



Simplification of less serious crime investigation

aimed to balance public danger, harm caused by crime and consumption of resources for investigation

Guidelines

Guidelines



Co-funded by the Prevention of and Fight against Crime Programme of the European Union.

The Guidelines has been worked out within the project "Simplification of less serious crime investigation aimed to balance public danger, harm caused by crime and consumption of resources for investigation" (No. HOME/2012/ISEC/FP/C2/4000003986) within the Framework Programme "Security and Safeguarding Liberties" and the specific programme "Prevention of and Fight against Crime" (ISEC) of the European Commission.

The Guidelines has been worked out by Dainis Vēbers, Raimonds Stulpāns (the State Police of the Republic of Latvia) with support of the project experts and the project team.

This project has been founded with support from the European Commission. This publication reflects the views only of the author, and the European Commission cannot be held responsible for any use which may be made of the information contained therein.



© Publisher: the State Police of the Republic of Latvia, 2015

© Photo: Archive of the State Police of the Republic of Latvia

© Design: LLC "E FORMA"

ISBN 978-9934-8311-5-7

Content

Preface of the Chief of the State Police	4
The aim is simple, quick and proportional investigation	6
About the project	7
Project team	9
The Guidelines	11
ESTONIA	14
FINLAND	34
GERMANY	51
LATVIA	65
LITHUANIA	84
ROMANIA	98
SWEDEN	108
THE NETHERLANDS	120
Conclusions	130
Internet sources	141

Preface of the Chief of the State Police



The Chief of the State Police
Ints Kuzis

One of the most important directions of the development of the State Police in recent years is the improvement of its basic activity – fight against crime. The State Police investigates more than 95 % of criminal cases in the country. Therefore how effectively criminal offences in the country in general will be detected and ceased and how much the society will feel protected from crime threat depends on the capacity, quality of work of the State Police and its investigation organisation in the pre-trial process.

In the Criminal Procedure Law of the Republic of Latvia the principle of mandatory nature of criminal proceedings is enshrined, grounded on the interests of society members in the case of invasion of their rights to receive the fair regulation of criminal legal relations. However in the modern world where available resources for fight against crime are limited the question of effectiveness of investigation to correlate common interests of society for the security with every person's individual interest to restore his or her rights, offended in the result of a crime is becoming more topical. In this context the necessity to define fight against crime, by directing the maximum of the resources of the police towards the prevention of and solving serious and especially serious crimes, is becoming more important as a priority. Police practice of many countries of the European Union has already proved the effectiveness of this work organisation model, nevertheless today's rapid pace of development constitutes the constant search for new solutions. The necessity of reducing the threat of crimes and increasing the security of the society in general are the main aims that compel to revise the existing investigation practice and to look for more effective investigation methods and new work organisation models.

It is worth noting that public opinion researches held in the last years in Latvia show that conviction in society is becoming stronger, that the police will never be able to detect all the crimes by 100 %, and thus for the sake of common security of the society the police forces should be directed to fight against the expressions of more serious crimes.

Taking into account the above mentioned and in order to promote the implementation of effective investigation procedures, the State Police of the Republic of Latvia initiated and in June 2013 concluded the Grant Agreement No. HOME/2012/ISEC/FP/C24000003986 with the

Guidelines

European Commission about the implementation of the project “Simplification of less serious crime investigation aimed to balance public danger, harm caused by crime and consumption of resources for investigation” in the framework of the general programme “Security and Safeguarding Liberties” and the specific programme “Prevention of and Fight against Crime” (ISEC) of the European Commission. The partners of the State Police of the Republic of Latvia in this project were the Ministry of Interior of the Republic of Latvia, Ministry of Justice of the Republic of Latvia, Prosecutor General Office of the Republic of Latvia, the non-governmental organisation “Pro-Police Latvia”, as well as the police of Lithuania, Estonia, Germany, Romania, Finland and Sweden.

The results of the implementation of the project are presented in this edition – solutions of work organisation and jural solutions that can serve as suggestions to increase the effectiveness of the police work in the area of investigation. I wish to express my enormous satisfaction and big gratitude to the whole project team and foreign colleagues for their great contribution to and involvement in the common work. The results of the project have brought to Latvia new experience of possibilities for more effective investigation, promoted the discussion on the questions of the development of the rights of criminal proceedings, and strengthened the State Police as a modern and effective law enforcement institution. My great hope is that other interested parties, who will become acquainted with the results of the project, will get much new information and motivation for the improvement of the investigation process.

Sincerely yours,

The Chief of the State Police **Ints Kuzis**

A handwritten signature in black ink, appearing to be 'Ints Kuzis', written in a cursive style.

The aim is simple, quick and proportional investigation



Project leader
Dainis Vēbers

The aim of the Guidelines worked out within the framework of the project “Simplification of less serious crime investigation aimed to balance public danger, harm caused by crime and consumption of resources for investigation” is to summarize the experience of partner countries and to find the best solutions for simplification of less serious crime investigation. Accordingly to give an opportunity for law enforcement agencies, public prosecutor’s office and court to use more resources for serious crime investigation, criminal prosecution and judicature.

Although it cannot be affirmed, that the Guidelines include an ideal simplified investigation model and the best practice, however, taking into account, that the countries involved in the project have very different investigation practice and legislation, it was possible to identify various simplified investigation approaches, the procedures of the imposition of penalty.

Consequently every EU Member State will be able to find ideas in the Guidelines that conform to their criminal law system and allow to carry out investigation even more simply, quickly, effectively, by using proportional resources, and to make a decision about penalty for a guilty person.

As a project leader I wish to express my gratitude to the project team and experts, as well as the institutions involved in the project for the work they have put into the working out of the Guidelines and successful progress of the project. I am really pleased that during realization of the project several of the project partners have tried to use new experience and have taken measures to simplify investigation, and the project has already reached positive results in some degree, and I hope that after publishing the Guidelines the initiatives for the simplification of investigation will become just more active.

Best regards,

Project leader **Dainis Vēbers**

A stylized, handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

About the project

The project "Simplification of less serious crime investigation aimed to balance public danger, harm caused by crime and consumption of resources for investigation" (No. HOME/2012/ISEC/FP/C2/4000003986) of the Grant Agreement concluded by the State Police of the Republic of Latvia with the European Commission within the Framework Programme "Security and Safeguarding Liberties" and the specific programme "Prevention of and Fight against Crime" (ISEC) of the European Commission.

The aim of the project – to exchange, summarize and analyse legislation, knowledge, experience and the best practice on simplification of less serious crime investigation in 7 EU Member States and to deliver recommendations for implementation of the best models and practice, thereby providing opportunities to increase effectiveness of law enforcement agencies in the EU Member States.

The project budget: 259 119 euros, including:

- co-financing of the European Commission – 233 181 euros;
- co-financing of Latvia – 14 337 euros;
- co-financing of other partner countries – 11 600 euros.

The duration of the project – from 1 July 2013 till 30 June 2015.

The State Police of the Republic of Latvia is the initiator and the coordinator of the project. The Ministry of Justice of the Republic of Latvia, Ministry of the Interior of the Republic of Latvia, Prosecutor General Office of the Republic of Latvia and the non-governmental organisation "Pro-Police Latvia" are also involved in the project. Other EU Member States are involved in the project:

- Estonia – Estonian Police and Border Guard Board;
- Finland – Helsinki Police Department;
- Germany – Criminal Investigation Department in Frankfurt am Main;
- Lithuania – Police Department of the Republic of Lithuania;
- Romania – General Inspectorate of the Romanian Police;
- Sweden – Swedish Police, the National Bureau of Investigation.

Jointly with the project team 16 experts of partner organisations are involved in the project activities, providing support in working out the guidelines, recommendations and preparing presentations about investigation in their countries.

Before the launch of the project the survey of the EU Member States was made with the support of the European Police College (CEPOL) and the European Judicial Network (EJN) for the purpose of ascertaining the existing simplified forms of the criminal proceedings. The information from 20 EU Member States was studied. Cooperation partners were addressed on the basis of the results of the survey.

Guidelines

The project activities were focused in four main directions:

- exchange of experience. The experts of the project, involved in exploring visits to the partner countries, have got invaluable practical experience of investigation practice in other countries. Several partner organisations could put into practice various newly acquired knowledge and simplified investigation in their countries already during the project. Latvian experts also explored the experience of the Netherlands in addition to the examination of legislation and practice of the partner countries and experience exchange among the project experts;
- working out recommendations. Experts of the partner countries identified investigation problems during the project and other experts suggested possible solutions. 62 problems have been identified altogether, providing each of them with 6–8 solution proposals;
- working out the Guidelines. When launching the project the Data collection plan was worked out according to which information of the partner countries about legislation and less serious crime investigation practice was summarized. The information obtained is included in the Guidelines and more positive practice is identified and shown in the Guideline conclusions to exemplify simplification of crime investigation for other EU Member States;
- closing conference and dissemination of the Guidelines. The Guidelines and more positive examples of simplified investigation are presented at the conference on 28–29 April 2015. Representatives of every EU Member State and of several Latvian institutions – police, prosecutor’s office, court, Ministry of Justice, Ministry of the Interior, higher educational institutions, are invited to the conference. The guidelines are also disseminated through web pages of partner organisations, as well as with the support of the European Police College and the European Judicial Network.

General Prosecutor office of the Republic of Latvia

State Police of the Republic of Latvia

LATVIJAS REPUBLIKAS IEKŠLIETU MINISTRIJA
Ministry of the Interior of the Republic of Latvia

Estonian Police and Border Guard Board

HESSEN
Police Headquarters Frankfurt/Main

General Inspectorate of the Romanian Police

Police Department under the Ministry of the Interior of the Republic of Lithuania

Finnish Police

Swedish Police

pro-police
Pro-Police Latvia

Justiņas ministrija
Ministry of Justice of the Republic of Latvia

Project No HOME/2012/ISEC/FP/C2/4000003986
“Simplification of less serious crime investigation aimed to balance public danger, harm caused by crime and consumption of resources for investigation”
2013-2015

Projekts Nr. HOME/2012/ISEC/FP/C2/4000003986
“Mazāk smagu noziegumu izmeklēšanas vienkāršošana ar mērķi sabalansēt nozieguma sabiedrisko bīstamību, radīto kaitējumu un izmeklēšanā izlietos resursus”
2013-2015

Co-funded by the Prevention of and Fight against Crime Programme of the European Union

Project team

The working out of the Guidelines and successful implementation of the project “Simplification of less serious crime investigation aimed to balance public danger, harm caused by crime and consumption of resources for investigation” was made possible thanks to the efforts of many people.

Project management group:

Dainis Vēbers, State Police, Latvia

Raimonds Stulpāns, State Police, Latvia

Inguna Trule, State Police, Latvia

Jolanta Ļuta, State Police, Latvia

Project experts:

Elīna Feldmane, Ministry of Justice, Latvia

Vilnis Vītolīņš, Ministry of the Interior, Latvia

Sandra Kerno, Prosecutor General Office, Latvia

Rait Pikaro, Estonian Police and Border Guard Board, Estonia

Ege Ülend, Estonian Police and Border Guard Board, Estonia

Mika Juhani Myöhänen, Helsinki Police Department, Finland

Jouni Johannes Niskanen, Helsinki Police Department, Finland

Jürgen Zimmermann, Criminal Investigation Department in Frankfurt am Main, Germany

Katharina Henche, Criminal Investigation Department in Frankfurt am Main, Germany

Arvydas Apanavičius, Police Department of the Republic of Lithuania, Lithuania

Bronius Dalinkevičius, Police Department of the Republic of Lithuania, Lithuania

Daniel Gabriel Tatomir, General Inspectorate of the Romanian Police, Romania

Ionut Tiberius Manea, General Inspectorate of the Romanian Police, Romania

Fredrik Persson, Swedish Police, the National Bureau of Investigation, Sweden

Anders Burén, Stockholm Police department, Sweden

Information about the Netherlands provided by:

Dr. Willem Geelhoed, Radboud University, the Netherlands

Dr. Maria Igorevna Federova, Leiden University, the Netherlands

Annelies Smits-Heutink, the Police Academy of the Netherlands, the Netherlands

Nils Filius, the Police Academy of the Netherlands, the Netherlands

Providing support in working out of the Guidelines and ensuring the project implementation as a whole in different stages of the project were involved:

Ilze Bērziņa-Ruķere, NGO "Pro-Police Latvia", Latvia

Santa Štolcere, State Police, Latvia

Žanna Lāma, State Police, Latvia

Ilze Ķēniņa, State Police, Latvia

Inga Akmentiņa, State Police, Latvia

Liene Freimane, State Police, Latvia

Jūlija Timoškāne, State Police, Latvia

Svetlana Silkāne, State Police, Latvia

Inna Pontus, State Police, Latvia

Support provided by:

Ints Ķuzis, State Police, Latvia

Andrejs Grišins, State Police, Latvia

Juris Šulte, State Police, Latvia

Natālija Dorožko, State Police, Latvia

Vineta Gaigala, State Police, Latvia

The Guidelines

The Guidelines are one of the results of the project “Simplification of less serious crime investigation aimed to balance public danger, harm caused by crime and consumption of resources for investigation” (No. HOME/2012/ISEC/FP/C2/4000003986).

The Guidelines include legislation and practice of less serious crime investigation of seven partner countries of the project (Estonia, Finland, Germany, Latvia, Lithuania, Romania and Sweden), analyse examples of decreasing consumption of resources for investigation by investigation institutions, as well as expedite fair regulation of criminal legal relations. The Guidelines also include a review of the experience of the Netherlands in a simplified investigation.

In accordance with the aim of the project legislation and practice are reflected concerning investigation carried out by investigation institutions but taking into account that the expedited, simplified forms of the proceedings are closely connected to work organisation of the prosecutor’s office and court, several examples of expedited, simplified disposal of legal proceedings in prosecutor’s office and court are also given.

Information about legislation and practice of every partner country of the project is provided in four essential directions.

1. Definition of a crime and investigation competence

Information is given in the Guidelines that the partner countries have various definitions of a crime and classifications of its gravity levels. Furthermore in a row of partner countries as a crime or offence is considered a violation that in other partner countries is an administrative violation, because penalty can be enforced by an investigation institution itself. In order to maintain possibly higher mutual comparability, also taking into account that the basic aim of the project is simplification of the investigation of crimes not of administrative violations, in the Guidelines legislation and practice of investigation regarding crimes, for which custodial sentence is provided, is analysed, accordingly the investigation institution cannot enforce such a penalty. The proceedings for administrative violations are only outlined in particular cases in order to demonstrate the difference between various legislation and diverse models of action when investigating crime or administrative violation.

In the introduction of the description of every partner country investigation competence, allocation of procedural roles between the investigation institution and the prosecutors office and in some cases also court is also indicated. The allocation of competence also for the majority explains the procedural decisions on termination, suspension of criminal proceedings, and the order of enforcement of penalty, all of which is described in the next sections.

2. Refusal to initiate criminal proceedings, termination and suspension of criminal proceedings

The idea of investigation simplification is pointed to make investigation commensurate with seriousness and social dangerousness of a crime, thereby making it possible to find extra resources that the investigating institution could direct to a serious and especially serious crime investigation and delinquent crime detection. This section describes the mechanisms of partner countries that are directed to refuse initiation of the investigation or termination of the investigation, if the crime committed is less serious or there is no public interest in sentencing an offender for particular crime. Various solutions are demonstrated as a result of which criminal proceedings are terminated and at the same time the result is considered as positive. For example, the settlement was reached between the victim and the offender, all the damages are compensated or the criminal proceedings are terminated on the assumption that the offender will fulfil some conditions.

Likewise, situations are examined when an investigation is suspended because of the failure to ascertain the offender. No country has so much resources to undertake active investigation and to detect all the crimes and understanding is reached at some investigation point that all possible has been done for crime detection with resources proportional to the crime seriousness and there is a need to make a decision of suspension of investigation.

Only resources saving examples are shown in the Guidelines and all the cases of termination of criminal proceedings are not analysed, for example, if a criminal offence has not taken place, the committed offence does not constitute a criminal offence, an amnesty etc.

3. Forms of simplified criminal proceedings

Forms of simplified criminal proceedings of a specific country are reflected during investigation of criminal cases with suspected persons and holding them liable at law. A special attention is paid to the stage of investigation in this section. If the examined forms of simplified criminal proceedings have special legislative regulation at the stage of accusation and judicature, the review of that is also given. Expedited proceedings of enforcing of penalty that exist in a particular country are also examined. But the general proceedings of investigation in a particular country are not considered in this section.

4. Review of practice

Examples of investigation of every country are considered in this section by consecutively examining the process of investigation from its initiation till the submission of the case to the prosecutor's office. Two kinds of crimes are analysed for the purpose of mutual comparability of the practice in countries – theft from a commercial object and driving a vehicle under the influence of alcohol or other intoxicating substances. The main condition for the choice of examples in a specific country is the possibility of enforcing a custodial sentence according to legislation concerning this crime.

Guidelines

This section also includes information about many mechanisms that allow for a specific investigation institution to enhance the effectiveness and simplify organisation of practical investigative work, for example, information systems, standardized forms etc.

Conclusions

The criminal legislation and investigation organisation of the countries examined in the project are very different, therefore various solutions regarding simplified investigation forms, suspension of investigation etc. are considered in the Guidelines. Taking this into account it was not possible in the concluding section to indicate one ideal model that could be applicable and work effectively in all the countries. Yet in this section examples are summarized and analysis is made concerning possibly the best solutions in different situations and stages of criminal proceedings.

In the concluding section and in the Guidelines in general it is possible to find ideas that could be suitable for the criminal justice system of a specific country, and implementation of these ideas would allow to carry out investigation in a more simple, expedite, and effective manner and with the proportional resources, as well as to make a decision on the punishment of a guilty person, thus to achieve effective and fair regulation of criminal legal relations.

ESTONIA

Offence and competence in pre-trial criminal proceedings

Offence

(1) Offence is a punishable act provided for in the Penal Code or another Act.

(2) Offences are criminal offences and misdemeanours.

(3) A criminal offence is an offence which is provided for in this Code and the principal punishment prescribed for which in the case of natural persons is a pecuniary punishment or imprisonment and in the case of legal persons – a pecuniary punishment.

(4) A misdemeanour is an offence which is provided for in this Code or another Act and the principal punishment prescribed for which is a fine, detention or deprivation of driving privileges.¹

Misdemeanours are prescribed not only in the Penal Code but also in many other acts (e.g., the Alcohol Act) and are proceeded as provided for by the Code of Misdemeanour Procedure.

If a person commits an act, which comprises the necessary elements of both a misdemeanour and a criminal offence, the person shall be punished only for the criminal offence.

Criminal offences are divided into criminal offences in the first and in the second degree.

In the first degree – an offence, the maximum punishment prescribed in this Code for a natural person is imprisonment for a term of more than five years or life imprisonment. An offence of a legal person is a criminal offence in the first degree if imprisonment for a term of more than five years or life imprisonment is prescribed for the same act as maximum punishment for a natural person.

In the second degree – the punishment prescribed for is imprisonment for a term of up to five years or a pecuniary punishment.

Competence in-trial criminal proceedings

Principle of mandatory criminal proceedings.

Investigative bodies and Prosecutors' Offices are required to conduct criminal proceedings when facts referring to a criminal offence become evident, unless circumstances provided for in § 199 of this Code exist which preclude criminal procedure or unless the basis to terminate criminal proceedings in accordance with subsection 201 (2), § 202, 203, 203¹, 204, 205, 205¹, 205² or section 435 (3) of this Code exists.²

¹ Penal Code, Section 3, Types of offences

² Code of Criminal Procedure, Section 6, Principle of mandatory criminal proceedings

(1) The Prosecutor's Office shall direct pre-trial proceedings and ensure the legality and efficiency thereof and represent public prosecution in court.

(2) The authority of a Prosecutor's Office in criminal proceedings shall be exercised independently by the prosecutor in the name of the Prosecutor's Office and the prosecutor is governed only by law.³

An investigative body shall perform the procedural acts provided for in this Code independently unless the permission of a court or the permission or order of a Prosecutor's Office is necessary for the performance of the act.⁴

In practice the police conducts the investigation but it is directed by a prosecutor in terms of taking the main decisions concerning direction of the investigation and some main decisions taken by the police also have to be agreed on by prosecutor.

(1) An investigative body or a Prosecutor's Office commences criminal proceedings by the first investigative activity or other procedural act if there is reason and grounds therefor and the circumstances provided for in subsection 199 (1) of this Code do not exist.

(2) If criminal proceedings are commenced by an investigative body, the body shall immediately notify the Prosecutor's Office of the commencement of the proceedings.⁵

Notification can also be done by phone.

(1) The reason for the commencement of criminal proceedings is a report of a criminal offence or other information indicating that a criminal offence has taken place.

(2) The grounds for a criminal proceeding are constituted by ascertainment of criminal elements in the reason for the criminal proceeding.⁶

There is no obligation to draw a special decision on commencement of criminal proceedings, and criminal proceedings are considered commenced by the first investigative activity or another procedural act.

³ Code of Criminal Procedure, Section 30, Prosecutor's Office in criminal procedure

⁴ Code of Criminal Procedure, Section 32, Investigative bodies in criminal procedure, Subsection 1

⁵ Code of Criminal Procedure, Section 193, Commencement of criminal proceedings, Subsections 1 and 2

⁶ Code of Criminal Procedure, Section 194, Reasons and grounds for criminal proceedings

Refusal to commence and termination of criminal proceedings

Refusal to commence criminal proceedings

(1) *Criminal proceedings shall not be commenced if:*

- 1) *there are no grounds for criminal proceedings;*
- 2) *the limitation period for the criminal offence has expired;*
- 3) *an amnesty precludes imposition of a punishment;*
- 4) *the suspect or accused is dead or the suspect or accused who is a legal person has been dissolved;*
- 5) *a decision or a ruling on termination of criminal proceedings has entered into force in respect of a person in the same charges on the bases provided for in § 200 of this Code;*
- 6) *a suspect or accused is terminally ill and is therefore unable to participate in the criminal proceedings or serve a sentence;*
- 7) *these criminal offences are specified in §§ 414, 415, 418 and 418¹ of the Penal Code and the person voluntarily surrenders the firearms, explosive devices in illegal possession or the substantial part, ammunition or explosive thereof;*
- 8) *based on the same facts, criminal proceedings are conducted in other states or criminal proceedings are concentrated in another state on the base provided for in § 436¹ to 436⁶ of the Code.*

(2) *Criminal proceedings shall not be commenced if detention of the suspect is substituted for pursuant to § 219 of this Code.⁷*

The investigative body shall, within 10 days as of receipt of a report, notify the person who submitted the report of the refusal to commence criminal proceedings.

This term may be extended by 10 days for deciding on the commencement of or refusal to commence criminal proceedings.

The notification sent is the decision on refusal, it is just called "notification of refusal to commence criminal proceedings". There is just one document.

The person concerning whom the complaint was submitted to has to be notified, except if confidentiality of the fact of notification is ensured pursuant to law or non-notification is required for prevention of crime (for example in cases of violent crimes in order to protect a victim).

A victim may file an appeal with the Prosecutor's Office against refusal to commence criminal

⁷ Code of Criminal Procedure, Section 199, Circumstances precluding criminal proceedings, Subsections 1 and 2

proceedings. An appeal may be filed within 10 days as of receipt of a notice on refusal to commence criminal proceedings.

Termination of criminal proceedings due to failure to identify a person who committed criminal offence

If, in pre-trial proceedings, a person who committed a criminal offence has not been identified and it is impossible to collect additional evidence, the proceedings shall be terminated on the basis of an order of the investigative body with the permission of a Prosecutor's Office, or by an order of a Prosecutor's Office. The proceedings may also be terminated partially in respect of a suspect or a criminal offence.

Where the bases prescribed cease to exist, proceedings shall be resumed pursuant to the procedure prescribed in § 193 of this Code.⁸

There are no specific orders or requirements of the Prosecutor's Office concerning the amount of investigative actions, which must be performed in particular criminal cases before criminal proceedings may be terminated due to failure to identify the person who committed a criminal offence. There also are no particular procedural terms when such criminal proceedings may be terminated. Criminal proceedings may be terminated very soon after commencement if all necessary actions for identification of a suspect have been performed but the result was not achieved.

There is no requirement to draw a special decision for resumption of proceedings. Proceedings are considered resumed by the first investigative activity or another procedural act after termination.

Termination of criminal proceedings in case of lack of public interest and negligible guilt

In case of lack of public interest and in case of negligible guilt the Prosecutor's Office may request termination of the criminal proceedings by a court with the consent of the suspect or accused if the following conditions exist:

- the object of criminal proceedings is a criminal offence in the second degree,
- the guilt of the person suspected or accused of the offence is negligible,
- the suspect has remedied or has commenced to remedy the damage caused, or
- has paid the expenses relating to the criminal proceedings or assumed the obligation to pay such expenses, and
- there is no public interest in the continuation of the criminal proceedings.

⁸ Code of Criminal Procedure, Section 200¹, Termination of criminal proceedings due to failure to identify person who committed criminal offence

At the same time the court may impose the following obligation to perform within the term not exceeding six months (except for drug addicts) at the request of the Prosecutor's Office and with the consent of the suspect or the accused:

- to pay the expenses of the criminal proceedings or compensate for the damage,
- to pay a fixed amount into the public revenues or to be used for specific purposes in the interest of the public,
- to perform 10 to 240 hours of community service,
- not to consume narcotics and to undergo the prescribed addiction treatment.

If a person with regard to whom criminal proceedings have been terminated fails to perform the obligation imposed, a court at the request of the Prosecutor's Office shall resume the criminal proceedings by an order.

If the object of criminal proceedings is a criminal offence in the second degree for which the minimum rate of imprisonment is not prescribed as punishment or only a pecuniary punishment is prescribed, a Prosecutor's Office may also terminate the criminal proceedings and impose the obligations mentioned above.

In the same way as a court the Prosecutor's Office may also resume terminated criminal proceedings by an order if the obligations are not fulfilled.⁹

Termination of criminal proceedings on this base depends on public interest, and a prosecutor is a person who decides whether it is appropriate to request termination of the particular criminal proceedings (or to terminate by himself) or not. More often criminal proceedings are terminated using this legal base by prosecutors.

Usually criminal proceedings commenced against a person who has committed a larceny for the first time are terminated using this legal base.

Termination of criminal proceedings in case of lack of public interest and in case of negligible guilt in 2013 was applied for 16 % of cases.

Termination of criminal proceedings due to lack of proportionality of punishment

If the object of criminal proceedings is a criminal offence in the second degree, the Prosecutor's Office may request termination of the criminal proceedings by a court with the consent of the suspect or accused and the victim if:

- *the punishment to be imposed for the criminal offence would be negligible compared to the punishment which has been or presumably will be imposed on the suspect or accused for the commission of another criminal offence;*

⁹ Code of Criminal Procedure, Section 202, Termination of criminal proceedings in case of lack of public interest in proceedings and negligible guilt

Guidelines

- *imposition of a punishment for the criminal offence cannot be expected during a reasonable period of time and the punishment which has been or presumably will be imposed on the suspect or accused for the commission of another criminal offence is sufficient to achieve the objectives of the punishment and satisfy the public interest in the proceeding.*¹⁰

If necessary the court may also resume the criminal proceedings by an order:

- if punishment imposed for another criminal offence is subsequently annulled;
- if the punishment imposed for another criminal offence is not severe enough or imposition of a punishment cannot be expected during a reasonable period of time and it will not be sufficient to achieve the objectives of the punishment and satisfy the public interest in the proceeding.

The Prosecutor's Office may also terminate the criminal proceedings on the aforementioned bases the same way as the court in situation if the object of criminal proceedings is a criminal offence in the second degree for which the minimum rate of imprisonment is not prescribed as punishment or only a pecuniary punishment is prescribed as punishment.

The Prosecutor's Office may also resume terminated criminal proceedings by an order on the same bases as the court.

Criminal proceedings may be terminated due to lack of proportionality of punishment only if a victim and a suspect agree to termination.

Termination of criminal proceedings on the basis of conciliation

The Prosecutor's Office or court may send a suspect or accused and the victim to conciliation proceedings with the objective of achieving conciliation between the suspect or accused and the victim and remedying of the damage caused by the criminal offence. For that the consent of the suspect or accused and the victim is necessary.¹¹

If facts relating to a criminal offence in the second degree which is the object of criminal proceedings are obvious and there is no public interest in the continuation of the criminal proceedings and the suspect or the accused has reconciled with the victim pursuant to the procedure provided for, the Prosecutor's Office may request termination of the criminal proceedings by a court with the consent of the suspect or accused and the victim. Termination of criminal proceedings is not permitted:

- 1) *in the criminal offences specified in §§ 133.¹, 133.², 134, 138 to 139, 141 and 143 and in the criminal offence specified in § 144 of the Penal Code, if the victim is less than eighteen years of age;*
- 2) *in criminal offences committed against a victim who is less than fourteen years of age;*

¹⁰ Code of Criminal Procedure, Section 203, Termination of criminal proceedings due to lack of proportionality of punishment, Subsection 1

¹¹ Code of Criminal Procedure, Section 203², Conciliation proceedings, Subsection 1

Guidelines

- 3) *if the criminal offence resulted in the death of a person;*
- 4) *in crimes against humanity and international security, against the state, criminal official misconduct, crimes dangerous to the public and criminal offences directed against the administration of justice.*¹²

The court shall impose, at the request of the Prosecutor's Office and with the consent of the suspect or the accused, the obligation to pay the expenses relating to the criminal proceedings and to meet some or all of the conditions of the conciliation agreement on the suspect or accused.

If a person with regard to whom criminal proceedings have been terminated fails to perform the obligations imposed on him or her, the court, at the request of the Prosecutor's Office, shall resume the criminal proceedings by an order.

If the object of criminal proceedings is a criminal offence in the second degree for which the minimum rate of imprisonment is not prescribed as punishment or only a pecuniary punishment is prescribed as punishment, the Prosecutor's Office may terminate the criminal proceedings and impose the obligations on the same aforementioned bases.

The Prosecutor's Office may also resume terminated criminal proceedings by an order if the person fails to perform the obligations imposed.

An Appeal

A simplified order shall set out the right of the victim to submit a request to a body conducting proceedings within 10 days as of receipt of the order for receipt of a reasoned order. If it is requested the body conducting the proceedings have to prepare a reasoned order within 15 days as of receipt of the request of a person.

A victim also has the right to examine the criminal file within 10 days as of receipt of a copy of the order on termination of the criminal proceedings.

A victim may file an appeal with the Public Prosecutor's Office against termination of criminal proceedings or dismissal of an appeal by a Prosecutor's Office.

An appeal may be filed within 10 days as of receipt of a copy of a reasoned order on termination of the criminal proceedings.¹³

Substitution of Detention of Suspect

If a person has committed a criminal offence in the second degree for which a pecuniary punishment may be imposed and the person does not have a permanent or temporary place

¹² Code of Criminal Procedure, Section 203¹, Termination of criminal proceedings on the basis of conciliation, Subsection 1

¹³ Code of Criminal Procedure, Section 207, Contestation of refusal to commence or termination of criminal proceedings in Office of Prosecutor General

of residence in Estonia, an investigative body may, with the consent of the person, substitute the detention of the person as a suspect by a payment covering the procedure expenses, the potential pecuniary punishment and the damage caused by the criminal offence into the public revenues.¹⁴

This form of proceedings is a very convenient solution for dealing with crimes committed by foreigners which do not live in Estonia. This is not a typical criminal procedure against a person with relevant legal consequences, although appropriate documentation is formed. This option is beneficial for suspects as they can avoid full criminal proceedings and also for police and society as a rapid and effective solution.

¹⁴ Code of Criminal Procedure, Section 219, Substitution of detention of suspect, Subsection 1

Simplified proceedings

Alternative proceedings

(1) At the request of an accused and a Prosecutor's Office, the court may adjudicate a criminal matter by way of alternative proceedings on the basis of the materials of the criminal file without summoning the witnesses or qualified persons.

(1.1) An accused and a prosecutor may submit a request for the application of alternative proceedings to the court until the commencement of examination by the court in a county court.

(2) Alternative proceedings shall not be applied:

- 1) in the case of a criminal offence for which life imprisonment is prescribed as punishment by the Penal Code;*
- 2) in the case of a criminal matter where several persons are accused and at least one of the accused does not consent to the application of alternative proceedings.¹⁵*

If a suspect or accused, counsel and Prosecutor's Office consent to the application of alternative proceedings, the Prosecutor's Office shall prepare the statement of charges.

The accused may also withdraw the request for the application of alternative proceedings until the completion of examination by the court.

A prosecutor, accused, his or her counsel, victim and civil defendant shall be summoned to a court session. The failure of a victim or civil defendant to appear in a court session do not hinder the court hearing and the hearing of the civil action.

In the court session the prosecutor gives an overview of the charges and the evidence, which corroborates the charges and which the prosecutor requests to be examined by the court.

Then the accused is given a word, followed by a proposal to the counsel to submit his or her opinion as to whether the charges are justified. Thereafter, the victim and the civil defendant or their representatives are given the floor.

The participants in the court session shall rely only on the materials of the criminal file. The court shall intervene if the participants in the proceedings refer to circumstances outside the criminal file. Nevertheless the accused may request that he or she is interrogated and the judge may also question the participants in the proceedings.

The court shall make one of the following decisions in chambers:

- 1) a ruling on the return of the criminal file to the Prosecutor's Office if there are no grounds for the application of alternative proceedings;
- 2) a ruling on the return of the criminal file to the Prosecutor's Office if the materials of the criminal file are not sufficient for the adjudication of the criminal matter by way of alternative proceedings;

¹⁵ Code of Criminal Procedure, Section 233, Grounds for application of alternative proceedings, Subsections 1 and 2

- 3) a ruling on termination of the criminal proceeding;
- 4) a judgment of conviction or acquittal with regard to the accused.

If a judgment of conviction is made by way of alternative proceedings, the court shall reduce the principal punishment to be imposed on the accused by one-third after considering all the facts relating to the criminal offence.¹⁶ This condition is a good motivation for the accused to request the court to adjudicate a criminal matter by way of alternative proceedings on the basis of the materials of the criminal file, thereby making criminal proceedings simpler and more effective.

Settlement proceedings

A court may adjudicate a criminal matter by way of settlement proceedings at the request of the accused or the Prosecutor's Office.

Settlement proceedings shall not be applied:

- 1) for criminal proceedings on a wide range of heavy crimes;
- 2) if the accused, his or her counsel or the Prosecutor's Office does not consent to the application of settlement proceedings;
- 3) in the case of a criminal matter where several persons are accused and at least one of the accused does not consent to the application of settlement proceedings;
- 4) if the victim or the civil defendant does not consent to the application of settlement proceedings.¹⁷

If a Prosecutor's Office considers application of settlement proceedings possible, it shall explain the option of applying settlement proceedings, the rights of the suspect or accused and the counsel, the consequences of application of settlement proceedings, prepare a report concerning consent granted by a civil defendant, ascertain the opinions of the victim about settlement proceedings and the civil action, and explain that the victim has no right to withdraw from the consent granted for settlement proceedings. A civil defendant also does not have the right to withdraw from a consent granted.

When a Prosecutor's Office and the suspect or accused and his or her counsel have reached a settlement concerning the legal assessment of the criminal offence and the nature and extent of the damage, negotiations can be commenced concerning the type and the category or term of the punishment, which the prosecutor requests in court. Settlement can not be concluded on a more severe punishment, which is more than 18 years of imprisonment.

If a Prosecutor's Office and the suspect or accused and his or her counsel fail to reach a settlement, the criminal proceedings are continued pursuant to general procedure.

The court can refuse to adjudicate criminal matter by settlement proceedings or return the

¹⁶ Code of Criminal Procedure, Section 238, Decisions in alternative proceedings

¹⁷ Code of Criminal Procedure, Section 239, Grounds for application of settlement proceedings

criminal file to the Prosecutor's Office for conclusion of a new settlement if the court does not consent to the legal assessment of the criminal offence, the amount of the civil action or the type or the category or term of the punishment.

A prosecutor, the accused and his or her counsel shall be summoned to a court session. In a court hearing the prosecutor gives an overview of the settlement. The judge asks whether the accused understands the settlement, consents thereto and ascertains whether the conclusion of the settlement was the actual intention of the accused. The judge also asks the opinions of the counsel and the prosecutor and whether they will adhere to the settlement. If it is necessary the judge may also question the participants in the proceedings.

If there are no circumstances precluding court judgement the court makes judgment on the conviction of the accused and on imposition of the punishment agreed upon in the settlement on the accused.

Summary proceedings

(1) If the facts relating to a subject of proof are explicit in the case of a criminal offence in the second degree and the prosecutor considers application of a pecuniary punishment as the principal punishment, the court may adjudicate the criminal matter by way of summary proceedings at the request of the Prosecutor's Office.

(2) Summary proceedings shall not be applied if the suspect is a minor.

(3) Summary proceedings shall not be applied if addiction treatment of drug addicts or complex treatment of sex offenders can be administered to the suspect.¹⁸

(1) In summary proceedings, a Prosecutor's Office shall prepare a statement of charges the main part of which shall set out:

- 1) the facts relating to the criminal offence;*
- 2) the legal assessment of the criminal offence;*
- 3) the nature and extent of the damage caused by the criminal offence;*
- 4) the evidence in proof of the charges;*
- 5) a proposal concerning the type and the category or term of the punishment.*

(2) A statement of charges and the materials of the criminal matter shall be sent to a court and copies of the statement of charges to an accused and his or her counsel.

(3) An accused and a counsel may submit a written opinion to a court within 30 days as of receipt of the statement of charges on adjudication of a criminal matter.¹⁹

Upon receipt of a criminal matter by a court but not earlier than 15 days after submission of the statement of charges to an accused and counsel, a judge prepares a court judgment if

¹⁸ Code of Criminal Procedure, Section 251, Grounds for application of summary proceedings

¹⁹ Code of Criminal Procedure, Section 252, Main part of statement of charges in summary proceedings

he or she consents to the conclusions presented in a statement of charges concerning the proof of the charges and the category or term of the punishment.

A copy of a court judgment made by way of summary proceedings shall be delivered to the accused and the Prosecutor's Office within 3 days as of the making of the judgment. Within 15 days as of the receipt of a court judgment the accused and the counsel have the right to request that the court hears the criminal matter pursuant to the general procedure.

If the accused or the counsel does not request that the court hears the criminal matter pursuant to the general procedure, the court judgment made by way of summary proceedings shall enter into force.

If a convicted offender contests a court judgment made by way of summary proceedings and requests that the court hears the criminal matter pursuant to the general procedure, the judge prepares a ruling on the return of the criminal file to the Prosecutor's Office. The prosecutor prepares a new statement of charges for continuation of the proceeding pursuant to the general procedure.

Expedited procedure

If a person is suspected of a criminal offence in the second degree and the facts relating to the subject of proof of which are explicit and all necessary evidence concerning which have been taken, the Prosecutor's Office may request that the court adjudicate that criminal matter pursuant to expedited procedure.

The request shall be made within 48 hours after the person has been interrogated as a suspect or after the person has been detained as a suspect.²⁰

This is the only type of simplified proceedings, which is beneficial not only for the Prosecutor's Office and courts but also for police in terms of decreasing of workload and increasing of efficiency.

An expedited procedure usually is not performed if a suspect is a minor because it is not possible to collect all necessary characterizing documents concerning a minor in 48 hours.

A person who has committed a criminal offence becomes a suspect in criminal proceedings at the moment of detention or interrogation. In the expedited procedure usually it is detention at a crime scene. Presence of a defence counsel to perform the expedited procedure is mandatory and it is possible to perform the expedited procedure only if the suspect agrees (the law does not require the consent of the suspect to apply the expedited procedure, but in practice usually the judges consider that the circumstances of the crime are not explicit if the suspect does not admit his/her guilt).

²⁰ Code of Criminal Procedure, Section 256¹, Basis for application of expedited procedure

The minutes for the expedited procedure shall set out:

- 1) statements of the suspect and other data relating to the interrogation or reference to separate minutes concerning the interrogation (that means that the interrogation may be written in the minutes of the expedited procedure);
- 2) whether the suspect wishes the hearing of the criminal matter to be conducted without summoning the witnesses;
- 3) testimony of the witness and other data relating to the questioning or reference to separate minutes concerning questioning (interrogation may be written in the minutes of the expedited procedure);
- 4) a list of other evidence;
- 5) the data provided for in a report on detention of a suspect if the person has been detained as a suspect.

The minutes for the expedited procedure shall be immediately forwarded to the Prosecutor's Office. Other evidence and the certificate concerning the expenses relating to the criminal proceedings are appended to the expedited procedure report.

If necessary, the Prosecutor's Office performs the acts necessary for the conduct of simplified proceedings. In such case, the data specified in the settlement or in the statement of charges in the summary proceedings shall be added to the minutes.

The Prosecutor's Office shall prepare the statement of charges and add the data to the minutes for the expedited procedure.

The accused and the criminal defence counsel are given a copy of the minutes for the expedited procedure.

If instead of the minutes for expedited procedure separate procedural documents are prepared, the accused and criminal defence counsel are given copies of the statement of charges and the materials of the criminal matter. The criminal defence counsel has the right to examine all the materials related to the criminal matter after the interrogation of the suspect until the beginning of the trial.

The Prosecutor's Office receives and settles petitions and complaints until a request for application of the expedited procedure is submitted to the court.

The participants in the proceeding and witnesses are summoned to court by the investigative body or the Prosecutor's Office with the approval of the court. The accused and the criminal defence counsel are summoned to court by the Prosecutor's Office.

The court session shall start within 48 hours of detention or interrogation of a suspect and all parties have to arrive to court. The prosecutor arranges the time of a court session. In practice some prosecutors meet the suspect before court but usually they meet only at court and a punishment, which will be requested to be imposed is already agreed upon.

The prosecutor makes an oral request to the court for hearing a matter by the expedited procedure and submits the materials related to the criminal matter to the court.

After declaring the commencement of examination by court, the court asks the prosecutor to present the statement of charges.

If the court hearing of the criminal matter is impossible (e.g. return of the statement of charges to the Prosecutor's Office, termination of the criminal proceedings etc.) the court shall organise a preliminary hearing.

Judicial proceedings upon expedited procedure shall be carried out pursuant to the procedures provided for in Code of Criminal Procedure, taking into account the differences provided for expedited procedures.

(1) The court shall make one of the following decisions:

- 1) a ruling on return of the materials of the criminal matter to the Prosecutors Office if there are no grounds for application of the expedited procedure, except due to insufficient evidence;*
- 2) a judgment of conviction or acquittal with regard to the accused.*

(2) If the court makes a judgment of conviction by the expedited procedure, the court shall reduce the amount of compensation levies but not more than by a half.²¹

The amount of compensation levies paid upon a judgment of conviction in the case of a criminal offence in the second degree is 1.5 times the amount of the minimum monthly wage. This condition is an additional motivation for a suspect to adjudicate a criminal matter by way of the expedited procedure, thereby making criminal proceedings simpler, shorter and more effective.

The Expedited procedure is more often applied concerning:

1. Driving in state of intoxication and evasion of service of sentence.
2. Larceny (theft).
3. Physical abuse.

Usually expedited procedure is applied when a person is arrested in a crime scene (e.g. driving in state of intoxication, systematic shop-lifting, physical abuse). But for petty theft (value up to 200 €) if a person has committed it for the first time misdemeanour procedure on site, in a shop will be used.

²¹ Code of Criminal Procedure, Section 256⁵, Decision upon expedited procedure

Practical application

Actions in pre-trial criminal proceedings in accordance with the Expedited procedure on larceny from a store

§ 199. Larceny

(1) Taking away of movable property of another with the intention of illegal appropriation is punishable by a pecuniary punishment or up to three years' imprisonment.

(2) The same act if:

- 1) the object of the act is a firearm, ammunition, explosive substance or radiation source;
- 2) the object of the act is a narcotic drug or psychotropic substance or a precursor thereof;
- 3) the object of the act is an object of great scientific, cultural or historical significance;
- 4) committed by a person who has previously committed theft, robbery, embezzlement, acquisition, storage or marketing of property received through commission of an offence, intentional damaging or destruction of a thing, fraud or extortion;
- 5) the act is committed publicly, but without the use of violence;
- 6) committed on a large-scale basis;
- 7) committed by a group;
- 8) committed by intrusion; or
- 9) committed systematically, is punishable by a pecuniary punishment or up to five years' imprisonment.²²

Work on site of the event

1. Arrival of the police patrol at the site of the event.
2. Reception of pre-prepared documents (written statement, complaint from the store, security firm document containing necessary information) from employees of the shop (security guard) regarding the larceny.
3. Interrogation of eyewitnesses to the crime and drawing the records of interrogations.
4. If stolen goods are spoiled, they are given to the police or left in the store. If goods are unspoiled, they are returned to the store.
5. Transportation of the suspect to the police facilities.

²² Penal Code, Section 199, Larceny, Subsections 1 and 2

Initial activities at the structural unit of police

6. Filling in the Procedural Information System – MIS (throughout the entire course of direction of criminal proceedings). From there information is automatically forwarded to the Prosecutor's Office and to the court. Criminal proceedings are commenced with the first procedural act.
7. Detention of the suspect, drawing the report of detention of the suspect, explanation of rights and obligations of the suspect.
8. Adding a copy of a person's ID to the documentation or drawing the protocol of establishing the identity.
9. If any physical evidence needs to be seized, it can be done by the report of detention of a suspect, by the inspection report or by the record of interrogation of a suspect.
10. Packaging of physical evidence.
11. If an interpreter is required, order one via the electronic channel.
12. If the suspect is a minor or the expedited procedure is applied, order a counsel via the electronic channel.
13. Interrogation of the suspect and drawing a record of interrogation of the suspect.

Work to be done with a victim

14. If necessary, interrogation of the representative of the store.
15. Requesting the representative to file for civil action (in electronic form, digitally signed), to show the amount of damage and grounds of representing.
16. Obtaining the surveillance camera recordings by an act of handover, inquiry or interrogation.

Work to be done with the suspect

17. Explaining of the rights and obligations of the suspect, providing defence counsel and if necessary an interpreter. Interrogation of the suspect.
18. Confirming the expense remuneration application presented by the counsel.
19. If the suspect is a minor, interrogation of his or her parent. In practice the expedited procedure is not applied because the police do not have time to collect all relevant background information concerning the minor (from the juvenile committee and certificate of character from the school).
20. If necessary, collection of DNA samples and fingerprints of the suspect and drawing the report of collection (rarely done in larceny cases).

Guidelines

21. If the criminal proceeding will not be directed according to the expedited procedure and the suspect is released, the investigator has to choose a preventive measure – usually it is prohibition on departure from residence.

Work to be done with material evidence

22. Inspection of seized recording of video surveillance camera, drawing the inspection report and preparation of the photo table of fragments of the recording.
23. If necessary, inspection of property stolen and other material evidence seized, drawing the inspection report and preparation of the photo table.
24. If possible, returning of property owned by a victim and documenting the signature on acceptance of property.
25. If necessary, drawing the ruling on destruction of highly perishable physical evidence.
26. Drawing the protocol of the expedited procedure.

Collection of characteristic data about the suspect

27. Making a printout from the Punishment Registry through the MIS (Procedural Information System – mainly supports the basic police procedural work processes) regarding a criminal record of the suspect and adding it to the criminal case.
28. Making a query on the data on average daily income of the suspect through the MIS and filling in the protocol of the expedited procedure or adding the information to the criminal case.
29. Making a query on previous offences of the suspect through the MIS and adding information to the criminal case (the prosecutor can also perform this action).
30. Applying for a convoy for the suspect to be transported to the courthouse.
31. Drawing a cover letter of submission of the criminal case to the supervising public prosecutor and delivering the criminal case to the prosecutor.
32. Entering information in the MIS throughout the entire course of criminal proceedings no later than within 48 hours following the procedural act. All entered data is accessible by prosecutors and judges.

In practice a protocol of the expedited procedure includes the following components:

- Name of the body conducting the proceeding.
- Criminal case number.
- Place and date of preparing the protocol and time of starting.
- Name and professional status of the body conducting the proceeding.

Guidelines

1. Suspect's personal data (given names and surname, personal identification code or date of birth, marital status, citizenship, education, native language, residence or location and address, place of work or educational institution, contact information, identification document).
 - Note concerning summoning to court and way of summoning (orally, in writing etc.).
2. Data of detention/interrogation of the suspect.
 - Note concerning minutes on detention of a suspect, annexed to the protocol of the expedited procedure.
 - Note concerning minutes on interrogation of a suspect annexed to the protocol of the expedited procedure or testimony of a suspect itself written in a protocol of the expedited procedure.
3. Standpoint of the suspect whether he or she wishes hearing of the criminal case without summoning of witnesses.
4. Name and surname of the victim.
 - Note concerning minutes on questioning of the victim, annexed to the protocol of the expedited procedure.
 - Note concerning summoning to court and way of summoning.
 - Note concerning the victim's opinion on the possibility of a compromise procedure and civil action, annexed to the protocol of the expedited procedure.
5. Name and surname of the witness.
 - Note concerning minutes on interrogation of a witness, annexed to the protocol of the expedited procedure or testimony of a witness itself written in the protocol of the expedited procedure.
 - Note concerning summoning to court and way of summoning.
6. List of other evidence.
7. Enclosures to the protocol of the expedited procedure.
 - Note concerning the annexed statement of the Punishment Register.
 - Note concerning the annexed calculation of the expenditure of the criminal proceeding.
 - Note concerning the annexed data on average daily income of the suspect.
 - Note concerning the annexed protocol of consent of the civil defendant for the compromise procedure.
8. Notes on minutes (submission of applications and resolving, other notes or absence of notes).
 - Suspect's name and signature.
 - Counsel's name and signature.

Guidelines

- Note concerning a warning of an interpreter of the liability for the unjustified refusal to perform his or her duties and for the provision of a knowingly false interpretation pursuant to the Penal Code.
- Interpreter's signature.
- Name and signature of the official of the body conducting the investigation.

Other features simplifying criminal proceedings

In Estonia information and data collected during the administrative procedure later on can be used as evidence also in criminal proceedings because likewise as in criminal proceedings persons in the administrative procedure are warned of the liability for the provision of an intentionally false testimony.

There is no requirement to draw separate decisions concerning the legal status of a person, who has committed a crime. The person acquires a status and rights of a suspect when he or she is detained or interrogated as a suspect. The same with a victim – there is no separate decision to declare a person a victim. Also there is no requirement to draw a special decision on commencement of criminal proceedings. Criminal proceedings are considered commenced with the first investigative activity or investigative act.

There is no requirement to draw a special decision and protocol on seizure. Seizure of material evidence in criminal proceedings may be recorded by a protocol of detention, by a protocol of interrogation or by a protocol of inspection.

Compensation requests for civil action concerning damage caused by criminal offence are submitted in electronic form and are digitally signed.

There is no requirement for an expert-examination by a forensic medical examiner in cases of physical abuse and it is sufficient for evidence with inquiry of the medical staff on findings of bodily injuries. Also it is sufficient if the investigator describes visible injuries of the victim in a report of physical examination (Sec. 88). That allows application of the Expedited procedure also for cases of physical abuse because it is not necessary to wait for a conclusion of an expert-examination, which can take several weeks. Therefore the category of physical abuse cases is the third most often proceeded in accordance with the Expedited procedure.

There is no requirement to provide a variety of characterizing data concerning adult suspects. It is sufficient with a printout from the Punishment Registry through the Procedural Information System MIS regarding a criminal record of the suspect. Written request to respective medical institutions requesting to issue the statement regarding the person being enlisted with psychiatry or narcology authorities are sent only if there is suspicion concerning the person's state of mental health but not in every criminal case.

If a person has no official income then the official minimum income determined by the state is calculated as the actual income of a person.

There is the MIS (Procedural Information System) implemented, which mainly supports basic police procedural work process. MIS users are administrative, misdemeanour and

criminal proceeders/investigators who carry out the procedures. Main functions of MIS are: registration of offence and informational eventualities, commencement or refusal to start proceedings, compiling of procedure documents, data exchange between MIS and ET (E-File), information processing of wanted persons and objects, penalty claims and accounting of received penalties, sending money claims in enforcement proceedings, and data exchange with other national registries. MIS users can make queries from the Population Register, Tax Office IS, Punishment Register, Schengen IS (SIS), Interpol, Register of Detainees, E-Land Register, Education IS, Traffic Insurance Fund, Traffic Register, Citizenship and Migration IS, E- Business register, Gun Register, and Health Insurance IS.

All relevant information concerning criminal proceedings is entered in the MIS and information is also available for prosecutors and judges. That facilitates cooperation between the police and the Prosecutor's Office and courts and ensures successful direction of simplified proceedings.

FINLAND

Offence and competence in pre-trial criminal proceedings

Offence

A person may be found guilty of an offence only on the basis of an act that has been criminalized in law at the time of its commission.

The punishment and other sanction under criminal law shall be based on law.¹

All offences are provided by the Criminal Code of Finland and there is no special Code of Administrative offences like in other countries. However there are also some minor offences (e.g., littering, some traffic violations) provided by separate laws.

For property crimes there is no specific amount of money set in the Criminal Code of Finland to divide petty offence from aggravated offence. For example, theft in practice is considered as a petty theft if the value of property is less than approximately 500 euros. And it is considered an aggravated theft if the value of property is higher than approximately 10 000 euros. At the same time modus operandi is also important. If petty theft was committed using specific equipment (e.g., a folio bag) it can be considered as a theft and if it was committed by using minor violence it can be also considered as an aggravated theft.

Competence in pre-trial criminal proceedings

The principle of mandatory criminal proceedings

The criminal investigation authority shall conduct an investigation when, on the basis of a report made to it or otherwise, there is reason to suspect that an offence has been committed.

Before initiating the criminal investigation, the criminal investigation authority shall if necessary clarify the circumstances connected with the suspected offence referred to in subsection 1, in particular so that no one is unjustifiably deemed a suspect in the offence and so that, when the matter requires it, the decision referred to in section 9, subsection 1 or section 10, subsection 1 on the waiving of the criminal investigation can be made. The provisions of this Act apply as appropriate to the measures that precede the initiation of the criminal investigation.

The head investigator decides when necessary on whether or not to conduct a criminal investigation as well as on clarification of the matters that may possibly be needed in order to make the decision. The criminal investigation measures necessary to clarify the matter may be undertaken already before the decision of the head investigator.²

¹ The Criminal Code of Finland, Chapter 3, Section 1, The principle of legality

² Criminal Investigation Act, Chapter 3, Section 3, Conduct of the criminal investigation

The following shall be clarified in the criminal investigation:

(1) in the manner required by the nature of the matter...³

The police evaluate each case and take relevant measures and use proportionate resources depending on the severity of the crime and there is no obligation to perform the same amount of investigative activities and to collect the same amount of evidence in each case without taking into account the damage caused by crime and public interest in prosecution.

The criminal investigation is conducted by the police.

In addition to the police, the border guard, customs and military authorities are criminal investigation authorities as provided in respect of their criminal investigation competence in the Border Guard Act (578/2005), the Customs Act (1466/1994), the Military Discipline Act (331/1983) and the Act on the Performance of Police Functions in the Defence Forces (1251/1995).

In addition to the criminal investigation authorities, the prosecutor participates in the criminal investigation.⁴

The criminal investigation is directed by the head investigator, who is the official with the power of arrest referred to in Chapter 2, section 9 of the Coercive Measures Act (806/2011). However, the public prosecutor serves as the head investigator only in the cases referred to in section 4, subsection 1 (if a police officer is suspected in an offence).⁵

The public prosecutor directs the criminal investigation if a police officer is suspected in an offence in the performance of his or her official duties. Even if an offence that a police officer is suspected of having committed had not been committed in the performance of official duties, the public prosecutor may, when this is required in view of the seriousness of the offence or otherwise by the nature of the matter, decide to assume the duties of head investigator.⁶

Usually public prosecutors do not lead investigation and police do that, however in the abovementioned cases also a public prosecutor can direct the criminal investigation.

The investigator, under the leadership and supervision of the head investigator, conducts the questioning concerning the suspected offence and the other criminal investigation measures and carries out the orders given by the head investigator regarding the investigation of the matter and performs the other measures which according to law are incumbent on the investigator.⁷

The head investigator (investigation leader) is a person who takes decisions concerning actions and measures to be taken, directs a criminal investigation, and signs documents prepared by the investigator, such as requests and decisions on coercive measures. The investigator performs all necessary investigation activities under the supervision of the head investigator.

³ Criminal Investigation Act, Chapter 1, Section 2, Issues to be clarified in the criminal investigation, Subsection 1

⁴ Criminal Investigation Act, Chapter 2, Section 1, The authorities in the criminal investigation

⁵ Criminal Investigation Act, Chapter 2, Section 2, Head Investigator, Subsection 1

⁶ Criminal Investigation Act, Chapter 2, Section 4, Special investigation arrangements, Subsection 1

⁷ Criminal Investigation Act, Chapter 2, Section 3, Investigator

On the request of the public prosecutor, the criminal investigation authority shall conduct a criminal investigation or perform a criminal investigation measure. Also otherwise the criminal investigation authority shall comply with orders given by the public prosecutor intended to ensure clarification of the matter in the manner referred to in Chapter 1, section 2.⁸

The criminal investigation authority shall, in the manner required by the nature or scope of the matter, notify the public prosecutor of the conducting of a criminal investigation and of circumstances connected with criminal investigation measures and otherwise of progress in the investigation. If the criminal investigation authority has notified the public prosecutor of the opening of an investigation in an offence, the head investigator shall, before concluding the criminal investigation, hear the public prosecutor on whether the matter has been clarified sufficiently in the manner referred to in Chapter 1, section 2, if the nature or scope of the matter require that the public prosecutor be heard, or if the intention is to conclude the criminal investigation without submitting the matter to the prosecutor. The Coercive Measures Act contains provisions on the notification obligation concerning the use of coercive measures.

The public prosecutor shall participate to the extent necessary in the criminal investigation in order to ensure that the matter is clarified in the manner referred to in Chapter 1, section 2.

The criminal investigation authority and the public prosecutor shall discuss questions relating to the arrangement of cooperation in the criminal investigation.⁹

The public prosecutor receives the already investigated case from the police and evaluates evidence. In the event of submission of the case to the court the public prosecutor prepares relevant and very precise documents regarding the persons, the crime and the evidence pertaining to the case. The public prosecutor usually does not interfere into an investigation, except severe cases where he or she takes part in the decision making process during investigation. There are meetings of prosecutors, head investigators and investigators arranged concerning measures to be taken in serious cases.

When an offence or an event that the reporting person suspects as an offence is reported to the criminal investigation authority, the authority shall record the report without delay.¹⁰

In Finland it is also possible to report an offence on the Internet and access to a reporting website is ensured by the Internet bank account of a reporting person. This service is available 24/7. The objective is to ensure that internet reports are inspected and registered to the crime register without delay. Nevertheless urgent cases should not be reported via internet.

If the public prosecutor may bring charges for the offence only at the request of the injured party (complainant offence), the criminal investigation is conducted only if the injured party has notified the criminal investigation authority or the public prosecutor that he or she requests that the offender be punished. If the injured party withdraws his or her request for punishment, the

⁸ Criminal Investigation Act, Chapter 5, Section 2, The competence of the public prosecutor in the criminal investigation, Subsection 1

⁹ Criminal Investigation Act, Chapter 5, Section 3, Obligation to cooperate, Subsections 1–3

¹⁰ Criminal Investigation Act, Chapter 3, Section 1, Recording of a report of an offence, Subsection 1

*investigation shall be discontinued.*¹¹

Upon the withdrawal of the request for punishment and discontinuation of the investigation the case will not be renewed if the injured party would change his or her mind. In shoplifting cases a request for punishment from an authorised person of a company may be received also by phone.

Complainant offences are, for example, petty offences, which have caused harm up to approximately 500 euros – petty theft, petty criminal damage, petty fraud, petty assault, invasion of domestic premises, defamation, menace.

¹¹ Criminal Investigation Act, Chapter 3, section 4, Conduct of the criminal investigation of a complainant offence, Subsection 1

Refusal to commence and termination of criminal proceedings

Refusal to commence criminal proceedings

In order to waive criminal investigation, based on the fact that no crime has been committed, a formal decision shall be written with a short motivation of the decision. This decision shall be made by the head investigator (investigation leader).

The criminal investigation may be waived or an already initiated criminal investigation may be discontinued in the case of an offence for which the maximum punishment expected is a fine and which, when assessed as a whole, is to be deemed manifestly petty, if the injured party has no requests in the matter.¹²

In this case a police officer may give the person suspected in an offence an oral or written caution.

Termination on the base of manifestly petty offence

The criminal investigation may be waived or an already initiated criminal investigation may be discontinued in the case of an offence for which the maximum punishment expected is a fine and which, when assessed as a whole, is to be deemed manifestly petty, if the injured party has no requests in the matter.¹³

The investigation is usually discontinued based on the aforementioned in cases of traffic offence, possession of alcohol, making noise, and disturbance of the public order. The obligatory condition for discontinuation of a case is that the injured party has no requests in the matter.

Interruption of a criminal investigation

After a criminal investigation has been initiated, it may be interrupted by the decision of the head investigator if no one is suspected in the offence and if no relevant clarification is available in the matter. In deciding on interruption of the criminal investigation, particular attention shall be paid to the nature of the suspected offence.

The criminal investigation shall be continued without undue delay when there are no longer prerequisites for interruption.¹⁴

In Helsinki (year 2013) approximately 56 % of all investigated incoming reports with no suspect

¹² Criminal Investigation Act, Chapter 3, Section 9, Waiver and discontinuation of the criminal investigation, Subsection 1

¹³ Criminal Investigation Act, Chapter 3, Section 9, Waiver and discontinuation of the criminal investigation, Subsection 1

¹⁴ Criminal Investigation Act, Chapter 3, Section 13, Interruption of a criminal investigation

are suspended by the police and a notification is sent to the plaintiff by e-mail, but these cases if necessary can also be easily reopened. As information is registered and the investigation is initiated in these cases, an investigation is conducted passively and police usually just wait for additional information or, for example, until the victim finds the stolen property.

The prosecutor's option not to prosecute

The public prosecutor may, on the request of the head investigator, decide that no criminal investigation is to be conducted or that the criminal investigation shall be discontinued, if he or she, on the basis of Chapter 1, section 7 or 8 of the Code of Criminal Procedure (see below as Prosecutor's option not to prosecute) or on the basis of another corresponding provision, should waive prosecution and if there is no important public or private interest that would require the bringing of charges.¹⁵

Decision on restriction of a criminal investigation is taken by the prosecutor based on the suggestion by the police.

The public prosecutor may decide not to prosecute:

(1) where a penalty more severe than a fine is not anticipated for the offence and the offence is deemed of little significance in view of its detrimental effects and the degree of culpability of the offender manifest in it; and

(2) where a person under 18 years of age has committed the offence and a penalty more severe than a fine or imprisonment for at most six months is not anticipated for it and the offence is deemed to be the result of lack of judgment or incaution rather than heedlessness of the prohibitions and commands of the law.

Unless an important public or private interest otherwise requires, the public prosecutor may, in addition to the events referred to in section 7, not prosecute:

(1) where the trial and punishment are deemed unreasonable or pointless in view of the settlement reached by the offender and the injured party, the other action of the offender to prevent or remove the effects of the offence, the personal circumstances of the offender, the other consequences of the offence to the offender, the welfare or health care measures undertaken and the other circumstances; or

(2) under the provisions on joint punishment and the consideration of previous punishments in sentencing, the offence would not have an essential effect on the total punishment.¹⁶

The latter provision, which allows not to prosecute is the so-called *cutting tales*. For example, if a suspect has committed a less severe crime and a severe crime and the abovementioned conditions exist, the prosecutor may not bring the case on the less severe crime through the whole criminal procedure and may prosecute and send to court just the case on severe crime. Whereas the perpetrator has been established, the victim can request a compensation for damages caused by the commitment of the less severe crime in a civil procedure.

¹⁵ Criminal Investigation Act, Chapter 3, Section 10, Restriction of a criminal investigation, Subsection 1

¹⁶ Criminal Procedure Act, Chapter 1, Sections 7 and 8

Restriction of a criminal investigation due to disproportionate expenses

The public prosecutor may, on the request of the lead investigator, also decide that the criminal investigation shall be discontinued if the expenses of continuing the investigation would be clearly disproportionate to the nature of the matter under investigation and the possible sanction or if on the basis of the criminal investigation measures already performed it is very probable that the public prosecutor should waive prosecution on grounds other than those referred to in subsection 1 (see above the Prosecutor's option not to prosecute). Discontinuation of the criminal investigation also requires that there is no important public or private interest that would require continuation of the investigation.¹⁷

For example, in the case of pick pocketing, if the victim is able to indicate that his or her property has been stolen within the last 24 hours at a railway station but cannot indicate the exact time of theft, it is too much work for the police to examine all video surveillance records for the given period of time and the police would not do so. In respect to the same crime, provided the victim is able to indicate the exact time of theft, the police will examine the video recordings and work on the case because they evaluate the efforts necessary for detection of a crime and the potential benefit of the said efforts. Based on this chapter, the decision on the restriction of a criminal investigation may also be taken in case there is a *word against word* situation between testimonies of the victim and the suspect or even in cases with no suspect, if the expenses of continuing the investigation would be clearly disproportionate to the nature of the matter under investigation.

In the case of restriction of a criminal investigation based on the abovementioned provisions of the Code of Criminal Procedure or due to disproportionate expenses, the decision on restriction is taken by the prosecutor based on the suggestion by the police. Termination of a case on the base of the manifestly petty offence, *cutting tales* or the first offence of a person is also usually conducted, based on a brief negotiation between the head investigator and the prosecutor, and if the prosecutor agrees to the termination of the case, the police shall submit to the prosecutor a suggestion in writing to terminate the case and the prosecutor shall make a decision in writing on the termination of the case. This decision shall be sent to the complainant and to the offender. The record on the termination of the case regarding such a petty crime shall not be retained in a criminal record of a person, but this record may be found in the police information system for the period of 2 years. In order to facilitate cooperation in the said decision making process and to discard certain cases already from the beginning, some prosecutors are also located in the police premises.

The criminal investigation shall be recommenced if there is a justified reason for this due to new factors, which have become evident in the matter.

Concerning decisions taken by the police in order to ensure effective allocation of investigation resources in Finland, it is a long-standing practice that the police based on previous experience decide how to allocate their resources and determine whether it is feasible to spend resources for investigation in particular categories of cases where there are no suspects. If the perpetrator is not known the police do not investigate the initiated cases of burglaries on construction sites,

¹⁷ Criminal Investigation Act, Chapter 3, Section 10, Restriction of a criminal investigation, Subsection 2

Guidelines

car thefts, bicycle thefts, pick pocketing (except specific measures to tackle this crime), thefts of boat motors and others. However the police conduct investigation even if there is no suspect in cases of open burglaries in houses, robberies, assault (domestic violence), fraud on the internet if the account number is known, pick pocketing outside the city centre and in other cases.

Simplified proceedings

Simplified criminal investigation

In simple and clear matters, the criminal investigation may be conducted in a simplified form as provided below if, in accordance with general sentencing practice, no punishment more severe than a fine is expected for the offence.

The head investigator decides as necessary on whether the criminal investigation is to be conducted in full or in a simplified form.¹⁸

In practice when criminal investigation is conducted in a simplified form a person is punished right on the spot and the criminal investigation is conducted by uniformed police officers.

A simplified criminal investigation does not have a head investigator. Only the main contents of the statement of the person being questioned is entered into the record of the questioning, and this may be recorded in another document in lieu of in a record of the questioning.

A simplified criminal investigation may be conducted without applying the provisions in Chapter 5, section 1 or in Chapter 7, sections 11 and 14–16. The same applies to Chapter 7, section 10, subsection 2 in respect of a notice of the right to retain counsel.¹⁹

Provisions not applied in the simplified criminal investigation:

- **no head investigator** (Chapter 2, section 2, subsection 1), there is no head investigator in such an investigation and all investigation is done by an investigator from the beginning to the end and he or she also closes the case);
- **no general record of a criminal investigation** (Chapter 9, section 6), there is no separate interrogation of a suspect and the result of the questioning is recorded in one sentence – whether the suspect admits or denies committing the crime. Other data is also recorded in a very brief form of a summary in the same document, which differs from the general record, which shall be prepared on the conclusion of the criminal investigation;
- **no notification to the prosecutor** (Chapter 5, section 1), in the procedure of a simplified criminal investigation the police do not have to notify the public prosecutor without delay regarding the matter;
- **no presence of a credible witness in questioning** (Chapter 7, section 11), there is no requirement to ensure the presence of a credible witness in the questioning if a suspect demands it;
- **no presence of the legal representative of a minor in the questioning** (Chapter 7, section 14);
- **no contact with the legal representative for a minor** (Chapter 7, section 15);

¹⁸ Criminal Investigation Act, Chapter 3, Section 14, Prerequisites for a simplified criminal investigation

¹⁹ Criminal Investigation Act, Chapter 11, Section 2, Content of a simplified criminal investigation

Guidelines

- **no participation of the representative of a social welfare authority in the questioning** (Chapter 7, Section 16), if a person under the age of 18 is suspected in an offence or a criminal act;
- **no notice of the right to retain counsel** (Chapter 7, Section 10.2), the simplified criminal investigation may be conducted without providing a suspect with notification of the right to retain counsel and without involvement of a counsel.

The proceedings of a simplified criminal investigation are applied in the investigation of clear and minor cases, such as traffic offences (except driving while intoxicated (DWI) – these cases shall be submitted to court), as well as investigation of shoplifting cases, drinking in public, possession of alcohol by minors and other simple and clear cases. Usually a simplified criminal investigation is conducted without detention of a suspect (domestic offenders) and financial punishment is ordered by the police patrol right on the spot. Whereas a simplified criminal investigation is used for the investigation of clear and minor cases, the confession of a suspect is not needed to conduct these proceedings.

Two different types of proceedings are described below – the summary fine proceeding and the summary penal fee proceeding, provided for in two additional laws, and the provisions mentioned above not applied in the simplified criminal investigation are applicable to these two types of proceedings. In these proceedings the police carry out the functions of the court and adopt the final decision in the case.

Summary fine	Summary penal fee
1. The amount of the fine depends on the seriousness of the crime and on the income of the suspect	1. The amount of the fee is fixed 10–115 euros regardless of the income of the suspect
2. No conversion of the fine into imprisonment	2. No conversion of a fee into imprisonment
3. 7 days to appeal the decision. If appealed, the case is submitted to the prosecutor and then to the court	3. 7 days to appeal the decision. If appealed, the case is submitted to the court. 30 days to appeal the decision if the crime is detected by automatic traffic cameras
4. In Helsinki approximately 22 % of crimes are investigated by this proceeding of which 2 % are crimes detected by traffic cameras	4. In Helsinki approximately 12 % of crimes are investigated by this proceeding of which 52 % are crimes detected by traffic cameras
5. 87 % of these cases are proceeded by uniformed police officers	5. 99 % of these cases are proceeded by uniformed police officers

6. This proceeding is more frequently applied in respect to shoplifting and more severe traffic offences:

- shoplifting 36 %
- causing danger in traffic 25 %
- traffic violation 13 %

6. This proceeding is more frequently applied in respect to infractions such as less severe traffic and alcohol offences:

- traffic infraction 87 %
- alcohol violation 7 %
- public order violation 1,5 %

(Statistical data as of 2013)

Written proceedings

The case can be handled without main hearing (in written proceedings) if:

- *maximum penalty by law is 2 years imprisonment;*
- *maximum penalty convicted is 9 months imprisonment;*
- *defendant confesses the criminal deed and gives consent to the written procedure;*
- *the defendant is at least 18 years old;*
- *the plaintiff gives consent to the written procedure;*
- *it is unnecessary to have a main hearing.*²⁰

The main beneficiary in written proceedings in terms of saving resources is not the police or the prosecutor's office, but the court. For the police written proceedings are even more time consuming, because when compared to a regular criminal investigation in written proceedings the police have to perform certain additional activities. The police have to explain the essentials of written proceedings to the suspect, obtain the confession of having committed a criminal deed, get the consent to the written proceedings, and to notify the parties about the application of the written proceedings. In the written proceedings the police have to do a full investigation job. The prosecutor has the obligation to carry out all the related paper-work, but does not have to meet the defendant at all. The court does not arrange a main court hearing and does not conduct a questioning of parties. The judge makes a decision in the case in an office based on the documents collected in the criminal case.

To conduct written proceedings the suspect must have a permanent address and all parties must be fluent in Finnish. Prior to the adjudication of the case by the court the copies of the criminal case documentation shall be sent to the suspect and it shall be double-checked whether all parties still agree to written proceedings. The problem is that some parties often do not respond to the second consent request and in these cases written proceedings may not be applied. Half of the criminal cases submitted for written proceedings are discontinued and submitted for main hearings because the parties have not replied to the consent request for application of written proceedings.

²⁰ Criminal Procedure Act, Chapter 5a, Sections 1–9

Written proceedings are more frequently applied for the cases of:

- driving while intoxicated (DWI);
- driving without a licence;
- aggravated DWI;
- thefts;
- petty thefts.

Urgent summoning by prosecutor

The prosecutor is to bring a charge by delivering a written application for a summons to the registry of the district court. The court may order, to the extent deemed necessary, that the prosecutor can bring a charge by self summoning the defendant.²¹

The aim of the urgent summoning by the prosecutor is to prevent time barring of the case and to get the accused convicted despite his or her absence. The prosecutor is available for the police at a police station on weekdays during daytime. In practice this proceeding is applied to foreign pickpockets and shoplifters without permanent residence in Finland. The suspect must plead guilty.

Urgent trial

There is no legislation concerning this procedure. The issue is urgent and practical co-operation between the police, the prosecutor, and the court. Therefore it is the issue of a regular criminal procedure taking place in an accelerated manner, for example, during a few days, when it normally takes at least one month, if a person is remanded to one year if the suspect is at large.

In practice this way of conducting criminal proceedings is applied for foreign pickpockets and shoplifters without permanent residence in Finland, which are convicted with a fine and then deported from Finland. To conduct this kind of an urgent trial the suspect does not have to plead guilty, but the evidence in the criminal case must be clear.

²¹ Criminal Procedure Act, Chapter 5, Section 1, Bringing a charge, Subsection 1

Practical application

Thefts in Finland are usually sentenced with a fine. In shoplifting cases more often 8-day fines are sentenced. If this punishment is sentenced by a court and converted into imprisonment then it is equivalent to 4 prison days.

Statement forms for pre-filling in shoplifting cases have been drawn up in cooperation with the Sellers' Association and contain all necessary information for criminal cases. In shoplifting cases there is no need to provide additional witnesses, because the security guard or the store detective, who has noticed the theft is already a credible witness. Therefore a record of video surveillance cameras is also not required in shoplifting cases because the security guard is already a credible witness. If the security guard has seen the video of the theft, it is also marked in the pre-filled statement. Provided the suspect would change his or her statement during the court proceedings and deny having committed the theft, the statement of the security guard would nevertheless be trusted even in the absence of a video record of the theft. It would not be considered as a *word against word* case by the court, because in this situation there is no contradiction between the testimonies of the complainant and the suspect, but between the security guard (witness) and the suspect, therefore the court would trust the statement of the security guard. In cases of traffic offences the police officer, who has noticed a traffic offence, is also a credible witness and there is no requirement to provide additional witnesses for making a decision in the case. Material evidence can also be described in these simplified proceedings. If stolen goods are not damaged, they are immediately returned to the store representative. If stolen goods are damaged they are not photographed, described or seized, just a note is written in the protocol that property is damaged and the claimant decides about a civil claim. Usually in shoplifting cases the offender is not detained, provided he or she is a domestic person, whereas if a person has committed shoplifting, for example, for the third time or there is suspicion that the offender could try to flee, he or she may be detained.

If the offender does not pay a fine sentenced in a general criminal proceeding, the court may convert the fine into a few days imprisonment, whereas the fine imposed by the police may not be converted for the time being. This situation creates a problem, because regular offenders do not pay fines imposed by the police and continue to commit crimes, and not all plaintiffs are willing to take a minor case to court. However this issue is under discussion in Finland. Usually if a person is a regular shoplifter and does not pay fines, the subsequent cases are processed by way of regular proceedings and submitted to court.

If the offender appeals the decision taken in a summary fine proceeding or in a summary penal fee proceeding, the police have to conduct full investigation, prepare all relevant documents pertaining to the case and the case is submitted to court, whereas the prosecutor does not have to conduct additional interrogation of the suspect.

Investigation steps in shoplifting cases

If the theft, when assessed as a whole, with due consideration to the value of the property or to the other circumstances connected with the offence, is to be deemed petty, the offender shall be sentenced for petty theft to a fine.

An attempt is punishable.²²

1. A police patrol arrives to the crime scene:
 - 1.1 Usually called by the shop detective/guard or the personnel of the shop.
 - 1.2 A pre-filled statement is handed to the police patrol.
 - 1.3 Oral statements and information from the witness (usually 1 witness). If there are no witnesses to the actual theft, surveillance material is collected.
2. Inspection and discussion with the suspect:
 - 2.1 Body search (weapons, drugs, alcohol, forbidden objects etc.).
 - 2.2 Whether the suspect is collaborative and what is his or her statement regarding the incident.
3. Checking of the stolen objects:
 - 3.1 If the stolen objects are undamaged they are immediately returned to the complainant. If the stolen objects are damaged during the incident their value is estimated (from the price tag) and a claim of a complainant or its representative is required.
4. Escorting of the suspect to the police car:
 - 4.1 Checking of the identification of the suspect, possible warrants and other information from the police information system.
 - 4.2 Provided the case is clear and the suspect does not deny committing the crime, a fine is imposed on the spot and the suspect is released after that.
5. The police patrol draws up a criminal report and transfers the information on the imposition of the fine to the police information system:
 - 5.1 The information regarding the fine is transferred by wire to the prosecutor.
 - 5.2 The suspect has the right to appeal in writing or orally to the prosecutor within 7 days (therefore video records of the theft are also kept in store for the period of 7 days in case they might be required).
 - 5.3 The suspect has to pay the fine within 30 days.
6. The prosecutor verifies the imposition of the fine after 7 days:
 - 6.1 If no appeals occur the case is final and legally valid.

²² Criminal Code, Chapter 28, Section 3, Petty theft

Guidelines

6.2 If the suspect appeals to the prosecutor and the prosecutor makes a decision to continue investigation, the case goes to the court.

Content of a shoplifting criminal case in simplified criminal investigation:

1. Brief final decision regarding the imposition of a fine.
2. The crime report of a police officer.
3. Pre-filled statement about the crime done by the plaintiff (shop, store etc.).
4. Notification of demand for punishment:
 - data, name, phone number of the plaintiff;
 - data, name, phone number of the witness;
 - information about the suspect, personal data;
 - description of the crime in 3–4 sentences;
 - imposed fine amount;
 - summary questioning of the suspect in a couple of words, whether he or she admits having committed the crime or not;
 - information regarding the appeal of the decision;
 - information regarding the payment of the fine.

In case of an ordinary theft the following additional actions shall be conducted:

- interrogation of the suspect;
- the claim of the plaintiff;
- telephone questioning of the store representative;
- video record of the theft if the suspect does not admit having committed the crime;
- interrogation of witnesses if necessary;
- additional protocol, taking photographs and destroying the damaged stolen goods prior to the court proceedings;
- the case is submitted to the prosecutor, who does not have to meet any of the parties prior to the court proceedings, reads the case materials, prepares documentation for the court, sends relevant document copies to the suspect, sends summons to the parties and sees parties only in the court.

Other features simplifying criminal proceedings

In Finland, when a person is interrogated, there is no special decision in writing on the status of the person in order to establish the person as a victim or a detainee, a suspect or an accused. When the status of the person is altered, it is reflected in the police report, the person is informed about that, and relevant rights are explained to the person prior to interrogation.

The police may take fingerprints, handprints and footprints, handwriting, voice and olfactory samples, photographs and information on identifying marks regarding the person suspected in an offence, for the purposes of identification, clarification of an offence, and also the registering of offenders even if there is nothing to compare with, just for possible use in the future.

The person to be questioned shall himself or herself be present in the questioning.

If the investigator deems that this would not inconvenience or compromise the reliability of the investigation, a party may give his or her statement through an attorney or by telephone or by other means of communication. Subject to the same prerequisites, a witness may be questioned by telephone or by other means of communication. The suspect may be questioned through an attorney only if the offence in question is not punishable by other or more punishment than a fine or imprisonment for six months.²³

This provision is applicable to all persons involved in simple criminal investigations and it really simplifies and speeds up the investigation. Among other means of communication in practise an e-mail is also used for questioning. In order to establish the identity of a person specific questions are asked to the person. These questions may be related to the premarital surname of a person's mother, siblings, driving licence or passport data, criminal record of the person, etc. This option to question a person without his or her presence is usually used for questioning of persons, who cannot arrive to the police station because of a vacation, distance, health condition and other reasons, also for questioning drunken drivers, if they plead guilty, and also for questioning persons in order to establish the perpetrator, when it is not known in a criminal case. After questioning in this manner a police officer writes a report and there is a special mark to be ticked in the protocol concerning questioning by telephone.

If a person is so intoxicated with alcohol or another intoxicant that he or she cannot be assumed to understand the significance of the questioning, he or she may be questioned only if the questioning cannot be postponed without endangering the clarification of the offence. The person to be questioned shall be reserved a later opportunity to examine his or her statement as provided below in respect of the examination of a statement under questioning.²⁴

If the person to be questioned is intoxicated with alcohol, it is not an obstacle to question the said person, provided the questioning cannot be postponed without endangering the clarification of the offence. Later on the questioned person can examine his or her statement. If the person has pleaded guilty during the questioning, but in a sober state does not any longer plead guilty, the

²³ Criminal Investigation Act, Chapter 7, Section 1, Presence of the person to be questioned, Subsections 1–2

²⁴ Criminal Investigation Act, Chapter 7, Section 3, Questioning of an intoxicated person

person shall have the right to make a new statement and alter the first statement. However the statement given in an intoxicated condition will also be added to the materials of the criminal case and submitted to court.

In order to ensure interpreting during the questioning for a suspect, who does not speak Finnish, if the questioning has to be conducted, for example, on the road during night time in a drunk driving case, the police may also provide interpreting by cell phone.

The questioning of an injured party may be left to await his or her initiative, if this is required by the nature of the matter due to a large number of injured parties or another corresponding reason. If there are too many persons who are victims of the offences committed by one offender (e.g., financial crimes), the police may set a term for pleading a victim to the crime. Usually it is done by announcement in mass media and a restricting deadline is set for submission of complaints (e.g., two weeks). Complaints submitted after the deadline shall not be added to the materials of the criminal case and only claims submitted in time shall be presented to the court.

Police officers have the right to remove a person if, on the basis of the person's threats or general behaviour, it can be concluded that he or she would be likely to commit an offence against life, health, liberty, domestic premises or property or his or her behaviour is causing or if, on the basis of the threats expressed by him or her or his or her general behaviour and previous behaviour in similar situations, he or she is likely to cause considerable disturbance or immediate danger to public order and security.

If it is apparent that the person's removal from a place is an inadequate measure and the disturbance or danger cannot otherwise be eliminated, the person may be apprehended and kept in custody for as long as it is likely that he or she would commit an offence referred to or cause disturbance or danger, but the period may not exceed 24 hours from the time of apprehension.²⁵

As a base for such apprehension a reasoned report of a police officer shall be written. Usually this measure is taken for recognised pickpockets detected in the crowd, thieves, who are looking inside of parked cars etc.

Concerning characterizing the data necessary to be collected in a criminal case there is a requirement to add only a printout of the criminal record on previous sentences from the database, and for minors – characterizing data from social authorities. There is no requirement to add data regarding the mental health of a suspect.

²⁵ Police Act, Chapter 2, Section 20, Preventing an offence or disturbance

GERMANY

Offences and the competence of investigation

Offences

(1) Felonies are unlawful acts punishable by a minimum sentence of one year's imprisonment.

(2) Misdemeanours are unlawful acts punishable by a lesser minimum term of imprisonment or by fine.¹

There is a separate proceeding code for regulatory offences/infractions – the Act on Regulatory Offences (Ordnungswidrigkeitengesetz), which refers only partly to the Code of Criminal Procedure.

A regulatory offence shall be an unlawful and reprehensible act, constituting the factual elements set forth in a statute that enables the act to be sanctioned by imposition of a regulatory fine.²

Regulatory offences can be provided by other laws, for example, the responsibility for a road traffic offence is established in the Road Traffic Act.

In the same way there is a separate penal and proceeding code for young offenders and juveniles – the Youth Courts Law (Jugendgerichtsgesetz).

(1) The public prosecution office shall have the authority to prefer public charges.

(2) Except as otherwise provided by law, the public prosecution office shall be obliged to take action in relation to all prosecutable criminal offences, provided there are sufficient factual indications.³

Competence of the investigation

As soon as the public prosecution office obtains knowledge of a suspected criminal offence either through a criminal information or by other means it shall investigate the facts to decide whether public charges are to be preferred.⁴

(1) The authorities and officials in the police force shall investigate criminal offences and shall take all measures that may not be deferred, in order to prevent concealment of facts...

(2) The authorities and officials in the police force shall transmit their records to the public prosecution office without delay. Where it appears necessary that a judicial investigation be performed promptly, transmission directly to the Local Court shall be possible.⁵

¹ German Criminal Code, Section 12, Felonies and misdemeanours, Subsections 1 and 2

² Act on Regulatory Offences, Section 1, Definition, Subsection 1

³ Code of Criminal Procedure, Section 152, Indicting Authority; Principle of Mandatory Prosecution, Subsections 1 and 2

⁴ Code of Criminal Procedure, Section 160, Investigation Proceedings, Subsection 1

⁵ Code of Criminal Procedure, Section 163, Duties of the Police, Subsection 1 and 2

The prosecutor has a formal responsibility for the investigation, and the police are considered to be a subordinate helping agency.

The police, when investigating an offence, are theoretically under the control and direction of the prosecution service. However in practice the police conduct the vast majority of investigations in misdemeanour cases independently of the prosecutor and present him or her with the completed file only at the conclusion of the investigation.

There are two main exceptions to this:

- The police will advise the prosecution of the commencement of an investigation in all kinds of serious cases, especially felonies and cases involving complex economic crimes. In some of these cases the prosecution will merely have a watching brief. In others, such as very serious crimes like homicide, they will be more actively involved throughout the investigation and may even attend the scene of the crime.
- In any case where the police wish to exercise coercive powers that require a judicial warrant or are seeking the pre-trial detention of a suspect on remand, they must advise the prosecutor, who is responsible for seeking the warrant or detention order.

After the investigations have been made by the police the file is sent to the regional public prosecutor's office. If during the investigations a judge's decision is necessary, the court of jurisdiction would be the investigating judge of the district court. His competence does not depend on the type of crime. The investigating judge rules on warrant of arrest, search of rooms, medical examination and telephone tapping and bugging.

The public prosecutor is responsible for finding sufficient evidence for the benefit of the defendant and against him. After having got the case, he may order that the police should do more investigations and he would tell them which. In very important cases he himself hears witnesses or leads the search of rooms. After this investigation he will decide:

- to drop the case because of lack of evidence against a certain person – 33 % of all cases. If the person who has committed minor criminal offence is unknown, the police will send the case to the public prosecutor's office which will dismiss the case, however, the case can be renewed when the perpetrator of the criminal offence is identified;
- to discontinue the proceedings concerning misdemeanours on the ground of insignificance – another third part of all cases. To do so the public prosecutor needs certain circumstances and sometimes the consent of the court of jurisdiction;
- to lay an indictment against the person charged with an offence or crime.

Termination of proceedings, dispense with prosecution

Termination of the investigation proceedings

(1) If the investigations offer sufficient reason for preferring public charges, the public prosecution office shall prefer them by submitting a bill of indictment to the competent court.

(2) In all other cases the public prosecution office shall terminate the proceedings. The public prosecutor shall notify the accused thereof if he was examined as such or a warrant of arrest was issued against him; the same shall apply if he requested such notice or if there is a particular interest in the notification.⁶

If the public prosecution office after conclusion of the investigation orders the proceedings to be terminated, it shall notify the applicant by indicating the reasons. Where the applicant is also the aggrieved person, he shall be entitled to lodge a complaint against the notification to the official superior of the public prosecution office within two weeks after receipt of such notification.

Non-prosecution of petty offences

If a misdemeanour is the subject of the proceedings, the public prosecution office may dispense with prosecution with the approval of the court competent to open the main proceedings if the perpetrator's guilt is considered to be of a minor nature and there is no public interest in the prosecution. The approval of the court shall not be required in the case of a misdemeanour which is not subject to an increased minimum penalty and where the consequences ensuing from the offence are minimal.⁷

Provisional dispensing with court action; provisional termination of proceedings

In a case involving a misdemeanour, the public prosecution office may, with the consent of the accused and of the court competent to order the opening of the main proceedings, dispense with preferment of public charges and concurrently impose conditions and instructions upon the accused if these are of such a nature as to eliminate the public interest in criminal prosecution and if the degree of guilt does not present an obstacle.⁸

For example, the following conditions and instructions may be applied:

- to pay a sum of money to a non-profit-making institution or to the Treasury;
- to perform some other service of a non-profit-making nature;

⁶ Code of Criminal Procedure, Section 170, Conclusion of the Investigation Proceedings, Subsections 1 and 2

⁷ Code of Criminal Procedure, Section 153, Non-Prosecution of Petty Offences, Subsection 1

⁸ Code of Criminal Procedure, Section 153a, Provisional Dispensing with Court Action; Provisional Termination of Proceedings, Subsection 1

Guidelines

- to participate in a social skills training course;
- to participate in a driver's competence course.

The public prosecution office shall set a time limit within which the accused is to comply with the conditions and instructions.

If the accused complies with the conditions and instructions, the offence can no longer be prosecuted as a misdemeanour. If the accused fails to comply with the conditions and instructions, no compensation shall be given for any contribution made towards compliance.

Insignificant secondary penalties

The public prosecution office may dispense with prosecuting an offence:

1. if the penalty or the measure of reform and prevention in which the prosecution might result is not particularly significant in addition to a penalty or measure of reform and prevention which has been imposed with binding effect upon the accused for another offence, or which he may expect for another offence, or
2. beyond that, if a judgment is not to be expected for such offence within a reasonable time, and if a penalty or measure of reform and prevention which was imposed with binding effect upon the accused, or which he may expect for another offence, appears sufficient to have an influence on the perpetrator and to defend the legal order.⁹

⁹ Code of Criminal Procedure, Section 154, Insignificant Secondary Penalties, Subsection 1

Simplified proceedings

Penal order

(1) In proceedings before the criminal court judge and in proceedings within the jurisdiction of a court with lay judges, the legal consequences of the offence may, in the case of misdemeanours, be imposed, upon written application by the public prosecution office, in a written penal order without a main hearing. The public prosecution office shall file such application if it does not consider a main hearing to be necessary given the outcome of the investigations. The application shall refer to specific legal consequences. The application shall constitute preferment of the public charges.

(2) A penal order may impose only the following legal consequences of the offence, either on their own or in combination:

- 1. fine, warning with sentence reserved, driving ban, forfeiture, confiscation, destruction, making something unusable, announcement of the decision, and imposition of a regulatory fine against a legal person or an association,*
- 2. withdrawal of permission to drive, where the bar does not exceed two years,*
 - 2a. prohibition of the keeping or care of, trade in or other professional contact with animals of any kind or of a certain kind for the duration of one to three years, as well as*
- 3. dispensing with punishment.*

Where the indicted accused has defence counsel, imprisonment not exceeding one year may also be imposed, provided its execution is suspended on probation.¹⁰

The judge shall comply with the application of the public prosecution office if he has no reservations about issuing the penal order. He shall set down a date for the main hearing if he has reservations about deciding the case without a main hearing, if he wishes to deviate from the legal assessment in the application to issue the penal order, or if he wishes to impose a legal consequence other than those applied for and the public prosecution office insists on its application. In addition to the summons, the defendant shall be provided with a copy of the application to issue a penal order, not including the legal consequence applied for.

The penal order shall contain:

- the personal identification data of the defendant and of any other persons involved;
- the name of the defence counsel;
- the designation of the offence the defendant is charged with, time and place of commission and designation of the statutory elements of the criminal offence;
- the applicable provisions by section, subsection, number, letter and designation of the statute;

¹⁰ Code of Criminal Procedure, Section 407, Admissibility, Subsections 1 and 2

Guidelines

- the evidence;
- the legal consequences imposed;
- information on the possibility of filing an objection and the relevant time limit and form of objection.

Within two weeks following service of the penal order the defendant may lodge an objection against the penal order at the court which issued it. At the trial the court is not bound in any way by the contents of the penal order; the defendant thus risks more serious punishment if he or she declines to accept the penal order.

The accelerated procedure

In proceedings before the criminal court judge and the court with lay judges the public prosecution office shall file an application, in writing or orally, for a decision to be taken in an accelerated procedure if, given the simple factual situation or the clarity of the evidence, the case is suited to an immediate hearing.¹¹

Where the public prosecution office files the application, the main hearing shall be held immediately or at short notice, without a decision to open main proceedings being required. No more than six weeks should lie between receipt of the application by the court and commencement of the main hearing.¹²

The criminal court judge or the court with lay judges shall grant the application if the case is suitable to heard using this procedure. A prison sentence exceeding one year or a measure of reform and prevention shall not be imposed in such proceedings. Withdrawal of permission to drive shall be admissible.¹³

An accelerated procedure may provide a better temporal connection between crime and punishment.

Accelerated proceedings are allowed, if the investigation is finished shortly after the crime (maximum 6 weeks), the factual situation is simple, and there is no need for an extensive taking of evidence, e.g., if the accused pleads guilty or if only one witness or expert is required.

Though the requirements are given, the public prosecutor sends the file to the local court.

At this time there is no need for a bill of indictment.

After receiving the file the main hearing shall be held immediately or at short notice. No more than six weeks should lie between receipt of the application by the court and commencement of the main hearing.

The suspect shall be summoned only if he is not brought before the court (in case of arrest).

¹¹ Code of Criminal Procedure, Section 417, Application by the Public Prosecution Office, Subsection 1

¹² Code of Criminal Procedure, Section 418, Main Hearing, Subsection 1

¹³ Code of Criminal Procedure, Section 419, Maximum Sentence; Decision, Subsection 1

In the summons he shall be informed of the charges against him. The time limit set in the summons shall be twenty-four hours, in regular proceedings the time between summons and the trial takes at least three weeks.

Although in regular proceedings the bill of indictment will be served at first to the accused. In summary proceedings there is no need to do so.

If an indictment is not filed, the charges shall be preferred orally at the beginning of the main hearing and their essential content shall be included in the record made at the sitting.

The taking of evidence dispenses with some of the main principles mentioned before.

The examination of a witness, an expert or a co-accused may be replaced by reading out records of an earlier examination, as well as of documents containing written statements originating from them.

Statements from public authorities and other agencies about their own observations, investigations and findings made in an official context and made by their staff may be read out if the defendant, defence counsel, and public prosecutor agrees.

To shorten the time a suspect stays in prison the accelerated proceeding is often used if the suspect is arrested.

Arrest in connection with the main hearing (Hauptverhandlungshaft)

(1) The public prosecution office and officials in the police force shall also be authorized to arrest provisionally a person caught in the act or being pursued:

- 1. if it is probable that an immediate decision will be taken in accelerated proceedings and*
- 2. if, on the basis of certain facts, it is to be feared that the arrested person will fail to appear at the main hearing.*

(2) A warrant of arrest may be issued on the grounds set out in subsection (1) against the individual strongly suspected of the offence only if it can be expected that the main hearing will be held within one week of the arrest. The warrant of arrest shall be limited to a maximum period of one week running from the day of the arrest.

(3) The decision to issue the warrant of arrest shall be given by the judge responsible for conducting the accelerated proceedings.¹⁴

Due to the fact that the main hearing must take place within one week of the arrest, there is no ground for the arrest if any evidence, that may be a witness, is needed but is not reachable. The decision to issue the warrant of arrest shall be given by the judge responsible for conducting the accelerated proceedings instead of the investigating judge because he or she is the only person who knows whether the main hearing could take place within one week.

¹⁴ Code of Criminal Procedure, Section 127b, Arrest in Connection with the Main Hearing

Practical application

The following review of practical application is relevant to Hessen. It may differ from the practice executed in other federations of Germany.

Common directives on the simplified procedure when dealing with minor and major offences

The collaboration between the police and the prosecution office in Hessen is considerably facilitated by the Common directives of the Ministry of Justice, Integration and Europe of the state Hessen and the Ministry of the Interior and Sport of the state Hessen on the simplified procedure when dealing with minor and major offences.

Purpose of the procedure

The simplified procedure shall rationalize the work by using standardised forms restricted to the essentials without waiving statements necessary for the criminal investigation procedure within the lawful criminal prosecution.

The process is modernized in order not to involve the prosecuting authorities for combating minor and major offences.

The criminal prosecution shall be speeded up by submitting the case files to the Public Prosecutor's Office/District Attorney without delay.

Forms and their usage

There shall be special pre-printed forms used for the simplified procedure. These pre-printed forms, as well as rules and conditions of execution of the simplified procedure, are elaborated by the State Office of Criminal Investigations of the state Hessen.

The streamlining of the procedure sought by the particular authorities is provided by registering the necessary statements on the spot to the greatest extent, examining witnesses and accused persons, and recording this in the respective pre-printed forms. The pre-printed forms can be filled in by handwriting, provided that it is legible.

Should the accused persons or witnesses clearly not be able to understand their rights in the procedure and the meaning of their statements and explanations, the examination shall remain undone; it shall be undertaken later on under appropriate circumstances (e.g., in the presence of an interpreter or by using a form for a written statement).

Submission to the Public Prosecutor's Office/District Attorney

Criminal charges without any investigative leads or leads for search – as soon as the charge is filed, the case files without delay are submitted to the Public Prosecutor's Office/District Attorney.

Criminal charges with leads for the search of things – the information relevant to the search of things shall be requested or completed as soon as possible. The case files shall be submitted preferably within 14 days to the Public Prosecutor's Office/District Attorney.

Criminal charges with investigative leads – the accused persons/witnesses shall be examined immediately if possible. Should the factual situation be clear and ordinary, they shall use the possibility to make the statements in writing. The case files shall be submitted to the Public Prosecutor's Office/District Attorney in a timely manner. In case of criminal offences prosecuted only upon application by the victim or if a form for the written statement is used, this shall happen only after the criminal charge has been filed or the statement of the accused person has been made, however not later than within four weeks from the commencement of the proceedings.¹⁵

The description of actions when investigating driving under the influence of alcohol or other intoxicating substances

A situation where the person committing the criminal act has attained the age of majority and knows the language of criminal proceedings.

(1) Whosoever drives a vehicle in traffic (Sections 315 to 315d) although due to consumption of alcoholic beverages or other intoxicants he is not in a condition to drive the vehicle safely shall be liable to imprisonment not exceeding one year or a fine unless the offence is punishable under section 315a or section 315c.

*(2) Whosoever commits the offence negligently shall also be liable under subsection (1) above.*¹⁶

1. Stopping the driver of a vehicle (after seeing him swerve about):
 - 1.1 In case of observations before the stop: the observations shall be documented in pre-prepared documents or afterwards as a report.
2. Police officers shall explain the reason for control and the driver has to hand over the necessary documents (driver's licence, passport etc.).
3. Looking inside the car for conspicuousnesses (e.g., the smell of booze) or suspicious items (e.g., beer bottles, joint).
4. Checking the person in the police system (hints for addiction, driving ban etc.).
5. The documents shall be checked for visible hints of forgery.
6. Explaining to the driver the criminal charge and his rights as a suspect.
7. Offering of a voluntary alcohol pre-test/breathalyser.
8. Applying a concrete charge depending on the measured amount:
 - 8.1 Less than 0,5 ‰ + no deficit manifestations – possibly a prohibition of further driving and seizure of the vehicle's key.

¹⁵ Common directives of the Ministry of Justice, for Integration and Europe of the state Hessen and the Ministry of the Interior and for Sport of the state Hessen on the simplified procedure when dealing with minor and major offences

¹⁶ German Criminal Code, Section 316, Driving while under the influence of drink or drugs, Subsections 1 and 2

Guidelines

8.2 Between 0,5 and 1,09 ‰ – an administrative offence.

8.3 Between 0,5 and 1,09 ‰ + deficit manifestations or 1,1 ‰ or more – a crime.

9. Taking the suspect to the police station.

10. Further steps in case of an administrative offence:

10.1 Voluntary breath test on a valid device (four devices for all of Frankfurt); result presented as a printout.

10.2 If the suspect does not cooperate or if the test has a result of 1,1 ‰ or more – a blood sample shall be taken (a judge's approval is obligatory).

10.3 Writing an administrative offence report (in cases of repetition: an additional report).

10.4 Release of the suspect from the police station.

11. Further steps in case of a crime:

11.1 Taking a blood sample (a judge's approval is obligatory), if the suspect cooperates a judge's approval is not necessary. Preparation of the documents (e.g., reports, invoice) for the doctor who takes the blood sample. The preparation, approval and taking of the blood sample, takes in average between 1 and 3 hours.

11.2 Seizure of the driver's licence and filling the document for a seizure. Sending the case and the driver's licence to the prosecutor before all proceedings are done in order to enable the prosecutor to get a judge's approval for the seizure of the licence.

11.3 Further seizure has to be done separately (including the seizure of the documents).

11.4 Prohibition of further driving and seizure of the vehicle's key.

11.5 Release of the suspect from the police station.

11.6 Writing the traffic criminal complaint.

11.7 Waiting for the medical report of the blood sample (it takes up to four weeks).

11.8 Written hearing of the suspects (sending a questionnaire) after receiving the medical report; an interrogation is an exception.

11.9 Reporting the case to the licensing authority who shall make further decisions on their own responsibility.

11.10 Filling the document for the resulting costs of the proceedings.

11.11 Writing the final report and sending the case to the prosecutor.

The proceedings in Frankfurt are done by the investigation teams of the police stations, which belong to the uniformed police. In the other parts of Hessen, the further proceedings are done by the police officers who were controlling the suspect.

The description of actions when investigating a theft from a store

A situation where the person committing the criminal act has attained the age of majority and knows the language of criminal proceedings.

Whosoever takes chattels belonging to another away from another with the intention of unlawfully appropriating them for himself or a third person shall be liable to imprisonment not exceeding five years or a fine.¹⁷

Theft and unlawful appropriation of property of minor value may only be prosecuted upon request in cases under section 242 and section 246, unless the prosecuting authority considers proprio motu that prosecution is required because of special public interest.¹⁸

1. Arrival of the police officers at the crime scene (called by an employee or the store detective).
2. Receiving the pre-prepared documents from the store. The documents shall contain information about the incident and about the stolen articles, information about the detainee and whether he or she has compensated losses, as well as the testimony by an employee or by the store detective. In this type of cases employees are not interrogated by the police.
3. The stolen goods are handed back to the stores in most cases.
4. Collecting of the video surveillance recording. An employee or the store detective voluntarily hands in the disc with the recording from the video surveillance cameras. This needs to be noted in the application or a police officer has to register it in the police report filled at the station. Collected surveillance material is always added to the case, but an analysis of a recording is only added if it is ordered by the prosecutor.
5. Checking the suspect in the police system (a warrant of arrest, permanent residence etc.).
6. Completing the pre-prepared document for interrogation of the suspect at the crime scene, letting the suspect sign it.
7. Release the suspect from the crime scene.
8. Sending all documents to the "K-26" unit (only in Frankfurt as a pilot project) where the final report shall be written and then the case shall be sent to the prosecutor.

Thus, the police complete one standardized document at the crime scene and the total amount of time spent at the crime scene is 10 to 20 minutes.

¹⁷ German Criminal Code, Section 242, Theft, Subsection 1

¹⁸ German Criminal Code, Section 248a, Theft and unlawful appropriation of objects of minor value

At the police station other documents are filled in the police information system from which they are afterwards printed and signed:

- a standardized form about the incident shall be filled, indicating the information about the complainant, about the perpetrator of the offence, about the witnesses, if there are any, about the enterprise, about the offence, including also the description of the incident;
- a report about the police action (if not indicated in the statement, it shall be noted that the disc with the recording from the video surveillance cameras has been taken) and if necessary additional information about the perpetrator of the offence can be included (e.g., information about other offences committed by the person);
- the materials of the case shall be sent to the "K-26" unit;
- a separate document about the perpetrator of the offence shall be prepared;
- a cover letter for the prosecution office is prepared.

After having identified a theft, the employees of the store are not obliged to call the police to the crime scene. An employee or the store detective can send an application to the police station by post, indicating personal data about the person who committed the theft. A video recording shall be added to the application. In these cases the "K-26" unit will send a standardized survey protocol by post to the offender indicating the date when it shall be sent back completed. After having received the protocol filled and signed the police refer the case to the public prosecution office. If the person has not sent the protocol by the date indicated the case is still referred to the public prosecution office, considering that the person has used the rights not to testify.

Standardized forms

Common directives on the simplified procedure when dealing with minor and major offences require the use of standardized forms in the investigation. These forms are also used in both examples given in the Guidelines. The forms shall be completed by filling certain requested fields or by marking with a "X" one of the options offered in the form. For example, minutes of an interrogation that can also be used in the documentation of an administrative offense contain the following information and optional fields:

1. Interrogation of a suspect in a criminal matter/Hearing in summary proceedings concerning administrative penalties.
2. Adult, Adolescent, Juvenile, Foreign.
3. Place/date/beginning and ending of the hearing.
4. Summoned, visited, compulsory attendance, at own initiation, to the station, in the residence, at the workplace.
5. I am charged with the following sentence: registered offences/crimes.
6. Involvement in the offence/crime: single offender, complicity, participation.

Guidelines

7. Time of the offence/crime. Place of the offence/crime.
8. Instruction of the personal details.
I have been informed that I am obliged to answer the questions concerning my person completely and correctly.
The non-observance of this obligations is liable to a fine according to...
9. Family name, first name, sex, date of birth, place and country of birth, nationality, present address(-es), present occupation, martial status.
- 10.-12. Identification documents and licences.
13. With offences involving vehicles – car, lorry, motorcycle, bus, bicycle, toy, special means of transport.
Type/model, licence plate, national ownership.
14. Type of driving licence.
15. Instruction on the statement on the matter: the explanation of the rights.
I understood the instruction and will make a statement, not make a statement, only make a statement through my lawyer, make a written statement with the consent of the police.
I did not understand the instruction.
16. I committed the crime/offence I am being charged with.
I did not commit the crime/offence I am being charged with.
Signature refused.
17. Name, official title and signature of the officer.
Signature of the suspect.

The Commissariat “K-26”

The specially formed unit of the standardized investigation “K-26” works on criminal offenses where the investigation is relatively easy. This unit was implemented only in Frankfurt as a pilot project. The below mentioned proceedings are processed differently in the other parts of Hessen. It is standardized, extremely simplified, and can be done in the office without having to carry out any police action besides the office work. This standardized investigation unit works on different types of crimes but only in those criminal offenses in which the persons involved have attained the age of majority, in which there has not been any arrests, where the investigation can be done in the office, and where the material evidences has not been seized. The investigation in “K-26” is carried out by filling the standardized forms and statements, as well as by sending a survey protocol by post to the victims, to the witnesses, and to the suspects.

The Commissariat “K-26” is divided into two investigation teams, the so-called *Ermittlungsgruppen* (EG):

EG 1 – proceedings without specific angles of police investigation:

Thefts from business properties (e.g., schools, restaurants, offices), criminal property damage, pickpocketing, embezzlement, bicycle theft, theft from automobiles, false money reports;

EG 2 – proceedings against known suspects:

Shoplifting, criminal property damage, defamation, trespassing, fraud (fraud on the internet, phishing from bank accounts and debit card data, false profit promises, false flat offers, oversubscribed cheques) etc.

LATVIA

Criminal offence and competence to investigate

Criminal offence

A harmful offence (act or failure to act) committed deliberately (intentionally) or through negligence, provided in this Law, and for the commission of which a criminal punishment is set out, shall be considered a criminal offence.¹

(1) Criminal offences shall be divided into criminal violations and crimes according to the nature and harm of the threat to the interests of a person or the society. Crimes shall be divided as follows: less serious crimes, serious crimes and especially serious crimes.

(2) A criminal violation is an offence for which this Law provides for deprivation of liberty for a term exceeding fifteen days, but not exceeding three months (temporary deprivation of liberty), or a type of lesser punishment.

(3) A less serious crime is an intentional offence for which this Law provides for deprivation of liberty for a term exceeding three months but not exceeding three years, as well as an offence, which has been committed through negligence and for which this Law provides for deprivation of liberty for a term up to eight years.

(4) A serious crime is an intentional offence for which this Law provides for deprivation of liberty for a term exceeding three years but not exceeding eight years, as well as an offence, which has been committed through negligence and for which this Law provides for deprivation of liberty for a term exceeding eight years.

(5) An especially serious crime is an intentional offence for which this Law provides for deprivation of liberty for a term exceeding eight years or life imprisonment.²

A person may be found guilty of committing a criminal offence and punished by a judgement of the court or a prosecutor's penal order.

Criminal proceedings for a criminal offence shall be performed in the public interest regardless of the will of the person who has suffered harm. In certain cases specified in the Criminal Procedure Law, criminal proceedings shall be initiated only on the basis of an application submitted by a person who has suffered harm. Small-scale theft, fraud and misappropriation (up to 360 euros), intentional destruction of or damage to property of another et al. are among these cases.

¹ The Criminal Law, Section 6, Concept of a Criminal Offence, Paragraph 1

² The Criminal Law, Section 7, Classification of Criminal Offences, Paragraph 1–5

Administrative liability

In addition to criminal liability a person in Latvia may be held administratively liable for less serious violations of the law.

Some administrative sanctions may be applied also by police officials, for example, fines, and therefore it is possible to apply a simplified procedure or even apply sanctions on the site of the event. The police department shall record the information on the administrative violation in a report.

The administrative violation report consists of the name and number of the form and it also may contain the following information:

- the place (district, city/town, county, parish), date and time of drawing up the report;
- the compiler of the report (the given name, surname, institution, and position of the official);
- the legal norm under which the report has been compiled;
- the given name, surname, personal identity number or the date of birth, address of the place of residence of a natural person, or the name, registration number and legal address of a legal entity;
- the place, date and time of the commitment (determination) of the violation;
- the essence of the violation;
- the name of the external legislation and the norm (section, paragraph, clause, and sub-clause) that imposes liability for the violation;
- the signature of the person;
- an entry regarding the refusal of the person to sign the report;
- notes regarding the content of the report;
- information regarding the documents attached to the report;
- the signature of the official;
- an entry regarding the receipt of a copy of the report;
- information regarding witnesses and/or victims (given name, surname, signature);
- other information necessary for decision-making regarding the matter (for example, information regarding the place of work or studies of the person and monthly income, regarding dependent persons, special rights granted to the person, previous administrative penalising of the person, the conveying of the person for the compilation of a report, the inspection of the person and property, the seizure of property and documents, as well as information regarding the vehicle);
- information regarding the place and time of adjudication of an administrative violation; and;
- information regarding a decision taken in the matter of an administrative violation (indicating circumstances, which mitigate or aggravate liability for the administrative violation, the legislation under which a decision has been taken, and the decision taken in the matter), as well as information about appealing the decision.

Unless proved otherwise in administrative proceedings, information regarding facts recorded in the administrative violation report by an official shall be considered as evidence without conducting additional procedural actions.³

The report may be accompanied by other evidence, for example, records of police in-car video cameras, police traffic radars etc.

Competence to investigate

A person directing the proceedings shall be:

- 1) an investigator or in exceptional cases a public prosecutor – in an investigation;*
- 2) a public prosecutor – in a criminal prosecution;*
- 3) a judge who conducts the adjudication – in the preparation a case for trial, as well as from the moment when the adjudication is announced thus completing legal proceedings in the court of the relevant instance, until the transfer of the case to the next court instance or until the execution of the adjudication;*
- 4) the composition of a court – during a trial;*
- 5) a judge – after entering into effect of a court adjudication.⁴*

At the investigative stage, an investigator is responsible for the progress of criminal proceedings and the record-keeping therein, as well as the investigator takes decisions independently regarding the progress of criminal proceedings – the initiation of criminal proceedings, the transfer of criminal proceedings to the Prosecutor's Office for the initiation of criminal prosecution and the termination of criminal proceedings due to, for example, the limitation of the proceedings or the non-existence of a criminal offence. The investigator takes decisions independently regarding the implementation of the most of procedural actions (including the application of security measures), except a search, special (secret) investigative actions and security measures involving deprivation of liberty.

A direct supervisor of the investigator oversees the work of the investigator in specific criminal proceedings. The direct supervisor of the investigator has a duty to organize the work of other officials in order to support the investigator (investigation team members, operational services staff). The direct supervisor of the investigator also has a duty to give instructions regarding the direction of an investigation and the conduct of investigative measures if the person directing the proceedings fails to ensure a targeted investigation and allow for unjustified intervention in the life of a person or delay.

A supervisory prosecutor oversees the work of the investigator in the investigation.

The supervisory prosecutor has a duty to give instructions regarding the selection of the type

³ Latvian Administrative Violations Code, Section 243, Evidence and mode of proof, Paragraph 4

⁴ Criminal Procedure Law, Section 27, Person Directing the Proceedings, Paragraph 2

of proceedings, the direction of an investigation, and the conduct of investigative measures if the person directing the proceedings fails to ensure a targeted investigation and allow for unjustified intervention in the life of a person or delay. The supervisory prosecutor examines complaints against the investigator and may revoke the decisions taken by the investigator. The supervisory prosecutor also coordinates a number of the investigator's decisions regarding, for example, the termination of criminal proceedings if a person committing the crime has not been identified.

Refusal to initiate criminal proceedings, termination and suspension of criminal proceedings

Refusal to initiate criminal proceedings and termination of criminal proceedings where no such harm has been caused that would require the application of a criminal punishment

An investigator with a consent of a public prosecutor may refuse to initiate criminal proceedings, if a criminal offence has been committed that has the features of a criminal offence, but which has not caused such harm that would warrant the application of a criminal punishment.⁵

An official shall make a decision regarding the refusal to initiate criminal proceedings. The decision may be made in the form of a resolution. The official shall notify the decision to the person who has reported an alleged criminal offence. In case of a reasoned written decision a copy of the decision shall be sent to the person.

The person may appeal the decision regarding the refusal to initiate criminal proceedings within 10 days from the receipt of the notification either to a prosecutor in case the decision has been made by an investigator or to a higher-ranking public prosecutor in case the decision has been made by a prosecutor. The adjudication of a prosecutor shall not be subject to appeal.

An investigator with a consent of a supervisory prosecutor, a prosecutor or a court may terminate criminal proceedings, if a criminal offence has been committed that has the features of a criminal offence, but which has not caused harm that would warrant the application of a criminal punishment.⁶

A person directing criminal proceedings shall make a decision to terminate the proceedings and immediately notify the person or the institution on the basis of a submission of which criminal proceedings has been initiated. A copy of the decision to terminate criminal proceedings shall be sent or issued to the victim and the person having the right of defence. The decision may be appealed to:

- An investigator's decision – a supervisory prosecutor.
- A prosecutor's decision – a higher-ranking prosecutor.
- A court judgement – higher level of court.

The laws and practice do not establish any common criteria for determining whether a criminal offence has been committed that has the features of a criminal offence but which has not caused harm that would warrant the application of a criminal punishment. Each and every offence and the circumstances thereof are presumed to be different, and therefore it is hard to establish specific common criteria applicable to all situations. There are also no rules governing how many

⁵ Criminal Procedure Law, Section 373, Refusal to Initiate Proceedings Paragraph 2¹

⁶ Criminal Procedure Law, Section 379, Termination of Criminal Proceedings, Releasing a Person from Criminal Liability, Paragraph 1 (1)

times criminal proceedings against the same person can be terminated or refused to be initiated. Based on the abovementioned the primary condition is the criteria of a criminal offence instead of the identity of the offender. Criminal proceedings may be terminated or refused to be initiated even without identifying the offender.

This regulation also involves the principle of proportionality allowing not to take action against a person, who has committed a criminal offence that has resulted in less serious consequences, and do not require any criminal procedure measures to prove the guilt of the person and apply criminal punishment. This principle also allows the authorities to align the resources for investigation with the harm caused by the criminal offence.

Conditional release from criminal liability

A person who has committed a criminal violation or a less serious crime, may be conditionally released from criminal liability by a prosecutor if, taking into account the nature of the offence and the harm caused, information characterising the defendant and other circumstances of the matter, it has been ascertained that the defendant will commit no further criminal offences.⁷

Criminal proceedings may not be terminated if the person has previously been convicted of an intentional criminal offence, as well as the person has been a subject to criminal proceedings that has been terminated, thus conditionally released from criminal liability over the past five years.

In the event of conditional release from criminal liability a prosecutor shall subject the person to a probationary period of three to eighteen months. If the person who has been conditionally released from criminal liability commits another intentional criminal offence or fails to perform the duties imposed or meet the terms of the settlement, the prosecutor shall continue the criminal prosecution.

Conditional release from criminal liability is permitted exclusively at the stage of criminal prosecution (the investigation of the person has been completed and the investigating authority has transferred criminal proceedings to the Prosecutor's Office and a prosecution has been brought against the person). In this case the police shall conduct full investigation in order to obtain sufficient evidence to hold the person criminally liable.

Settlement

An investigator with a consent of a supervisory prosecutor, a prosecutor or a court may terminate criminal proceedings, if the person who has committed a criminal violation or a less serious crime has made a settlement with the victim or his or her representative in the cases specified in the Criminal Law.⁸

⁷ The Criminal Law, Section 58¹, Conditional Release from Criminal Liability, Paragraph 1

⁸ Criminal Procedure Law, Section 37, Termination of Criminal Proceedings, Releasing a Person from Criminal Liability, Paragraph 1(2)

A person who has committed a criminal violation or a less serious crime, except criminal offences resulting in death of a human being, may be released from criminal liability if the person has made a settlement with the victim or with his or her representative and within the last year the person has not been released from criminal liability for the commission of an intentional criminal offence by reaching a settlement over the past year, and the person has completely eliminated the harm caused by the criminal offences committed or has reimbursed the losses caused.⁹

In the cases described above criminal proceedings may not be terminated and the person directing the proceedings shall make a decision whether or not to terminate the criminal proceedings based on the nature of the criminal offence and the harm caused, as well as the personality of the offender.

Criminal proceedings shall not be initiated, while initiated proceedings shall be terminated, if a settlement between a victim and a suspect or an accused has been made in criminal proceedings that may be initiated only on the basis of an application of a victim.¹⁰

In cases where settlement has been made in criminal proceedings that may be initiated only on the basis of an application of a victim, for example, a small-scale theft, the person directing the proceedings shall immediately terminate criminal proceedings. The person directing the proceedings shall not look for precedents where analogous criminal proceedings have been terminated.

A settlement shall indicate that it has been entered into voluntarily with each party understanding the consequences and conditions thereof. The parties may enter into a settlement in the presence of the person directing the proceedings, an intermediary trained by the State Probation Service or a notary.

The implementation of a settlement is considered to be an efficient and fair regulation of criminal legal relations since the victim is reimbursed for the harm caused in a shorter period of time. Besides the implementation of a settlement enables the investigating authorities to save resources as they are not required to conduct a full investigation. A settlement may be entered into on the first day of criminal proceedings and criminal proceedings may be terminated on the same day if all terms and conditions are met.

Suspension of criminal proceedings if a person who committed the crime has not been determined

(1) In case of failure to identify the person who has committed a criminal violation or a less serious crime in criminal proceedings within two months from the day of the initiation of criminal proceedings, an investigator shall decide, with the consent of a supervisory prosecutor, the matter regarding the suspension of criminal proceedings. The criminal proceedings regarding commitment of serious criminal offence may be suspended in accordance with the same procedures, unless it

⁹ The Criminal Law, Section 58, Release from Criminal Liability, Paragraph 2

¹⁰ Criminal Procedure Law, Section 377, Circumstances that Exclude Criminal Proceedings, Paragraph 9

involves violence and the authorities has failed to identify a person committing such crime within four months.

(2) Before the suspension of criminal proceedings referred to in Paragraph one of this Section, the minimum amount of procedural and investigative measures determined, in accordance with the classification of the criminal offences, by the Prosecutor General shall be subject to compulsory implementation.

(3) If a supervisory prosecutor determines that all the requirements of the Prosecutor General for the investigation of a specific criminal offence have been met in criminal proceedings, a person directing the proceedings shall suspend the criminal proceedings until the guilty person is identified or the limitation period for criminal liability enters into effect. After the suspension of criminal proceedings, investigative actions may be performed only upon renewal of criminal proceedings.¹¹

According to the Criminal Procedure Law criminal proceedings of serious violent crimes (robbery, intentional infliction of serious bodily injury, etc.), and especially serious crimes (murder, rape, large-scale theft etc.) may not be suspended. These criminal proceedings are considered as being subject to ongoing investigation until the limitation period for criminal liability enters into effect.

As regards criminal proceedings that may be suspended, the practice shows that the periods determined (two or four months) are often extended. Criminal proceedings are subject to ongoing investigation for more than a year before being actually suspended. The main reason is the need for different investigative measures, for example, an expert-examination or interrogation of a witness staying abroad.

The Order No. 67 of the Prosecutor General of 13.10.2011 on *The Amount of Procedural and Investigation Documents* states that before making a decision to grant permission to suspend criminal proceedings under the procedure laid down in Section 400, Paragraph 3 of the Criminal Procedure Law, the supervisory prosecutor of criminal proceedings shall determine whether all reasonable steps to justify the existence or nonexistence of facts involved in the object of evidence have been taken, and actively perform the duties of a supervisory prosecutor depending on the specific features of the criminal offence to be investigated – to give instructions to the investigator regarding the appropriate direction of the investigation and regarding the need for procedural and investigative measures. The supervisory prosecutor shall ensure that all necessary actions and procedural measures are performed in criminal proceedings taking into consideration the nature of a specific criminal offence and the circumstances under which it has been committed.

¹¹ Criminal Procedure Law, Section 400, Suspension of Criminal Proceedings in an Investigation, Paragraph 1–3

Simplified proceedings

The prosecutor's penal order

If a person has committed a criminal violation or a less serious crime, and a prosecutor, taking into account the nature of and harm caused by the committed criminal offence, the personal characterising data, and other circumstances, has gained conviction that the person shall not be subjected to a punishment of deprivation of liberty, yet the person should be punished, he or she may end the criminal proceedings, drawing up a penal order.¹²

The prosecutor shall draw up the penal order when the accused has admitted his or her guilt and has reimbursed the victim for the harm caused, as well as the accused has reimbursed the state compensation and has agreed to the completion of the criminal proceedings.

In his or her penal order the prosecutor may impose a fine or community work on the accused but not exceeding half of the maximum fine or duration of community service specified in The Criminal Law. The prosecutor may also impose additional punishments – restriction of rights or probationary supervision in accordance with The Criminal Law.

The prosecutor's penal order may be drawn up after the police has completed the investigation and forwarded the criminal proceeding to the Prosecutor's Office. The prosecutor's penal order requires no court approval.

In simple cases where the police complete the investigation within a short period of time, the prosecutor's penal order is an efficient way to punish the person shortly after committing the criminal offence since the adjudication of the case and the application of punishment is not affected by the caseload.

Urgent procedures

Upon commencing an investigation, a person directing the proceedings may apply urgent procedures, if:

- 1) the person who committed the criminal offence has been identified, because this person has been caught at the moment of committing the criminal offence or shortly after committing thereof;*
- 2) the person has committed a criminal violation, a less serious crime, or a serious crime;*
- 3) the completion of the investigation may be completed within five working days in accordance with the emergency procedures in the amount specified for such investigation.¹³*

¹² Criminal Procedure Law, Section 420, Injunction of a Public Prosecutor Regarding the Admissibility of the Application of a Punishment, Paragraph 1

¹³ Criminal Procedure Law, Section 424, Admissibility of the Application of Urgent Procedures

(1) A person directing the proceedings, after the commencement of an investigation in accordance with urgent procedures, shall do the following:

- 1) ascertain the circumstances of the committed criminal offence;*
- 2) ascertain the victim of the criminal offence;*
- 3) ascertain the nature and amount of harm caused by the criminal offence;*
- 4) enquire the eyewitnesses of the event;*
- 5) question eyewitnesses and the person against whom criminal proceedings have been initiated;*
- 6) if necessary, conduct an inspection of the scene of the event, or other investigative actions;*
- 7) record all findings in a single protocol;*
- 8) take a decision to declare a person to be the suspect, and may decide to apply security measures; and*
- 9) ascertain other circumstances that have significant influence on the decision making regarding the matter.*

(2) Within five working days after commencement of an investigation, a person directing the proceedings shall submit the materials of a case together with a cover letter to the supervisory prosecutor, and shall make a note regarding such submission in the minutes of the criminal proceedings.¹⁴

In case of the application of urgent procedures only the key facts must be recorded through questioning (instead of interrogation), while the questioned persons may provide detailed testimonies as necessary in the court. Other investigative actions are required only when the testimonies of the persons are insufficient to prove the guilt of the person.

According to the Criminal Procedure Law urgent procedures allow for recording of all findings in a single protocol. A number of the State Police departments have established and use such protocol. The protocol contains:

- a decision to initiate criminal proceedings;
- an inspection;
- a decision to declare a person to be the victim;
- eyewitness testimonies;
- a decision to declare a person to be the suspect;
- a decision to apply security measures; and
- the suspect's testimony.

¹⁴ Criminal Procedure Law, Section 425, Direction of an Investigation in Accordance with Urgent Procedures

Besides the abovementioned protocol, there are other necessary documents of the case, for example, the minutes of criminal proceedings and documents related to material evidence.

In the event of the application of urgent procedures the evidence obtained (eyewitness reports or joint protocol) is acceptable also in case of completing criminal proceedings in any other way, and there is no need for repeated investigative actions if further stages of the criminal proceedings are conducted in accordance with other types of procedure for criminal proceedings (for example, general procedure).

Unfortunately in most cases at the investigative stage police choose not to conduct less extensive and simple investigations provided by the law. Persons are subjected to detailed interrogations and other investigative actions are carried out, thus the investigation under urgent procedures is nearly the same as under the general procedure, the only difference is reduced time limits. The urgent procedure enables the investigator to transfer the case to the prosecutor together with a cover letter instead of a decision on the proposal to initiate criminal prosecution.

Upon the receipt of a criminal case under urgent procedure the prosecutor shall decide whether to continue the criminal proceedings under urgent procedure or to select another type of completion of criminal proceedings. The prosecutor may either continue the criminal proceedings under general procedure or, for example, apply the prosecutor's penal order.

Good examples of the application of the urgent procedure include cases where the police transfer a criminal case to the Prosecutor's Office within 48 hours from detaining the person who has committed the criminal offence. Meanwhile the prosecutor have enough time to apply the prosecutor's penal order, thus contributing to efficient and fair regulation of criminal legal relations.

If the prosecutor decides to continue criminal proceedings under urgent procedure, he or she shall make a decision to transfer the criminal case to the court, which shall also be considered as a decision to hold the person criminally liable. A copy of the decision along with copies of the case materials shall be immediately submitted to the accused and the victim. The decision shall be accompanied by a list of material evidence and documents, as well as a list of persons to be summoned to the court hearing, on the basis of the opinion of the prosecution and the defence. At the same time, the prosecutor shall send a summons to the court hearing to all persons to be summoned. The prosecutor shall set the time of the trial of the matter by co-ordinating it with the court; however the time period to the court hearing shall not be less than three or longer than ten working days, counting from the day of issuing the copy of the decision to the accused.

In case of urgent procedure the prosecutor shall not interrogate the accused and make a separate decision to hold the person criminally liable and to transfer criminal proceedings to the court.

If the criminal case has been transferred to the court under urgent procedure the first court hearing shall be held not later than seventeen working days from the initiation of criminal proceedings.

Summary procedures

A person directing the proceedings may conduct an investigation in accordance with summary proceedings if:

- 1) the person who committed the criminal offence has been identified;*
- 2) the investigation may be completed within 10 days.¹⁵*

In case of summary proceedings, the investigator shall, within 10 days from the day of commencing the investigation, submit the materials of the case and the cover letter to the prosecutor. The law lays down no special requirements for the extent of an investigation under summary proceedings. Therefore, an investigation under summary proceedings is nearly the same as an investigation under general procedure, the only difference is reduced time limits. Summary proceedings enable the investigator to transfer the case to the prosecutor together with a cover letter instead of a decision on the proposal to initiate criminal prosecution.

Upon the receipt of a criminal case, the prosecutor shall decide whether to continue the criminal proceedings under summary proceedings or to select another type of process. The prosecutor may either continue the criminal proceedings under general procedure or, for example, apply the prosecutor's penal order.

If the prosecutor agrees to continue criminal proceedings under summary proceedings, he or she shall make a decision to transfer the criminal case to the court within ten days. The decision to transfer the criminal case to a court shall also be considered as a decision to hold the person criminally liable. The decision shall be accompanied by a list of material evidence and documents, as well as a list of persons to be summoned to the court hearing, on the basis of the opinion of the prosecution and the defence. A copy of the decision to transfer the criminal case to a court and copies of the materials of the case shall be submitted to the accused. A copy of the decision shall also be submitted to the victim.

In case of summary proceedings the prosecutor shall not interrogate the accused and shall make a separate decision to hold the person criminally liable and a decision to transfer criminal proceedings to the court.

The court shall commence the trial of the case transferred under summary proceedings not earlier than 10 days and not later than 30 days.

If a criminal case has been transferred to the court under summary proceedings, the first court hearing shall be held not later than 50 days from the initiation of criminal proceedings.

¹⁵ Criminal Procedure Law, Section 428, Admissibility of the Application of Summary Proceedings

Application of an agreement in pre-trial criminal proceedings

(1) A public prosecutor may enter into an agreement, on the basis of his or her own initiative or the initiative of an accused or his or her defence counsel, regarding the admission of guilt and a punishment, if circumstances have been ascertained that apply to an object of evidence, and the accused agrees to the scope and qualification of his or her incriminating offence, an assessment of the harm caused by such offence, and the application of agreement procedure.

(2) Agreement procedure may not be applied in case there are several accused persons in the same criminal proceedings and an agreement regarding the admission of guilt and a punishment may not be applied to all the accused persons.¹⁶

During the agreement procedure the prosecutor negotiates with the accused regarding the type and amount of the punishment, which the prosecutor shall ask the court to impose. The prosecutor shall draw up the minutes of an agreement containing:

- 1) the place and date of the negotiations;
- 2) the position, name and surname of the person directing the procedural action;
- 3) the name, surname and personal identity number (or date of birth, if no personal identity number exists) of the accused, the representative of a minor accused, as well as the name, surname, and office address of the defence counsel;
- 4) the place, time, and brief description of the criminal offence;
- 5) the qualification of the criminal offence;
- 6) the amount of the harm caused by the criminal offence and an agreement regarding the compensation thereof;
- 7) the aggravating and mitigating circumstances of liability of the accused;
- 8) information regarding the accused person;
- 9) the punishment that a public prosecutor will request for the court to impose.

The agreement shall be signed by the accused, the defence counsel, the representative of the minor accused, and the prosecutor. A copy of the agreement shall be issued to the accused or his or her representative.

After signing the agreement the prosecutor shall send the materials of the criminal case along with the minutes of the negotiations to the court for approval of the agreement signed.

The court may consider the agreement under oral or written procedure unless the prosecutor, the accused or the victim has expressed objections to it. The court shall approve the agreement signed in a judgement. In case the accused withdraws from the agreement during the court hearing, the court shall hear the case in accordance with the general procedure.

¹⁶ Criminal Procedure Law, Section 433, Grounds for the Application of an Agreement

Trial of criminal proceedings without examination of evidence

(1) A court may take a decision not to conduct an examination of evidence in relation to the entire prosecution or an independent part thereof on condition that:

- 1) the accused admits his or her guilt for the prosecution charges against him or her or for the relevant part thereof;*
- 2) the court does not have any doubts regarding the guilt of the accused after an examination of case materials;*
- 3) the accused, or, in case of mandatory defence, also his or her defence counsel and representative, agrees to the decision not to conduct such examination.*

(2) Before making a decision not to conduct an examination of evidence, a court shall ascertain the views of the prosecutor, the person ensuring defence, and the victim and his or her representative regarding the decision not to conduct the examination, and shall explain to such persons the procedural essence and consequences of the non-conduct of the examination of evidence. If an accused does not agree with the amount of compensation for harm and the amount does not affect the legal classification of the criminal offence, a court may conduct examination of evidence only in the part regarding the amount of compensation.¹⁷

Before transferring the criminal case to a court the prosecutor shall ascertain whether the accused consents to the trial of the criminal case without examination of evidence. The prosecutor shall draw up a protocol containing the following information: does the accused agree not to examine evidence in the whole amount of charges or in specific part thereof. Upon the commencement of the trial, the court shall repeatedly ascertain whether the accused consents to the trial of the criminal case without examination of evidence. About 80–90 % of criminal cases in Latvia are adjudicated without an examination of evidence.

¹⁷ Criminal Procedure Law, Section 499, Non-Conducting of an Examination of Evidence, Paragraph 2

Practical application

Police investigation of criminal proceedings initiated on the basis of Section 180 of the Criminal Law for small-scale theft from a store

A situation where the person committing the criminal offence has attained the age of majority and knows the language of criminal proceedings.

For a person who commits a small-scale theft, fraud, or misappropriation... –

the applicable punishment is deprivation of liberty for a term up to one year or temporary deprivation of liberty, or community service, or a fine.¹⁸

Small-scale means the minimum monthly wage determined in the Republic of Latvia, which is 360 euros in 2015.

Actions of the police at the scene of event

Arrival of the investigation team (investigator) at the scene.

Accept a written report on the theft from the store employees, interrogation, and drawing up of a written record of interrogation (in some case it may be a questioning and a written record of a questioning).

Make a decision in writing to initiate criminal proceedings.

Complete the Criminal Proceedings Register (throughout the criminal proceedings).

Inspect the scene of the event, take photos of material evidence, if any, seize and package evidence, as well as draw up a scene investigation report (to be drawn up depending on the practice of the department).

Seize surveillance videos. A video may be submitted by the victim along with the application or entered into evidence during interrogation. The investigator may also make a decision on seizure and draw up a written record of evidence seized. A copy of the written record shall be issued to the victim or a security guard.

Take the person who has committed theft to the police department.

Handling of a victim

Request the victim – a legal entity, to submit a written report on the theft and to include it in the criminal case materials.

Request the victim – a legal entity, to present documents conforming the legal status thereof and to add them to the criminal case materials.

¹⁸ The Criminal Law, Section 180, Theft, Fraud, Misappropriation on a Small Scale

Verify the power of attorney of a representative of the victim – a legal entity, to participate in criminal proceedings and to add it to the criminal case materials.

Make a decision in writing to declare the legal entity to be the victim and introduce the representative to the decision and inform about the rights and obligations of the victim.

Make a decision in writing to grant permission to the representative of the legal entity to participate in criminal proceedings and introduce the representative to the decision and inform him or her about his/her rights and obligations (sometimes the decision may be incorporated in the decision to declare a person to be the victim in the form of a resolution).

Request the victim – a legal entity, to present documents to substantiate the losses and to add them to the criminal case materials.

Interrogate the representative of the victim – a legal entity, and draw up a written record of interrogation.

Complete an application for compensation for the victim – a legal entity, and add it to the criminal case materials (information may be entered in the written record of interrogation).

Handling of a person who has committed a criminal offence

In case of detaining the person the police shall draw up a detention protocol, issue an excerpt of and explain the rights and obligations of a detained person, issue a list of lawyers, and place the detained person in the temporary place of detention (up to 48 hours), search of the person.

If the detained person requires a lawyer, the police shall request one, draw up a request for a legal assistance, and add the request to the criminal case materials.

Interrogate the detained person and draw up a written record of the interrogation.

Make a decision in writing to release the detained person from the temporary place of detention and the release of a person.

Make a decision in writing to declare a person to be the suspect.

If the suspect requires a defence counsel, the police shall request one and draw a written request for the defence counsel.

Introduce the suspect to the decision to declare him or her to be the suspect, issue a copy of the decision, issue an excerpt of and explain the rights and obligations.

Take DNA samples from the suspect and draw up a written record of taking DNA samples, collect biometric data (facial image and fingerprints), if the person has been detained these data are recorded upon placing the person in the temporary place of detention).

Interrogate the suspect and draw up a written record of the interrogation (as necessary, or the person has voluntarily given testimony).

Apply a security measure to the suspect as necessary.

On-site examination of the testimony of the suspect, as necessary draw up a protocol of on-site

examination of the testimony and produce photo evidence of the on-site examination of the testimony.

Add a printout of information characterising the suspect from information systems to the materials of the criminal case (Punishment Register, personal data etc.).

In certain cases the police may request court judgements regarding criminal cases where a person has not served his or her sentence yet and add them to the materials of a criminal case.

Handling of material evidence

Inspect the surveillance video seized to draw up a protocol of inspection of the surveillance video and produce photo evidence of captured images from the surveillance video.

Inspect the property stolen by the person committing the theft and seized by the police and other material evidence to draw up an inspection protocol and produce photo evidence.

Make a list of material evidence.

Make a decision in writing on handling of the property seized.

Return the seized property belonging to the representative of the victim – a legal entity, and obtain a signature to confirm the return of the property.

Registration of information and transfer of the case to the Prosecutor's Office

Information shall be entered into the Criminal Procedure Information System throughout the criminal proceedings not later than within 24 hours after updating the information. The following information shall be entered in the Criminal Procedure Information System: a description of the criminal offence, data on the persons involved in the criminal proceedings, and all decisions made regarding the criminal proceedings.

Make a decision in writing to propose the commencement of criminal prosecution and transfer the materials of the criminal case to the Prosecutor's Office. In case of urgent procedures or summary procedures the materials of the criminal case are transferred to the Prosecutor's Office by cover letter.

Police investigation of criminal proceedings initiated on the basis of Section 262, Paragraph 2 of the Criminal Law for operating a vehicle under the influence of alcohol without a driving licence

A situation where the person committing the criminal offence has attained the age of majority and knows the language of criminal proceedings.

For a person who operates a vehicle, or gives a driving lesson without a driving licence (the driving licence has not been acquired or taken away according to specific procedures) and the driver is under the influence of alcohol, or narcotic, psychotropic, toxic or other intoxicating substances, – the applicable punishment is deprivation of liberty for a term up to one year or temporary deprivation

*of liberty, or community service, or a fine, with deprivation of the right to drive a vehicle for a term up to five years and with or without confiscation of property.*¹⁹

Initial actions when stopping a vehicle

When a police patrol officer or a traffic police officer stops a driver he or she may measure the content of alcohol in the driver's breath by a portable breath testing device.

If the test is positive the officer shall draw up a protocol of the measurements taken and attach printouts from the breathalyser.

The vehicle shall be placed in a special parking lot. Depending on the content of alcohol in the driver's breath the driver may be taken to the police department.

If the person refuses to take the test by police breathalyser he or she shall be taken to a medical facility to measure blood alcohol content.

If the person refuses to measure blood alcohol content he or she shall be held criminally liable for refusal to measure the influence of alcohol or narcotic, psychotropic, toxic or other intoxicating substances. The same punishment as for operating a vehicle or giving a driving lesson without a driving licence may be applied for such a criminal offence.

Actions in a police department

Make a decision in writing to initiate criminal proceedings.

Complete the Criminal Proceedings Register (throughout the criminal proceedings).

Questioning eyewitnesses of the criminal offence, including patrol police officers, and interrogating, and drawing up of a written record of interrogation (in some case it may be a questioning and a written record of a questioning).

If the driver is also the owner of the vehicle the police shall make a decision in writing to seize the vehicle in order to ensure possible confiscation of the property (vehicle) and shall obtain the approval of the investigating judge.

Prepare a written notification on the seizure of the vehicle and forward it to the Road Traffic Safety Directorate to enter information into the public vehicle register.

Handling of a person who has committed a criminal offence

In case of detaining a person, the police shall draw up a detention protocol, issue an excerpt of and explain the rights and obligations of the detained person, issue a list of lawyers, and place the detained person in the temporary place of detention (up to 48 hours), search of the person.

¹⁹ The Criminal Law, Section 262, Operating a Vehicle while under the Influence of Alcohol or Narcotic, Psychotropic, Toxic or Other Intoxicating Substances, Paragraph 2

If the detained person requires a lawyer the police shall request one, draw up a request for legal assistance, and add the request to the criminal case materials.

Interrogate the detained person and draw up a written record of the interrogation.

Make a decision in writing to release the detained person from the temporary place of detention and the release of a person.

Make a decision in writing to declare a person to be the suspect.

If the suspect requires a defence counsel the police shall request one and draw a written request for a defence counsel.

Introduce the suspect to the decision to declare him or her to be the suspect, issue a copy of the decision, issue an excerpt of and explain the rights and obligations of a suspect.

Take DNA samples from the suspect and draw up a written record of taking DNA samples, collect biometric data (facial image and fingerprints); (if the person has been detained these data are recorded upon placing the person in the temporary place of detention).

Interrogate the suspect and draw up a written record of the interrogation (as necessary, or the person has voluntarily given testimony).

Apply a security measure to the suspect as necessary.

Add a printout of the information characterising the suspect from information systems to the materials of criminal case (Punishment Register, personal data, and data from the Road Traffic Safety Directorate etc.).

In certain cases the police may request court judgements regarding criminal cases where a person has not served his or her sentence yet and add them to the materials of a criminal case.

Registration of information and transfer of the case to the Prosecutor's Office

Information shall be entered into the Criminal Procedure Information System throughout the criminal proceedings not later than within 24 hours after updating the information. The following information shall be entered in the Criminal Procedure Information System: a description of the criminal offence, data on the persons involved in the criminal proceedings, and all decisions made regarding the criminal proceedings.

Make a decision in writing to propose the commencement of criminal prosecution and transfer the materials of the criminal case to the Prosecutor's Office. In case of urgent procedures or summary procedures the materials of the criminal case are transferred to the Prosecutor's Office by cover letter.

LITHUANIA

Criminal act and competence of pre-trial investigation

Criminal act

Criminal acts shall be divided into crimes and misdemeanours.¹

- 1. A crime shall be a dangerous act (act or omission) forbidden under this Code and punishable with a custodial sentence.*
- 2. Crimes shall be committed with intent and through negligence. Premeditated crimes are divided into minor, less serious, serious and grave crimes.*
- 3. A minor crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration of three years.*
- 4. A less serious crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration in excess of three years, but not exceeding six years of imprisonment.*
- 5. A serious crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the duration in excess of six years, but not exceeding ten years of imprisonment.*
- 6. A grave crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration in excess of ten years.²*

A misdemeanour shall be a dangerous act (act or omission) forbidden under this Code which is punishable by a non-custodial sentence, with the exception of arrest.³

A person may be found guilty of committing a criminal act and punished by a judgement of the court.

When elements of a criminal act are discovered, the prosecutor and pre-trial investigation agencies are obliged, within the limits of their competences, to take up all measures provided for by the law and in the shortest possible term conduct an investigation and disclose the criminal act.⁴

¹ Penal Code, Article 10, Types of Criminal Acts

² Penal Code, Article 11, Crime

³ Penal Code, Article 12, Misdemeanour

⁴ Code of Criminal Procedure, Article 2, Duty to Detect Criminal Acts

In certain cases specified in the Code of Criminal Procedure, pre-trial investigation may be initiated on the basis of a complaint of a victim or an application of a representative of a legal entity. For instance:

- threatening to murder or cause a severe health impairment to a person or terrorisation of a person;
- theft;
- swindling.

Administrative liability

In addition to criminal liability a person in the Republic of Lithuania may be held administratively liable for less serious violations of the law – Code of Administrative Offences.

A person shall be held administratively liable also for shoplifting, where the total value of the stolen property is below 3 MSL (37.66 x 3 = 112.98 euros). An administrative offence – shoplifting is usually punishable by a fine. Driving a vehicle under the influence of alcohol shall also be subject to administrative liability.

Information on the administrative offence may be recorded in a single protocol.

Competence of pre-trial investigation

1. *Pre-trial investigation shall be conducted by officers of pre-trial investigation institutions. Pre-trial investigation shall be organised and supervised by a prosecutor. The prosecutor may decide to conduct a pre-trial investigation or part of it by himself/herself.*
2. *Certain investigation actions may be conducted by a pre-trial judge in the cases provided for by this Code.⁵*

The pre-trial investigation officer shall have the right to perform all the actions provided for in the Code of Criminal Procedure with the exception of those, which may be performed solely by the prosecutor or pre-trial judge.

The head of the pre-trial investigation institution or a division thereof:

- shall organize activities of the pre-trial institution or division thereof;
- control procedural activities of pre-trial investigation officers.

The prosecutor shall:

- be obliged to supervise the course of pre-trial investigation conducted by institutions of pre-trial investigation;

⁵ Code of Criminal Procedure, Article 164, Entities of Pre-trial Investigation

Guidelines

- give mandatory directions to officers of pre-trial investigation institutions, entrust criminal intelligence entities to use methods and means for collecting criminal intelligence information;
- have the right to form an investigating group out of officers from different pre-trial investigation institutions.

Only the prosecutor may make an application to the pre-trial judge in respect of performance of actions within his competence.

The pre-trial judge shall:

- impose and authorize the application of procedural coercive measures;
- invite witnesses and victims to take an oath and question them;
- question the suspects;
- approve the prosecutor's decisions in cases defined in Code of Criminal Procedure etc.

The pre-trial judge shall not perform any actions on his own initiative.

Questioning of the victim, witness or the suspect conducted by the pre-trial judge has the highest degree of credibility and in trial hearings the testimony may be read if the questioned person is absent from the trial for any reason.

The pre-trial judge shall also hear criminal cases, for example, under the expedited procedure on a condition that he or she has not previously been involved in the particular criminal proceedings.

Refusal to initiate criminal proceedings and termination, suspension of criminal proceedings

Minor relevance of a crime

A pre-trial investigation shall be terminated if it is recognised that the criminal act is of low significance. A person who commits a crime may be released from criminal liability by a court where the act is recognised as being of minor relevance due to the extent of the damage incurred, the object of the crime or other peculiarities of the crime.

This option shall be applied in the event of, for example, theft where the extent of damages incurred is barely above the minimum limit of administrative liability.

A pre-trial investigation shall be terminated by the decision of a pre-trial judge, who shall approve the prosecutor's resolution on the termination. A copy of the decision shall be sent to the interested parties.

Reconciliation

A pre-trial investigation shall be terminated if the suspect and the suffered party reconcile.

A person who commits a misdemeanour, a negligent crime or a minor or less serious premeditated crime may be released by a court from criminal liability where:

- 1) he has confessed to commission of the criminal act, and*
- 2) voluntarily compensated for or eliminated the damage incurred to a natural or legal person or agreed on the compensation for or elimination of this damage, and*
- 3) reconciles with the victim or a representative of a legal person or a state institution, and*
- 4) there is a basis for believing that he will not commit new criminal acts.⁶*

If a person released from criminal liability commits a new premeditated crime within the period of one year, the previous decision releasing him from criminal liability shall become invalid and a decision shall be adopted on the prosecution of the person for all the criminal acts committed.

If a person released from criminal liability commits a misdemeanour or a negligent crime within the period of one year or fails without valid reasons to comply an agreement approved by a court on the terms and conditions of and procedure for compensating for the damage, the court may revoke its decision on the release from criminal liability and decide to prosecute the person for all the criminal acts committed.

⁶ Penal Code, Article 38, Release from Criminal Liability upon Reconciliation between the Offender and the Victim, Paragraph 1

In case of reconciliation the court may decide not to release the following persons from criminal liability:

- a recurrent offender (recidivist);
- a dangerous recurrent offender;
- a person who had already been released from criminal liability on the basis of reconciliation with the victim, where less than four years had lapsed from the day of reconciliation until the commission of a new act.

A pre-trial investigation shall be terminated by the decision of a pre-trial judge who shall approve the prosecutor's resolution on the termination. A copy of the decision shall be sent to the interested parties.

Bail

A pre-trial investigation shall be terminated if the suspect is transferred to a person trusted by the court on bail.

1. *A person who commits a misdemeanour, a negligent crime or a minor or less serious intentional crime may be released by a court from criminal liability subject to a request by a person worthy of a court's trust to transfer the offender into his responsibility on bail. Bail may be set with or without a surety.*
2. *A person may be released from criminal liability by a court on bail where:*
 - 1) *he commits the criminal act for the first time, and*
 - 2) *he fully confesses his guilt and regrets having committed the criminal act, and*
 - 3) *at least partly compensates for or eliminates the damage incurred or undertakes to compensate for such where it has been incurred, and*
 - 4) *there is a basis for believing that he will fully compensate for or eliminate the damage incurred, will comply with laws and will not commit new criminal acts.*⁷

A pre-trial investigation shall be terminated by the decision of a pre-trial judge who shall approve the prosecutor's resolution on the termination. A copy of the decision shall be sent to the interested parties.

The term of bail shall be set from one year up to three years.

When requesting to release a person on bail with a surety, a bailsmen shall undertake to pay a surety in the amount specified by a court.

If a person released from criminal liability on bail commits a new premeditated crime during the term of bail, the previous decision releasing him from criminal liability shall become invalid and the court shall decide to prosecute the person for all the criminal acts committed.

⁷ Penal Code, Article 40, Release from Criminal Liability on Bail

If a person released from criminal liability on bail commits a new misdemeanour or negligent crime during the term of bail, the court may revoke its decision on the release from criminal liability and shall decide to prosecute the person for all the criminal acts committed.

Refusal to initiate criminal proceedings or termination of criminal proceedings in the absence of a complaint of the injured party⁸

Criminal proceedings may not be initiated, and the initiated proceedings must be terminated in the absence of a complaint of the injured party or a statement of the legal representative thereof, or a prosecutor's demand to initiate proceedings in the cases when proceedings may be initiated solely upon receipt of the complaint of the injured party or the statement of the legal representative thereof, or the prosecutor's demand.

A complaint of the injured party or a statement of a representative of the legal entity is required to initiate pre-trial investigation of a number of criminal acts, for instance:

- threatening to murder or cause a severe health impairment to a person or terrorization of a person (except cases of domestic violence);
- rape (except cases of domestic violence);
- sexual assault (except cases of domestic violence);
- theft;
- swindling.

Where these criminal acts are of public importance or incur damage to a person who for valid reasons is unable to defend his lawful interests in the absence of a complaint of the injured party or a statement of the legal representative thereof, pre-trial investigation of these acts must be initiated on the prosecutor's demand.

When refusing to initiate pre-trial investigation a prosecutor or a pre-trial investigation officer shall draw up a reasoned decision. A pre-trial investigation officer may refuse to initiate pre-trial investigation solely subject to consent of the head of a pre-trial investigation institution or a person authorised by him.

A copy of a decision to refuse initiation of pre-trial investigation shall be sent to the person who has submitted a complaint, statement or notice. A pre-trial investigation officer must send the copy of the decision to a prosecutor within 24 hours.

A decision of a pre-trial investigation officer on refusal to initiate pre-trial investigation may

⁸ This is one of the 9 circumstances of the inadmissibility of the criminal procedure. Other circumstances, as indicated in Article 3 of the Code of Criminal Procedure, include lack of elements of a crime or misdemeanour in the act, expiration of the period of limitation for criminal liability, the criminal act having been committed by a person who, at the time of commission of a criminal act, has not yet reached the age from which he is held liable under criminal law, etc.

be appealed to a prosecutor, and the prosecutor's decision – to a pre-trial investigation judge. Appeals may be filed within seven days from the receipt of the copy of the decision or ruling.

If a pre-trial investigation has been initiated it is only the prosecutor who has the right to terminate it. The prosecutor's decision to terminate a pre-trial investigation may be appealed against by filing the appeal to a higher-ranked prosecutor within 20 days from the decision. The decision of the higher-ranked prosecutor may be appealed against by filing the appeal to the pre-trial judge.

Suspension of investigation if the person who has committed the criminal act has not been established

- 1. In cases where, upon taking of all procedural actions during a pre-trial investigation and upon exhausting all possibilities for establishing the person who has committed the criminal act, such person is not established, the pre-trial investigation may be suspended by a well-grounded decision of the prosecutor. The decision of the prosecutor to suspend the pre-trial investigation may be appealed against within seven days from the serving of a copy of the decision to the injured party or representative thereof, according to the procedure established by Article 63 of this Code.*
- 2. In case if the grounds referred to in paragraph 1 of this Article cease to exist, the pre-trial investigation may be renewed without a separate decision, upon taking of at least one procedural action.⁹*

In Lithuania, the police and the Prosecutor's Office shall approve action plans for a three-year period and agree on the priorities covered by these plans regarding the results of a pre-trial investigation. One of the priorities requires 10 % of criminal proceedings that meet the criteria for the suspension of criminal proceedings to be suspended within 5 working days from the initiation of criminal proceedings.

If criminal proceedings are suspended within 5 working days from the initiation thereof, then no report on the actions conducted in criminal proceedings is required in order to suspend criminal proceedings. If criminal proceedings are suspended in excess of 5 working days from the initiation thereof then a special report on the actions conducted in criminal proceedings is required.

⁹ Code of Criminal Procedure, Article 31, Suspension of Pre-trial Investigations in Case of Failure to Establish the Offender, Paragraph 1 and 2

Simplified procedure

Penal order

- 1. In case of criminal acts which as the sole or alternative penalty are punishable by any penalty, with the exception of cases where the committed criminal offence is punishable by a time-limited or life imprisonment only, the trial proceedings may be dispensed with and the penalty may be imposed by a penal order. Penal order issuance by the court procedure shall be applied exceptionally in cases when the perpetrator makes amends for or eliminates the damage, if such was made, or undertakes to amend for or eliminate the damage.*
- 2. The judge shall be entitled to draw up the penal order upon receipt of the prosecutor's application regarding the disposing of the case by issuing a penal order by the court.*
- 3. If during the pre-trial investigation the prosecutor decides to apply to the judge for disposing of the case by issuing a penal order and the accused person has no objections thereto, the bill of indictment shall not be drawn up. In such case the prosecutor shall draw up an application and send it together with the material collected in the course of pre-trial investigation to the court in accordance with the rules of jurisdiction.*
- 4. If the prosecutor makes a decision to dispose of the case by means of issuing a penal order by the court, he shall notify the victim hereof. The victim may file an appeal against the prosecutor's decision to the pre-trial judge within seven days from the receipt of such notice.¹⁰*

The prosecutor's application concerning the disposition of a case by issuing a penal order shall contain the following:

- 1) indication of the name, surname, date of birth, identification number, marital status, profession, workplace and, at the prosecutor's discretion, other personal data of the accused person;*
- 2) a short description of the act for the commission of which the accused person shall be punished by a penal order;*
- 3) specification of the criminal law under which liability for a committed criminal act is provided for;*
- 4) presentation of the principal facts on which the accusation is based;*
- 5) indication of the type and level of the punishment proposed to be imposed in respect of the accused person and setting forth the accused person's view regarding it.¹¹*

A penal order shall be issued by the court upon examination of the prosecutor's application and the case materials. A penal order shall contain the decision on the guilt of a person, the punishment to be imposed, as well as explain the right of the accused person to request to

¹⁰ Code of Criminal Procedure, Article 418, The Prosecutor's Right to Dispose of the Case by the Issuance of Penal Order

¹¹ Code of Criminal Procedure, Article 419, Contents of the Prosecutor's Application

hear the case in a court. In case of applying a penal order the punishment of the person shall be reduced by 1/3 of the imposed punishment.

A penal order shall be issued to the accused person; in cases where the accused is not available the penal order may be served to, for example, a representative of the employer's administration or a person of the age of majority present at the place of residence of the accused person who shall sign for receipt.

If the accused person does not agree to the punishment imposed he or she shall request to hear the case in a court within 14 days after the issuance of a penal order. A judge may decide on a court hearing on his/her own initiative. The court hearing shall be scheduled no later than 10 days after the submission of the claim.

In case of a court hearing and finding the accused person guilty the judge may impose another type and amount of punishment instead of the punishment imposed by the penal order. The court ruling may be further appealed under the general procedure.

In case of applying a penal order the police shall conduct full investigation. At the same time the application of the simplified procedure is an efficient way to reduce total duration of criminal proceedings, since a person is punished as soon as possible after committing the criminal act. Moreover the victim is reimbursed for the damages incurred.

Expedited procedure

- 1. If the circumstances of the commission of a criminal act are clear and the case in respect of the commission of the act is subject to hearing before the district court, the prosecutor may on the day of the initiation of the pre-trial investigation or not later than within fourteen days from the day of the initiation thereof apply to the court which has the jurisdiction over the case with a request to hear the case by applying the expedited procedure.*
- 2. In the case defined under paragraph 1 of this Article the prosecutor shall dispense with the bill of indictment, however, shall together with the request submit to the court any pre-trial investigation material when procedural actions were pursued. The prosecutor together with the institution of pre-trial investigation shall notify the accused person, defender thereof, the victim, civil claimant, civil respondent and representatives thereof as well as witnesses on the time and place of the judicial hearing organized by means of the expedited procedure. Victims, civil claimants and civil respondents questioned in the course of the pre-trial investigation shall also be notified that their non-appearance not accounted for by valid reason shall be considered their consent to hearing the case in absentia and shall not impede with the hearing of the case, with the exception of cases when the court rules that presence thereof is necessary.¹²*

¹² Code of Criminal Procedure, Article 426, Prosecutor's Right to Dispose of the Case by Applying for the Expedited Procedure

Guidelines

- 1. The prosecutor's application concerning the hearing of a case under the expedited procedure shall contain the full name of the accused, his/her date of birth, identification number, marital status, profession, workplace, record of previous convictions and, at the prosecutor's discretion, other data; brief description of the criminal act committed: its place, time, manner and consequences; the criminal law providing liability for such a criminal act; list of witnesses and victims whose testimony forms the basis of charges or who are requested to be questioned at the court proceedings; items and documents significant for the hearing of a case and the prosecutor's position and the accused person's opinion on the possibility of not summoning witnesses to the hearing shall be set forth.*
- 2. The prosecutor shall hand a copy of the application for the case hearing under the expedited procedure to the accused.¹³*

In case of applying the expedited procedure the prosecutor shall draw an application instead of a bill of indictment. Although the Code of Criminal Procedure allocates 14 days for the application of the expedited procedure, the expedited procedure is actually applied within 48 hours after the detention of the person.

If criminal proceedings are conducted under the expedited procedure and the person admits his or her guilt, the punishment of the person shall be reduced by 1/3 by a final decision in criminal proceedings.

The court may refuse to hear a case under the expedited procedure if the conditions for the application of the procedure have been violated, for example, the 14-day period laid down by the law has expired. In such case the investigation shall be continued under the general procedure.

A judge who performs the duties of a pre-trial judge in other proceedings may hear the case under the expedited procedure. However the pre-trial judge must not be previously involved in the particular criminal proceedings.

Lithuania has recently developed and implemented a simplified joint protocol of the expedited procedure, which contains a brief description of nearly all information necessary for the expedited procedure. Such a protocol requires a brief interview of the persons instead of detailed questioning. The protocol is particularly suitable for criminal proceedings on theft from stores. This protocol consists of 3 pages and contains the most relevant information regarding investigation of less serious crimes. The protocol includes standard text and empty lines to fill in the following information in handwriting:

- data on the compiler of the protocol;
- description and qualification of the criminal act;
- data on the victim;
- testimonies of the victim and witnesses, as well as a warning against giving a false testimony;
- inspection of the crime scene;

¹³ Code of Criminal Procedure, Article 427, Content of the Prosecutor's Application

Guidelines

- list of the stolen property;
- an entry on the return of the stolen property, an acknowledgement of the receipt, and data on the recipient;
- data on the person who has committed the criminal act;
- confession of the guilt of the person who has committed the criminal act, an acknowledgement of the receipt of an excerpt of the rights and signature of the person to consent to the application of the expedited procedure;
- an entry on conveying the person to the police department;
- a proposal to apply the expedited criminal procedure;
- a list of accompanying documents and signature of the compiler of the protocol.

Practical application

Expedited procedure regarding theft from a store

A situation where the person committing the criminal act has attained the age of majority and knows the language of criminal proceedings.

1. *A person who seizes another's property shall be punished by community service or by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to three years.*
2. *A person who openly seizes another's property in an open manner or seizes another's property by breaking into premises, a storage facility or a guarded territory or seizes another's property publicly from a person's clothes, handbag or other carried item (pick-pocketing) or a vehicle shall be punished by a fine or by arrest or by restriction of liberty or by imprisonment for a term of up to six years.*
3. *A person who seizes another's property of a high value or the valuables of a considerable scientific, historical or cultural significance or seizes another's property by participating in an organised group shall be punished by imprisonment for a term of up to eight years.*
4. *A person who seizes another's property of a low value shall be considered to have committed a misdemeanour and shall be punished by community service or by a fine or by restriction of liberty or by arrest.*
5. *A person shall be held liable for the acts provided for in paragraphs 1 and 4 of this Article only subject to a complaint filed by the victim or a statement by his authorised representative or at the prosecutor's request.¹⁴*

The property shall be considered to be of a considerable value where its value exceeds the amount of 250 MSLs and of a low value where its value exceeds the amount of 3 MSLs, but does not exceed the amount of 5 MSLs. 1 MSL = 37,66 euros.¹⁵ MSL - Minimum subsistence level.

1. Upon the receipt of the report (one made by a shop employee or security guard by telephone) on the committed shop-lifting, police officers arrive at the place of incident (police patrol officers are usually the first to get to the crime scene).
2. Upon their arrival to the place of incident and on their check of information concerning the crime committed, police patrol officers call through a responsible duty police officer from the police unit the police operational group officers.
3. Having arrived at the place of incident, an operational group officer receives the report

¹⁴ Penal Code, Article 178, Theft

¹⁵ Decree of Government of the Republic of Lithuania No. 897 "Decree on amendment of the decree of Government of the Republic of Lithuania No.1031 "On approval of a basic amount of punishments and penalties" dated 14 October 2008" dated 3 September 2014

Guidelines

from the responsible shop employee, examines the crime scene with the report being drawn up, seizes items or documents significant for the investigation of the criminal act and seizes video recordings (where the shop premises are video recorded) (or examines them on the spot with the report being drawn up and returns the items back).

4. The pre-trial investigation is initiated when the pre-trial officer puts a resolution on the document (application, complaint) or draws up a police report. On his return to the police unit, the police officer enters all data (all the facts of the criminal act committed, data relating to the victims and suspects, data concerning the item seized, etc.) into the online Register of Police-Registered Events (PR|R). In this way the criminal case automatically receives the registration number.
5. The officer who commenced the pre-trial investigation draws up the report as to the pre-trial investigation commenced and forwards it to the prosecution service (this is to be performed not later than on the next working day from the start of the pre-trial investigation).
6. Upon the receipt of the report in the prosecution service from a police unit notifying of the start of the pre-trial investigation a prosecutor who is to supervise the pre-trial investigation is assigned. The assigned prosecutor drafts up the commission for the police unit specifying who is entrusted to conduct the pre-trial investigation.
7. The record of the suspect's provisional arrest is written up (the suspected person may be detained for 48 hours); the prosecutor is notified of the fact of the detention of the individual.
8. The notification of suspicion is drawn up (the notification must specify the criminal acts the person is suspected of). This notification is to be served to the suspected person within 24 hours of the moment of detention.
9. Providing that the suspected person does not have a personal defence lawyer of his own, a police officer is to contact by means of electronic communications a curator of the state-guaranteed legal aid service who assigns the defence lawyer for the suspected person.
10. Having served the notification of suspicion the suspected person is to be interviewed as a suspect.
11. All individuals having knowledge of a criminal act committed are to be interviewed, confrontations are arranged, and verification of evidence on the spot are carried out, as necessary.
12. If the shop sustained material damage due to the criminal act and thus, is willing to file a lawsuit, the shop administration is to authorise (must submit a written authorisation) a person in charge of the representation of this legal entity in the criminal procedure. In such a case the investigator draws up the resolution authorising the participation of the representative in the process.
13. Subject to the civil lawsuit the person authorised by the shop is recognised under the investigator's resolution as a civil plaintiff in this criminal case.
14. All material characterising the suspected person must be collected (information on his

Guidelines

convictions, transcripts of court judgements of convictions, data related to the person's penalties in the administrative procedure, data on the person's mental status, collected from medical establishments and other). Information concerning the suspected person's place of residence, employments, income being received, records from the labour exchange, convictions and penalties in the administrative procedure are obtained by police officers by utilising police information system. Transcripts of court judgements of conviction are obtained by e-mail from the electronic filing system of the courts (data has been accumulated there since 2005).

15. Having carried out all actions necessary for pre-trial investigation the police officer submits the criminal case to the prosecutor supervising the pre-trial investigation.
16. The prosecutor files the application as for the adjudication of the case in the expedited procedure and presents it together with the pre-trial investigation material for the court.
17. When adjudicating the criminal case in court police officers are to ensure the participation of the suspect and all the witnesses (they must be served subpoenas for the appearance before court and on the failure to do so, the police officers must find and take them to court).

ROMANIA

Criminal offence and competence to investigate

Offense

(1) An offense is an action stipulated by criminal law that has been committed under guilt, without justification and for the commission of which a person can be charged.

(2) An offense is the only basis for criminal liability.¹

According to Romanian legislation offence within the Penal Code are classified by the value defended and not by their gravity/seriousness. So far there is no borderline between less serious crimes and more serious crimes.

Obligatory character of starting and exercising the criminal investigation.

(1) The prosecutor is under an obligation to start and exercise the criminal investigation ex officio when evidence exists that shows the commission of an offense and there are no legal grounds to prevent them other than those stipulated at par. (2) and (3).

(2) In the cases and conditions specifically stipulated by law, the prosecutor can waive the exercise of the criminal action if, considering the concrete elements of the case, there is no public interest in performing its object.

(3) In cases specifically stipulated by law, the prosecutor shall start and exercise criminal action after a prior complaint is filed by the victim or after securing authorization or referral from the jurisdictional body or after satisfying another condition required by law.²

Competence to investigate

Criminal investigation bodies of the judicial police and special criminal investigation bodies perform their criminal investigation activities under the coordination and supervision of prosecutors.

(1) A prosecutor coordinates and controls directly criminal investigation activities performed by the judicial police and by special criminal investigation bodies set by law. Also, a prosecutor makes sure that criminal investigation acts are performed in compliance with the legal stipulations.

(2) A prosecutor may perform any criminal investigation act in the cases they coordinate and supervise.³

¹ Criminal Code, Article 15 Main features of an offense

² Criminal Procedure Code, Article 7 Obligatory character of starting and exercising the criminal investigation

³ Criminal Procedure Code, Article 56 Jurisdiction of prosecutors

It is mandatory that the criminal investigation is conducted by a prosecutor:

- in case of offence with oblique intent and which resulted in the death of a person;
- in case of offence for which the competence of jurisdiction to examine the case in first instance belongs to the High Court of Review and Justice or to Courts of Appeals etc.

(1) The criminal investigation bodies of the judicial police conduct the criminal investigation in relation to any offense that is not assigned by law under the jurisdiction of special criminal investigation bodies or of a prosecutor, as well as in other situations stipulated by law.⁴

In Romania, the following two judges are involved in the verification of lawfulness of the criminal investigation – Judge of Rights and Liberties, Preliminary Chamber Judge.

A Judge of Rights and Liberties decides upon applications, proposals, complaints, challenges or any other motions referring to preventive measures, asset freezing, temporary safety measures, approval of searches, use of special surveillance etc. A Judge of Rights and Liberties, upon a proposal of the prosecutor, may question the witness in situations where there is a risk that the witness might not be available during the trial.

A Preliminary Chamber Judge verifies lawfulness of the prosecutions ordered by prosecutors, verifies lawfulness of evidence production and of the performance of process acts by criminal investigation bodies, rules on challenges against decisions to refuse initiation of a criminal investigation or to drop charges etc.

In Romania institutions other than investigation bodies have a number of obligations in situations where they have established a possible commission of an offence.

Whenever there is a reasonable suspicion related to the commission of an offense, the bodies of state inspections, control and management bodies of public administration authorities, public order and national security bodies and others are under an obligation to prepare minutes.

Bodies are under the obligation to take steps to preserve the location where offenses were committed and to collect or preserve material evidence. In case of in-the-act offenses, the same bodies have the right to conduct bodily and vehicle searches, to apprehend the offender and bring them forthwith before the criminal investigation bodies.

When a perpetrator or persons present at the crime scene have objections to raise or specifications to make, or have to offer explanations in respect of the aspects mentioned in the fact-finding minutes, the fact-finding body is under an obligation to record these in such minutes.

Concluded acts, together with the material evidence shall be transmitted forthwith to criminal investigation bodies.⁵

⁴ Criminal Procedure Code, Article 57 Jurisdiction of criminal investigation bodies

⁵ Criminal Procedure Code, Article 61 Acts concluded by fact-finding bodies

Refusal to initiate criminal action, termination and suspension of criminal action

Refusal to initiate criminal action or termination of criminal action in the absence of a complaint of the victim

Criminal action may not be initiated, and when it has already been initiated, may not be used if:

- a prior complaint is missing;
- a prior complaint was withdrawn for offence in relation to which its withdrawal exempts from criminal liability, reconciliation took place or a mediation agreement was concluded.

When the law requires that criminal investigation can only be started based on the prior complaint by the victim, the criminal investigation cannot be started in the absence of such an act.

(1) A criminal investigation shall only start on the basis of receiving a prior complaint by the victim, in the case of offenses for which the law mandates it.

(2) The preliminary complaint shall be filed with the criminal investigation body or the prosecutor, as established by law.⁶

A preliminary complaint shall be filed within 3 months of the day the victim learned of the commission of the offence.

Upon receiving a preliminary complaint the criminal investigation body shall make sure it meets all the requirements of form and whether it was filed inside the legal time frame. If in a case where criminal investigations have already been performed it is found that a preliminary complaint is required, the criminal investigation body shall call upon the victim and ask whether they wish to file a complaint. In the affirmative case the criminal investigation body shall continue its investigations. In the contrary case it shall submit its documentation to the prosecutor, accompanied by a proposal to close the case.

Upon the receipt of a proposal by the investigation body to terminate the case the prosecutor shall verify the case materials and decide on the termination of the case. If there are grounds for the termination of the case, the prosecutor shall order the case terminated; if there are no such conditions, the case shall be returned to the investigation body.

A person may submit a complaint concerning the termination of the case to the Preliminary Chamber Judge at the court that would have legal jurisdiction to try the case as a court of first instance.

⁶ Criminal Procedure Code, Article 295 Preliminary complaint

Dropping charges

(1) In the situation of offenses for which the law requires the penalty of a fine or a penalty of imprisonment of no more than 7 years, the prosecutor can drop charges when, considering the contents of the offense, the modus operandi and the instruments used, the goal of the offense and the concrete circumstances of its commission, the consequences that occurred or could have occurred, they find that a public interest is not served in prosecuting.⁷

The prosecutor might decide on dropping the criminal prosecution if he ascertains that there is no public interest for prosecution based on the content of the deed, the way and means used to perpetrate the crime, the goal and circumstances in which the crime was committed, and the consequences produced or which might have been produced by committing the crime.

When the perpetrator of the crime is known in deciding if there is a public interest the prosecutor also decides based on the personality of suspect/defendant, his conduct before he committed the crime, and his actions in order to diminish the consequences of the offence.

After consulting with the suspect or defendant the prosecutor can order that they comply with one or several of the following obligations:

- remove the consequences of the criminal offence or make redress, or agree with the civil party on an avenue of redress;
- make a public apology to the victim;
- perform community service for a time span for not less than 30 and no more than 60 days, except in the case where their health precludes them to provide such community service;
- enlist in a counselling program.

The interested parties may submit a complaint concerning the decision of the prosecutor to the Preliminary Chamber Judge. The complaint shall be submitted within 20 days.

The Preliminary Chamber Judge can rule to:

- deny the complaint;
- sustain the complaint, annul the challenged resolution, and send the case back to the prosecutor with explanations in order to supplement the criminal investigation;
- sustain the complaint, annul the challenged resolution, and rule to begin trial of the offences and individuals against whom the criminal action started during the criminal investigation finding that the lawfully gathered evidence was sufficient, thus putting the case up for random assignment;
- sustain the complaint and change the legal grounds of the challenged resolution to close a case if this does not create a situation that is more difficult for the individual who filed the complaint.

⁷ Criminal Procedure Code, Article 318 Dropping charges

Suspension of investigation if the person who has committed the offence has not been established

In order to identify the perpetrator and solve the case the criminal investigation body draws up an investigative plan. When the perpetrator is not mentioned in the complaint the investigative plan has to be drawn up within 30 days from the moment when the file was assigned. The investigative plan will receive a consultative accept of the police station commander and approval of the prosecutor.

The investigative plan will contain judiciary activities to be conducted within 60 days from the moment it was drawn up. Investigation can continue after 60 days but no more than one year.

If the mentioned term is reached and the perpetrators were not identified, the criminal investigation body elaborates an official report proposing that the penal file will be sent to the penal archives stipulating the prescription term. The report will receive a consultative signature of the Police Station Commander and the prosecutor's approval. The penal file will be handed over to the Archives Police Department. The prosecutor may decide to continue investigation.

The investigation can be reopened after an official report is drawn up with the consultative signature of the police station commander and the prosecutor's approval. New elements for reopening the criminal investigation to be considered:

- intelligence, which can conduct to perpetrator identification including denunciators and auto-denunciators;
- forensic data;
- identification of stolen goods;
- similar offences committed;
- the same modus operandi within a certain area.

Simplified procedures

There are no specific types of simplified criminal procedures at investigation stage applied in Romania. The conduct of an investigation depends on whether or not the person committing the offence has been identified and the complexity of the case. An investigative plan shall be drawn up for complex cases.

When the perpetrator is mentioned in the complaint the investigative plan has to be drawn up within 3 month from the start of the criminal proceedings regardless of the complexity of the case or within 5 days from the moment when the file was assigned if the case is complex.

When the perpetrator is not mentioned in the complaint the investigative plan has to be drawn up within 30 days from the moment when the file was assigned.

There is no investigative plan when the perpetrator is detained/arrested.

When the criminal investigation officer ascertains that there is sufficient ground for a person to be prosecuted, he/she will send a report to the prosecutor's office, signed by the police station commander.

The prosecutor must give a written answer within one day for regular cases or within 15 days for complex cases.

At the stage of court proceedings certain categories of cases are prioritised and subjected to a shorter period of time for the trial.

(1) If the case counts with defendants in pre-trial detention or under house arrest, the court proceedings shall be urgent and as a matter of priority, whereas the court hearings shall be held, usually, every 7 days.

(2) Out of strongly justified reasons, the court may grant shorter or longer recesses between court hearings.⁸

Guilty plea

The object of the guilty plea is admission to have committed the offense and accepting the charges on which criminal action has begun, and regards the type and amount of punishment, as well as how the punishment shall be served.⁹

(1) A guilty plea can only be concluded concerning the offenses for which the law requires a penalty of a fine or no more than 7 years of imprisonment.

(2) A guilty plea can be concluded when the gathered evidence provides sufficient information that

⁸ Criminal Procedure Code, Article 355 Emergency court proceedings in cases with persons in pre-trial detention or under house arrest

⁹ Criminal Procedure Code, Article 479 Object of the guilty plea

*the offenses for which charges have been filed exists, and that the defendant is the author of that offense. On entering a guilty plea legal assistance is mandatory.*¹⁰

During the criminal investigation, after the formal filing of charges the defendant and prosecutor can conclude an agreement as a result of the defendant pleading guilty. A guilty plea shall be concluded in writing. The effects of the guilty plea shall be subject to approval by the hierarchically superior prosecutor.

A guilty plea contains:

- a) date and place of signing;*
- b) surname, name and capacity of the signatory parties;*
- c) information on the person of the defendant, as stipulated at Art. 107 par. (1);*
- d) description of the offense that makes the object of the guilty plea;*
- e) charges for that offense and penalty required by law;*
- f) evidence and methods of proof;*
- g) specific statement by the defendant that they admit having committed the offense and accept the charges that have been filed formally;*
- h) type and amount of punishment and how the punishment is to be served, or a resolution to waive enforcement of the penalty or postpone enforcement of the penalty on which the prosecutor and defendant have agreed;*
- i) signatures of the prosecutor, defendant and defense counsel.*¹¹

After signing the guilty plea, the prosecutor shall file with the court that would have jurisdiction to try the case on the merits and submit the guilty plea accompanied by the criminal investigation file.

The court shall rule on the guilty plea following a non-adversarial procedure, by judgment returned in public session after hearing the prosecutor, the defendant, and the defence counsel of the latter, as well as the civil party if present.

In the situation where the court sustains the guilty plea and the parties have entered a civil settlement or a mediation agreement concerning the civil action, the court shall include that in its judgment.

¹⁰ Criminal Procedure Code, Article 480 Conditions for concluding a guilty plea

¹¹ Criminal Procedure Code, Article 482 Contents of the guilty plea

Practical application

Police investigation for theft from a store

A situation where the perpetrator has attained the age of majority and knows the language of criminal proceedings.

Theft

(1) The act of taking a movable asset from another person's possession or use, without the latter's consent, in order to make it one's own, without right, shall be punishable by no less than 6 months and no more than 3 years of imprisonment or by a fine (not given by law enforcement agencies).

(2) The act is a theft even if the asset belongs fully or partly to the perpetrator, if at the time of perpetration the asset in question was in the legitimate possession or use of another person.¹²

1. Upon the receipt of the report by a representative of the store the police patrol arrives at the scene.
2. At the crime scene the police patrol draws up a protocol with a detailed description of the scene and testimonies of the involved persons. The protocol shall contain the following information:
 - information regarding the police officers arriving at the scene, the reason for arrival (report etc.), time of arrival;
 - information regarding the scene;
 - information regarding persons present at the scene (personal data, address, the place of work);
 - testimonies of the victim and witness;
 - testimony of the person recognized by the victim and the witness indicated to be the perpetrator;
 - description of stolen goods;
 - information on whether the persons who have given testimonies have any objections to the protocol;
 - signatures of the police patrol officers, the victim, the witness, and the perpetrator on each page of the protocol.

At the scene the police patrol shall act in accordance with the Criminal Procedure Code, ART. 61 Acts concluded by fact-finding bodies, and the actions conducted by the police patrol shall not be considered to be investigation of the offence yet. Usually perpetrators in such cases are not detained.

¹² Criminal Code, Article 228 Theft

3. Data of the perpetrator shall be verified in information systems.
4. The victim submits a standard complaint of the victim. The complaint is checked if all legal requirements are met. If not met, the petitioner will be informed in writing or on the spot if possible about which requirements are not fulfilled and as consequence the complaint will not be registered. The police station commander or one of his deputies must write on the complaint a resolution mentioning for which type of crime the investigation will proceed.
5. The complaint is registered in the Register of Penal Files. In order to do it, the police station commander sends a proposal to the prosecutor's office regarding initiation of the investigation accompanied by the complaint and other relevant materials. The prosecutor's office will register the complaint and allocate a unique number. In urgent cases a unique number can be given by phone and the file submitted later on to the prosecutor's office. In such cases the file shall be registered in the Register of Penal Files within 5 days. In urgent cases where search or preventive measures must be applied the file shall be registered within 24 hours.
6. The criminal investigation officer submit a report to the prosecutor in order to be approved for initiation of the criminal proceedings *in personam*, when the perpetrator is known and enough evidence was gathered, or *in rem*, when the perpetrator is not known but enough evidence was gathered, indicate that a crime was committed.
7. Police officers conduct investigative actions – interrogate the victim, the witness, and the suspect. They shall conduct other investigative actions as necessary. Most often, no additional actions are required in case of theft from a store and also surveillance video recordings are not required to be seized and inspected.
8. A report regarding the completion of the investigation shall be drawn up and signed by the police station commander. The report along with the criminal case materials shall be handed over to the prosecutor's office.
9. Upon the receipt of the criminal case, the prosecutor shall decide on presenting charges, dropping charges or return of the criminal case to the police to continue the investigation.
10. National Incident report data bases shall be filled up with all the above mentioned investigations.

If the person accused for theft is taken in custody, the following activities must be performed:

- shall be informed forthwith in a language they understand of the offence they are under suspicion of having committed and of the reasons for being taken in custody (this shall be recorded in a report);
- a written police order for taking in custody for a maximum of 24 hours will be drawn up.

Taking in custody may be ordered only after hearing the suspect or defendant in the presence of a retained or court appointed counsel. An interview shall be conducted.

Prior to hearing the criminal investigation body or the prosecutor are under an obligation to inform the suspect or defendant that they have the right to be assisted by a retained or court

appointed counsel and the right not to make any statement, except for providing information referring to their identity, by drawing their attention that anything they declare can be used against them (this shall be recorded in a report).

A suspect or defendant taken in custody has the right to inform their retained personal counsel or to request criminal investigation bodies or the prosecutor to inform such a counsel. The way in which the counsel is informed shall be recorded in a report. A person taken in custody may be denied their right to inform their counsel personally only for well-grounded reasons, which shall be recorded in a report.

A retained counsel is under an obligation to come to the premises of the judicial body within a maximum of two hours after having been informed. In case the retained counsel fails to arrive, the criminal investigation body or the prosecutor shall appoint a counsel *ex officio*. This shall be recorded in a report.

Taking in custody is ordered by the criminal investigation body or by the prosecutor through an order, which shall include the reasons having caused the taking of such measure, the day and time when custody starts, as well as the day and time when custody ends.

A suspect or defendant taken in custody shall be handed a copy of the prosecutorial order.

During taking a suspect or defendant in custody, the criminal investigation body or the prosecutor having ordered the measure have the right to proceed to take pictures of them and to fingerprint them.

If taking in custody was ordered for a person accused for theft by the criminal investigation body, they are under an obligation to inform the prosecutor forthwith and by any means on having taken such a preventive measure. This shall be recorded in a report.

SWEDEN

Crime and competence in a preliminary investigation

Crime

A crime is an act defined in this Code or in another law or statutory instrument for which a punishment as stated below is provided.¹

Unless otherwise stated, an act shall be regarded as a crime only if it is committed intentionally.²

A person may be found guilty of committing a crime and punished by a judgement of the court. In some cases specified by law a penalty may be applied by a prosecutor by means of summary penalty and police officials by means of summary orders for a breach-of-regulations fine. The Swedish Penal Code also includes such offences, which only have a penalty fine when committed, and this fine may be applied by police officials. Thereby in Sweden offence is considered a crime, which in other countries would have been compared to an administrative violation.

In addition to the Penal Code crimes are foreseen also in various specialized laws, for example, in Drug trafficking and other laws.

Competence in preliminary investigation

Principle of mandatory criminal proceedings.

A preliminary investigation shall be initiated as soon as due to a report or for other reason there is cause to believe that an offence subject to public prosecution has been committed.³

During the preliminary investigation, inquiry shall be made concerning who may be reasonably suspected of the offence and whether sufficient reason exists for his prosecution and the case shall be prepared so that the evidence can be presented at the main hearing without interruption.⁴

Application to crime can be submitted to police over telephone, letter, in police station or over the internet.

A decision to initiate a preliminary investigation is to be made either by the police authority or by the prosecutor. If the investigation has been initiated by the police authority and the matter is not of a simple nature, the prosecutor shall assume responsibility for conducting the investigation as soon as someone is reasonably suspected of the offence. The prosecutor shall also take over the conduct of the investigation if there special reasons so require.

¹ The Penal Code, Chapter 1 On Crimes and Sanctions for Crime, Section 1

² The Penal Code, Chapter 1 On Crimes and Sanctions for Crime, Section 2

³ The Code of Judicial Procedure, Chapter 23 Preliminary investigation, Section 1, Paragraph 1

⁴ The Code of Judicial Procedure, Chapter 23 Preliminary investigation, Section 2

A prosecutor conducting a preliminary investigation may enlist the assistance of a police authority. He may also direct a police officer to take particular measures in aid of the preliminary investigation when appropriate having regard to the nature of the measure. Before the preliminary investigation has been initiated, a police officer may question persons or take other investigatory measures relevant to the inquiry.⁵

Before criminal proceedings have been initiated police authorities can question people and carry out other investigative measures, which are necessary to clarify the circumstances. Based on Police law Swedish police may decide to carry out surveillance actions and technical surveillance before criminal proceedings have been initiated.

If an application form of the victim is required to initiate criminal proceedings, but it has not been received yet, criminal proceedings may be initiated also without this application by informing the victim. However if the victim does not submit an application, the investigation is terminated.

Main decisions in the criminal case are made by an investigation leader who manages the work of several investigators. In investigations, which are carried out outside the working time, the role of the investigation leader is carried out by shift senior officers of the police operative command center.

Police and prosecutors enter into an agreement, which determines crimes which are investigated by police and which are investigated by prosecutors.

The police investigates cases until the moment the identity of suspect is clarified. In cases when a serious crime is committed but the identity of suspect is not clarified police informs the prosecutor and the prosecutor can decide to take over the investigation of the case. If the identity of the suspect is clarified, the prosecutor carries out investigation for committing serious crimes, also in cases where the suspect is arrested it is necessary to pursue investigative actions where acceptance is in the jurisdiction of the Court (for example, wiretapping, search) or the crime is committed by an underage person. In other cases where the identity of the suspect is clarified the investigation is carried out by the police.

The prosecutor may take over the investigation of any case.

⁵ The Code of Judicial Procedure, Chapter 23 Preliminary investigation, Section 3

Refusal to initiate a preliminary investigation, discontinuance of a preliminary investigation, and a waiver of prosecution

Refusal to initiate a preliminary investigation

A preliminary investigation need not be initiated if it is manifest that it is not possible to investigate the offence.⁶

A preliminary investigation also does not need to be initiated in certain other cases, for example, if continued inquiry would incur costs not in reasonable proportion to the importance of the matter and the offence, if prosecuted, would not lead to a penalty more severe than a fine or if it can be assumed that the prosecution will not be instituted pursuant to the provision on the waiver of prosecution (mentioned in subpart 2.3).

Before criminal proceedings have been initiated police authorities can question people and carry out other investigative measures, which are necessary to clarify the circumstances. After arrival of the police at the crime scene, considering event circumstances and proof gathered in the crime scene, it is evaluated if it is possible to refer the case to trial. The nature and severity of the crime is also evaluated by comparing it to the needed investigative resources to investigate it. In essence on the crime scene, after contacting the investigative leader over telephone a decision is made on whether to continue the investigation or not. Approximately in 65 % of cases from all reports about events, the investigation is suspended immediately. The victim has the right to appeal this decision to the prosecutor.

Discontinuance of a preliminary investigation and refusal to initiate a preliminary investigation

The preliminary investigation shall be conducted as expeditiously as possible. When there is no longer reason for pursuing the investigation, it shall be discontinued.⁷

A preliminary investigation may also be discontinued:

- 1. if continued inquiry would incur costs not in reasonable proportion to the importance of the matter and the offence, if prosecuted, would not lead to a penalty more severe than a fine or*
- 2. if it can be assumed that prosecution will not be instituted pursuant to the provision on waiver of prosecution contained in Chapter 20, or on special examination of prosecution and if no substantial public or private interests would be ignored by the discontinuance of the preliminary investigation.*

If the conditions for discontinuance of a preliminary investigation under the first paragraph exist already before such investigation has been initiated, it may be decided that a preliminary investigation shall not be initiated.

⁶ The Code of Judicial Procedure, Chapter 23 Preliminary investigation, Section 1, Paragraph 2

⁷ The Code of Judicial Procedure, Chapter 23 Preliminary investigation, Section 4, Paragraph 2

Decisions under this section shall be issued by a prosecutor.⁸

If the cost of investigation is not in reasonable proportion of the matter of the offence, and it is expected that it would not lead to a more severe penalty than a fine or the accusation will not be instituted based on mentioned reasons in subpart 2.3, criminal proceedings may be terminated.

The mentioned decisions to waive the initiation of a preliminary investigation and to terminate a preliminary investigation are entitled only to the prosecutor and the police have no rights to take such decisions.

Waiver of prosecution

Prosecutors may waive prosecution (waiver of prosecution), provided no compelling public or private interest is disregarded:

- 1. if it may be presumed that the offence would not result in another sanction than a fine;*
- 2. if it may be presumed that the sanction would be a conditional sentence and special reasons justify waiver of prosecution;*
- 3. if the suspect has committed another offence and no further sanction in addition to the sanction for that offence is needed in respect of the present offence; or*
- 4. if psychiatric care or special care in accordance with the Act on Support and Service for Certain Persons with Functional Impairments (1993:387) is rendered.*

A prosecution may be waived in cases other than those mentioned in the first paragraph if it is manifest by reason of special circumstances that no sanction is required to prevent the suspect from engaging in further criminal activity and that, in view of the circumstances, the institution of a prosecution is not required for other reasons.⁹

A decision to waive prosecution may be made even after the institution of a prosecution when circumstances emerge that, had they existed or been known at the time of the prosecution, would have led to waiver of prosecution. Prosecution may not be waived, however, if the defendant objects or after judgment has been rendered.

A waiver of prosecution may be withdrawn if special reasons so require.¹⁰

To save resources with the condition that compelling private or public interests are not disregarded, the prosecutor may waive prosecution for less serious crimes if the person in the meantime is prosecuted also for serious crimes and less serious crimes after investigating them and sending to court actually will not affect the final penalty, also applied in situations when a person will be likely sentenced with a conditional sentence and in situations when a penalty is not necessary to deter the person from further crimes. Discontinued criminal proceedings for less serious crimes are not restored unless it is necessary due to special conditions.

The victim has the right to appeal this decision to the prosecutor.

⁸ The Code of Judicial Procedure, Chapter 23 Preliminary investigation, Section 4a

⁹ The Code of Judicial Procedure, Chapter 20 Right to Prosecute; Aggrieved Persons, Section 7

¹⁰ The Code of Judicial Procedure, Chapter 20 Right to Prosecute; Aggrieved Persons, Sections 7a and 7b

Simplified procedures

Issues of liability for offence subject to public prosecution may be undertaken by public prosecutors by means of summary penalty orders and by police officers by means of summary orders for a breach-of-regulations fine. Summary orders are used in lieu of prosecutions.

Order for a summary penalty

An order for a summary penalty means that the suspect is, subject to his approval immediately or within a specified period, ordered to pay a fine according to what the prosecutor considers that the offence deserves. Approved orders shall have the same effect as a judgment that has entered into final force.

Fines may be ordered by summary penalty orders concerning offences in respect of which fines are included in the range of penalties, though not standardized fines. There are special provisions concerning summary penalty orders for offences committed by someone under eighteen years. The provisions of Chapter 34, Section 1, first paragraph 2 of the Penal Code apply to orders to pay a fine.

Conditional sentences or such a sanction coupled with a fine may be ordered by means of a summary penalty order in cases where it is obvious that the court would order such a sanction. However, this does not apply to offences committed by a person under 18 years if there is reason to combine the conditional sentence with a community service order.¹¹

Orders for a summary penalty may not be issued:

- if the preconditions for public prosecution do not exist;
- if the order does not include all offences committed by the suspect that are under consideration according to the knowledge of the prosecutor;
- if the aggrieved person has declared that he intends to institute an action for a private claim in consequence of the offence not relating to the obligation to pay a fine etc.;
- if an action for a corporate fine is brought in consequence of the offence.

The order shall identify:

- the suspect;
- the offence specifying the time and place of its commission and the other circumstances required for its identification;
- the applicable statutory provision or provisions;
- the punishment and special legal effects submitted to the suspect for approval;

¹¹ The Code of Judicial Procedure, Chapter 48 Orders for Summary Penalty and Orders for Breach-of-regulations Fine, Section 4

- the private claim submitted to the suspect with information concerning the aggrieved person and the circumstances on which the claim is based.

If the aggrieved person has presented a private claim relating to an obligation to pay in consequence of the offence and the circumstances are such that the prosecutor is liable to prepare and present the aggrieved person's action, the private claim shall also be presented to the suspect for approval.

If an order for summary penalty is submitted to the suspect for approval within a specified period by annotation in the order or by any other way, the suspect shall be informed of the manner and the period fixed for the approval and shall be informed that if the order is not approved, prosecution may be instituted after the expiration of the specified period.

The order for a summary penalty shall be handed over or sent to the suspect. The suspect's approval of an order of summary penalty is made by his signing a declaration that he admits the commission of the act and accepts the sanction and the special legal effects included in the order and by delivering the declaration to the proper authority.

An approval signed on a document other than the order is valid only if it is manifestly clear which order it is referred to. If an order for a summary penalty concerns nothing other than a fine or fines and fees under the Fund for Victims of Crime Act and without any previous written approval the whole of the amount is paid, the payment is considered as an approval if it does not appear that the suspect has not intended to approve the order.

An approval given after the issuance of a summons or summons application by the prosecutor has no effect.¹²

Order for a breach-of-regulations fine

Order for a breach-of-regulations fine means that the suspect is, subject to his approval, immediately or within a specified period, ordered to pay a fine.

Orders for breach-of-regulations fine may be issued concerning offences that are neither punishable by any other penalty than fines assessed directly in a set amount nor standardized fines, and for which breach-of-regulations fines are decided in the manner prescribed by Section 14.

If a special conditions are prescribed for public prosecution, the provisions of orders for breach-of-regulations fine are not applicable.¹³

The Prosecutor-General shall determine the amount that shall be fixed as the breach-of-regulations fine for different offences.

Orders for a breach-of-regulations fine shall be made in writing and shall be signed by the police officer.

¹² See The Code of Judicial Procedure, Chapter 48, part on Order for Summary Penalties

¹³ The Code of Judicial Procedure, Chapter 48 Orders for Summary Penalty and Orders for Breach-of-regulations Fine, Section 13

The order should be issued in the presence of the suspect and he shall have an opportunity to approve the order immediately. If the order is issued in the absence of the suspect or if a suspect being present at the issuance of the order needs time for reflection, the police officer may hand the suspect the order for later decision as to the issue of approval.

Orders for a breach-of-regulations fine may not be issued:

- if the suspect denies the act;
- if the order does not include all offences committed by the suspect that are in consideration according to the knowledge of the police officer;
- if there is reason to assume that an action for a civil claim will be commenced.

In other situations if it may be assumed to be required that a prosecutor examines the issue of summary penalty or prosecution for the offence, an order should not be issued.

When the offence calls for forfeiture of property or a special legal effect in the form of a fee under the Act on the Fund for the Victims of Crime, costs of blood tests and blood analysis relating to the suspect and undertaken for the investigation of the offence this shall also be submitted to the suspect for approval.

An approval of an order for breach-of-regulations fine given after the issuance of a summons or a summons application by the prosecutor also has no effect.¹⁴

A breach-of-regulations fine is applied, for example, to most of traffic crimes.

¹⁴ See The Code of Judicial Procedure, Chapter 48, part on Order for breach-of-regulations fine

Practical application

Preliminary investigation regarding theft from a store

A situation where the person committing the criminal act has attained the age of majority and knows the language of criminal proceedings.

A person who unlawfully takes what belongs to another with intent to acquire it, shall, if the appropriation involves loss, be sentenced for theft to imprisonment for at most two years.¹⁵

If the crime under Section 1, having regard to the value of the stolen goods and other circumstances of the crime, is regarded as petty, a fine or imprisonment for at most six months shall be imposed for petty theft.¹⁶

In the case when theft is considered a petty theft the value of the stolen goods is less than 100 euros and usually for this crime a fine is sentenced by the prosecutor.

1. Police receives a notice about committed theft from a trading facility. Officers of patrol police arrive at the crime scene and carry out initial operations, which are not considered as investigative actions yet. Victims, possible witnesses are questioned about the information they know. In case of theft from trading facilities, also for bicycle and car theft, when the person who committed this crime is not arrested at the crime scene, the police does not arrive at the crime scene, the complainant is asked to arrive at the police station.
2. Officials of the patrol police communicate with the leader of the investigation over telephone, who considering obtained information about the nature of the offence, circumstances and possibility to gather evidence, decides whether to initiate an investigation or not.
3. If the leader of the investigation decides to initiate an investigation, the suspect is brought to the police station for questioning.

On direction of a police officer, anyone found at the scene of an offence is required to accompany the officer for questioning, which shall be held immediately. If such a person refuses to comply without a valid excuse, he may be brought to the questioning by the police officer.

The preceding paragraph shall also apply to persons present at a site adjacent to the scene where an offence was shortly before committed, if a less severe penalty than imprisonment for four years is not prescribed for the offence. This also applies to an attempt to commit such an offence.

The provisions of the first and second paragraph also apply before there has been time to initiate the preliminary investigation.¹⁷

A person not under arrest or in detention is not obliged to stay for questioning longer than six hours. If there is extraordinary need to have a person suspected of an offence available for continued questioning, he is obliged to stay an additional six hours.

¹⁵ The Penal Code, Chapter 8 On Theft, Robbery and Other Crimes of Stealing, Section 1

¹⁶ The Penal Code, Chapter 8 On Theft, Robbery and Other Crimes of Stealing, Section 2

¹⁷ The Code of Judicial Procedure, Chapter 23 Preliminary investigation, Section 8

A person under fifteen years of age is not obliged to stay for questioning longer than three hours. In cases of extraordinary need, such a person is obliged to stay an additional three hours.

After the conclusion of the questioning, or after expiration of the time the questioned person is obliged to stay, he may immediately leave. The person shall not be required to appear at another questioning for at least twelve hours thereafter, without extraordinary reasons.

A person who may be suspected for an offence may be taken into custody during the period he is required to remain, provided this is necessary having regard to the purpose of the intervention, public order or security.¹⁸

4. Police official in the police station executes a report about the incident in the Investigations Information System. The report consists of information about:
 - incident circumstances, providing a brief description of the crime;
 - stolen goods, it's value, and taken action with it (returned to the store);
 - the victim and if a compensation application is submitted;
 - the person, who called the police, the witness;
 - the person, who committed the crime.
5. The suspect's interrogation protocol is executed in the Investigations Information System at the police station, the suspect has the opportunity to read the protocol on the screen and make comments on the protocol content. A suspect does not have to sign a protocol of interrogation. It is recorded that the suspect agrees to the testimony in the interrogation protocol, and the protocol is approved by an electronic signature of the police official, created by the system. Afterwards it is not possible to make any changes in the protocol. During the interrogation it is clarified and noted in the protocol whether the suspect agrees to applying a fine. The interrogation in cases of theft in trading facilities lasts for about 5 minutes.
6. The testimony of the victim and witnesses are entered into the Investigations Information System by a police official at the police station based on verbal questioning held at the crime scene, which in these cases are brief and last for about 5 minutes. Also in this case a testimony of the victim and witness recorded in a questioning protocol is not signed by them. If police officers have unclear matters or it is necessary to approve if the victim maintains the complaint in the case or application for compensation, the police official may take questioning over telephone.

Also if the case is already in court, a questioning may be taken by telephone.

At main hearings, evidence may be taken by telephone if, in consideration of the kind of evidence and other circumstances, it is appropriate, or if the taking of evidence pursuant to the ordinary rules would occasion costs and inconvenience not being in a reasonable proportion to the importance of taking the evidence in the ordinary way. As to taking evidence by telephone the rules in this Code concerning notices, directives, and consequences of absence shall not apply.¹⁹

¹⁸ The Code of Judicial Procedure, Chapter 23 Preliminary investigation, Section 9

¹⁹ The Code of Judicial Procedure, Chapter 46 Main Hearing in Cases with Public Prosecution, Section 7

Guidelines

7. In the case of theft in a trading facility when the person who committed the crime is caught during committing the crime, only the testimony of the victim and witness and the confession of the suspect is necessary to execute a prosecution. Recordings of security cameras are not added to the investigation materials because mentioned testimonies are enough for the evidence.
8. In addition to the materials of the case documents are generated by the Investigations Information System about:
 - suspects income;
 - participation of the defence counsel;
 - data of the victim, witness;
 - data of the suspects;
 - authorization in the Investigations Information System (all actions made in the information system relevant to the case).
9. Overall the documentation of the investigation is conducted in electronic form in the Investigations Information System. During the interrogations and questionings signatures of the questioned persons are not necessary, thereby it is not necessary to print out the documents to sign them (the main testimony will be given in the court not to the police). No document in the criminal case is signed but it is added to the case, automatically generated auditing list of authorization in the Investigations Information System on multiple pages with all operations that have been made by police officers in the information system in the relevant case indicated. Thereby all documents added and actions made are registered and all changes in the case are indicated in the auditing list of authorization in the Investigations Information System. For example, an interrogation protocol of the suspect, generated by the Investigations information system, is affirmed with an electronic signature, which is also indicated in the auditing list of authorization in the Investigations Information System. Thereby recorded content of a testimony in the protocol cannot be changed and the possibility of intervention is excluded. If it is necessary to supplement the testimony, than a new protocol is generated, but it is not possible to make any changes in the first protocol. All documents are printed out only when the investigation is completed and the case is submitted to the prosecutor's office. The police at this point have to present the criminal case materials to the victim and the person who committed the crime. It can be also done by sending materials by mail. After that the prosecutor does not need to do it.
10. Although jail time can be sentenced for petty theft, the prosecutor mainly applies an order for a summary penalty with a fine. Fines for theft from trading facilities are up to 50 fine rates. The rate of the fine is calculated according to the level of income of the person. If the fine is not paid, the case is passed to bailiff.

A typical criminal case for theft from a store consist of following short documents without signatures, generated by the Investigations Information System:

- 1) the document about core data of the criminal case (1 page);
- 2) the list of documents in the criminal case (1 page);
- 3) the report from the patrol police about detected facts in the scene (2 pages);
- 4) the document, which indicates if the representative of the store maintain the complaint (1 page);
- 5) the testimony obtained in a 5 minute questioning of the witness in a few sentences (1 page);
- 6) the testimony obtained in a 5 minute interrogation of the suspect in a few sentences (1 page);
- 7) the document with the data of the suspect (1 page);
- 8) the document with income of the suspect (1 page);
- 9) the document about participation of the defence counsel (1 page);
- 10) the document with contact information of the victim and witness (1 page);
- 11) the document with contact information of the suspect (1 page);
- 12) the auditing list of authorization in the Investigations Information System (multiple pages).

Other features simplifying criminal proceedings

In Sweden with the objective to use police resources efficiently, in the beginning of the investigation a major part of actions in the criminal proceedings are carried out by highly qualified and well equipped patrol police crews. At the arrival at the scene the patrol police crew carries out the investigation as far as their resources and work load allows them to.

In Sweden with acceptance of the prosecutor with a goal to efficiently use investigative resources, minor criminal proceedings on offences committed by a person may be terminated (so called *cutting tales*) in the case when the person is also prosecuted with serious crimes and less serious crimes after the investigation and passing to court would not affect the final penalty. Terminated criminal proceedings for less serious crimes that have been committed are not restored and are archived. For example, if it is ascertained in the investigation that the person has committed 12 serial burglaries then the police with acceptance of the prosecutor may terminate the investigation in part of the committed crimes and may continue to collect evidence only in, for example, 6 most serious criminal cases, because it will not significantly change the sentence if the rest of the cases will also be sent to court, meanwhile the police, prosecutor`s office and

court will spend a reasonable amount of resources and time to prosecute this person for all the committed crimes.

In Sweden an investigator carries out investigations simultaneously in approximately 20 criminal cases and it is frequently evaluated whether criminal proceedings should be terminated.

In Sweden investigative actions may be carried out, for example, questioning by telephone or other communication resources. To increase the efficiency questioning by telephone is commonly used. In order to establish the identity of a person specific questions are asked to the person before such questioning. These questions may be related to the premarital surname of a person's mother, siblings, driving licence or passport data, criminal record of the person etc.

In criminal cases for caused lite injuries the investigator is not obliged to order a forensic expert examination to state injuries caused to the victim. In these cases a report of a police officer is evident enough, where injuries caused to the victim are described and it is sufficient with such a report in a case.

It is planned to implement remote investigation practices in Sweden. For example, in cases such as store theft it is planned that the representative of the store calls the police and informs about the theft and remotely provides necessary information. While the police in such minor cases remotely initiate and conduct investigation without arriving at the scene.

THE NETHERLANDS

Offences and criminal procedure

Offences

Offences are divided into a two-level system:

- Crimes.
- Misdemeanours.

Most offences are contained in the Criminal Code (1886). More offences are contained in the Road Traffic Act, the Opium Act, the Weapons and Ammunition Act, the Economic Offences Act and in many other acts where lots of offences are contained in addition to the Criminal Code. The general part of the Criminal Code also applies to other offences provided for in the aforementioned legislation, not only to offences provided for in the Criminal Code. The criminal procedure for investigation of offences indicated in other legislation in some aspects differs from the criminal procedure set forth in the Code of Criminal Procedure.

Crimes in the Criminal Code are arranged by legal interest and offence definition and maximum penalty are grouped together. The offences provided for in the Criminal Code have no minimum penalty specified. For example, shoplifting is deemed a theft and it is a crime provided for in the Criminal Code.

Misdemeanours are contained in the Criminal Code and also in other particular acts adopted by the state or by municipalities.

Many offences, for example, less serious traffic offences, may be proceeded according to the administrative procedure as administrative violations, although they are offences.

General characteristics of the Dutch criminal procedure

Investigation is formally led by a public prosecutor, but mostly it is carried out by the police or special investigative units. Usually the police coordinates different actions taken in criminal proceedings with the prosecutor by phone. A representative of the managerial staff of the police, called the deputy prosecutor, takes the most important decisions in an investigation. Such decisions include, for example, the decision about detaining a person for 3 days. In some police precincts prosecutors are also located at police precincts, which facilitates conducting an investigation and allows for a prompt imposition of a penal order issued by a prosecutor. A suspect in criminal proceedings is someone against whom there is a reasonable suspicion, based on facts and circumstances that he has committed a criminal offence and no special written

decision must be prepared on that.¹ Special decisions on the institution of criminal proceedings, recognition of a person a victim a.o. are not required either. Initially it is the police who assembles an investigation file, which is sent to the prosecutor's office for further prosecution. But ultimately the prosecutor is in charge of the investigation and decides, which evidence and documents must be included in a criminal case file. If the prosecutor has not seen the suspect for the order of police custody, he does not meet the suspect during a pre-trial investigation, and after completion of the investigation he sends copies of the criminal case materials to the suspect's defence counsel. In such a case he sees the suspect only at the arraignment and questioning before the judge. An investigating judge does not lead an investigation but can perform investigating actions when requested by either party, issues warrants, questions witnesses etc. If it is necessary the witnesses may be questioned under oath by the investigating judge. That might give the testimony more weight but ultimately it is for the trial judge to decide on the selection and weighing of evidence. The difference is that an investigating judge has more authority to apply compulsory measures against a person to obtain a testimony. Special investigative techniques are laid down in the Code of Criminal Procedure but they may also be used based on the Police Act, although if such actions are related to intervention into personal lives of persons, the prosecutor's approval is required as well. The police act can only provide the basis for less intrusive measures. Abundant use of pre-trial detention is common in the Netherlands. The legal aid scheme is quite generous but there are lots of restrictions for participation of the defence counsel in an investigation. A suspect may be detained for 6 hours during the investigation for questioning. The detention may be extended to 15 hours if a person must be detained during the night as well. A person may be detained for 3 days by a decision of a representative of the managerial staff of the police, called a deputy prosecutor as well, but a defence counsel must be provided for the detainee if such a decision is made. According to article 57 of the Code of Criminal Procedure a prosecutor or a deputy prosecutor may order a suspect to be placed in police custody for three days. According to article 58, if urgently necessary this custody can be extended by another 3 days, but only by the prosecutor. In any case the suspect must be brought before a judge within maximum of 3 days and 15 hours. The investigation judge assesses the legitimacy of the detention, and if found that the detention is not legitimate, the judge releases the suspect immediately.² The investigating judge may also order detention on remand, on request of the prosecutor for maximum 14 days. The court decides in Chambers whether to place the suspect in detention of remand for a longer period up to a maximum of 90 days. The time of detention of remand may be extended. The trial is more adversarial and the pre-trial is more inquisitorial. The prosecutor is of quasi-judicial character, he assists the court in arriving at material truth. Therefore a prosecutor decides, which witnesses will be summoned to the court and he or she can also dismiss the defence counsel's request to summon additional witnesses to the court. Such a request of the defence counsel may later be satisfied by the court, but that rarely happens. The Dutch criminal justice system has two factual instances (the district court and appellate court), and the Dutch Supreme Court handles questions of law. The Dutch

¹ Code of Criminal Procedure, Article 27

² Code of Criminal Procedure, Article 59a

criminal procedure is very open for influence by the European Court of Human Rights.

The investigation of all the registered crimes is not the main task of the police in the Netherlands. The police has as a central task: under supervision of appropriate authority and according to applicable legal provisions to maintain legal order and provide help to those who need it. Thus under the authority of the prosecutor the police conducts criminal investigations, and under the authority of the major the police ensures public order/safety. The main task of the police is to ensure safety for the society. The crime investigation is a task approached flexibly by the police depending on the set priorities and resources available for the police to effectively ensure their primary task – safety for the society. The police involves different partners in the prevention of crime as well, discusses the most effective means of the prevention of crime with them, and takes advantage of their resources. For example, for the prevention of distribution of synthetic drugs on the Internet representatives of internet-based retailers are effectively involved by using their technological capacity to prevent distribution of drugs through their on-line shops. This allows a more efficient use of resources of the police, which thus are not consumed with investigating all criminal cases instituted, but used, for example, for a proactive approach on prevention of crime from which the society in general profits more.

Refusal to initiate criminal proceedings, termination and suspension of criminal proceedings

The expediency principle

There are no mandatory proceedings in the Netherlands, instead the expediency principle is applied. At the core of criminal proceedings in the Netherlands is their expediency. The institution of criminal proceedings and investigation is governed by the expediency principle instead of the principle of mandatory criminal proceedings.

The Code of Criminal Procedure provides:

- *The Public Prosecution Service instigates proceedings as soon as possible when it considers that the investigation ought to lead to a prosecution.*
- *It can refrain from prosecuting for reasons of public interest.*³

Negative interpretation of the expediency principle:

- prosecution is the rule;
- non-prosecution for public interest reasons is an exception.

Negative interpretation of the expediency principle has led to the formulation of exceptional circumstances, such as public interest reasons included in *the Guideline on using case dismissal grounds*.

There are two types of grounds for case dismissal:

- technical grounds (e.g., lack of evidence, wrong suspect);
- policy grounds (e.g., old facts, minor case, bad health of persons involved, restored relationship between parties, when a suspect could be prosecuted but will not be prosecuted).

Dismissals are registered including grounds for dismissal by the Public Prosecution Service.

During the '60s – '70s there was a rise of positive interpretation of the expediency principle:

- non-prosecution is the rule;
- prosecution is an exception (only allowed when public interest requires so).

Positive interpretation of the expediency principle has led to the formulation of guidelines with positive indications for prosecution – *the Guideline on the framework for prosecution*.

It contains a system for calculation of offence severity and subsequent action with detailed guidelines. The system is computerized and it helps the police to make decisions and offers pre-made decisions and required actions suitable in each case, and is based on the circumstances

³ Code of Criminal Procedure, Article 167

of a case. The facts of a particular case are entered into the system and afterward its software calculates the input data about the circumstances of a case it may offer, for example, to settle the case. In the case of a serious crime a settlement will not be offered because such a case requires investigation. These guidelines are accessible to the public, they comprise several hundreds of pages and are grouped by types of crimes. The guidelines help to determine the seriousness of the offence committed, the course of criminal proceedings, and the possible penalty based on circumstances of the particular case. The guidelines are developed and remain in force for a certain term, for example, they are effective until the indicated year and must be updated afterwards, which is regularly done. However decisions generated by the system do not preclude a police officer from taking a different decision from the one generated by the system in special circumstances. The priorities set by the police in the field of crime prevention influence the aforementioned decision making system as well. For example, the police together with prosecutors and heads of municipalities decide about the priorities of the police in a particular administrative territory. Thus municipalities indirectly influence these guidelines depending on criminal tendencies in a particular administrative territory during a particular period of time. The types of crimes the police will not investigate are also evaluated by the police to ensure effective use of resources, which is approved by the Public Prosecution Service. And it is another factor influencing the decision making process about cases.

Insignificant offences – refusal to initiate proceedings

The expediency principle generally acknowledged authority to dismiss cases because of general interest:

- by a prosecutor: art.167 Code of Criminal Procedure;
- by the police (completely dismissed, but the prosecutor is responsible): art.152 Code of Criminal Procedure.

It may be refused to investigate almost any type of case based on the expediency principle, since it can be interpreted very broadly.

There is a dual nature of the expediency principle.

For example:

- no indication for prosecution from guidelines (crime is not serious enough);
- reason for dismissal found in the Guideline on using case dismissal grounds: 'minor case' (Code No. 40).

The police also have their special internal guidelines (instructions), based on which points are assigned to each case based on different circumstances of a case (for example, concerning the victim, damage caused etc.). If the score reaches a certain number, the case is initiated, if not – it is dismissed.

The victim is notified of the refusal to initiate proceedings or termination of investigation and he or she is entitled to appeal against the decision in a court. The person who committed the

reported offence does not have to be notified about the refusal to initiate a case.

Complaints about dismissal:

- may be submitted by 'directly interested parties' (mostly victims);
- Court of Appeal hears the Public Prosecution Service and the complaining party;
- court can order the Public Prosecution Service to instigate proceedings and indicate the offence to be indicted;
- no appeal possible.⁴

A decision on refusal to initiate criminal proceedings does not preclude a person from bringing a civil suit for losses incurred as a result of the offence.

Disproportionate costs – termination of proceedings

Possibilities for the prosecution in complete or partial termination of proceedings in order to avoid disproportionate costs:

- if an indictment has been served, it may be revoked but only until the hearing;
- if the trial has started, inadmissibility because of disproportionate prosecution may be requested but it is unlikely;
- low or no sentence may be requested in spite of conviction.⁵

If a case is prosecuted, the court will convict minor cases but apply low sentences (minimum sentences do not exist in the Netherlands).

It is unlikely that a case would be prosecuted at all if the costs of proceedings are disproportionate. For example, investigation of cases of fraud often require great resources and if during investigation of such a case the police comes to a conclusion that investigation of the particular case of fraud would be very costly, the criminal case may be dismissed already in the investigation phase.

No offender found – suspension of proceedings

Possibilities to suspend proceedings, if no offender has been found:

1. Dismissal of a case by police:
 - true decision to dismiss the case;
 - no decision, simply no actions taken.
2. Unconditional dismissal of a case by a prosecutor:
 - on policy grounds: code 56 (impossible to find a suspect).

⁴ Code of Criminal Procedure, Article 12

⁵ Criminal Code, Article 9a

3. In case a suspect is known, but cannot be reached:

- trials in absentia are common in the Netherlands (as long as the court thinks the indictment will have reached the suspect by post, the trial will not be halted).

Usually comparatively simple cases are dismissed if the suspect is not known. A case is dismissed by a decision of the police based on the aforementioned system of guidelines, upon the notice from the system that the case can be dismissed, since sufficient evidence has not been obtained about the offender. If the police believe that a case is not serious, it is dismissed very soon after initiation. If there are any threads of investigation in a case and the police believe it could be solved and is worth investigating, an investigation is continued and a case is not dismissed. In cases of more serious crimes the police have more authority with regard to investigation and consequently the probability that the police will decide on continuing an investigation instead of dismissal of a case is greater. For example, in case of a burglary criminal cases are always initiated, because investigation of such crimes is one of the priorities of the police. Although if the evidence in such a case is insufficient to solve the crime, a case is dismissed and information contained in a case is used for analytical work along with information acquired from other similar cases to develop tactics for solving such crimes. The use of such dismissed cases is governed by different data protection regulation basis depending on the use of information from a dismissed case, and these grounds are changed as required. No specific written decision has to be made for renewal of an investigation in a case or joining it with other cases.

The practice in the Netherlands is that trials are held very often in the absence of the accused represented at the trial by a defence counsel. Occasionally trials are held in the absence of a defence counsel as well. This practice is most common in cases, where the accused is a citizen of another European Union state with a residence outside the Netherlands. An indictment is sent by mail to the accused and, if the accused fails to attend the hearing, the trial is held in his absence. It is very easy to convict persons in this manner, but problems with the imposition of the sentence are not uncommon.

Simplified proceedings

Prosecutors in the Netherlands are as much interested in speedy prevention of and fight against crime and quick investigation as the police. Criminal proceedings are simplified and a great number of cases are prevented from reaching the court in the Netherlands by a wide use of:

- a transaction (like a settlement; Art. 74 Criminal Code);
- a conditional dismissal (Art. 167 Code of Criminal Procedure);
- a penal order of a prosecutor (Art. 257a Code of Criminal Procedure);
- administrative enforcement of traffic offences (diverted from the criminal procedure sphere).

Positive consequence: large amounts of cases never reach a judge.

But there is also a constitutional limit: only judges may impose imprisonment.

There is an intention to further simplify non-prosecution modalities in the near future in the Netherlands on:

- an unconditional dismissal (Art. 167 Code of Criminal Procedure);
- a penal order (257a Code of Criminal Procedure).

Conditions for a penal order:

1. All misdemeanours and crimes with a maximum punishment of 6 years imprisonment (a lot of offences correspond to this requirement).
2. Possible sanctions would be made more expedient: community service (maximum 180 hours), a fine, confiscation of property, monetary compensation for the victim, driving disqualification up to a maximum of 6 months, and/or behavioural guidelines.
3. Safeguards: when the prosecutor intends to impose a sanction other than a payment of an amount, the accused must be heard and he or she has to agree to the imposition of the sanction.
4. The accused has the possibility to 'resist' within 14 days to the imposition of a penal order. If a person does not wish to pay the fine immediately, he or she will have 14 days to accept or to object against the imposition of the penal order and choose the hearing of the case according to the general criminal proceedings. In that case the prosecutor summons the accused before the district court.

“ASAP” procedure

Since the middle of 2011 a new method – the “ASAP” procedure (in Dutch – ZSM), to deal with high volume crime was implemented as a pilot project. Presently the “ASAP” procedure is introduced throughout the country. It is a change in the work process and the practice, it is not a legal change. There is a focus on the penal order as the legal instrument for the “ASAP” procedure and the main goal is to adjudicate a case as fast as possible. The procedure was initiated and introduced by the Public Prosecution Service, and the police, as well as the Public Prosecution Service, are committed to its application.

The “ASAP” procedure includes the following characteristics:

- as soon as possible;
- selective;
- simple;
- clever;
- together;
- community-oriented.

The goals of the “ASAP” procedure are:

- efficiency;
- effectiveness through speedy processing of cases;
- meaningful intervention in response to crimes;
- careful, noticeable and comprehensible decision making;
- speed of the procedure: decision making within the first 6 hours (during police custody), final disposal of the case within 7 days for most cases or within 1 month (instead of the usual 8–9 months).

The “ASAP” procedure:

- the Public Prosecution Service decides on a case within a maximum of 7 days;
- the Public Prosecution Service works with partner agencies (council for child protection, probation and victim support services);
- less administrative burdens (simplified case file, more verbal information);
- in order to facilitate application of this procedure prosecutors work at the police premises, where in course of 6 hours usually the final decision in a criminal case is made.

The amount of evidence to be collected and its recording is made as simple as possible to achieve the goal of criminal proceedings with minimum resources. For example, in a case of shoplifting only two sources of evidence are required in the Netherlands. They can be the confession of the person who committed the theft and the testimony of the shop’s owner or a security guard or a recording from surveillance cameras. If the recording is required as evidence it is not seized as a

rule, instead a short description of its contents is prepared. If a person fails to admit the fact of committing the theft, a shot from the recording is added showing the moment of the theft. The police receives one document from the shop on a standard form, which includes the statement of the theft and a testimony of a witness to the theft. An additional questioning of the witness is not required later during the criminal proceedings.

Three phases of the “ASAP” procedure:

1. Selection of cases: sufficiency of evidence and no complicating factors (e.g., the accused person, context of a crime, harm/damage).
2. Decision making (consultation with partner agencies).
3. Execution of punishment (as soon as possible, e.g., payment of the fine at the police station).

If a suspect agrees to application of the “ASAP” procedure and pays a fine imposed by a penal order, the person loses its right to appeal against the imposed punishment and it is entered into the Punishment Register. Suspects however willingly agree to the application of the “ASAP” procedure, because they can avoid a trial and the case compared to the general criminal proceedings is processed very quickly. Presently possibilities of involvement of the defence counsel in the “ASAP” procedure are considered.

In 2013 approximately 69 000 cases out of 112 000 were processed using the “ASAP” procedure.

Challenges of application of the the “ASAP” procedure:

- the quality of the investigation process and decision making;
- rights of the accused: legal assistance, adequate information about rights, inappropriate pressure (‘take it or leave it’ attitude on behalf of authorities).

Conclusions

In the section of conclusions the best examples in opinion of the developers of the guidelines of the countries analysed are summarized in such criminal procedure areas as – refusal to initiate criminal proceedings, termination and suspension of criminal proceedings, simplified forms of criminal proceedings, and the practice of applying them. Taking into account that the countries examined have a different legal regulation, as well as competence allocation of the investigation institutions and prosecutor's office in pre-trial investigation of criminal cases, solutions for one country may not be completely adoptable in another country. Nevertheless these examples can serve for the improvement of appropriate legislation and its enforcing practice. It is worth drawing attention that in the section of conclusions there is a small review given about specific solutions, and information in more detail is available in the section of a particular country.

Every country analysed in the guidelines in the guidelines developer's opinion has its positive solutions for carrying out simplified and proportional investigation of the case and enforcing of penalty, and in the conclusions section it is tried to be reflected.

At the end of the conclusions section there is the best model of solutions given in our opinion.

Refusal to initiate criminal proceedings and termination of criminal proceedings

Only those conditions of refusal to initiate criminal proceedings and termination of criminal proceedings are analysed in the guidelines, that in some way correlate the seriousness of the crime and social danger regarding it to the amount of resources of the investigation institution, the prosecutor's office, and the court, which have to be spent for a case to investigate, maintain incrimination and judge it.

Refusal to initiate criminal proceedings and termination of criminal proceedings due to low significance of an offence

Although principle of mandatory nature of criminal proceedings prevails in most countries analysed, almost in all of them conditions exist, that allow not to initiate criminal proceedings or terminate them if a crime committed is of low significance or the punishment for the offence is not in the interests of society.

For example, it is possible to terminate criminal proceedings in Finland if the damage as a result of an offence is insignificant or the investigation of it will require expenses out of proportion to the seriousness of the offence. The public prosecutor in Romania can refuse to initiate criminal proceedings, if by taking into account specific circumstances of the case public interests are not affected.

Guidelines

It is worth noting that in the criminal legislation of the Netherlands the expediency principle not the principle of mandatory nature of criminal proceedings is established. Furthermore the prosecutor's office of the Netherlands has worked out detailed guidelines that allow to precisely determine, whether to investigate a particular offence or not.

Settlement

There are regulated settlement procedures in all the countries examined, nevertheless they have a different influence upon criminal proceedings. Settlement concluded in criminal proceedings in some countries is considered only as circumstances mitigating the liability that is taken into account for imposing a penalty and it is possible to terminate criminal proceedings in the case of settlement in other countries. Besides it is determined in particular occasions that in the case of settlement the criminal proceedings compulsorily must be terminated if it was possible to initiate them only on the basis of the complaint of the victim. There is such a condition in Latvia. In the Latvian Criminal Procedure Law it is specified that it is not allowed to initiate criminal proceedings and criminal proceedings already initiated must be terminated if there is the settlement between the victim and the suspected person or the accused person in such criminal proceedings, which can be initiated only on the basis of the application of the victim. Settlement can be concluded in the presence of an investigator. Such criminal proceedings can be already terminated at the stage of investigation.

Termination of criminal proceedings with conditions

There are mechanisms in many countries analysed that specifies termination of criminal proceedings by simultaneously laying down conditions for the offender to observe. Criminal proceedings can be resumed and a person judged in the case of nonfulfillment of these conditions. Conditions can be different, for example, to indemnify for losses, to attend courses for drivers etc. This mechanism is mostly used if an offender has committed a less serious crime for the first time and a public prosecutor by taking into account the personality of the offender considers that there is no need to impose a criminal penalty. Such a decision can be taken by the court based on the suggestion of a public prosecutor or by a public prosecutor as in Latvia.

Suspension of criminal proceedings, if the person, who has committed a crime, is not ascertained

In all the countries analysed there are mechanisms for suspension or even termination of investigation in criminal proceedings, if the person who has committed a crime is not ascertained. It is not possible to ascertain the person who has committed an offence in all occasions and also it is not possible to actively investigate all the offences till the period of limitation. Consequently there should be a mechanism for suspension of an active investigation and resumption if grounds for suspension have disappeared. There are no specified terms or categories of criminal cases that limit suspension of criminal proceedings (except in Latvia, Romania). Therefore in practice, taking into account the seriousness of a specific crime and the damage done, investigation of

Guidelines

a crime is suspended or terminated even on the first day (when crimes are less serious). Police themselves or in cooperation with the prosecutor's office evaluate before suspension of criminal proceedings whether all the investigative actions are performed to detect a crime by taking into account proportionality. These are mainly actions at the crime scene in the case of less serious crimes. If evidence about the offender is not obtained at the crime scene (for example, a video record identifying the offender is not obtained) then the investigation can be suspended.

For example, the investigation can be suspended by the decision of the leader of an investigation unit in Finland (there is no need for the decision or the approval of a public prosecutor) if no one is suspected of committing a crime and it is not possible to get additional information in the case. Investigation must be resumed as soon as the grounds of suspension disappear (if new information is obtained).

The Estonian Code of Criminal Procedure provides that if the person who has committed a crime is not ascertained in pre-trial criminal proceedings and it is not possible to collect additional evidence criminal proceedings must be terminated. Criminal proceedings are terminated on the basis of an order of the investigation institution with an approval of a public prosecutor or on the basis of an order of a public prosecutor. The injured person is informed about the termination of the criminal proceedings and has the right to appeal against the decision. If new evidence is obtained, the investigation can be resumed. There are no specified limitations for categories of cases or terms in legislative acts, therefore in practice investigation of less serious crimes can already be terminated on the first day after carrying out initial investigative actions. Taking into account that the case has already been terminated, when the limitation period has entered into effect no additional decisions in writing have to be taken or other actions performed.

The German Code of Criminal Procedure provides that a public prosecutor brings an accusation if sufficient evidence is obtained and a public prosecutor terminates criminal proceedings in other cases.

Simplified types of criminal proceedings

The countries examined in the guidelines have different types of simplified criminal proceedings, that makes it possible to impose a criminal penalty on the person even in a few hours or days in contrast to the situation when the same case would be proceeded in general criminal proceedings and a penalty would be imposed after several months or even later.

There are solutions in several countries, when in certain conditions a public prosecutor can impose a penalty that is not related to the deprivation of liberty, accordingly the case should not be submitted to the court. But there are solutions in other countries specifying expedited transfer of a case to the court and specifying concrete time limits for the court session. There are also combinations of both examples above.

48 hours criminal proceedings

Several countries examined in the guidelines have expedited procedures stipulating trial in the court in the specified time period from the moment of the initiation of criminal proceedings or the detention of a person. For example, expedited proceedings in Lithuania stipulate to transfer a criminal case to the court in 14 days from the moment of criminal proceeding initiation, nevertheless in practice they try to carry that out in 48 hours or while the person who has committed a crime is detained. There are proceedings provided by law in Germany when in expedited proceedings trial in the court shall start in six weeks, but if the person is temporarily arrested, in one week (temporary arrest before the court session).

As one of the best examples of simplified expedited proceedings brings the person before the court while the person is detained (or in 48 hours). Such an example is the Estonian Expedited procedure stipulating that the public prosecutor's demand about the adjudication of criminal matter pursuant to expedited procedure must be submitted to court in 48 hours. The expedited procedure can be used if the facts about the matter of proof are clear and all necessary evidence is collected (mostly it is applicable in the situations when the person is detained at the moment of committing a crime). While the person is detained police conduct initial investigative actions, draw up the report of the Expedited procedure, and transfer it together with the rest of the materials of the criminal case to the prosecutor's office. The prosecutor's office appeals to the court and the session is organised while the person is still detained and is taken to the court session directly from the temporary detention place. The cases about the crimes for which the penalty of deprivation of liberty does not exceed five years is provided for can be proceeded in such way. The penalty of the deprivation of liberty can be adjudged, but taking into account that the person who has committed the crime has agreed for the Expedited procedure to be applied, the court shall reduce the amount of compensation levies to sate. Such lessing of the sanctions facilitates enforcing of the Expedited procedure.

Reduced scope of investigation and urgent transference of a case to prosecutor's office

Concurrently with the examples above that stipulate the submittal of a criminal case to the court in a concrete term or the designation of a court session there are two types of simplified procedures in Latvia (Urgent procedures and Summary procedures) that also stipulate a concrete term for the criminal case transference from one person directing criminal proceedings to the next (from the police to the public prosecutor, from the public prosecutor to the court). The most effective of these simplified procedures is the Urgent procedure, stipulating that the investigation institution transfers the criminal case materials to prosecutor's office in five working days, and the prosecutor's office decides about transference of the case to the court (or chooses another type of criminal proceedings) in two working days, and comes to an agreement with the court about the time of a court session. The court session should take place from the third till the tenth day from the moment the case is transferred to the court. Accordingly the total period of time from the initiation of criminal proceedings till the court session in this procedure is not longer than twenty days, but it may also be shorter. Besides, the person must not be detained or arrested. An opportunity of choice of the prosecutor's office for action models in the simplified procedure is worked out, the case is not compulsorily submitted to the court. The public prosecutor, upon receipt of the case from the investigation institution and after evaluation of the circumstances of the crime and the personality of the offender, for example, can apply public prosecutor's penal order or terminate criminal proceedings with conditions, or submit the case to the court. In the same way there is the scope of investigation reduced in the Urgent procedure provided for in the law. It is necessary to question the witnesses and the person who has committed a crime, not to interrogate them by recording it in a protocol. Other investigative actions should be performed only if it is necessary. Taking into account that the Urgent procedure can be applied if the person who has committed the criminal offence has been surprised at the moment of committing the criminal offence or immediately after committing it thereof, the case is clear and evidence is sufficient.

Penal order

There are available solutions in countries analysed that allow to enforce a penalty without the oral criminal proceedings trial in the court, by issuing a penal order. The court issues such a penal order after the public prosecutor's suggestion in Lithuania and Germany, but a public prosecutor can do that himself in Latvia, Sweden and the Netherlands. Consequently in simple cases when a public prosecutor considers that it is not necessary to enforce the punishment of the deprivation of liberty the person can already be punished in several hours from the moment of committing of the crime and the identification of the person who has committed the crime.

In the Netherlands a penal order can be applied to crimes for which the deprivation of liberty not exceeding six years is provided for. At the same time the public prosecutor, considering that in specific occasion the aim of the punishment can be reached with penalty not connected with the deprivation of liberty, can also issue a penal order. Taking into account that public

Guidelines

prosecutors in the Netherlands are also located in the premises of a police station it is possible to issue such a penal order in several hours after the moment of taking a person to the police station. Furthermore if a public prosecutor applies pecuniary penalty, it is possible to pay a fine at the same place in the police station, accordingly the punishment can be enforced already in several hours from the moment of committing of the crime and the identification of the person who has committed the crime.

Also in Latvia the public prosecutor's penal order is a successful alternative to the trial in the court if a public prosecutor considers that the punishment of deprivation of liberty should not be enforced. The penal order can be applied in Latvia if the accused agrees to that, admits his guilt, and has indemnified for all the losses and covered compensations. It is also possible in several hours in the simplest cases or while the person is detained (48 hours). Police contact a public prosecutor by phone, inform about the crime committed, the circumstances of committing the crime, about the detained person and the personality of the detained person, and transfer the criminal case and the person who has committed the crime to the prosecutor's office. With the conditions given above the public prosecutor can immediately apply a penal order or make other decisions (for example transfer the case to the court).

Simplified trial

Trial is possible without examination of evidence in several examined countries. Such an opportunity is provided for by legislative acts in Estonia and Latvia, essentially unburdening the work of the court. Even 83 % trials in Latvia in 2014 were adjudicated without examination of evidence. The judge awards a judgement by reviewing the case materials, hearing the public prosecutor, the accused and, if it is necessary, the victim. Trial without examination of evidence is only possible with the consent of the accused. In Estonia if the accused agrees to such a rapid procedure, the court shall reduce the principal punishment to be imposed on the accused by one-third. There are almost no limitations in the case of Latvia and Estonia regarding categories of cases that could be considered in such an order (it is not applied in Estonia, if life imprisonment is provided for the crime committed), there are also no limitations regarding the term of transference of a case to the court. These can be cases that have been transferred to the court in the rapid procedure or after a long investigation as well.

In Finland the adjudication of the case under written procedure is provided for, where the judge awards a judgement in the case based on the materials collected in the criminal case. The case can be adjudicated under written procedure only with the consent of the parties (the offender and the victim).

Other simplification activities

Investigation without special decisions on direction of the criminal proceedings and on the status of the persons in criminal proceedings

There are highly different legal regulation and practice in countries examined regarding the necessity of making a decision on initiation of criminal proceedings, the recognition of the person as a suspect or the victim, the case transference to prosecutor's office etc. If there are special decisions in writing required in Latvia, Lithuania and Romania, and these decisions should be motivated, then there is no requirement for such decisions in other countries analysed in the project at all, accordingly a considerable amount of time resources is saved.

For example, criminal proceedings in Estonia, Sweden and Finland are initiated with the first procedural action, for instance, inspection of the crime scene. There is a registration sheet of a criminal case drawn up where the basic information about a crime is indicated (time, place of committing of the crime, brief description, the offender, the victim).

The status of the person in criminal proceedings is given simultaneously with the particular procedural action in which the person is engaged, for instance, the status of the suspect can be given at the moment of the interrogation of the person as the suspect or the information about a person's rights and duties. For example, in Estonia there is a section in the protocol of interrogation where it is indicated for what crime the person is suspected (the article of the Criminal Code, a short description of the offence) and the person signs that has been informed. The similar order is in Germany where in the protocol of interrogation of the suspect the type of the crime for which the person is suspected is indicated.

The case transference to the prosecutor's office in many countries (for instance, in Finland, Sweden, Germany) is carried out using a covering letter and there is no need for a special decision.

Standardized forms

The work of investigators can be essentially unburdened with standardized forms in which the largest part can be filled, noting required, not the forms, which are filled with one's hand with a broad description. The positive example is German (Hessen) forms of the protocol of interrogation of the suspect and other forms. There is free space in the form of the protocol of interrogation of the suspect for a person's data, the rest of the filling spaces can be noted with "X", choosing from the given options including whether the suspect admits committing the crime or not.

The simplified joint protocol of the expedited procedure in Lithuania is worked out, where several investigative actions can be recorded on few sheets together – inspection of the crime scene, inspection of the stolen goods, questioning of the victim, witnesses and the offender.

In Latvia it is also provided by the Criminal Procedure Law that, when applying the Urgent procedure all the necessary investigative actions and all that has been determined can be recorded in a single protocol.

Effective cooperation of the prosecutor's office and police

The study of investigation practice of less serious crimes in the countries involved in the project gives grounds to infer, that simplified, fast and resource saving investigation depends not only on the procedures provided by criminal procedure laws and expedited procedures, but also on effective cooperation of the prosecutor's office and police.

Cooperation of the prosecutor's office and police in Finland and the Netherlands is considered as effective, because public prosecutors are located and work in the premises of police stations and in this connection can make various decisions quickly and qualitatively (penal order, termination of the case because of the lack of evidence or because the interests of society are not affected with a particular offence etc.), advise police officers on additional actions to get evidence in order to make it possible to bring an accusation etc.

Cooperation can be facilitated with an agreement between the prosecutor's office and police on common priorities, the scope of the investigation in the particular categories of criminal cases and other conditions that allow to standardize and unify requirements for investigation of the particular categories of criminal cases in all the police stations and territorial units of the prosecutor's office. For example, there is such an agreement in Hessen in Germany. The Prosecutor General's Office and the Police Department of the Republic of Lithuania have also concluded such an agreement.

Every country has its own information system or systems in which information about offences committed and criminal proceedings is included and classified. These information systems are already drawing closer the criminal case to becoming electronic in several countries and can serve as effective means of information exchange between the police and the prosecutor's office, accordingly be as the foundation for the expedite decision making procedure by reviewing criminal case materials entered into the information system.

For example, in Estonian the Procedural Information System investigator enters (or adds as a document) any decision and the protocols of investigative actions. Accordingly a public prosecutor can examine this information in the information system and can get a complete idea concerning the particular criminal case. In Latvia there is a similar Criminal Procedure Information System, which functionality allows to draw up decisions and reports right in the system (or to add them as documents), and the supervising public prosecutor or the investigating judge can get to know the information included in the system. But it should be noted that original documents with signatures are in the criminal case in paper form. For the present the mentioned information systems do not offer digital signing of documents. But officials of the Swedish police execute almost all the information, connected with the criminal case, as well as procedural documents, in the information system. The signatures of the persons involved are not necessary for the confirmation of the mentioned actions. It is enough to have a police official's signature that the information system generates. While the criminal case is at the police, it is only in the information system, but when the criminal case is transferred to prosecutor's office, all the materials are printed out and sent off by post to the prosecutor's office and the offender.

Summary

Summarizing the examples reflected in the conclusions section such main conclusions about the activities that could facilitate simplification, effectivization and correlation of investigation with the public dangerousness of the crime can be drawn:

1. Taking into account that in the analysed countries the work of police and prosecutor's office is closely connected (the public prosecutor supervises or directs the investigation), it is necessary to facilitate the practical cooperation of these institutions. One of the solutions could be the arrangement of work places for public prosecutors in the premises of police stations.
2. It is necessary to further develop information systems of countries by providing the person directing criminal proceedings with additional options, as well as allowing the public prosecutor to conduct remote supervision of the investigation process more effectively, to give instructions on choosing the type of criminal proceedings, the direction of investigation etc.
3. The development of the guidelines on investigation of offences (description of the investigation process) would allow to form the common view and unified practice for the officials of the police and prosecutor's office in the direction and the scope of the investigation of the particular offences.
4. The development and usage of standardized forms in which the largest part can be filled, noting required whenever possible leaving less space for free text. The forms of protocols in which results of several investigative actions can be recorded together.
5. Whenever possible minimize drawing up various motivated decisions in writing. The status of the persons involved in the criminal proceedings (the suspect, the victim etc.) should be given at the moment of notification of the status, rights and duties, not with a special decision in writing and notification about it. It is possible to inform the person about the status during the investigative action and to record the notification in the protocol of the investigative action.

A comparative analysis of legal regulation and practice of less serious crime investigation in the examined countries allow to model in the Guideline the opinion of the developers, optimally simplified and effective pre-trial criminal proceedings, and also to mark the directions of development of the existing practice of pre-trial investigation of less serious crimes, namely:

Initial actions after reception of information regarding the committed crime

1. Police officers arrive at the scene and evaluate the obtained information, make a decision on initiation of the investigation. If the committed crime is considered to be of low significance, does not affect the interests of society, the police officers can make a decision not to initiate the criminal proceedings by providing acceptance of the leader of the investigation unit.

Guidelines

The victim can appeal against such a decision of the police to the public prosecutor. In countries where the public prosecutor directs an investigation, a police officer immediately initiates the public prosecutor in deciding the matter. The decision of a public prosecutor can be appealed to the higher-ranking public prosecutor.

2. Upon initiating the investigation, police officers perform initial investigative actions and if during these actions the offender is not ascertained provided with an acceptance of the leader of the investigation unit, terminate the investigation (even on the day of investigation initiation). The victim can appeal against such police actions to the public prosecutor. In countries where the public prosecutor directs an investigation, a police officer immediately initiates the public prosecutor in deciding the matter. The decision of a public prosecutor can be appealed to the higher-ranking public prosecutor. Upon obtaining new information till the limitation period, the criminal proceedings can be immediately resumed with the first investigative action.

Actions if the person who has committed the crime is detained

3. Obtaining the necessary amount of evidence to prove the offender's guilt, for example, by detaining the offender at the crime scene, the police officer immediately (while the person is detained) transfers the case to the public prosecutor.
4. The public prosecutor evaluates whether the amount of evidence is sufficient, if not the public prosecutor can return the case to the police for additional investigation or, if it is not possible to obtain additional evidence or it is out of proportion regarding the seriousness of the offence, he or she decides to terminate the criminal proceedings.
5. If evidence is sufficient, also taking into account the personality of the offender, the public prosecutor decides to terminate the criminal proceedings with conditions (the offender must indemnify for losses, pass specific courses etc.) or to apply a penal order (pecuniary penalty, probation, restriction of rights etc.).
6. If the public prosecutor considers that it would be necessary to adjudge to the person the punishment of the deprivation of liberty, the public prosecutor immediately transfers the criminal case to the court. A trial in court is held while the person is detained. If the offender agrees, the trial in the court can be performed without examination of evidence.

Actions if the person who has committed the crime is released at the scene of the crime (not conveyed to the police)

7. The police interrogate the suspected person and ask about person's opinion and agreement to the expedited procedure (a penal order, the trial in the court without an examination of evidence etc.)
8. After receiving the criminal case from the police the public prosecutor decides on the returning of the criminal case for the investigation, the termination of the criminal

Guidelines

proceedings or application of the penal order (if the offender has agreed to that during the police interrogation). The decision of the public prosecutor is sent off by post. The interested persons can appeal against the decision to terminate criminal proceedings to the higher-ranking public prosecutor, but to appeal against application of the penal order they can appeal to the court – that is the court session and the trial in the court (more severe punishment can be enforced).

9. If the public prosecutor considers that it would be necessary to adjudge the person the punishment of the deprivation of liberty, he draws up an indictment and immediately transfers the criminal case to the court. The indictment is sent off to the accused by post. The trial is scheduled as soon as possible and takes place without examination of evidence or under written procedure (if the accused has agreed to that).

Internet sources

Webpage of Estonian legislative acts

<https://www.riigiteataja.ee/en/>

Penal Code –

<https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/522012015002/consolide>

Code of Criminal Procedure –

<https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/522082014002/consolide>

Code of Misdemeanour Procedure –

<https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/521082014006/consolide>

Webpage of Finnish legislative acts

<https://www.finlex.fi/en/laki/kaannokset/>

Criminal Code –

<https://www.finlex.fi/en/laki/kaannokset/1889/en18890039>

Criminal Investigation Act –

<https://www.finlex.fi/en/laki/kaannokset/2011/en20110805>

Webpage of German legislative acts

<http://www.gesetze-im-internet.de>

German Criminal Code –

http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html

The German Code of Criminal Procedure –

http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html

Webpage of Latvian legislative acts

<http://likumi.lv/about.php>

The Criminal Law –

http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/The_Criminal_Law.doc

Criminal Procedure Law –

http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Criminal_Procedure_Law.doc

Latvian Administrative Violations Code –

http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Latvian_Administrative_Violations_Code.doc

Webpage of Lithuanian legislative acts

<https://www.e-tar.lt/portal/en/legalActSearch>

http://www3.lrs.lt/dokpaieska/forma_e.htm

Webpage of Romanian legislative acts

<http://www.just.ro/>

Law of the Criminal Code –

<http://www.just.ro/LinkClick.aspx?fileticket=72y7HkFZ%2bRw%3d&tabid=89>

Law of the Criminal Procedure Code –

<http://www.just.ro/LinkClick.aspx?fileticket=u0Jx07a1STU%3d&tabid=89>

Webpage of Swedish legislative acts

The Swedish Code of Judicial Procedure –

<http://www.regeringen.se/sb/d/108/a/1540>

The Swedish Penal Code –

<http://www.regeringen.se/sb/d/108/a/1536>

Webpage of legislative acts of the Netherlands

www.wetten.overheid.nl