition of imposition of protective custody on a juvenile person is his conviction or his declaration of guilt. The court may impose protective custody in criminal proceedings if

- the juvenile person's upbringing is not being taken care of properly and a proper upbringing is not possible in the family where he lives,
- his previous upbringing was neglected, or
- the environment where he lives does not guarantee his proper upbringing.

Protective custody may be imposed separately if the court refrained from sentencing the juvenile offender or in addition to a sentence.

Protective custody must be imposed by the court in civil proceedings on a person having attained the age of 12 and not yet attained the age of 14 and having committed an offence that may be sanctioned under the Criminal Code with a sentence of life imprisonment. Protective custody may be imposed also if it is necessary for ensuring the proper upbringing of a person younger than 14 having committed an act otherwise constituting a criminal offence. A specific case is the imposition of protective custody on a person younger than 15 having committed a criminal offence of sexual abuse.

Protective custody is executed in special custody facilities ("institutional protective custody") or in professional foster families ("family protective custody") or, if required by the juvenile person's health, in a medical custody facility.

If the juvenile person's reeducation has reached a stage where he is likely to behave properly in a different environment, the court can refrain conditionally from protective custody and place the juvenile person outside the custody facility or the foster family.

Protective custody is executed as long as it is required in order to attain its objective, provided that the juvenile offender has not attained the age of 18. If required in the interest of the juvenile offender, the court may extend protective custody until he turns 19.

Protective supervision is a protective measure being part of mandatory post-prison care, which is necessary for completing the reform of offenders of particularly serious crimes and, optionally, also of offenders of criminal offences becoming recidivists such that, despite being punished several times for the same criminal offences, they cannot be expected to lead a regular life without mandatory post-prison care.

The court must impose protective supervision on an offender sentenced for a particularly serious crime to an unconditional sentence of imprisonment. The court may impose protective supervision on a perpetrator of an intentional criminal offence having previously served the sentence of imprisonment for such criminal offence at least twice if an unconditional sentence of imprisonment is imposed again and if, given the personality of the offender, his previous way of life and the environment where he lives, he cannot be expected to live a regular life once he has served his sentence.

Protective supervision may not be imposed in the case of a juvenile person or a convict sentenced to a sentence of life imprisonment. Protective supervision ranges from a period of one to three years.

A convict subject to protective supervision must:

- report necessary information about the means and sources of providing for himself and demonstrate them,
- report in person to a probation officer at specified times,
- report leaving his place of residence indicated in the court decision.

Other restrictions and duties may be imposed also in addition to protective supervision. Protective supervision is managed by a probation officer until its period expires or its remainder is waived.

Detention is a protective measure intended to protect society against convicts who, while serving a sentence of imprisonment, start suffering from an incurable mental disease and pose a risk to society if released after serving the sentence. If the convict is incurable and would be dangerous at large, the court will, on the basis of an expert medical opinion, interrupt the execution of sentence and order that the convict be placed in a detention facility.

Placement in a detention facility may be imposed also on a perpetrator of an intentional criminal offence if he refuses to submit to protective treatment or if the objective of protective treatment cannot be achieved and he would pose a risk to society if at large.

Before the sentence of imprisonment is completed, placement in a detention facility may be imposed also on an offender who has committed a sexually motivated crime or on an offender repeatedly committing a particularly serious crime.

Placing the offender in a detention facility is intended to prevent him from committing further criminal offences and acts otherwise constituting a criminal offence by means of a special treatment regime and through isolation from society.

The offender is kept in a detention facility as long as there is no less severe means of ensuring that society is protected from him. At least once a year, the court verifies whether keeping the convict in the detention facility is justified and, on the basis of an expert medical opinion, decides whether detention will continue or whether the

offender will be released from the detention facility. Detention is supervised by the prosecutor.

Confiscation of things is a protective measure ensuring protection of society against dangerous objects and things not subject to sentence of forfeiture of things. The State becomes the owner of the confiscated things.

If no sentence of forfeiture of things has been imposed, the court will order confiscation of a thing

- belonging to a person who may not be prosecuted or sentenced,
- belonging to an offender, providing that the court refrained from sentencing him or criminal proceedings against him were terminated, conditionally terminated or terminated due to an approved settlement,
- constituting goods without verification marks,
- if the circumstances of the case justify the assumption that the thing could be a source of financing terrorism, or
- confiscation is required for the security of persons or property or otherwise to protect the public interest.

Confiscation of things is not possible if the injured party is entitled to damages and his right to damages would be frustrated by the confiscation of such things or if the value of the thing in question is obviously disproportionate to the gravity of the contravention.

Confiscation of pecuniary amounts and **confiscation of property** are protective measures affecting property that may be imposed on legal persons as of 1 September 2010. The Slovak Republic introduced legal responsibility of legal persons for criminal offences of natural persons (*indirect criminal responsibility of legal persons*). This form of responsibility was adopted because of the principles of individual responsibility for fault and personality of sentences and the lack of capacity of a legal person to be responsible for its will and to choose between legal and illegal conduct.

The concept of sanctioning legal persons is based on protective measures, i.e., a certain infringement permitted by law, in this case against property rights, is caused in order to protect society against criminal offences and acts otherwise constituting criminal offences. It follows from the definition of the scope of application of protective measures that a protective measure under the Criminal Code may be imposed if the Criminal Code is used for assessing criminality of an act for which the protective measure is to be imposed. This provision applies also if the perpetrator of an act otherwise constituting a criminal offence is not criminally responsible or if he may not be prosecuted or sentenced.

Confiscation of pecuniary amounts may be imposed by the court on a legal person if a criminal offence was committed or attempted or in the case of participation in such an offence, in connection with a) the exercise of authority to represent such legal person, b) the exercise of authority to make decisions on behalf of such legal person, c) the exercise of authority or supervision of such legal person or d) neglecting

supervision or due diligence of this legal person. The pecuniary amounts that may be confiscated range from €800 to €1,660,000.

Confiscation of property will be imposed by the court on a legal person if a criminal offence was committed or attempted in connection with a) the exercise of authority to represent such legal person, b) the exercise of authority to make decisions on behalf of such legal person, c) the exercise of authority or supervision of such legal person or d) neglecting supervision or due diligence of such legal person.

In the case of confiscation of property, the extent of property that may be confiscated is the same as in the case of forfeiture of property. Imposition of protective measures requires a connection with an activity concerning a legal person (powers of representation, decision-making, supervision) and this connection applies also to attempted criminal offences and to all forms of participation. The sanction may be imposed also on a legal successor of a legal person.

The difference between the protective measures imposed on legal persons – confiscation of pecuniary amounts and confiscation of property – consists in the fact that confiscation of pecuniary amounts is optional whereas confiscation of property must be imposed by the court if all statutory conditions are met.

10 CRIMINAL RESPONSIBILITY AND SANCTIONING OF JUVENILE OFFENDERS

10.1 Criminal responsibility of juvenile offenders

Effective protection of juveniles by criminal law is an integral part of the aims and functions of criminal law in society. This protection requires a specific approach and a different strategy reflecting the physical and mental specificities of juveniles. The provisions regulating the position of juvenile offenders are included in the general part of criminal law. Criminal responsibility and sanctioning of juvenile offenders is regulated in Title IV of the General Part of the Criminal Code entitled "General Provisions on Prosecution of Juveniles". Specific provisions relative to criminal proceedings against juvenile offenders are included in the Code of Criminal Procedure.

An important instrument of decriminalization is the lower degree of seriousness of contraventions resulting in a considerably more favourable treatment of young offenders than of adult offenders in criminal law: In case of an adult offender the seriousness of a contravention must be higher than negligible, in case of a juvenile offender it must be higher than small.

The Criminal Code defines a **juvenile** as a **person having, at the time of committing a criminal offence, attained the age of 14, but not having attained the age of 18**. A juvenile younger than 15 not having, at the time of committing an offence, achieved a level of intellectual and moral maturity allowing him to discern its illegality or to control his action is not responsible for such criminal offence. Individual mental maturity is a corrective instrument for establishing criminal responsibility of juveniles. The Criminal Code requires a juvenile to be capable of realizing, given his degree of development, that his act grossly contravenes the rules of society of which he is a member (intellectual element) or to be able to control his conduct appropriately (will element). The level of intellectual and moral maturity of persons between 14 and 15 years of age must (and, of persons between 15 and 18 years of age, may) be examined by two experts in the field of psychiatry or youth psychology.

10.2 Sanctioning juvenile offenders

The provisions concerning the purpose of sanctions and educational measures reflect the principle of a special (specific) approach with respect to imposing sanctions, protective and educational measures and to deciding criminal cases involving juvenile offenders. They reflect also the necessity of special care that must be given to youth in the interest of society as a whole.

The *purpose of imposing a sentence on a juvenile offender* is, in the first place, to educate him to be a good citizen. The sentence should, at the same time, prevent illegal conduct and also protect society. The sentence imposed should also restore disturbed societal relations and integrate the juvenile offender into his family and social environment. The purpose of sentences and the specificities of juvenile offenders are reflected also in the limited scope of sentences.

The *purpose of imposing protective measures and educational measures* on a juvenile offender is to exert positive influence on his mental, moral and social development, taking account of the degree of his intellectual and moral development, his personal characteristics, family upbringing and his environment of origin, and to protect him against negative influence and to protect society against criminal offences. Protective measures and educational measures are intended to make an effective contribution to resolving current problems in the juvenile offender's life and causes of his criminal activity, to motivate him to lead a life without conflict with the law and to mend the damage caused.

The sentence, the protective measure or the educational measure imposed must reflect the juvenile offender's personality as such; his age, intellectual and moral maturity, health condition, as well as his personal, social and family situation, and it must be proportionate to the nature and gravity of the offence.

Waiver of sentence is an educational instrument. The court may refrain from punishing a juvenile offender if three basic conditions are met (he committed a contravention; he regrets committing it and displays an effective effort to reform) and

- given the nature of the offence committed and the juvenile offender's previous life, it may be expected that the trial will be sufficient for achieving his reform or
- the court accepts a guarantee for the reform of the juvenile offender and is satisfied that, given the educational influence of the guarantor, the nature of the offence committed and the person of the juvenile offender, imposition of a sentence is not necessary.

Specific cases where the court may refrain from punishing a juvenile offender are cases where he committed the offence in a state caused by a mental disorder and the court is satisfied that the protective treatment imposed will ensure his reform better than a sentence and where a protective measure or an educational measure is already in course and, therefore, imposition of a sentence is not necessary for achieving the aim pursued by the law.

If the court refrains from imposing a sentence, the juvenile offender is regarded as not having been convicted.

In case of juvenile offenders, the court may **conditionally refrain from imposing a sentence** if it comes to the conclusion that, even though the conditions of waiver of punishment are satisfied, it is necessary, for a certain period, to supervise the conduct of the juvenile offender in question. The court will determine a probationary period which can also be combined with restrictions and duties in order to encourage the juvenile offender to lead a regular life. This institution is specific since, until the court decides that the juvenile offender has passed probation (or until the fiction of passing probation applies by operation of law), a sentence may still be imposed.

The Criminal Code defines the sentences that may be imposed on juvenile offenders; *community work, pecuniary penalty, forfeiture of things, prohibition of a certain activity, expulsion and imprisonment*. The leading principle of imposition of a sentence on juvenile offenders is the educational purpose of punishment. The Criminal Code prefers imposition of a sentence not connected with imprisonment. In the structure of sanctions imposed on juvenile offenders, the sentence of imprisonment is the criminal sanction of last resort (*ultima ratio*). The list of sentences is exhaustive and therefore may not be extended.

The provisions on sentences imposed on juvenile offenders are of special application with respect to the general provisions of the Criminal Code regulating imposition and execution of individual sentences. In case of juvenile offenders the general provisions are modified as follows:

- Punishment of community work may range from 40 to 150 hours. This sentence may not, given its nature or the circumstances of its execution, endanger the health, safety and moral development of the juvenile offender.
- Pecuniary penalty may range from €30 to €16,590. It may be imposed if the statutory conditions are met, the juvenile offender receives income or his property situation allows this sentence to be imposed. The law allows also conditional suspension of pecuniary penalty, in which case the court will impose a probationary period of up to three years. It may impose also adequate restrictions and duties in order to encourage the juvenile offender to lead a regular life.
- Sentence of forfeiture of things.
- Sentence of prohibition of a certain activity may range from one to five years in the case of a juvenile offender. The maximum term of this sentence may not exceed five years. This sentence may be imposed on a juvenile offender only if it does not interfere with his preparation for his profession.
- Sentence of expulsion may be imposed on a juvenile offender under the general conditions, ranging from one to five years. The court will take into account also the personal and family situation of the juvenile offender. This sentence must not expose the juvenile offender to a risk of decadence.
- Sentence of imprisonment – in case of juvenile offenders prison terms set forth in the Criminal Code are reduced by half, the maximum limit of the reduced

prison term not to exceed seven years and the minimum limit not to exceed two years. In the event a juvenile offender commits a particularly serious crime and the degree of gravity of his crime for society is exceptionally high, given the despicable manner of action, the despicable motive and the serious result that is difficult to correct, the law provides for an exceptional prison term of seven to fifteen years. In the case of offenders under 18, a sentence of imprisonment is served in correctional institutions intended for juvenile offenders. The Criminal Code allows also a conditional suspension of sentence and a conditional suspension of sentence with probationary supervision, which are alternatives to an unconditional sentence of imprisonment. A sentence of life imprisonment may never be imposed on a juvenile offender.

As for **protective measures**, the Criminal Code contains special provisions on protective measures regulating *protective custody* which may be imposed only on a juvenile offender. Protective measures regulated in the General Part of the Criminal Code such as protective treatment, detention and confiscation of things are intended both for juvenile and adult offenders. The Criminal Code explicitly prohibits imposing protective supervision on juvenile offenders.

Educational measures are a specific type of sanction imposed on juvenile offenders. The Slovak Criminal Code distinguishes between these types of educational measures; *educational duties and restrictions and admonition with warning*. They may be imposed only with the consent of their addressee. With respect to their preventive effect, educational measures are very useful because they allow the prosecutor or the judge to exert positive influence on a juvenile offender and to prevent him from a life of crime by separating him from his criminogenic environment or by ensuring supervision over his behaviour.

Educational duties and restrictions include the duty to submit to probationary supervision, to live with a parent or another adult, to seek to settle with the injured party and to compensate for the damage caused, the duty to perform activities of general interest without remuneration or to submit to addiction treatment, social training, psychological counselling or a different programme.

Admonition with warning means that the court and, in the preparatory proceedings, the prosecutor firmly reprimand the juvenile offender in the presence of his statutory representative for his illegal conduct and warn him about the sanctions under the Criminal Code that he may face if he commits a criminal offence in the future. Admonition with warning is intended to prevent the juvenile offender's recidivism.

11 SELECTED CRIMINAL OFFENCES FROM THE SPECIAL PART OF THE CRIMINAL CODE

11.1 Introduction to the Special Part of the Criminal Code

The Special Part of the Criminal Code contains an exhaustive enumeration of all the types of criminal offences. Each is identified by its name, description of its subject matter and by the applicable sentence. Definitions of criminal offences do not contain general characteristics such as the age of the perpetrator, mental capacity, description of preparatory action or attempt or the possibility of imposing protective measures all of which are defined in the General Part of the Criminal Code. When interpreting and applying individual provisions, it must be borne in mind that the General Part and the Special Part of the Criminal Code are inseparably intertwined.

The system of the Special Part of the Criminal Code is based on a hierarchy of protected values and interests. The titles and the chapters of the Criminal Code include criminal offences listed by type objects. The recodification of the Criminal Code in 2005 (effective as of 1 January 2006) introduced important modifications to the system of the Special Part. Individuals, their life and health, freedom, honour and dignity, property and other fundamental rights and freedoms became the focus of protection of criminal law, followed by interests of society.

The Special Part of the Criminal Code contains the following 12 titles:

- I. Criminal offences against life and health**
- II. Criminal offences against freedom and human dignity**
- III. Criminal offences against family and youth**
- IV. Criminal offences against property**
- V. Economic criminal offences**
- VI. Criminal offences against public safety and criminal offences against the environment**
- VII. Criminal offences against the Republic**
- VIII. Criminal offences against order in public affairs**
- IX. Criminal offences against other rights and freedoms**

- X. **Criminal offences against conscription, against civilian service, against service in armed forces and against homeland defence**
- XI. **Military criminal offences**
- XII. **Criminal offences against peace and humanity, criminal offences of terrorism and extremism and war criminal offences.**

Legal qualification of an act liable to constitute a criminal offence starts with analyzing the facts under the subject matter of the relevant criminal offence. On the basis of the factual circumstances of the case suggesting a certain criminal offence, it must be assessed whether it is an illegal act and whether the facts satisfy all characteristics of the subject matter of such criminal offence. If the perpetrator's criminal activity does not satisfy the characteristics of a consummated criminal offence, it must be assessed whether it is preparation to commit a crime or an attempt to commit a criminal offence. If the element of illegality is absent the act can be, with respect to subject-matter characteristics, an act otherwise constituting a criminal offence. Therefore, it must be established whether there is any circumstance excluding illegality, e.g., extreme necessity or necessary defence.

If several persons participated in the commission of a criminal offence, it must be established whether it was as co-perpetrators or as organizing, instigating, soliciting, aiding or a different form of criminal complicity. When establishing the facts it is necessary to ascertain the degree of seriousness of the act as well as other important circumstances of the case, in order to assess whether it is a basic, qualified or privileged subject matter. Once the facts of the case have been duly established, the court will decide on guilt and sentencing.

Interpretation of individual subject matters of criminal offences requires not only knowledge of rules of criminal law, but also of rules of other branches of law. A correct interpretation of a rule of criminal law requires the application of interpretation rules pertaining to legal definitions of terms used in the Criminal Code.

11.2 Brief description of selected criminal offences

I. Criminal offences against life and health

The Constitution of the Slovak Republic stipulates that every individual shall have the right to life. Human life deserves protection also prior to birth. No-one shall be deprived of life. Capital punishment is not permitted. The importance of this protected value is reflected also in the system of the Criminal Code which protects human life and health in Title I of the Special Part.

Criminal offences against life and health are divided into three chapters:

- *Criminal offences against life* – Premeditated murder, Murder, Infanticide, Killing, Manslaughter, Unlawful abortion, Participation in a suicide.
- *Criminal offences against health* – Bodily harm, Unlawful removal of organs, tissues and cells, Illegal sterilization.
- *Criminal offences endangering life or health* – Unlawful experimentation on human beings and human cloning, Impairment of health, Propagation of a dangerous contagious human disease, Exposing others to human immunodeficiency virus, Exposing others to a venereal disease, Endangerment of health with defective foodstuffs and other objects, Endangerment of health with unauthorized pharmaceutical drugs, healthcare aids and equipment, Unlawful manufacture and possession of and trafficking in narcotic drugs and psychotropic substances, poisons and precursors, Propagation of toxic addictions, Serving alcoholic beverages to minors, Distribution of anabolic substances, Failure to provide assistance.

The objective element of criminal offences against life and health consists in causing death, impairing health or endangering life and health. The most serious criminal offence is *premeditated murder* which is committed by a person intentionally killing another with a premeditated motive. A more severe sentence will be imposed on a perpetrator having been sentenced previously for the criminal offence of murder, having committed it against two persons, in a more serious manner of action, against a protected person, for a particular motive or with intent to obtain a property benefit. Unlike the criminal offence of murder, the subject matter of premeditated murder contains a motive as a mandatory characteristic.

The criminal offence of *killing* is committed by a person causing, with intent to cause another grievous bodily harm or bodily harm, another death by negligence. *Manslaughter* means that death was caused to another by negligence or in a condition excluding capacity to exercise a certain activity induced by the perpetrator by using an addictive substance, provided that he committed the offence in connection with his employment, profession, position or function or as a driver of a means of transport.

Criminal offences against health are *criminal offences causing bodily harm*, which differ from one another by the intensity of impairing health of another and by the result caused. Another differentiating criterion is the form of fault. Accordingly, four forms of bodily harm are distinguished; causing grievous bodily harm intentionally, causing bodily harm intentionally, causing grievous bodily harm by negligence and causing bodily harm by negligence.

The Criminal Code defines *bodily harm* as injury to another's health objectively requiring a medical examination, attendance or treatment, during which the injured person's habitual way of life is obstructed for longer than a short time. According to case law, bodily harm is associated with work incapacity of more than seven days. *Grievous bodily harm* is defined by the Criminal Code as a serious injury to health or a serious disease, mutilation, loss or substantial reduction of work capacity, limb paralysis, loss or substantial impairment of a sensory function, damage to an important organ, disfigurement, inducing abortion or feticide, extreme suffering or a health impairment of longer duration. A health impairment of longer duration is an impairment requiring treatment and possibly involving work incapacity of not less than 42 calendar days,

during which time the impairment seriously affects the injured person's habitual way of life.

II. Criminal offences against freedom and human dignity

The Criminal Code protects also the rights and freedoms guaranteed by the Constitution of the Slovak Republic such as personal integrity, observance of privacy of correspondence and of messages, freedom of thought, conscience, and religion, inviolability of dwelling, respect for human dignity, freedom of assembly and freedom of association. Title II of the Special Part of the Criminal Code lists the ***criminal offences against freedom and human dignity***, which are divided into 2 chapters:

- *Criminal offences against freedom* – Trafficking in human beings, Trafficking in children, Deprivation of personal freedom, Restricting personal freedom, Restricting freedom of residence, Taking a hostage, Kidnapping for ransom, Cross-border abduction, Robbery, Extortion, Gross coercion, Coercion, Restricting freedom of religion, Infringing freedom of dwelling, Infringing freedom of association and of assembly, Infringing privacy of messages.
- *Criminal offences against human dignity* – Rape, Sexual violence, Sexual abuse, Incest.

The objective element consists in interfering with protected interests in various forms; by using (physical or psychological) force, by a threat of force, by a threat of imminent force, by a threat of other serious harm. *Trafficking in human beings* is a criminal offence infringing moral principles applied in a democratic state such as free decision-making of people with respect to fundamental issues of existence. This criminal offence is committed by a person obtaining, by intentional fraudulent action, by trick, by restricting personal freedom, by force, by a threat of force, by a threat of other serious harm or other form of coercion, by providing pecuniary remuneration or other benefits, by abusing his position or by taking advantage of the defencelessness of another, the consent of another to being transported abroad for the purposes of prostitution or other form of sexual exploitation, pornography, forced labour, slavery, servitude or removal of organs, tissues or cells or other forms of exploitation.

Deprivation of personal freedom means unlawful, permanent or, at least, long-lasting restriction of personal freedom. *Restricting personal freedom* is committed by a person preventing another from enjoying personal freedom without authorization; it is a restriction of free movement of shorter duration. *Restricting freedom of residence* is committed by a person forcing another, by trick or force, threat of force or other harm, without authorization, to remain in a certain place, or preventing another from remaining in a certain place without authorization. *Restricting freedom of religion* is committed by a person forcing another to participate in a religious act or preventing another from participating in a religious act without authorization or otherwise preventing another from enjoying his freedom of religion without authorization. *Infringing freedom of dwelling* is committed by a person entering or remaining in another's dwelling without authorization. Under the Criminal Code, a criminal offence is committed in a dwelling

if it is committed in a house or in a residential unit or in other premises intended for housing including accessory premises and parcels of land, provided that they are enclosed as a part of a dwelling.

Robbery and extortion rank among the most frequent criminal offences. Robbery is committed by a person using force or a threat of imminent force against another with intent to seize a thing of another. This provision protects two social interests; an individual's personal freedom in terms of free decision-making and property that the perpetrator wants to seize. It is a prematurely consummated criminal offence since its consummation does not require a thing of another to be seized; the use of force or a threat of imminent force with intent to seize a thing of another is sufficient. Robbery is in a relation of specialty to extortion. Extortion is committed by a person coercing another by force, by a threat of force or by a threat of other serious harm to act, to omit to do or to endure something. In this case, it is freedom of decision that is protected.

Criminal offences against human dignity protect human dignity mainly in moral and sexual relations. *Rape* is committed by a person coercing a woman, by force or by a threat of imminent force, into sexual intercourse or abusing her defencelessness for such an act. This provision protects the woman's right to free decisions regarding her sexual life. Coercing a woman into sexual intercourse means overcoming the woman's serious resistance. Abusing defencelessness for committing this act means that the woman was in a condition making her unable to offer resistance (e.g., unconsciousness, deep sleep) and that this state was not caused by the perpetrator. It is an intentional criminal offence which can be committed only by a man. *Sexual violence* is committed by a person coercing another, by force or by a threat of imminent force, into oral intercourse, anal intercourse or other sexual practices or abusing the defencelessness of another for such an activity. This provision protects moral and physical development of persons under 18 years of age. *Sexual abuse* is committed by a person having sexual intercourse with a person under 15 years of age or otherwise sexually abusing such a person. It is committed also by a person impelling a person under 18 years of age to engage in extramarital sexual intercourse or otherwise sexually abusing such a person, providing that the person in question is in the perpetrator's custody or supervision or is a dependant or that the sexual intercourse is done for remuneration. These criminal offences cannot be committed by those whom these provisions are intended to protect.

III. Criminal offences against family and youth

Protection of family and youth is based on international treaties and on the Constitution. Under the Constitution of the Slovak Republic, motherhood, marriage and family are protected by law, by the State, and by society. Title III of the Special Part of the Criminal Code regulates the following ***criminal offences against family and youth***: Bigamy, Leaving a child, Abandoning a child, Neglecting mandatory maintenance, Maltreating a relative or a committed person, Kidnapping, Corrupting morals of youth.

The object of the criminal offences mentioned above are family relations arising from the Family Act and the proper education of youth. The objective element of

bigamy consists in entering into marriage by a person already married or knowingly entering into marriage with such a person. *Leaving a child* is committed by a person leaving a child in a place where the child's life and health are not at risk, providing that the perpetrator has a duty to take care of the child and that the child cannot obtain assistance. *Abandoning a child* is committed by a person abandoning a child and exposing the child to a risk of death or bodily harm. *Neglecting mandatory maintenance* is committed by person not complying with his statutory duty to maintain or to provide for another or intentionally evading this statutory duty. *Maltreating a relative or a committed person* is committed by a person maltreating a relative or a committed person; maltreatment means wrong treatment of a relative or a committed person which is, to a certain extent, gross, ruthless, and lasting and perceived by the person concerned as grievous harm. *Kidnapping* is committed by a person removing a child or a person suffering from a mental disorder or a mentally underdeveloped person from the custody of the person having the duty of custody of such a person under law or under an official decision. *Corrupting morals of youth* is committed by a person exposing a person under 18 to a risk of decadence by inciting such a person to an idle or immoral life, or enabling such a person to lead such a life or enabling such a person to commit acts constituting criminal offences or impeding such person's compulsory school attendance.

IV. Criminal offences against property

The Constitution of the Slovak Republic protects all types of ownership. Criminal offences against property are regulated in Title IV of the Special Part of the Criminal Code. The object of criminal-law protection are all ownership rights. The type object consists of ownership rights, other property rights and peaceful possession of things. The extent of individual protected interests varies. The relevant provisions protect, e.g., the ownership right and possession of a thing; an employee's right to his wage, salary and other financial emoluments; specific property interests; rights related to the ownership of houses, residential units or non-residential premises; exercise of rights related to using payment instruments, electronic money or other payment cards; property; free disposal of property; rights of creditors to satisfaction of their claims, regularity of commercial relations, information and information media, national cultural heritage.

Criminal offences against property are: Theft, Embezzlement, Non-payment of wage and redundancy payment, Unlawful enjoyment of a thing of another, Unlawful use of a motor vehicle of another, Unlawful interference with a right to a house, a residential unit or non-residential premises, Unlawful manufacture and use of a payment instrument, electronic money or other payment card, Counterfeiting and altering motor vehicle identification data, Fraud, Credit fraud, Insurance fraud, Capital fraud, Subvention fraud, Unjust enrichment, Fraudulent bankruptcy, Induced bankruptcy, Operating dishonest games and wagers, Unlawful operation of lotteries and similar games, Sharing of proceeds from criminal activity, Legalization of proceeds from criminal activity, Usury, Concealment of a thing, Infringement of duties related to administering property of another, Causing harm to a creditor, Preferential treatment of a cred-

itor, Fraudulent practices in bankruptcy and composition proceedings, Obstructing bankruptcy or composition proceedings, Infringing a ban of competition, Damaging a thing of another, Damaging and abusing records on a data medium, Abuse of ownership, Damaging and causing deterioration of cultural heritage.

With respect to protection of property, it should be noted that *property* includes all property values, e.g., things, claims and other rights, as well as rights of pecuniary value. The object of criminal offences against property is (one's own or another's) *thing*. Under the Criminal Code, a thing is a movable or an immovable thing, a residential unit or a non-residential premise, an animal, a controllable natural force or energy and a security of any form whatsoever. Things include also immaterial information, computer data or image recordings on technical media.

The objective element of criminal offences against property consists in various acts of the perpetrator against property of another in the form of; *appropriating a thing of another, unlawful enjoyment of a thing of another, damaging a thing of another, gaining benefit to property to the detriment of another or gaining benefit from a criminal offence of another*. Appropriating a thing means removing it from the possession of the owner or of another person entitled to hold it without authorization, with the intent of disposing of it as one's own. Gaining benefit means unlawful reproduction of property of the perpetrator or of another person either by enlarging it or by saving the costs that would otherwise be expended from the property of the perpetrator or of another person.

Theft is committed by a person appropriating a thing of another by seizing it and causing a small damage by doing this. This criminal offence can also be committed regardless of the amount of damage caused if the perpetrator appropriates a thing of another by seizing it by means of burglary, or if he, immediately after the act, tries to keep the thing by force or by a threat of imminent force, or if he commits the act against a thing kept on or with another's person; if the thing consists of crops from agricultural land or of wood from forest land or if it is a fish from an intensive-farming pond; or if he commits the offence against a thing supplied, under special legislation, for consideration or if he has been sanctioned for a similar offence in the previous 12 months. *Embezzlement* is committed by a person appropriating a thing of another entrusted to him and causing a small damage by doing this. In this case, the perpetrator does not seize the thing because it was entrusted to him by the owner for temporary possession for disposing of it as agreed. If he, acting with intentional fault, starts disposing of it in a manner different from that agreed by the parties and causes a small damage by doing this, he is guilty of embezzlement.

The provision concerning non-payment of wage and redundancy payment protects the employee's contractual claims towards the employer resulting from an employment relationship or a similar relationship. This criminal offence is committed by a person, acting as a statutory authority of a legal person or a natural person, being an employer or its authorized representative, who fails to pay a wage, a salary or other remuneration for work, wage compensation or a redundancy payment to his employee that the employee is entitled to on the due date, even though he has funds necessary for paying them and the funds are not necessary for ensuring the activities of a legal person or of a natural person being an employer, or takes measures aimed at obstructing such payments. This criminal offence can be committed only by a special subject –

the statutory authority of a legal person or a natural person being an employer or their authorized representative. The criminal offence is consummated once the contractual claims are not satisfied as they fall due.

The Criminal Code protects property of another from fraudulent actions. Fraudulent actions involve the perpetrator inducing or using a mistake of another in order to gain benefit for himself or for another to the detriment of property of another. Inducing a mistake means simulating circumstances incompatible with reality. *Fraud* is committed when a small damage is caused by this act. *Credit fraud* is committed by a person eliciting from another a credit or a credit security by misleading them as to whether the conditions of granting or repayment of the credit are satisfied and causing a small damage by doing this. *Insurance fraud* is committed by a person eliciting an insurance benefit from another by misleading them. This criminal offence can be committed also by an employee, a member, a representative or another person entitled to act on behalf of the insurer helping to obtain insurance benefit to a person known to them not to meet the conditions of granting it. *Capital fraud* is committed by a person indicating, in relation to offering, selling or distributing securities or other instruments promising participation in property benefits of an undertaking or in relation to offering benefits from such investments, untrue or unreal information concerning the investment benefits or property situation of the investment undertaking or withholding disadvantages of such investments in prospectuses, promotion materials or summaries concerning the property situation or the benefits of the undertaking with respect to a larger number of persons.

Subvention fraud is another type of fraud pertaining only to subsidies, subventions, benefits or other payments from the state budget, the budget of a public institution, a state fund budget, and the budget of a municipality or a self-governing region that can only be provided or used in accordance with conditions laid down by law or by a different legal instrument. Subvention fraud takes three forms: 1) eliciting a subsidy, a subvention, a benefit or other performance from another without meeting the conditions for receiving it by misleading another as to whether these conditions are met; 2) using an illegally obtained subsidy, subvention, benefit or other performance to a greater extent for a purpose different from the determined purpose; 3) an employee, a member, a representative or another person authorized to act on behalf of the entity providing a subsidy, a subvention, a benefit or other performance, enabling another to obtain a subsidy, a subvention, a benefit or other performance in spite of knowing that the person concerned does not meet the conditions for receiving it.

On the basis of the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime, the provision regarding the *criminal offence of legalization of proceeds from criminal activity* was introduced in the Criminal Code. The objective element of this criminal offence consists in disposing of proceeds or other property from criminal activity of any value or in disposing of a thing constituting proceeds from a criminal offence if it is motivated by an effort to conceal its illicit origin or to disguise its determination or use for the commission of a criminal offence, or to frustrate its seizure for the purposes of criminal proceedings or to frustrate its forfeiture or confiscation. Legalization of proceeds from criminal activity means use or other disposal of proceeds or other property resulting from criminal activity or from participation in criminal activity committed on the territory of the Slovak Republic or outside the ter-

ritory of the Slovak Republic or if there is a justified suspicion of such origin. Proceeds from criminal activity are any economic advantage resulting from criminal activity.

V. Economic criminal offences

Economic criminal offences are an important part of the Special Part of the Criminal Code. Emphasis is put on protecting the elements of the market economy such as equality of parties, competition rules and protection of copyright and industrial rights. With respect to their system, economic criminal offences are listed in Title V of the Special Part and based on their type object are divided into the following four chapters :

- *Criminal offences endangering the market economy* – Abuse of participation in competition, Unlawful business activities, Unlawful trade in foreign currencies and provision of foreign exchange services, Unlawful manufacture of alcohol, Violation of rules on international circulation of goods, Violation of rules on handling controlled goods and technologies, Endangering foreign exchange trade.
- *Criminal offences against economic discipline* – Distortion of data in economic and commercial records, Damaging financial interests of the European Communities, Endangering commercial, bank, postal, telecommunication and tax secrets, Abuse of information in commercial relations, Fraudulent practices in public procurement and public auctions, Causing harm to consumers, Unfair commercial practices with respect to consumers.
- *Criminal offences against currency and tax-related criminal offences* – Counterfeiting, altering and unlawful manufacture of money and securities, Uttering counterfeit, altered and illegally manufactured money and securities, Manufacture and possession of counterfeiting instruments, Endangering circulation of money, Counterfeiting, altering and unlawful manufacture of revenue stamps, postage stamps, labels and postmarks, Counterfeiting and altering technical control measures for identification of goods, Reduction of taxes and insurance payments, Non-transfer of taxes and insurance payments, Non-payment of tax, Violation of state technical measures for identification of goods.
- *Criminal offences against industrial rights and copyright* – Infringement of rights to trade marks, to appellations of origin of products and trade names, Infringement of industrial rights, Infringement of copyright.

Undisturbed competition in a market economy is protected by the provision on *abuse of participation in competition* which is committed by a person abusing his participation in competition by damaging, by unfair competition in economic relations, the reputation of a competitor or by action contrary to the law on protection of competition, causing another competitor a substantial damage or endangering the operation of his business. Unfair competition includes, in particular, misleading advertising, misleading labelling of goods and services, causing a risk of mistaken identity, parasitic use of reputation of a competitor's business, products or services, bribing, disparage-

ment, violation of trade secret and endangerment of health of consumers and the environment.

The State has also an interest in economic discipline being protected against distortion of data in economic relations, against damaging financial interests, against abusing information in commercial relations and against action detrimental to consumers. *Distortion of data in economic and commercial records* is committed by a person stating untrue or grossly distorting data or concealing data concerning essential facts in reports, declarations and computer input data serving as a basis for statistical reporting, employee records, accounting verification, verification of use of subsidies, subventions or other types of performance, for determination of value of property or of a security's exchange rate, for bankruptcy, composition, restructuring or debt settlement or for an entry in the Business Registry, the Cadastre of Immovables or the registry of motor vehicles.

The provision on *fraudulent practices in public procurement and public auctions* protects the interest in a due and regular course of public procurement and public auctions, in particular the interest in protecting transparency, equal treatment and non-discrimination of tenderers and bidders in public procurement and public auctions. This criminal offence is committed by a person acting, in relation to public procurement or a public auction, contrary to a generally binding legal instrument on public procurement and public auctions, or procuring for a tenderer or a bidder an advantage or more favourable conditions to the detriment of other tenderers or bidders with the intent to cause damage to another or to obtain profit for himself or for another. It is a criminal offence also if the perpetrator commits fraudulent practices in relation to public procurement by, in a more serious manner, coercing another to abstain from participating in a public tender or an auction; providing, promising or offering property benefit or other benefit for abstaining from participating in a public tender or in a public auction or soliciting or accepting property benefit or other benefit for abstaining from participating in a public tender or in a public auction.

With respect to regular collection of taxes, the Criminal Code regulates a number of criminal offences. The provision on *reduction of taxes and insurance payments* protects the interest of the State in a correct assessment of taxes, social insurance payments, public health insurance payments or pension savings payments. This criminal offence is committed by a person reducing, to a small extent, a tax, a social insurance payment, a public health insurance payment or a pension savings payment. Reduction of taxes and insurance payments means assessing an amount lower than due. *Non-transfer of taxes and insurance payments* is committed by a person withholding a due tax, social insurance payment, public health insurance payment or pension savings payment, deducted or collected as provided by the law, to a small extent, and not transferring it to the beneficiary or by claiming a return payment of value added tax or of a consumption tax with the intent of procuring unjust enrichment for himself or for another. Non-transfer of taxes (insurance payments) means that a tax due (insurance payment) withheld is not transferred to the beneficiary (e.g., the Revenue Office, the Social Insurance Authority). *Non-payment of taxes*, which is committed by a person not paying in a timely manner a due tax of a greater amount, emphasizes the interest of the State in due payment of taxes.

VI. Criminal offences against public safety and criminal offences against the environment

Criminal offences listed in Title VI of the Special Part are connected with a risk to human life or health, with a risk of damage to another's property or with a risk to the environment. The risk is usually caused by a natural disaster, a traffic accident, an epidemic, environmental pollution, water pollution and air pollution. These offences are criminal offences of endangerment, the objective element of which consists in endangering the protected interest. Title VI on ***Criminal offences against public safety and criminal offences against the environment is*** divided into two chapters:

- *Criminal offences against public safety* – Endangerment of public safety, Damaging and endangering operation of a facility of general interest, Endangerment under the influence of an addictive substance, Violation of duties in extreme duress, Endangerment of safety of aircraft and ships, Cross-border aircraft hijacking, Unlawful possession of and trade in weapons, Establishing, plotting and supporting a criminal group, Establishing, plotting and supporting a terrorist group, Unlawful manufacture and possession of nuclear materials, radioactive substances, extremely dangerous chemical substances and extremely dangerous biological agents and toxins.
- *Criminal offences against the environment* – Endangering and damaging the environment, Unlawful handling of waste, Violation of water and air protection rules, Violation of plant and animal protection rules, Violation of rules on protection of trees and shrubs, Propagating a contagious animal or plant disease, Release of genetically modified organisms, Poaching.

The provision on *endangerment of public safety* protects human life and health and property against danger to public safety. The objective element of this criminal offence consists in intentionally exposing people to a risk of death or grievous bodily harm or in intentionally exposing property of another to a risk of damage of great extent by causing a flood, a fire, a breakdown, an accident involving a public transport vehicle or a harmful effect of explosives, gas, electricity, radioactivity or other dangerous substances. Danger to public safety occurs when people are exposed to an imminent and specific risk of death or grievous bodily harm (under the settled case law at least seven persons must be affected) or of damage of great extent to property of another. Endangerment of public safety may be committed in two forms; by causing a danger to public safety, by aggravating it or by making its elimination or mitigation more difficult.

The provision on endangerment under the influence of an addictive substance protects human life and health and property against persons who, having consumed an addictive substance, perform their employment or other activity, by which they could, being under the influence of this substance, endanger human life or health or cause a substantial damage to property. *Endangerment under the influence of an addictive substance* is committed by a person performing his professional duties or other activity in a condition induced by himself and excluding capacity by using an addictive substance, which could endanger human life or health or cause a substantial damage to property. In order to be criminally responsible for this criminal offence, the per-

petrator a) must have been convicted or released from imprisonment imposed for a similar act during the previous 24 months; b) must have been sanctioned for a similar act committed under the influence during previous 24 months or c) must have caused, even if only by negligence, bodily harm to another or a greater damage to property of another.

Under the Criminal Code, addictive substances are alcohol, narcotic drugs, psychotropic substances and other substances liable to have a negative impact on one's mental condition, controlling or discerning capacity or social behaviour. In a condition excluding capacity, one is not capable of performing a certain activity safely. According to medical data, a vehicle driver cannot drive a vehicle if the level of alcohol in his blood is 1.00 g/kg or higher.

In order to more effectively fight and sanction organized crime, the legislator enacted subject matters of *criminal offences consisting in establishing, plotting and supporting a criminal group or a terrorist group*. Membership in a criminal group or a terrorist group as such constitutes a criminal offence, whether or not the participant takes part in the criminal activity committed by such group. Establishing is defined as setting up a criminal group or a terrorist group. Plotting is an activity consisting in initiating an agreement to establish a criminal group or a terrorist group, setting up a plan of activity, selecting persons and assigning tasks. Under the Criminal Code activity for a criminal group or a terrorist group is intentional participation in such a group or other intentional action for the purposes of a) maintaining the existence of such group, or b) committing criminal offences by such group. Supporting a criminal group or a terrorist group means intentional action consisting in providing funds or other means (money, weapons, vehicles), services (legal services, transportation services), assistance (concealing group members) or creating other conditions for the purposes of a) establishing or maintaining the existence of such group or b) committing criminal offences by such group.

The right to protection of the environment ranks among fundamental human rights and freedoms. The object of criminal offences against the environment is the interest in protection of the environment; purity of air, water and soil, preservation of ecological balance in nature and preservation of all plant and animal species for the next generations. With respect to the objective element, endangering a protected interest is sufficient. Causing an infringement in the form of environmental harm is usually sanctioned as a circumstance justifying the application of a more severe sentence. In the case of criminal offences against the environment, damage is the sum of ecological harm and material damage. Material damage includes the costs of restoring the environment to its original state. Environmental harm, harm caused to protected animal and plant species, exemplars or trees are determined on the basis of the value determined by law or by another generally binding legal instrument adopted on the basis of a law.

The provision on *endangering and damaging the environment* protects the environment against actions endangering or damaging the environment. The objective element of this criminal offence is exposing the environment to a risk of small damage by violating rules on environmental protection or on protection and management of natural resources, including natural healing sources and natural mineral table waters. It is a blanket subject matter referring to rules on environmental protection. Since the

basic elements of the environment are air, water, rock, soil, organisms, ecosystems, etc., the criminal offences protecting these individual elements are subsidiary to the criminal offence mentioned above.

VII. Criminal offences against the Republic

Title VII of the Special Part of the Criminal Code lists ***criminal offences against the Republic***. They protect the constitutional order of the Slovak Republic, territorial integrity, independence, sovereignty, defence capability and security of the Slovak Republic. The constitutional order is a democratic system of fundamental rights and freedoms guaranteed by the orderly organization and functioning of state authorities and local self-governing authorities, political parties and movements regulated by the Constitution of the Slovak Republic. Criminal offences against the Republic are divided into 2 chapters:

- *Criminal offences against the foundations of the Republic* – High treason, Plotting against the Slovak Republic, Terror, Subversion, Sabotage.
- *Criminal offences against security of the Republic* – Espionage, Jeopardizing secret information.

The common attribute of the criminal offences mentioned above is the fact that they sanction various forms of activities against the State as well as criminal activity controlled from or aimed at foreign countries. The most serious criminal offence against the Republic is *high treason*. The objective element of this criminal offence consists in a perpetrator, who must be a citizen of the Slovak Republic, committing – in association with a foreign power or a foreign official – the criminal offence of plotting against the Slovak Republic, terror, subversion or sabotage. Association means co-perpetration, participation, including psychical assistance, such as encouraging the perpetrator's determination to commit high treason or displays of support. Under the Criminal Code, a foreign power includes foreign states and their military groupings or other groupings represented by their organizations and authorities, such as, in particular, intelligence agents, military officials, diplomats and other state officials. A foreign agent is a natural person or a legal person that is not an authority or a representative of a foreign state but, given his political, economic and social position, has considerable influence in his state or in international relations.

Criminal offences against the security of the Republic sanction the most serious acts against both external and internal security of the Republic in the field of secret information. Under the Secret Information Protection Act, secret information is any information or thing with respect to which the author of such secret information determines that, given the interest of the Slovak Republic, it must be protected against disclosure, abuse, damage, unlawful reproduction, destruction, loss or theft. The provision on espionage protects secret information indentified by the Act cited above as "top secret" and "secret" in the interest of the Slovak Republic, of another country, international organization, supranational organization or association of states whose interests the Slovak Republic has an obligation to protect pursuant to international

treaties. *Espionage* is committed by a person spying to obtain secret information with a view to disclosing it to a foreign power or to a foreign agent or by a person collecting data for this purpose, containing such secret information or by a person intentionally disclosing such secret information to a foreign power.

VIII. Criminal offences against order in public affairs

Title VIII of the Special Part of the Criminal Code regulates ***criminal offences against order in public affairs***. These provisions protect both public authorities and public officials and society against corruption and bureaucracy of state officials and certain forms of criminal complicity. The entire society is interested in a regular and undisturbed exercise of public affairs. Criminal offences against order in public affairs are divided into five chapters:

- *Criminal offences against exercise of power of public authorities* – Assault against a public authority, Assault against a public official.
- *Criminal offences of public officials* – Abuse of power by public officials, Obstruction of assignments by public officials.
- *Corruption* – Accepting a bribe, Bribing, Indirect corruption.
- *Certain forms of criminal complicity* – Encouraging, Condoning a criminal offence, Supporting, Failure to report a criminal offence, Failure to prevent a criminal offence.
- *Other forms of interfering with the activity of public authorities* – Interfering with independence of courts, Contempt of court, Obstruction of justice, False accusation, False testimony and perjury, Untrue expert opinion, interpreting or translation, Obstructing the execution of an official decision, Obstructing the execution of a decision of the Constitutional Court of the Slovak Republic, Obstructing the preparation and holding of elections and referendums, Counterfeiting or altering a public instrument, an official seal, an official enclosure, an official emblem or an official mark, Jeopardizing confidential information and restricted information, Crossing a state border by force, Smuggling human beings, Unlawful crossing of a state border, Revolt of prisoners.

The object of the provisions on *assaults against public authorities and public officials* is the interest in a regular, due and lawful exercise of powers by public authorities and public officials. The perpetrator's act is directed against the exercise of power either before or after such exercise. The objective element consists in using force or a threat of killing, causing bodily harm or a small damage. *Public authorities* are state authorities, authorities of territorial self-governance, public institutions, authorities of interest group self-governance, natural or legal persons entrusted with the exercise of public power by the law. *Public officials* under the Criminal Code include the President of the Slovak Republic, a member of the National Council of the Slovak Republic, a member of the European Parliament, a member of the government, a judge of the Constitutional Court of the Slovak Republic, a judge, a prosecutor or a different person holding an office in a public authority, a member of the armed forces, a public servant,

a mayor, a president of a self-governing unit, a deputy of an authority of territorial self-governance, a state employee or an employee of a state administration authority, of an authority of territorial self-governance or of a different state authority, a person performing his tasks in a legal person entrusted by the law with adopting decisions in the field of public administration, a notary, a bailiff, a member of the forest guard, water guard, fishing guard, hunting guard, nature guard or a person holding the authority of a member of the nature guard, participating in performing social and state assignments and employing power entrusted within the scope of his responsibilities for performing these assignments. Public officials include also judges and officials of international judicial authorities recognized by the Slovak Republic or officials or other responsible employees of authorities of a foreign country acting in criminal proceedings or authorities of the European Union, provided that such person accomplishes acts relative to criminal proceedings of such a country or authority on the territory of the Slovak Republic. For a public official to be criminally responsible and/or protected, the criminal offence in question must be committed in connection with his power and responsibility, within the scope of accomplishing social and state assignments and of deciding on the rights of others.

The rights and duties of natural and legal persons and the state's interest in a lawful process of adopting decisions regarding them by public officials within the scope of their authority are protected by the provisions on abuse of power by public officials and obstructing assignments by public officials. *Abuse of power by a public official* may be committed in three forms; by exercising power in a way contrary to the law, by exceeding the power and by failing to comply with a duty resulting from the power or from a court decision. *Obstructing an assignment by a public official* consists in a public official, within the scope of his power, negligently frustrating the accomplishment of an important assignment. Frustrating accomplishment of an important assignment means making its accomplishment in a timely manner impossible.

The provisions on corruption are aimed against accepting bribes, bribing or any behaviour with respect to persons charged with powers in the public or private sector contrary to the duties resulting from their position and aimed at obtaining unjust advantages. The Criminal Code regulates three basic forms of corruption; *accepting a bribe*, *bribing* and *indirect corruption*. All forms of corruption are sources of unjust enrichment and they deform the entire society. *Accepting a bribe* is committed by a person accepting, soliciting or having promised, directly or through an intermediary, for himself or for another, a bribe for acting or abstaining from acting, in a way contrary to his duties resulting from his employment, profession, position or function. Under the Criminal Code, *bribe* is a thing or other performance of patrimonial or non-patrimonial nature without a legal cause. Accepting a bribe in connection with dealing with affairs of general interest is also a criminal offence. Under the Criminal Code, *affairs of general interest* are interests that exceed the scope of individual rights and are important to society.

The provisions on accepting a bribe with a "foreign element" protect a due and undisturbed exercise of official duties of foreign public officials in international trade and a due exercise of functions of persons such as members of foreign parliamentary assemblies, judges or officials of international judicial authorities recognized by the Slovak Republic or representatives or employees of an international, supranational or

intergovernmental organization or authority being in a contractual relationship with the Slovak Republic or persons in a similar function.

Bribing is committed by a person promising, offering or providing, directly or through an intermediary, to another a bribe for acting or abstaining from acting, in a way contrary to his duties resulting from his employment, profession, position or function or, for this reason, promising, offering or providing, directly or through an intermediary, a bribe to another person. Offering, providing or promising a bribe to another in connection with dealing with affairs of general interest is also a criminal offence.

The Criminal Code establishes also criminality for both indirect acceptance of a bribe and indirect bribing. *Indirect acceptance of a bribe* is committed by a person accepting, soliciting or having promised, directly or through an intermediary, for himself or for another, a bribe for influencing or for having influenced the exercise of power by a public official or a foreign public official. *Indirect bribing* is committed by a person promising, offering or providing, directly or through an intermediary, to another a bribe for influencing or for having influenced the exercise of power of persons indicated in the provision on bribing. In the provisions on effective repentance, the Criminal Code explicitly provides that criminality of an act of bribing and indirect corruption is extinguished if the perpetrator provided or promised the bribe only because he was asked to do so and he immediately and voluntarily reported it to an authority acting in criminal proceedings or to the Police Corps.

This title of the Criminal Code regulates also individual subject matters of criminal offences consisting in facilitating or supporting criminal activity of others or creating favourable conditions and enabling the perpetrators to evade criminal proceedings, sentence and protective measures. These criminal offences are described in the chapter dealing with criminal complicity and participation.

The provisions on other forms of interfering with the activity of public authorities protect the activity of public authorities against various interferences with this activity. *Interfering with independence of courts* consists in influencing a judge so as to make him fail to comply with his duty in court proceedings or in intentionally frustrating the right of parties to court proceedings or the defendant's right to his statutory judge. *Contempt of court* is committed by a person who, despite a prior warning, repeatedly and seriously disturbs a trial; offends or disparages the court during trial or does not comply with a court order or a summons without a sufficient excuse. *Obstructing justice* is committed by a person producing, in court proceedings or in criminal proceedings, evidence that is known to him to be counterfeit or altered with a view to using it as genuine; by a person counterfeiting, altering or frustrating evidence or obstructing the collection of evidence; frustrating or impeding the presence or testimony of a party to criminal proceedings, of a party to court proceedings, of a witness, of an expert, of an interpreter or of a translator; or by a person using force, a threat of force or a threat of other serious harm or promising, offering or providing an unjust advantage in order to influence a party to criminal proceedings, a party to court proceedings, a witness, an expert, an interpreter, a translator or an authority acting in criminal proceedings.

The state's interest in controlling persons crossing state borders is protected by the provisions on *crossing a state border by force* and *smuggling human beings*. The objective element of smuggling human beings consists in the perpetrator organizing for

a person not being a citizen of the Slovak Republic and not having a permanent residence on the territory of the Slovak Republic the unlawful crossing of the state border of the Slovak Republic or passing through its territory. A perpetrator enabling or assisting in such action will also be criminally responsible. If the perpetrator, with the intent to obtain, directly or indirectly, a financial advantage or other material advantage for himself or for another, enables a person not being a citizen of the Slovak Republic and not having a permanent residence on the territory of the Slovak Republic to remain or to obtain employment in the territory of the Slovak Republic or assists that person in so doing, it is also a criminal offence.

IX. Criminal offences against other rights and freedoms

Criminal offences against other rights and freedoms are regulated in Title IX of the Special Part of the Criminal Code. They are aimed against serious cases of violation of civic coexistence and they protect morality, respect for others and their fundamental rights and freedoms, such as life, health and property.

Criminal offences against other rights and freedoms are: Violence against a group of residents, Dangerous threatening, Dissemination of alert information, Intoxication, Rioting, Desecration of a place of final rest, Disparagement of a dead person, Soliciting, Production of child pornography, Propagation of child pornography, Possession of child pornography, Corrupting morals, Defamation, Unlawful handling of personal data, Infringing rights of others, Infringing confidentiality of oral statements and other personal expressions, Maltreatment of animals.

Violence against a group of residents is committed by a person threatening a group of residents with death, grievous bodily harm or other serious harm or with causing a damage of great extent or using force against a group of residents. A group of residents means at least three persons having their permanent residence on the territory of the Slovak Republic but not necessarily Slovak citizens. *Dangerous threatening* is committed by a person threatening another with death, grievous bodily harm or other serious harm in a way liable to cause reasonable concern. In this case, the object of the act is one or more individuals. *Dissemination of alert information* interferes with peaceful civic coexistence, peace and public order. The provision on *dissemination of alert information* emphasizes the interest in protecting people against serious concerns based on false alert information. The objective element of this criminal offence consists in the perpetrator intentionally causing a risk of serious concern to at least some residents of a certain place by disseminating false alert information; committing a similar action liable to cause such a risk (e.g., sending out imitations of chemical or poisonous substances capable of endangering human life and health); reporting such information or such action to a legal person, to the Police Corps or to other state authorities or to the mass media despite knowing that it is untrue and that it can result in measures leading to serious concern at least among some residents of a certain place; causing, in a state crisis situation, even if only by negligence, a risk of serious concern, despondency or defeatism among at least some residents of a certain place by disseminating alert information.

Civic coexistence is also protected by the provision on *intoxication*. It is an abstract offence of endangerment consisting in the perpetrator bringing himself, by consuming or applying an addictive substance, to be in a state of mental incapacity in which he commits an act otherwise constituting a criminal offence. However, if his act otherwise constituting a criminal offence is sanctioned with a lesser sentence under the law, the perpetrator will be punished with the lesser sentence.

Peaceful civic coexistence is protected against serious attacks violating public order and peace by the provision on *rioting*. The objective element of this criminal offence consists in the perpetrator, verbally or physically, in a public place or in a place accessible to the public, committing a gross indecency or a riot. *Gross indecency* is an action grossly violating rules of civic coexistence and principles of civic morals. *Riot* is an action seriously infringing public peace and order. The subject matter of rioting includes a demonstrative enumeration of actions satisfying the attributes of rioting: assaulting another, disparaging a state symbol, disparaging a historical or a cultural monument. Other forms of action consist in grossly disturbing assemblies of citizens, sporting events or cultural events or in causing a public nuisance by practicing sexual intercourse, sexual exhibitionism or other pathological sexual practices in such a place. Desecration of the place of final rest and disparagement of a dead person are specific forms of rioting.

Many criminal offences listed in Title IX of the Special Part of the Criminal Code protect morals and moral development. *Soliciting* covers two types of action; procuring, moving, seducing, using, obtaining or offering another for prostitution or exploiting or facilitating prostitution of others. Under the Criminal Code, prostitution means gratification of sexual needs of another by coitus, other types of sexual intercourse or similar sexual intercourse for remuneration. Prostitution as such is not a criminal offence under Slovak criminal law.

The provisions on *production, propagation and possession of child pornography* protect moral development and upbringing of minors. These criminal offences are committed by a person using, obtaining or otherwise abusing a child for producing child pornography; enabling a child to be abused for producing child pornography; otherwise participating in producing child pornography; reproducing, transporting, procuring, making available or otherwise propagating or possessing child pornography. *Child pornography* is a depiction of coitus, other types of sexual intercourse or other similar sexual intercourse with a child or depiction of nude parts of a child's body aimed at sexual gratification of another. *Production of child pornography* is not only industrial or mechanical manufacture, but any production of child pornography whatsoever, including, in particular, production of child pornography films, photographs, etc. *Propagation of child pornography* includes dissemination by mass media, but also any other distribution, including computer networks. *Possession of child pornography* means any type of possession.

The criminal offence of *defamation* protects honour, reputation and esteem. This criminal offence is committed by a person communicating false information concerning another, capable of seriously jeopardizing his esteem in society, harming him in his job or business, interfering with his family relations or causing him other serious harm. Communication of true information capable of jeopardizing esteem of another is not a criminal offence.

X. Criminal offences against conscription, against civilian service, against service in armed forces and against homeland defence

Title X of the Special Part of the Criminal Code protects a group of societal interests focused on a due exercise of assignments resulting from conscription duty, alternative service in time of war and war state, service in the armed forces and homeland defence. **Criminal offences against conscription, against civilian service, against service in armed forces and against homeland defence** are divided into four chapters:

- *Criminal offences against conscription* – Frustrating capacity for service, Non-compliance with the conscription duty, Circumvention of the conscription duty.
- *Criminal offences against civilian service* – Non-performance of civilian service, Evading civilian service.
- *Criminal offences against service in armed forces* – Non-performance of service in armed forces, Violation of personal and material duties.
- *Criminal offences against homeland defence* – Collaboration with the enemy, War treason, Service in a foreign army.

The criminal offences against conscription protect a due performance of assignments resulting from conscription duty or other duties of homeland defence. The *conscription duty* is a duty to submit to conscription, to perform exceptional service or alternative service. Conscription takes place in time of war or a state of war. As of 1 January 2006, the system of military service for the purposes of ensuring the defence of the Slovak Republic changed substantially. Military service exclusively on the basis of a professional military service was introduced except for crisis situations. Compulsory military service was abolished and replaced with exceptional military service and civilian service, as a substitute for compulsory military service, has been replaced with alternative service in time of war or in a state of war. Consequently, *alternative service* is a service performed instead of exceptional service by a registered citizen or a reserve soldier in time of war or in a state of war, provided that he has declared in writing that he refuses to perform exceptional service because such service is contrary to his conscience or religious belief. The objective element of criminal offences against civilian service consists in non-performance (omission) of alternative service within 24 hours of the deadline stipulated in the drafting order; in refusing to perform alternative service and in intentionally evading its performance (by harming one's health, by simulating a disease); in leaving the place of performance of alternative service and in staying away from the place of performance of alternative service.

The provisions on criminal offences against service in the armed forces protect the interest in a due discharge of duties connected with due performance of military service as well as the interests in due compliance with personal and material duties imposed on citizens for the purposes of homeland defence. The objective element of these criminal offences consists in non-performance (omission) of service in the armed forces within 24 hours of the deadline stipulated in the drafting order; in not presenting oneself without delay from abroad for the performance of exceptional service after declaration of mobilization; in not performing, evading, frustrating or obstructing

personal and material duties. Such duties include working duties of natural persons, provision of material means and provision of accommodation.

Title X of the Special Part of the Criminal Code protects also the interest in ensuring state security and defence capability in time of war or a state of war. *Collaboration with the enemy* is committed by a person procuring, in time of war or in a state of war, benefit for the enemy or supporting the enemy in any way. *War treason* consists in serving in an enemy army or an enemy armed corps. *Service in a foreign army* consists in serving in a foreign army without the permission of the President of the Slovak Republic.

XI. Military criminal offences

The purpose of armed forces is to preserve peace and security of the Slovak Republic and to assure obligations resulting from international treaties binding on the Slovak Republic. The purpose of armed security corps and armed corps is to ensure internal security, order and to fight various types of crime, including organized crime. Title XI of the Special Part of the Criminal Code regulates **military criminal offences** and is divided into four chapters:

- *Criminal offences against military subordination and military honour* – Disobedience, Resisting or obstructing a military duty, Affront between soldiers, Violence against a superior officer, Violation of rights and protected interests of soldiers.
- *Criminal offences against the duty of military service* – Evading a service act or performance of military duty, Desertion.
- *Criminal offences against duties of guard and supervisory services* – Violation of guard service duties, Violation of supervisory service duties, Violation of air defence duties.
- *Criminal offences endangering combat capability* – Endangerment of morale of troops, Violation of service duties, Cowardice before the enemy, Non-fulfilment of a combat assignment, Abandoning combat equipment, Surrendering combat equipment to an enemy.

Criminal offences listed in Chapter 1 injure and jeopardize military discipline and indivisible commanding power. *Disobedience* is committed by a person refusing to fulfil an order, intentionally not fulfilling an order or not fulfilling an order by negligence under such circumstances that an important service assignment could be frustrated or substantially obstructed. *Resisting or obstructing a military duty* is committed by a person resisting a soldier fulfilling particular military duties or coercing him to violate such a duty. Observance of service discipline, dignity, esteem and honour between soldiers and of rules of military respect are protected by the provision on *affront between soldiers*. This criminal offence is committed by a soldier insulting another soldier, unless a more serious criminal offence is committed, or insulting, by force or by a threat of imminent force, a superior soldier (a soldier superior in rank) or a subordinate soldier (a soldier inferior in rank) or insulting, by force or by a threat of imminent force, a soldier equal in rank. Criminal offences against the duty to perform military service protect

the military service as such against evading the performance of military service and of military duties; against consumption of alcohol or other addictive substances while in service or in a crisis situation and against deliberate absence with a view to evading military service.

Title XI of the Special Part of the Criminal Code protects also the due performance of guard service, supervisory service, and air defence duties. It protects combat capability, the morale of troops and the discipline of individuals as well.

XII. Criminal offences against peace and humanity, criminal offences of terrorism and extremism and war criminal offences

Criminal offences against peace and humanity, criminal offences of terrorism and extremism and war criminal offences are set forth in Title XII of the Special Part of the Criminal Code. These criminal offences are divided into three chapters. Chapter 3 contains common provisions.

- *Criminal offences against peace and humanity, criminal offences of terrorism and extremism* – Endangerment of peace, Genocide, Terrorism and certain forms of participation in terrorism, Torture and other inhuman or cruel treatment, Supporting and promoting groups aimed at oppressing fundamental rights and freedoms, Production of extremist materials, Propagation of extremist materials, Possession of extremist materials, Disparagement of nation, race or belief, Encouraging national, racial or ethnic hatred, Encouraging, disparaging and threatening persons because of their racial or national origin, colour, ethnical or gender origin, Inhumanity.
- *War criminal offences* – Use of prohibited combat instruments and prohibited warfare techniques, Plundering in areas of war operations, Abuse of internationally recognized symbols and national symbols, Assault against a parliamentarian, Abuse of a right of requisition, Wartime cruelty, Persecution of civilians, Wartime lawlessness, Endangerment of cultural goods.

The object of these criminal offences is the interest of society in protection of fundamental human values, in particular, the fundamental interest of mankind formulated in international documents against genocide, torture, crimes against humanity, apartheid, as well as protection against support and promotion of movements aimed at oppressing civil rights and freedoms or proclaiming racial, class-based, national or religious hatred. The objective element of these criminal offences can take many forms consisting in maltreatment, torture or other inhuman or cruel treatment; in supporting or promoting a group of persons aiming, by force, by threat of force or by threat of other serious harm, at oppressing fundamental rights and freedoms; in disparaging a nation, a language, a race or an ethnic group or a group of persons because of their religion or because they have no religion; in threatening to restrict rights and freedoms, restricting rights and freedoms and encouraging restricting rights and freedoms. Genocide is one of the most serious criminal offences against humanity. Its object is fundamental human rights such as the right to national and racial equality, freedom of reli-

gious belief, right to life and to free development of personality regardless of national or racial origin or religious belief. This criminal offence is committed by a person, with intent to destroy, in whole or in part, a nation or a national, ethnical, racial or religious group, a) causing grievous bodily harm or death to a member of such group, b) imposing measures intended to prevent births within the group, c) forcibly transferring children of the group to another group or d) inflicting on the members of the group conditions of life calculated to bring about its physical destruction in whole or in part.

Terrorism and certain forms of participation in terrorism are a particularly serious criminal offence taking an international dimension and seriously jeopardizing fundamental rights and freedoms. The objective element of this offence includes action consisting in: a) committing or threatening to commit a crime endangering human life or health, personal freedom or property; b) unlawful manufacture, ownership, possession, transport, delivery or other use of explosive, nuclear, biological or chemical weapons or c) performing unlawful research and development of such weapons or of weapons prohibited by law or by international treaties. Forms of participation in terrorism are gathering or providing funds for the commission of a criminal offence of terrorism, public encouragement of its commission, soliciting another to commit it or planning its commission.

The type object of war criminal offences is the observance of internationally recognized rules of warfare and the interest in protecting fundamental human rights in case of war or an internal armed conflict in accordance with international conventions and customs of war.

Conclusion

Slovak criminal law is part of the Slovak legal order and a branch of public law. Substantive criminal law is particularly important because it protects the rights and legitimate interests of natural and legal persons, interests of society and the constitutional order of the Slovak Republic by defining what a criminal offence is and what sanction may be imposed for committing it. This textbook focuses on fundamental concepts and institutions of substantive criminal law. Using texts relative to the general part and special part of criminal law, the textbook offers a comprehensive overview of the foundations of substantive criminal law as a branch of the Slovak legal system.

The readers can acquaint themselves with the foundations of criminal responsibility, with the scope of application of the Criminal Code, with the principles of imposition of sentences and protective measures, as well as with the characteristics of individual criminal offences. Theoretical texts are complemented by specific cases including solutions which are intended to help readers understand the concepts and institutions of substantive criminal law and to make the application of theoretical knowledge to practical situations clearer.

The textbook contains a basic overview of substantive criminal law. Given its limited extent, this textbook does not deal with all institutions of criminal law in detail. Nonetheless, the authors believe that it provides readers with a general idea of Slovak substantive criminal law.

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