

# THE WOLF THEISS GUIDE TO:

Handling Business Crime  
Cases in Central, Eastern &  
Southeastern Europe



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## Handling Business Crime Cases in Central, Eastern & Southeastern Europe

This 2018 Wolf Theiss Guide to Handling Business Crime Cases in Central, Eastern & Southeastern Europe is intended as a practical guide to the general principles and features of the basic legislation and procedures in countries included in the publication.

While every effort has been made to ensure that the content is accurate when finalised, it should be used only as a general reference guide and should not be relied upon as definitive for planning or making definitive legal decisions. In these rapidly changing legal markets, the laws and regulations are frequently revised, either by amended legislation or by administrative interpretation.

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## FOREWORD

As a leading law firm in CEE/SEE and home to one of the biggest dispute resolution teams in the region, we see it as our obligation to keep our clients up-to-date with legal developments that may affect their businesses. White collar crime continues to be an important global topic for financial institutions and corporations and we continue to observe significant growth in demand for dispute resolution services across the region, particularly in heavily regulated sectors such as energy, financial services and healthcare.

In addition, investor protection, asset tracing and compliance with national and international anti-corruption laws continue to grow in importance as both business crimes and tougher scrutiny by authorities become more common. Companies need to protect themselves from fraud, forgery, insider trading and theft of assets, while at the same time making sure that both management and co-workers understand compliance rules and guidelines in order to avoid that unpleasant knock on the door by investigation authorities.

Increased awareness of these issues inspired us to publish this second edition of The Wolf Theiss Guide to: Handling Business Crime Cases in Central, Eastern and Southeastern Europe.

The guide is intended to be a resource tool providing you with a brief overview of the legal procedure in business crime cases, the competent authorities and their powers, the exertion of influence and claims of damage recovery, and the expected time frame and costs for criminal proceedings in each of the countries where Wolf Theiss provides services: Albania, Austria, Bosnia & Herzegovina, Bulgaria, Croatia, the Czech Republic, Hungary, Kosovo, Poland, Romania, Serbia, Slovak Republic, Slovenia, and Ukraine.

We hope that you find the guide helpful. If you have any questions about its content, please do not hesitate to contact me at any time.



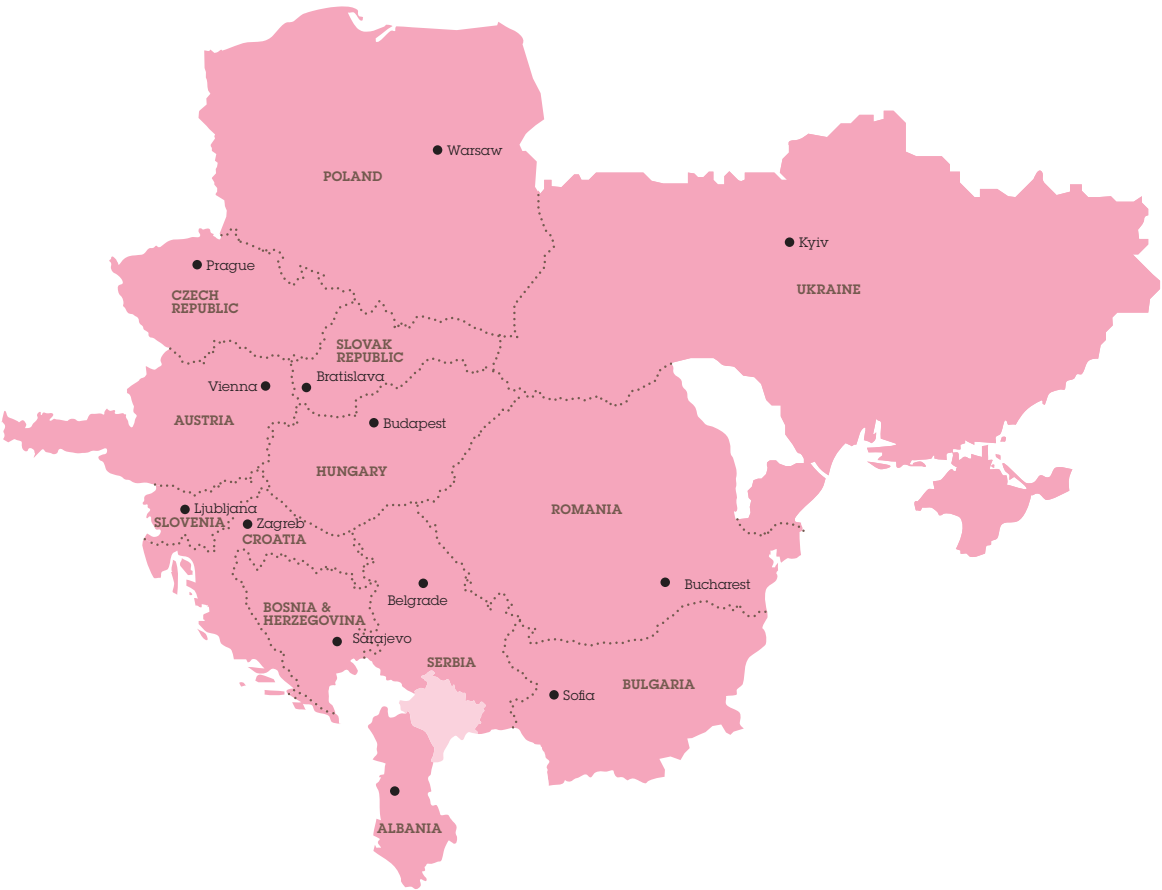
**Clemens Trauttenberg ■ June 2018**

Partner, Head of the Disputes Practice Group, Wolf Theiss

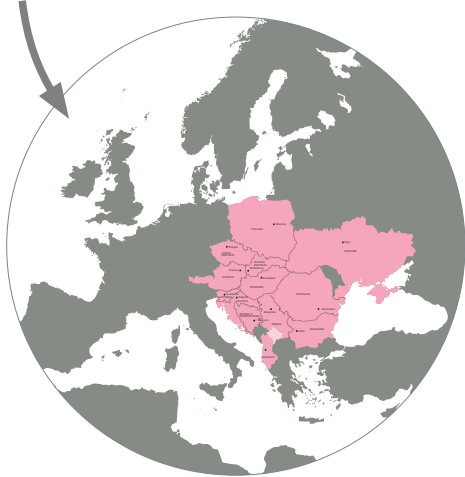
I would like to thank all colleagues at Wolf Theiss who assisted in the preparation of the publication. Their continued efforts to ensure the continuing update of the Guide are very much appreciated. I'd also like to acknowledge former Wolf Theiss Partner Bettina Knoetzi for her contributions to the 1<sup>st</sup> edition of the guide.







EUROPE



- WOLF THEISS REGION
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- EUROPE



# ALBANIA

## **HANDLING BUSINESS CRIME IN ALBANIA**

The Criminal Code of the Republic of Albania covers criminal acts such as fraud by individuals or legal entities, money laundering, both active and passive bribery in the public and private sectors and undue influence of public officials.

The Law on the Prevention and Combating of Organized Crime adopted in September 2004 provides the legal basis for combating economic crimes performed by organized criminal groups.

Law No. 9754, dated 14 June 2007 “On the criminal liability of legal entities” provides for the criminal liability of legal entities established in the Republic of Albania. The Law is applicable to all legal entities i.e. to companies that have been established and which operate pursuant to Albanian law but also to local administrative entities, public legal entities, political parties and trade unions.

Pursuant to this law, a legal entity can be held criminally liable for any offence committed in its name or for its benefit: (i) by its managing body or legal representatives; (ii) by a person who is under the authority of the person who runs, represents and administers the legal entity; or (iii) due to a lack of control or surveillance by the person that runs, represents and administers the legal entity.

The judicial process in a criminal case differs from a civil case. The prosecutor represents the state in most court proceedings, including all criminal prosecutions. The main principle governing the Albanian judiciary system is a fair trial with defendants presumed innocent until proven guilty.

A criminal proceeding is initiated upon the request of a prosecutor, police department or by individuals alleging violations of their rights or that have incurred damages. In the latter case, the allegation is submitted to the Prosecution Office or Serious Crimes Prosecution Office and the prosecutor then decides whether to file charges and, if so, what charges to file. The charges are filed with the District Court in the section for criminal cases or with the Court of Serious Crimes. The prosecutor may issue investigation orders or warrants which in any case should be examined by the court that has the authority to uphold or change such order/warrant.

The police is responsible for investigating allegations of business crime. If they find sufficient evidence of a crime, then an arrest is made. However, it is up to the court to finally decide on the final warrant. Otherwise, the police should submit a report on their findings to the prosecution office and then the prosecutor issues the warrant. This report constitutes a summary of all the events that have preceded the arrest and provides witness names and other relevant information. The report is handed over to the prosecutor.

Most criminal charges involving business crime are judged by the District Court of Serious Crimes located in Tirana. Other criminal charges are judged by the criminal first instance courts. The courts of first instance are organized and operate on a judicial district basis.

The defendant has the right to access all the evidence that the prosecutor presents to the judges, may question opposing witnesses, and present its own witnesses and evidence.

Anyone accused of a crime is legally presumed to be innocent until proven guilty by a final court decision. This means that it is the prosecutor who has to convince the court that the defendant is guilty and must provide proof of guilt.

Cases on business crime in the First District Court of Serious Crimes in Tirana are heard by a panel of three judges. Its decisions may be appealed to the Court of Appeal of Serious Crimes located in Tirana. Appeals are decided by panels of three judges working together.

The Albanian legal system does not explicitly provide for the re-examination of criminal cases, including reopening domestic proceedings, in the event of the court finding a serious violation of an applicant's right to a fair trial. According to the provisions of Article 450 of the Albanian Criminal Code, a request for review of a final judgment may be entertained only when:

- the facts of the grounds of the sentence are contradictory to those of another final sentence;
- the sentence relies upon another civil court decision, which has since been revoked;
- after the sentence new evidence has appeared or has been found, which solely or together with the evidence already evaluated, proves that the accused is guilty; or
- it is proved that the sentence has been rendered as a result of the falsification of facts during the trial or due to another act which is by law a criminal offence.

The prosecutor should decide whether to bring the case to court, to dismiss the charges or to suspend the case within 3 (three) months from the date of the notification to the accused of the criminal charges against him/her.

The prosecutor may prolong the period of investigation by a further 3 (three) months. In complex cases, the prosecutor may extend the investigation period to 2 (two) years and upon the expressed written consent of the Attorney General the investigation may be extended to up to 3 (three) years.

However, in most cases the period between the submission of the claim and the indictment being submitted to the court takes approximately 12 (twelve) months.

The period between the indictment and a sentence in the first instance is approximately 12 (twelve) months.

Litigation costs are mainly composed of court and attorneys' fees, expenses for expert opinions and witnesses (including remuneration for any business days missed), and translation costs. However, free legal defence is provided for criminal cases. The fees, expenses and remunerations for witnesses and translators are defined by the Council of Ministers.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
<b>SUMMARY</b>		
<b>APPROXIMATE DURATION</b>	<p>The period between indictment and sentence in first instance is approximately 9 months.</p> <p>The period between first instance court and appellate court sentence is approximately 6 months.</p> <p>Defendants that are detained on remand are treated with priority.</p>	<p>Every person deprived of her/his liberty should be brought before a court within 48 hours after the arrest. The pre-trial detention period cannot be more than half of the maximum punishment provided for the alleged crime. In any case, the pre-trial detention may not be more than 3 years.</p>
<b>APPROXIMATE COSTS</b>	<p>The procedural expenses include the costs related to examinations, expertise, notifications, lawyers' fees and any other expenses that have been duly documented.</p> <p>The maximum fees that may be applied by lawyers for both civil and criminal cases are defined by a joint order of the Ministry of Justice and National Chamber of Advocates.</p> <p>In the final decision of the court, the judge defines the party that has the obligation to pay the procedural expenses. The bailiff office undertakes all the required steps to enforce the final decision of the court.</p>	<ul style="list-style-type: none"> <li>▪ The procedural expenses are prepaid by the state, except for those related to acts requested by the parties.</li> <li>▪ When the defendant does not have sufficient means, the defence expenses shall be covered by the state.</li> </ul>
<b>JURY TRIALS</b>	There are no jury trials in Albania.	

CLASS ACTIONS	Limited.
DOCUMENT PRODUCTION	Documents are disclosed to each of the parties in a criminal proceeding.
MANDATORY REPRESENTATION BY COUNSEL	The defendant has the right to present his/her own defence or to be assisted by defence counsel.
PRO BONO SYSTEM	Yes. Each court has a list of attorneys who provide free legal aid for people who can't afford the cost of legal proceedings.

*This chapter was written by Agim Muco and Jonida Braja.*



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AUSTRIA

## HANDLING BUSINESS CRIME IN AUSTRIA

Over the past years, criminal authorities have become more interested and better equipped to start investigations in business crime matters. In fact, criminal proceedings are often conducted parallel to civil proceedings. In particular, criminal proceedings can be a powerful tool for recovering or securing assets or any other funds that are derived from criminal offences.

Furthermore, since the Austrian Code of Civil Procedure (CCP; *Zivilprozessordnung*), is characterized by rather restrictive disclosure rules, criminal proceedings represent an effective tool for obtaining evidence, which would otherwise not be accessible, from the opposing party. In addition, a criminal court may also decide on civil claims brought against the accused by issuing a binding and enforceable decision, thereby avoiding time-consuming and costly civil proceedings that bear a substantial cost risk for the parties. Under Austrian law, both individuals as well as legal entities can be subject to criminal prosecution.

Criminal investigations are usually conducted by the criminal investigation department of the police (*Kriminalpolizei*) under the supervision of the public prosecution (*Staatsanwalt*). For corruption matters and large volume white-collar crime cases, a special prosecution authority is competent; the Central Public Prosecutor's Office for Combating Economic Crime and Corruption (*Wirtschafts- und Korruptionsstaatsanwaltschaft*). The overseeing judge (*Haft- und Rechtsschutzrichter*) at the local Regional Court (*Landesgericht*) decides upon objections to investigative measures as well as requests to impose or terminate investigative custody. Certain investigative measures require the overseeing judge's approval; in particular measures with coercive character (e.g. house searches).

A conviction can be avoided (also, a potential penalty can be reduced) by cooperating with the public prosecution, e.g. as chief witness (*Kronzeugenregelung*). The benefit derived from such cooperation varies depending on the stage of the investigation. If the public prosecution finds that there is sufficient basis for a conviction, main criminal proceedings (*Hauptverhandlung*) are initiated by filing an indictment. In other words: The case is brought to public trial.

First instance main criminal proceedings are conducted by District Courts (*Bezirksgericht*), in minor cases (with penalties of up to 1 (one) year of imprisonment) and Regional Courts (*Landesgericht*). While District Court trials are held by single judges, the composition of the Regional Court varies depending on the charges: single judge; panel of three judges; panel of one judge and two lay judges; panel of two judges and two lay judges, or panel of three judges and a jury of eight persons.

Austrian criminal procedural law provides for a rather complicated system of two instances. Either the Court of Appeal or the Austrian Supreme Court acts as final instance.

As of 1 January 2015, parties to criminal proceedings may also file a complaint with the Constitutional Court (*Verfassungsgerichtshof*) if the parties consider the statutes applied to the case unconstitutional. Such complaints may only be filed in connection with an appeal against a first instance decision.

Potential victims of a criminal offence are recognized as parties to criminal proceedings; this enables potential victims access to information that can also be used in the pursuit of their civil claims. Potential victims may, *inter alia*:

- have access to the files (which may however be subject to restriction);
- participate in certain phases of the criminal investigation;
- participate in the main proceedings (trial) with the right to ask direct questions to the accused, to witnesses and to expert witnesses; and
- request that the criminal investigation be continued if the public prosecutor decides to terminate the investigation.

Any victim (legal entities as well as natural persons) may also join criminal proceedings as a "private party" (*Privatbeteiligter*) via a formal statement of accession (*Privatbeteiligtenanschluss*). In addition to the aforementioned rights, a private party is also entitled to, inter alia:

- formally request the collection of evidence;
- act as a subsidiary prosecutor if the public prosecution drops the charges;
- file a complaint if the criminal court terminates the criminal proceedings;
- present its civil claims against the accused and request that the criminal court decide upon its civil claims; and
- file an appeal if the criminal court fails to decide on (or finds in favour of) its civil claims.

While criminal proceedings are a powerful tool to gain information otherwise inaccessible through civil proceedings, criminal courts are reluctant to actually award civil claims (in total). Even in cases of convictions, victims are often relegated to the civil courts.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
<b>SUMMARY</b>		
<b>APPROXIMATE DURATION</b>	<p>There are no statistics available regarding the duration of criminal proceedings concerning charges of business crime and/or corruption. In general, criminal investigations may take 1 to 3 years; first instance proceedings (calculated from the indictment to the first instance court's decision in writing) may take 6 to 12 months; appellate proceedings may take another 6 to 18 months. If the matter is remitted to the first instance, the entire case will have to be reheard by another judge/panel.</p> <p>It has to be stressed that complex cases regarding charges of business crime and corruption may easily take 5 to 10 years.</p>	
<b>APPROXIMATE COSTS</b>	<p>It is close to impossible to provide a general and serious estimation of the costs of criminal proceedings. The complexity of the case is a major factor but also:</p> <ul style="list-style-type: none"> <li>▪ whether the investigation is closed or the case is actually tried;</li> <li>▪ the location of the office of the public prosecution authority conducting the investigation/of the court conducting the main proceedings;</li> <li>▪ the number of suspects and other parties;</li> <li>▪ the necessity of private expert opinions/expert testimony (e.g., forensic accountants);</li> <li>▪ the necessity of translations and/or international judicial assistance;</li> <li>▪ whether the case is in the public eye, etc.</li> </ul> <p>The following approximate costs are based on the assumption that no expert opinions or expert testimonies are required:</p> <p>For the party initiating and joining such proceedings as an injured party, the costs for the criminal investigation as well as the first instance proceedings may easily range from EUR 10,000 to EUR 50,000 and from EUR 5,000 to 20,000 for potential appellate proceedings. There are no court fees.</p> <p>For the party subject to criminal proceedings, the costs for the criminal investigation may easily range from EUR 75,000 to EUR 250,000; for the first instance proceedings from EUR 50,000 to EUR150,000, and for appellate proceedings from EUR 30,000 to EUR 75,000. Suspects who are (fully) acquitted are eligible for a "contribution" to his/her legal fees. The maximum contribution is limited (irrespective of the actual costs) and depends on the composition of the court:</p>	

	<ul style="list-style-type: none"> <li>▪ Regional Court with a panel of three judges and a jury: up to EUR 10,000</li> <li>▪ Regional Court with a panel of one or two judge(s) and two lay judges: up to EUR 5,000</li> <li>▪ Regional Court with a panel of one judge: up to EUR 3,000</li> <li>▪ District Court: up to EUR 1,000</li> </ul> <p>These amounts do not include cash outlays (e.g. costs for copies of the file).</p>	
<b>JURY TRIALS</b>	<p>Most cases of corruption and/or business crime are heard by a single judge or a panel consisting of one or two professional judge(s) and two lay judges. In general, only capital offenses and certain political offenses will be heard by a jury.</p>	
<b>CLASS ACTIONS</b>	<p>Not applicable in criminal proceedings.</p>	
<b>DOCUMENT PRODUCTION</b>	<p>Yes. Certain evidence may not be gathered by (order of) the prosecution without prior court approval (e.g. banking information).</p>	<p>Austria provides only limited legal privilege regarding attorney work products and client-attorney correspondence.</p>
<b>MANDATORY REPRESENTATION BY COUNSEL</b>	<p>Representation by counsel is mandatory in (i) criminal investigations as long as the suspect is held in investigative custody; (ii) in main proceedings if the potential penalty exceeds three years of imprisonment; and (iii) in (most) appellate proceedings.</p>	
<b>PRO BONO SYSTEM</b>	<p>Yes. There is legal aid for natural persons as well as legal entities who cannot afford the costs of legal proceedings.</p>	

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WOLF THEISS

# BOSNIA & HERZEGOVINA

## **HANDLING BUSINESS CRIME IN BOSNIA & HERZEGOVINA**

Criminal acts are generally regulated by criminal codes (*krivični zakon*) adopted at both entity and state levels, as well as at the level of BD, while rules of criminal procedure are provided in the criminal procedure codes (*zakon o krivičnom postupku*) also adopted at entity, state and BD level. Due to the process of harmonization of criminal procedure codes within BiH which started in 2003, all these legal acts in principle provide for substantively the same rules of criminal procedure.

The criminal codes of BiH, FBiH, RS and BD provide for a set of criminal acts which can be classified as business crimes, i.e., criminal acts against commerce, business and security of money transfers. In addition, the relevant codes also define criminal acts of bribery (corruption), as well as tax-related criminal acts. This group of crimes includes acts, *inter alia*, causing bankruptcy, damaging creditors, creating a monopoly position on the market, revealing business secrets, counterfeiting money or securities, money laundering, illicit trade and production, etc.

In addition to the liability of natural persons, the relevant criminal codes also regulate the criminal liability of legal entities, which can be penalized with monetary fines, seizure of property or liquidation of the legal entity. In general, a legal entity is liable for criminal acts committed on the territory of BiH. In general, a legal entity can be liable for criminal acts that its legal representative committed in the name and for the account of such legal entity, in situations defined by the respective criminal code.

As previously outlined, the criminal procedure in BiH is governed by the criminal codes of BiH, FBiH, RS and BD. In general, the criminal procedure consists of three stages: investigation, denunciation and the main hearing. The procedure is initiated by the prosecutor who is authorized to issue an order for an investigation, if it finds that there are reasons to doubt (*osnovi sumnje*) that a criminal act has been committed. Providing that the investigation results in sufficient material (e.g. supporting evidence) confirming that there is reasonable doubt (*osnovana sumnja*) that a criminal act has been committed and who the offender is, the prosecutor will commence the denunciation phase of the procedure by raising an indictment.

The indictment is submitted to the competent court in writing. Upon receipt of the indictment, the court passes a decision confirming or rejecting all or certain allegations of the submitted indictment. If the court confirms the indictment entirely or partially, it schedules a main hearing where the prosecutor and the defendant may present their cases, by submitting documents, examining fact and expert witnesses, etc., and through closing arguments. The first instance procedure is terminated after the court renders the judgment.

The judgment is based on the facts and evidence presented by the parties during the main hearing. An unsatisfied party may file an appeal to the competent Cantonal Court in FBiH or District Court in RS, for the reasons provided in the relevant codes of criminal procedure. Judgments of the appellate courts may further be challenged before the relevant Supreme Courts of FBiH and RS for a limited number of reasons. In BD, an unsatisfied party may file an appeal to the BD Appellate Court, while an appeal against decisions of the BiH Court can be filed with the Appellate Council of the BiH Court.

Generally, the prosecutor plays the key role in criminal proceedings as the criminal procedure can be initiated and conducted only on the basis of a prosecutor's request. In the course of the procedure, the prosecutor undertakes actions for which it is authorized by law. An illustrative example is the prosecutor's role in the investigation procedure. In particular, a prosecutor is authorized to undertake all investigation activities, including questioning the suspect and hearing the injured party, performing inspections and reconstructions of events, undertaking special measures which ensure the safety of the witnesses and information, and ordering the necessary expertise, in accordance with the rules stipulated in the relevant criminal procedure codes.

In any case, the prosecutor can undertake actions either alone or through persons who are legally obliged to act on the basis of the prosecutor's orders. In that respect, the prosecutor supervises the work of the authorized officers (e.g. police officers), i.e. persons who have adequate authorization within, *inter alia*, the police bodies of BiH, including the State Agency for Investigation and Protection, State Border Agency, and the police bodies of the competent ministries of internal affairs. Moreover, the prosecutor is authorized to request information from



the state authorities, business companies, legal entities and natural persons, all of whom are obliged to notify the prosecutor of any actions undertaken and to act on the basis of its orders.

Generally, under the relevant laws, an injured person – i.e., a person whose personal or proprietary rights have been violated or jeopardized by the committed criminal act – is typically considered as a victim and as such, has certain rights and obligations in the course of the criminal procedure.

In principle, the damaged person is entitled to be notified if the investigation will not be conducted or if the investigation has been suspended in order to be able to file an objection to the relevant decisions; to be examined as a witness (which is usually the case); to be present during the hearing of fact and expert witnesses; to file an appeal against the court's judgment with regard to the costs of the criminal procedure and its property-related claim, etc. In any case, one of the important rights of the injured party is the right to file a property-related claim for example for compensation for damages, return of goods or the annulment of certain legal transactions.

If the court passes a decision finding the accused guilty, it can adjudicate the property-related claim entirely or partially. In case the court passes a decision finding the accused not guilty, it will further refer the injured party to claim its property-related claims in the course of civil litigation proceedings. In any case, the court may propose that the involved parties settle the claim in a mediation procedure. In practice, courts in BiH rarely decide on property-related claims filed in criminal proceedings stating that deciding on this issue would unnecessarily prolong the criminal procedure. Therefore, the injured party is usually referred to civil proceedings to claim damages.

In principle, evidence used in criminal proceedings may be used in the civil procedure as well. Under the relevant codes on civil procedure, the court is, with regard to the existence of a criminal act and the criminal liability of the offender, bound by the final decision of the court finding the accused person guilty.

Although the BiH, FBiH, RS and BD criminal procedure codes provide for relatively expedited court proceedings, depending on the backlog of pending cases before the relevant courts and the circumstances of the given case, in practice criminal proceedings last for at least 1 (one) year, with the exception of certain aspects of the criminal procedure, such as the issuance of the warrant for pronouncement of sentence (*kazneni nalog*), or the procedure for admission of guilt and plea bargaining which is quite often used in practice.

The costs of the criminal procedure typically include attorneys' fees, detention costs, remuneration for experts and witnesses, translation expenses, etc. The court determines and sets the amount of court fees in the court judgment for each individual case.

If the accused is found guilty, it will bear all costs of the procedure. On the other hand, if the accused is found not guilty, the costs of the procedure are borne by the state/entity/district budget.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
<b>SUMMARY</b>		
<b>APPROXIMATE DURATION</b>	Although the BiH, FBiH, RS and BD criminal procedure codes provide for relatively quick court proceedings, depending on the backlog of pending cases before the relevant courts and the circumstances of a given case, in practice criminal procedures may last for at least one year, with the exception of certain aspects of the criminal procedure, such as the procedure of issuance of warrant for the pronouncement of a sentence ( <i>kazneni nalog</i> ), or the procedure for admission of guilt and plea bargaining.	

<b>APPROXIMATE COSTS</b>	According to FBiH and RS law, the costs for criminal procedures typically include attorneys' fees, detention costs, remuneration for experts and witnesses, translation expenses, etc.
<b>COURT FEES</b>	The court determines and sets out the amount of court fees in the court judgment for each individual case.  If the accused is found guilty, it will bear all costs of the procedure. On the other hand, if the accused is found not guilty, the costs of the procedure are borne by the state/entity's/district budget.
<b>ATTORNEYS' FEES</b> <i>SIMPLE CASE</i>	<b>FBiH: Assumptions based on the criminal procedure before a sole judge of a municipality court.</b>  <i>Investigation procedure:</i> representation of the suspect during questioning: BAM 300 (approx. EUR 150) for the first hour and BAM 60 (approx. EUR 30) for every following hour of the questioning; participation as defence attorney in the activities pertaining to collection of evidence (e.g. search of an apartment, facilities, persons, etc.): BAM 150 (approx. EUR 75) for the first hour and BAM 60 (approx. EUR 30) for every following hour of the evidence activities; participation as defence attorney in the investigation procedure: BAM 60 (approx. EUR 30) per hour.  <i>First instance:</i> objection to the indictment: BAM 300 (approx. EUR 150); representation of the accused: BAM 300 (approx. EUR 150); in cases when the main hearing lasts longer than one day, the attorney is entitled to BAM 300 (approx. EUR 150) for the first day of the hearing and 50% of the fee for the second and every following day of the main hearing and BAM 60 (approx. EUR 30) per hour from the second hour onwards of the main hearing.  <i>Second instance:</i> defence of the suspect before a panel of judges in second instance; BAM 900 (approx. EUR 450); drafting an appeal: BAM 300 (approx. EUR 150).  <b>RS: Assumptions based on the criminal procedure before a sole judge of the basic court:</b>  <i>Investigation procedure:</i> for participation in the investigation procedure, plea bargaining and admission of guilt: BAM 200 (approx. EUR 100).  <i>First instance:</i> for drafting petitions upon confirmation of the indictment and during the main hearing: BAM 100 (approx. EUR 50); objection to the indictment: BAM 150 (approx. EUR 75); defence of the accused and representation of the accused at the main hearing: BAM 200 (approx. EUR 100).  <i>Second instance:</i> for drafting an appeal: BAM 150 (approx. EUR 75).  <i>COMPLEX CASE</i>  <b>In FBiH:</b> in particularly complex cases, for attorneys appointed by the court, the court will approve a lump sum exceeding the attorneys' fees defined by the FBiH Attorneys' Tariff.  <b>In RS:</b> attorneys' fees can be increased up to 100% if, <i>inter alia</i> , the case requires special expertise or specialized knowledge or if the case is particularly complex.
<b>JURY TRIALS</b>	No. There are no jury trials in BiH.
<b>CLASS ACTIONS</b>	No. Class actions are not possible in criminal proceedings.
<b>DOCUMENT PRODUCTION</b>	Yes. During the investigation, the defence attorney may review the documents and any obtained objects which are in favour of the suspect. The attorney can be denied this right in case the disclosure can jeopardize the purpose of the investigation.  Upon raising the indictment, the accused and the attorney may access all files and evidence.  The judge or the panel of judges and the prosecutor are obliged to provide the defence attorney with access to any new evidence, information or facts that they have obtained and which can serve as evidence in the course of main hearing.

<b>MANDATORY REPRESENTATION BY COUNSEL</b>	Yes.	<p>It is mandatory that the accused is represented by a defence attorney:</p> <p>if he/she is a minor;</p> <ul style="list-style-type: none"> <li>▪ at the time of the first questioning, if he/she is deaf or mute;</li> <li>▪ if he/she is a suspect of a criminal offense that is punishable with a long-term imprisonment;</li> <li>▪ after the court determined detention before a trial and during such a detention;</li> <li>▪ when the indictment is delivered, if the indictment has been raised for a criminal offense punishable with ten years of imprisonment, or for a criminal offense punishable with a severe punishment.</li> </ul>
<b>PRO BONO SYSTEM</b>	Yes.	<p>If the requirements for mandatory defence have not been met and if the accused cannot bear the costs of counsel representation, the court will appoint a counsel <i>ex officio</i> in the following situations:</p> <ul style="list-style-type: none"> <li>▪ if the procedure concerns a criminal offense punishable with imprisonment of three years or a criminal offense punishable with a severe penalty; or</li> <li>▪ if the interest of equity require so, irrespective of the type of punishment.</li> </ul>

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**BULGARIA**

## **HANDLING BUSINESS CRIME IN BULGARIA**

Business crimes are regulated by the Bulgarian Criminal Code (promulgated State Gazette issue No. 26/02.04.1968, as amended from time to time). The Criminal Code contains general rules regarding criminal offences in Bulgaria, as well as the specific qualifications for each crime.

The Criminal Code is applicable to all Bulgarian citizens, as well as foreigners who are resident on Bulgarian territory or territory under Bulgarian jurisdiction (with the exception of foreigners covered by immunity provisions). Under the Bulgarian penal system the principle of innocent until proven guilty is in place.

Under Bulgarian law, legal entities (private corporations, institutions, NGOs, etc.) are not subject to criminal liability. They are allowed to participate in the criminal process only to the extent of claiming damages, in case they are victims of crimes (as "civil plaintiffs").

Most business crimes are set out in the chapter of the Criminal Code entitled "Crimes against the economy". However, some crimes, which are not closely related to business, are placed in other chapters of the Criminal Code, e.g. common cases, such as fraud or asset misappropriation, but also crimes against creditors, banks and tax systems.

According to Bulgarian penal legislation it is illegal for a manager to conclude deals when it is known in advance that these deals will damage the interests of the company or its creditors. Bribery, regardless of whose initiative it is, is also considered a crime. If a legal entity is insolvent, but the respective District Court is not notified within 30 (thirty) days of the actual insolvency, the manager and/or accountants may be prosecuted. The same applies for managers, assignees and other persons who destroy documents related to insolvency and jeopardize the performance of the respective procedures.

Business crimes also include crimes against the customs regime such as, among others, storage and distribution of excise goods with unpaid excise, import and export of goods without payment of the due taxes and fees and violations of the customs notification and registration regimes. Bulgarian legislation prohibits the counterfeiting of papers, money, payment and bank documents, their distribution and usage. Money laundering and other violations of the Act on measures against money laundering (promulgated State Gazette issue No. 85 of 24.07.1998, as amended from time to time) are also prosecuted under Bulgarian law. Persons are not allowed to prepare and use fake documents and to conduct illegal activities which may lead to their or their company's exemption from tax obligations.

Fraud and misappropriation of EU funds may also be considered a business crime in Bulgaria. The procedures for investigating the committed crimes, the perpetrators and the caused damage are mainly addressed in the Criminal Procedure Code (promulgated State Gazette issue No. 86/28.10.2005, as amended from time to time). The Criminal Procedure Code also contains rules regarding the conduct of investigations and the court procedures in a criminal process.

The criminal procedure in Bulgaria is divided into two phases. In the first phase an investigation is conducted to determine the specific facts and qualifications of the crime, including the identity of the perpetrators and the victims and the respective damages. The investigation authorities (the police, customs officers, as well as officers of other public institutions, such as the National Investigation Service, State Agency "National Security" etc.) are the active authorities in this phase. The process is supervised by a public prosecutor from the competent Prosecution office. It may be the Regional Prosecution office, the District Prosecution office or the Specialized Prosecution office, depending on the type of crime.

Once the pre-trial phase begins the investigation authorities are allowed, under the conditions of the Criminal Procedure Code, to search for and collect evidence in offices, houses or other places and/or people, to question witnesses, etc. in order to find out the actual occurrence of events. During the investigation the defendant should be provided with and made aware of all documents and prosecution acts. The investigating bodies should collect not only incriminating, but also exculpatory evidence.

The investigation should be completed and the file should be sent to the prosecutor within 2 (two) months at the latest as of the date of initiating an investigation. However, in cases of significant complexity the investigation may be extended by a further 4 (four) months as many times as necessary, as long as the absolute time limitation for the prosecution of the crime has not expired. When enough evidence is collected or it is not possible to collect further evidence, the competent supervising public prosecutor decides whether to file the prosecution act in the respective court, or to dismiss the case.

Once the prosecution act is at the court, the second, judicial phase begins. In this phase the court reviews the evidence, questions witnesses and hears the defendant and the public prosecutor. This should happen in a reasonable period of time, but case duration may significantly differ. The court panels consist of either one or three judges depending on the severity and type of crime. After the court hearings are concluded the court decides whether the defendant is guilty, not guilty or whether the case needs more investigation. If the defendant is found guilty, the respective sentence should also be rendered by the court based on the court file. Sentences may be appealed before the respective second instance courts (Appeal Court when the case has been heard at first instance by a District Court; or a District Court when the case has been heard at first instance by a Regional Court). The appeal decision may be subject to further cassation appeal (only on points of law and not on points of fact) before the Supreme Court of Cassation.

Bulgarian legislation provides two ways to protect harmed persons or legal entities. During the judicial phase of the crime process, persons and legal entities are allowed to file civil claims against the defendant in the same court case with a request for compensation for the caused damage. Another option is to file a new court claim before the respective civil court and to initiate an independent proceeding.

The costs for the case are borne by the defendant if found guilty. The “civil claim” costs are also borne by the defendant if the court sustains the claim.

The duration of a criminal process in Bulgaria depends on the specifics of each case, but usually lasts from 18 (eighteen) months to 3 (three) years.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
<b>SUMMARY</b>		
<b>APPROXIMATE DURATION</b>	Approximately 8–12 months per instance.	Duration depends on the court and the severity of the punishment provided.
<b>APPROXIMATE COSTS</b>	All documents and papers related to criminal cases are free of charge; no court fees are collected.  Depending on the type and severity of the punishment provided in the Criminal Code for a particular offense, minimum remunerations vary from BGN 400 (approx. EUR 204) to BGN 3,000 (approx. EUR 1,533).	Lawyers usually charge higher fees (3–4 times higher than the minimum ones) in criminal cases.
<b>JURY TRIALS</b>	The Bulgarian courts hear criminal cases in first instance in a panel composed of: <ul style="list-style-type: none"> <li>▪ a single judge; or</li> <li>▪ a judge and two court assessors, if the criminal offence entails more than 5 years of deprivation of liberty as a punishment; or</li> <li>▪ two judges and three court assessors, if the criminal offence entails no less than 15 years of deprivation of liberty or another, more severe punishment.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Court assessors are randomly selected by the system for each case, and their remuneration is paid for by the budget of the justice system.</li> <li>▪ Other participants in a court case are not allowed to appoint court assessors and are not required to ensure their payment.</li> </ul>

CLASS ACTIONS	Not available in criminal cases.	
DOCUMENT PRODUCTION	Limited.	
MANDATORY REPRESENTATION BY COUNSEL	In some cases.	Mandatory if (i) the criminal offence entails more than 10 years of deprivation of liberty or a more severe punishment; (ii) the defendant does not speak Bulgarian; (iii) the defendant is under arrest; or (iv) the defendant is not present at the court hearing.
PRO BONO SYSTEM	Yes. The Legal Aid Act provides for aid for people who cannot afford the costs of legal proceedings, but who want a counsel and if the interests of justice require so.	



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**CROATIA**

**WOLF THEISS**

## **HANDLING BUSINESS CRIME IN CROATIA**

Proceedings related to business crime recently started rising in importance in Croatia, especially in cases in which shareholders attempted to defraud company creditors by hiding company assets.

The purpose of criminal proceedings is usually to put additional pressure on the perpetrators or to gain access to information which only the prosecutor can access and which would otherwise remain unknown to the victim. In addition to this, successful convictions usually open the route to collecting the debt from the perpetrator's private property, which is another reason why victims decide to engage in criminal proceedings.

The first step to initiate criminal proceedings is reporting a potential crime to the competent state prosecutor. The prosecutor has a priority right to decide whether to initiate the proceedings.

The prosecutor usually instructs the police to make preliminary investigations which should help the prosecutor assess whether there are grounds for a criminal conviction. If the prosecutor finds that there could be an arguable case, the prosecutor initiates an official investigation in order to collect relevant evidence.

If the prosecutor makes a *prima facie* assessment that there are no grounds for criminal liability, the prosecutor grants the victim an opportunity to assume prosecution. The victim has 8 (eight) days to declare whether it assumes prosecution and to propose investigations that the victim deems appropriate for collecting relevant evidence.

Formal accusation can be brought before the court once the prosecutor or the victim assuming prosecution collects sufficient evidence. Depending on the gravity of the alleged crime, criminal cases may be heard by specialized criminal departments of Municipal or County Courts.

Croatia traditionally had for many years an inquisitorial system in which the presiding judge played the main role in conducting the trial and taking evidence. As part of the changes of the criminal procedure in 2011 many adversarial features were introduced into the system. The parties now play a more active role in putting forth their case before the judge who acts as an independent decision maker.

Parties are entitled to appeal against a court decision rendered in a first instance trial. The appeal is heard either by a County Court, if the first instance trial was heard by a Municipality Court, or by a Supreme Court, if the first instance trial was heard by a County Court. The law allows for a second appeal against decisions of the appellate courts if the perpetrator is convicted with a long term jail sentence or if the appellate court overturns an acquitting decision and finds the perpetrator guilty.

There are three extraordinary legal remedies available against appellate decisions: (i) reopening the trial in matters concerning serious violations by the participants, or discovery of new facts and/or evidence which may lead to a different decision; (ii) revision of a court decision in case of a breach of fundamental human rights; or (iii) revision of the court decision if there is a suspicion that there was a serious violation of the rules of due process.

The state prosecution office is generally entitled to initiate proceedings and act as prosecution during the trial for the majority of criminal offenses. In addition to the state prosecution office, there is a special department for fighting corruption and organised crime called "Uskok". This department has competence over cases involving corruption, such as giving and taking a bribe, abuse of power in business or by state officials, human trafficking, certain cases of drug trafficking, and crimes committed by organised groups.

Both organisations have wide authorities in collecting evidence and prosecuting before the court. They can also request the court to allow surveillance measures such as wiretapping or physical surveillance.

As already described above, victims may assume the prosecution role if the state prosecution office declines to prosecute. In such cases, private prosecutors have wide competencies to propose the collection of evidence to investigation judges, but private prosecutors may lack the professional support enjoyed by the state prosecution.

Crime victims may participate in criminal proceedings either as aggrieved parties on the same side as the state prosecution or as private prosecutors.

In both roles victims may propose the taking of evidence, cross examining the defendant and the witnesses or filing appeals against court decisions. They can also request the criminal court to order the defendant to compensate them for financial losses or other damages that the victims suffered as a consequence of the crime. Filing such a request prevents the limitation period otherwise applicable to the damages claim from expiring. If such a claim is rejected by the criminal court, the victim is not prevented from filing a damage claim before a civil court.

Criminal courts may issue preliminary injunctions against defendants. Documents and evidence collected during criminal proceedings may generally be used in civil proceedings as well.

The duration of investigations and trial procedures largely depends on the nature of the criminal offense and the availability of evidence. State prosecution and criminal courts are generally very fast in conducting investigations, so investigations usually do not last for more than 1 (one) year. Trial proceedings usually last between 6 (six) months and 2 (two) years.

There are no court fees for reporting criminal offenses or initiating criminal proceedings.

Victim's counsel costs are prescribed by the Croatian Bar's Tariff and they may range between HRK 1,000 (EUR 133) for a hearing in proceedings for an offense with the maximum sentence up to 3 (three) years, HRK 4,000 (EUR 533) for a hearing in proceedings for an offense with a maximum sentence of more than 10 (ten) years. Brief costs usually vary between HRK 250 and HRK 4,000 (EUR 33 – EUR 533).

Counsel costs are recognized by the courts and, in the case of a conviction, the defendant may be ordered to pay the costs of the proceedings together with the victim's counsel costs.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
<b>SUMMARY</b>		
<b>APPROXIMATE DURATION</b>	<p><b>Simple cases:</b> <i>first instance:</i> within 18 months; <i>second instance:</i> within 12 months; <i>third instance:</i> within 12 months.</p> <p><b>Complex cases:</b> <i>first instance:</i> 1 to 3 years; <i>second instance:</i> 12 months; <i>third instance:</i> within 12 months.</p>	The duration of court proceedings usually depends on which court hears the case. Similar to civil proceedings, trials may last longer in courts which are overloaded with cases.
<b>APPROXIMATE COSTS</b>  <b>COURT FEES</b>	In general, there are no court fees for initiating or conducting criminal proceedings that are prosecuted by the State Prosecutor.	<ul style="list-style-type: none"> <li>▪ Convicted persons may be ordered to pay the costs of criminal proceedings.</li> <li>▪ The court has a discretionary power to decide whether the procedural costs will be borne by the convicted person.</li> <li>▪ All the expenses are advanced from the court's budget (e.g. for expert opinions, travel expenses for witnesses, etc.).</li> <li>▪ The court may also bear the defence costs if the defence counsel has been appointed by the court.</li> <li>▪ If there are more convicted persons, the costs will be divided among the convicted persons.</li> </ul>

<p><b>ATTORNEYS' FEES (NET)</b> SIMPLE CASE (INVESTIGATION PROCEEDINGS NOT INCLUDED)</p> <p>COMPLEX CASE (INVESTIGATION PROCEEDINGS NOT INCLUDED)</p>	<p><b>Assumptions based on a charge with the maximum penalty of 5 years of imprisonment:</b> <i>first instance:</i> preparation of 4 comprehensive briefs, four hearings of 1h, 2h, 4h and 6h, respectively, preparation of hearings/ meetings with client, witnesses, correspondence with client: EUR 3,000 to EUR 5,000; <i>second instance:</i> one brief, one hearing: EUR 700 to EUR 1,300; <i>third instance:</i> one brief, one hearing: EUR 1,000 to EUR 2,000.</p> <p><b>Assumptions based on a charge with the maximum penalty of more than 10 years of imprisonment:</b> <i>first instance:</i> preparation of 15 comprehensive briefs, 12 hearings with a duration of 6 x 2h and 6 x 4h; preparation of hearings/ meetings with client, witnesses, correspondence with client: In total EUR 24,000 to EUR 40,000; <i>second instance:</i> two briefs, one hearing: EUR 3,000 to EUR 4,000; <i>third instance:</i> one brief, one hearing: EUR 3,000 to EUR 5,000.</p>	<ul style="list-style-type: none"> <li>Attorneys' fees are determined on the basis of the Attorneys' Tariff or on the basis of the regulation issued by the Ministry of Justice (in case of <i>ex officio</i> defence) and depend on the penalty for the crime with which the accused has been charged.</li> <li>Attorneys' fees may be agreed differently than as provided in the Tariff. However, a court will only award fees calculated on the basis of the Tariff.</li> </ul>
<b>JURY TRIALS</b>	There are no criminal jury trials in Croatia.	
<b>CLASS ACTIONS</b>	There are no criminal class actions in Croatia.	
<b>DOCUMENT PRODUCTION</b>	<p>Limited. There is no formal discovery procedure in Croatia.</p> <p>The police may, upon a court order, perform a search of premises and seize any document that is important for the case.</p>	
<b>MANDATORY REPRESENTATION BY COUNSEL</b>	<p>Mandatory representation is required if the accused is a foreigner and does not understand the Croatian language, or if the accused is not capable of defending him/herself due to health reasons.</p> <p>Mandatory representation is also required if the statutory prescribed penalty consists of more than 10 years of imprisonment.</p>	
<b>PRO BONO SYSTEM</b>	Yes. There is legal aid available to individuals who cannot afford a defence attorney.	

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# CZECH REPUBLIC

## HANDLING BUSINESS CRIME IN THE CZECH REPUBLIC

The legal provisions covering business crimes went through an enormous development lately. The area of business crime and the criminal offences falling within this area have been extended and the sanctions made more restrictive. Concurrently, the criminal liability of legal entities has been introduced by Act No. 418/2011 Coll. on Corporate Criminal Liability. In cases of fraud (in particular credit fraud), embezzlement, bribery, or breach of duty in property administration, business crime plays a substantive role in the Czech Republic.

In comparison with civil proceedings, criminal proceedings are distinctly faster and also cheaper (there are no court fees). Parties attempt to initiate criminal proceedings for various reasons; one reason is often to get hold of information which only the State Prosecutor can access and which would be otherwise unknown to the victim of the crime. Thus, business crime victims often initiate criminal proceedings to gain access to evidence, in order to use this in civil proceedings (which may be carried on concurrently). The victim claiming damages in the criminal proceeding does not need to specify the amount of damages and if the harm is proven, the proceedings to recover damages are usually very fast.

In criminal cases there are also two instances; whereby an appeal against the first instance decision is possible. Nevertheless, there are no separate criminal courts in the Czech Republic for particular crimes. Criminal cases are decided by specialized judges and panels. In the Czech Republic criminal proceedings are initiated by the police, as the police are obliged to conduct all necessary investigations to reveal the fact that a crime was committed. Anyone may file a criminal complaint of a crime being committed to the State Prosecutor's Office or to the police, in which case the police are supervised by the State Prosecutor. If the justified facts suggest that a crime was committed, the police initiate the criminal prosecution immediately. A copy of the decision to initiate the criminal prosecution is served to the accused no later than the beginning of the first interrogation and within 48 (forty eight) hours to the State Prosecutor and the defence counsel.

The preliminary proceedings are led by the State Prosecutor and only he/she can either submit the indictment to the court, in case he/she has enough evidence proving the guilt of the accused, or discontinue the criminal proceedings.

After studying the indictment submitted by the State Prosecutor, the judge orders a trial (*hlavní líčení*). The trial is the most important part of the criminal prosecution. Within the proceedings the State Prosecutor is obliged to prove the guilt of the accused while the principle *in dubio pro reo* applies – if the authorities cannot sufficiently prove the facts, it shall be assumed that the facts are not proven. The accused has the right, but not an obligation, to prove his/her innocence. The judge evaluates the evidence (e.g., examination of witnesses, examination of the accused, expert opinions). In business crime proceedings the most important evidence includes the examination of witnesses, expert opinions and economic analyses – it is often important to prove the correctness of final accounts, or other sophisticated economic evidence. Moreover it is very important to establish whether the offence was intentional or caused through negligence. The trial ends with a judgment – either a guilty verdict (a sentence) or a verdict of not guilty (an acquittal) or another procedural decision (e.g. abatement, postponement or settlement if possible).

A guilty verdict may be appealed by the accused or by the State Prosecutor, while an acquittal may be appealed only by the State Prosecutor. The accused can appeal the decision of the court of lower instance before the court of higher instance (e.g. from the district court to the regional court).

The appellate court reviews the legality and justification only of those sentences of the judgment against which an appeal was filed, including the correctness of the criminal proceedings in terms of alleged errors. The appellate court can (i) uphold the appeal; or (ii) revoke the contested judgment. Furthermore, the appellate court may deviate from the factual findings of the court of the first instance only if it presents important evidence for the factual findings which were already presented during the main trial, or if it presents new evidence.

The criminal law enforcement authorities are the court, the State Prosecutor and the police. Simple cases before the district court are decided by sole professional judges and in difficult cases by a panel of one professional judge and two lay judges. The main “player” is the State Prosecutor, which is the only body capable of bringing a criminal action – the indictment. The organization of the State Prosecutor's Office corresponds to the organization

of the courts (i.e. district, regional, high and Supreme State Prosecutor's Office). The State Prosecutors' Office is a part of the Ministry of Justice.

If the business crime caused damages, the injured party may ask for a remedy within the criminal proceedings (*adhezní řízení*) or may initiate separate civil proceedings. The surrender of the unjust enrichment may also be required. Civil and criminal proceedings may therefore run concurrently. The court in the civil proceedings is bound by the verdict of the criminal court. Under the Act No. 45/2013 Coll., on Victims of Crimes, effective from 1 August 2013, a new specific role of the "victim" was established. The main difference between a victim and an injured party is that a victim may only be an individual and thus in a specific situation a bereaved person may also be considered a victim. Under this Act the victim of a business crime benefits from new rights. For example, the victim may make a statement regarding the impact of the crime on his/her life which may help the court to decide about the appropriate and fair judgment. Moreover, the victim may be defended by a principal for free (newly, the principal may be a legal entity or an organization specialized in providing social services). In addition to the defending principal the victim may also have a confidant who helps the victim to deal with the consequences of the crime.

Every party may apply for the production of evidence in criminal proceedings, i.e., the State Prosecutor, the accused, or the victim. The judge can even call for the production of evidence which nobody applied for. The judge decides if the production of evidence is important, or if this is redundant and therefore merely an obstruction to the proceedings.

The victim may (if approved by the judge) question the accused, but only after the judge has already finished the examination.

Interim injunctions may be granted during the proceedings. These represent an enumerative area of duties that the court may grant to the accused within the criminal proceeding. The aim of these interim injunctions is to secure the rights and freedom of the victim such as life, freedom or human dignity. The court can grant interim injunctions only if there is enough evidence proving the guilt of the accused. Types of interim injunctions include e.g. a ban on contact with the victim, a ban on entry into a common residence with the victim or a ban on traveling abroad.

If the documents were legally gained within the criminal proceeding, they can be used further in the civil proceedings. The principle of free evaluation of the evidence (*zásada volného hodnocení důkazů*) applies particularly in the criminal proceedings. Therefore, the evidence might be anything which is able to contribute to the clarification of the crime and which is admitted by the court as evidence.

Compared to civil proceedings criminal proceedings are usually significantly faster. Generally, the time frame for the criminal proceeding depends on the complexity and the uniqueness of the case. Simple cases are decided by the court of first instance within 1 (one) year and by the appellate court within 18 (eighteen) months. Complex cases, especially those regarding business, may take a longer time. The court itself is not bound by any statutory period of time.

Contrary to civil proceedings, in criminal proceedings court fees do not exist; ergo criminal proceedings are initiated *ex officio*. On the other hand, the accused has to bear the costs for any expert's opinion (if not required by the court itself) and the attorney's fees. The attorneys specialized in criminal proceedings may bill their hourly rate to the client, but the court will adjudicate only a fee prescribed by the secondary legislation.

### Corporate Criminal Liability

The Act No. 418/2011 Coll., on Corporate Criminal Liability, effective from 1 January 2012 implemented the requirements set out by EU Directive 2009/52/EU, so called "direct liability of legal entities". Under this Act, a legal entity may be prosecuted if the crime has been committed by one of the persons listed in this Act and which is imputable to the legal entity. The commitment of a crime by actions of (i) a statutory body of the legal entity; (ii) a member of the statutory body; (iii) a person acting in a managerial capacity carrying out management

or control activities; or (iv) a person exercising a decisive influence over the management of the legal entity is imputable to the legal entity.

The commitment of a crime by an employee or a person having a similar status is imputable to the legal entity only if (i) this person has acted according to the instructions of the above-mentioned bodies or persons; (ii) the above-mentioned bodies or persons have not performed sufficient control over the activity of employees or other subordinates; or (iii) have not taken sufficient measures to avoid or avert the consequences of the committed crime.

All crimes as set out in the Criminal Code give rise to prosecution with the exception of those crimes enlisted in an enumerative list contained in this Act.

Legal entities are mostly subject to financial sanctions for any violation of the law. The ultimate sanction is the dissolution of the legal entity.

According to publicly accessible information only very few proceedings with legal entities are waiting to be heard before the courts in the Czech Republic at the moment.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
<b>SUMMARY</b>		
<b>APPROXIMATE DURATION</b>	<p><b>Simple cases:</b> <i>first instance:</i> 6 months; <i>second instance:</i> 1 year.</p> <p><b>Complex cases:</b> <i>first instance:</i> 1 year; <i>second instance:</i> 1 to 1½ years</p>	Criminal proceedings are significantly faster than standard civil proceedings, but in very complex cases (e.g., in cases of business crime) the proceedings may be much longer.
<b>APPROXIMATE COSTS</b>	<p>There are no court fees.</p> <p>The accused may bear the costs for experts' opinions and attorney's fees. On the other hand, the attorneys may bill in accordance with the secondary legislation and not their usually hourly rate.</p>	
<b>JURY TRIALS</b>	There are no jury trials in the Czech Republic.	
<b>CLASS ACTIONS</b>	Class actions are not permitted in the Czech Republic.	
<b>DOCUMENT PRODUCTION</b>	The principle of free evaluation applies in criminal proceedings. Everything that can contribute to solving the crime may be submitted as evidence.	<ul style="list-style-type: none"> <li>Documents shall be submitted in Czech. Czech translations must be attached to documents in foreign languages.</li> <li>The court is entitled to ask the parties or third parties to submit other documents besides documents referred to as evidence.</li> <li>Copies of documents (documentary evidence) shall be submitted to the court. The counter-party is obliged to make their own copies using the copies from the court file at its own expense.</li> </ul>

<b>MANDATORY REPRESENTATION BY COUNSEL</b>	<p>The accused shall be represented by counsel if:</p> <ul style="list-style-type: none"> <li>▪ the accused is (i) in custody, prison or protective treatment; (ii) incapacitated or deprived of full legal capacity by a court decision; or (iii) fugitive;</li> <li>▪ if an agreement on guilt or punishment is being negotiated;</li> <li>▪ if the court decides on extradition, transfer to another EU Member State, enforcement of a foreign criminal law decision or imposition of protective treatment; or</li> <li>▪ if the offence is punishable with a minimum of 5 years of imprisonment (the accused may forfeit his/her right to the mandatory defence).</li> </ul> <p>Each court has a list of counsel from which the counsel are chosen.</p>
<b>PRO BONO SYSTEM</b>	<p>Yes.</p>

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HUNGARY

## **HANDLING BUSINESS CRIME IN HUNGARY**

Business crime offences in general include bank fraud, bribery, blackmail, counterfeiting, embezzlement, forgery, insider trading, money laundering, tax evasion and antitrust violations, and are most often committed for illegal monetary gain. Although the importance, volume and complexity of such criminal cases have shown increasing trends over the past 5 to 6 (five to six) years, the ratio of such offences within the overall criminal statistics does not qualify as outstandingly significant. Certain trends have been clearly visible in recent years: commercial entities use more and more the legal tool of criminal reports against suppliers, competitors and business partners; while banks are turning their growing attention from client frauds to internal frauds.

In business crime matters the instrument of plea bargaining has a greater significance than in general criminal cases to counter-balance the often very high degree of difficulties and inefficiency of investigation work in business crimes.

It is a fundamental peculiarity of business crime matters that, unlike in general criminal cases, the suspected person is formally charged only at a late stage of the police investigation, and the overwhelming amount of the investigation work (witness interrogations, collection of evidence, expert work) is completed before such formal charge is notified. This gives the police more room for timing and planning the strategy of the case.

Criminal cases typically commence with a criminal report filed with the competent police or the prosecutor's office. The police then decide whether to (i) order an investigation; (ii) request more information; or (iii) reject the report. In business crime matters, due to their complexity and technical elaboration, it is essential that the criminal report is prepared by legal experts of the particular business field in order to give a proper description and legal ammunition to the police to enable them to successfully proceed with the case. Reports prepared improperly are often rejected without any investigation on the merits, due to the police's lack of adequate and in-depth knowledge of the particular business.

If an investigation is ordered, the police will take the procedure forward. When all relevant investigation actions are completed (such as collection of documents, hard drives, interrogation of the injured party, witnesses, expert work) the police formally closes the investigation and refers the file to the prosecutor with a proposal to formulate a charge. The prosecutor (who usually supervises the entire investigation work) will decide whether a charge is properly grounded. If so, the prosecutor prepares and files the bill of indictment with the competent court. It is the court that finally judges the indictment.

The first stage of a criminal process is investigation. This is conducted by the competent bodies of the police or the national tax and customs authority. Business crimes are usually investigated by the local police department or, in high value cases, the county police departments. In the event of organised crime, country-wide crimes or in highly specialised fields the investigation is conducted by the specialised investigation office of the national police headquarters. In addition, certain business crimes are investigated by the central criminal directorate of the national tax and customs authority.

The public prosecutor overviews and supervises the process of investigation. Once the investigation is closed and the file is transferred from the police (or the national tax and customs authority) to the public prosecutor, it will decide whether to (i) formally submit a charge to the competent first instance court; (ii) refer the file back to the police for supplementary investigation; or (iii) drop the charges.

The Hungarian criminal court system is divided into three levels in terms of ordinary criminal procedures: local courts (*járásbíróság*), county courts (*törvényszék*) and courts of appeal (*ítélőtábla*). In addition, the Curia<sup>1</sup> acts in certain cases as a third level of appeal. Similarly to civil litigation proceedings, a usual criminal court case consists of two instances, and the final and binding judgment is adopted by the second instance court. As an exception, if the first and second instance judgments are completely contradictory to each other, only in respect of finding or not finding the charged person guilty, an appeal is possible to the third instance court, which then adopts the final and binding judgment.

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<sup>1</sup> Curia is playing the role of the Supreme Court of Hungary.



There is no ordinary remedy against the second or third instance court's decision. In other words, these judgments are final, non-appealable and binding. Only an extraordinary legal remedy is available (*felülvizsgálati kérelem*) to challenge such a decision before the Curia. To achieve this, the Curia grants an extraordinary remedy (typically the annulment or alteration of the previous judgments). The applicant must evidence that a material breach of substantive law has occurred, or certain fundamental procedural rules have been breached.

The injured party (typically the person filing the criminal report with the police) has a legitimate right to pursue civil law claims to recover the damages that it suffered as the consequence of the business crime offence. Such a claim may be presented in the criminal proceedings free of any charges or duties (excluding legal fees of counsel). In order to secure such claims the investigation authority may order a freeze over bank accounts or assets or other means of security.

The injured party's best tool to expedite its interests in the criminal proceedings is to retain highly qualified legal advisors experienced in the field of commercial law and business crime. Such advisors will keep in contact with the relevant authorities to gain up-to-date knowledge on the status of the proceedings, and they can present motions to accelerate the case and to improve the chances of recovery of the damages caused by the criminal offence. It is important that a criminal report, once filed with the police, may no longer be withdrawn, and therefore this cannot be a tool of settlement with the criminal offender.

The investigation stage of the proceedings lasts in general 1 to 2 (one to two) years, subject to the complexity of the case. After a lapse of 1 (one) year the prosecutor introduces a more scrutinised control and supervision over the investigation process. After a lapse of 2 (two) years, the investigation must be closed. All such deadlines start from the first interrogation of the suspect. Given that suspects are usually interrogated for the first time in a late stage of the investigation, the duration of the investigation may in practice be significantly extended.

Following the completion of the investigation the procedural stage before the prosecutor's office may last 30 (thirty) days to 6 (six) months. Court cases usually terminate after a period of up to 3 (three) years.

All costs of the criminal proceedings (in particular, expert fees) are advanced by the state, and are finally borne by the charged person if found guilty at the completion of the court case. If the investigation is cancelled, the charge is dropped or the charged person is released due to lack of any criminal offence or insufficient evidence, all costs are finally borne by the state (and not the injured party which filed the criminal report).

Business crimes are criminal offences of public prosecution (and not private), and the injured party which files the criminal report in such cases does not have to pay any stamp duties.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
<b>SUMMARY</b>		
<b>APPROXIMATE DURATION</b>	<i>Investigation stage of proceedings:</i> 1 to 2 years (subject to the complexity of the case). <i>Procedural stage before the prosecutor's office:</i> 30 days to 6 months. Court cases usually terminate after a period of up to 3 years.	
<b>APPROXIMATE COSTS</b>	All costs of the criminal proceedings (in particular expert fees) are advanced by the state and are finally borne by the charged person if found guilty. As a general rule, attorneys' fees are subject to the engagement letter between the client and the attorney.	
<b>JURY TRIALS</b>	There are no jury trials in Hungary.	
<b>CLASS ACTIONS</b>	There are no class actions.	
<b>DOCUMENT PRODUCTION</b>	All documents are collected by the investigation authority <i>ex officio</i> . They may request the production of documents from the suspect, the witnesses and the injured party.	

MANDATORY REPRESENTATION BY COUNSEL	It is not mandatory for an injured party to retain a legal counsel, but in practice this is highly advisable to promote their interests and to improve the chances of recovery of damages caused by the criminal offence.
PRO BONO SYSTEM	Yes. The Hungarian state provides legal aid to people who cannot afford a legal representative.

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# KOSOVO

WOLF THEISS

## **HANDLING BUSINESS CRIME IN KOSOVO**

Corruption remains a serious challenge for Kosovo. A survey by the Kosovo Democratic Institute indicates that 73% of the respondents in Kosovo believe that since 2007, the level of corruption has increased, while only 8% think that corruption has decreased. According to the World Bank's Worldwide Governance Indicators, Kosovo's control of corruption has shown little improvement since 2003, and remains low at more or less 30% (100% representing full control of corruption), with no clear tendency since 2005.

A more recent study, the 2015 Corruption Perceptions Index by Transparency International indicates similar results. Since 2010, Kosovo's total rank and score (shown in brackets, whereas 0 indicates corruption to be perceived as very high and 100 indicates an environment very clean of corruption) has somewhat improved from 110<sup>th</sup> (28) to 95<sup>th</sup> (36) of 176 participating countries in 2016.

Our own perception of this issue seems to confirm the above studies.

The main regulations concerning combating business crime are recorded in Articles 284–318 of the Kosovo Criminal Code. These articles regulate a variety of crimes, such as the violation of patent rights, unauthorized communication of trade secrets, damaging creditors, causing of bankruptcy, use or production of counterfeit money, tax evasion, unjustified gift giving and acceptance and many more. The extent of the catalogue is comparable with catalogues from other countries in Europe.

Besides the Criminal Code, there are several other laws which regulate offenses connected with business crime. The most important examples are the Law on Internal Trade, which contains the basic principles of trading and the Law on Liability of Legal Persons for Criminal Offenses.

On 1 February 2012 the Project against Economic Crime in Kosovo (PECK) was initiated by the European Union and the Council of Europe. PECK's overall objective is to contribute to democracy and the rule of law through the prevention of corruption, money laundering and financing of terrorism in Kosovo. A large number of agencies and authorities are taking part in this project. The key players are the Kosovo Anti-Corruption Agency (KAA), the Financial Intelligence Unit (FIU), the Office for Good Governance Human Rights and the Equal Opportunities and Gender Issues (OGG) at the office of the Prime Minister. During the project, numerous laws have been revised (e.g., the Criminal Code) and new laws have been adopted.

A criminal trial in Kosovo is divided into several stages. It starts with a pre-trial, conducted by the competent state prosecutor and the judicial police, in which investigations are carried out and evidence is recorded. The aim of the pre-trial is to decide whether to file an indictment or to discontinue proceedings. In case there is sufficient proof the state prosecutor will bring in an action and the main trial will commence.

The main trial is terminated by a judgment by the competent court. The judgment is rendered and announced in the name of the people and either rejects the charge or acquits the accused of the charge or pronounces the accused guilty. If the accused is guilty, there are three principal punishments: long-term imprisonment, imprisonment and fines. Within 15 (fifteen) days of the day the copy of the judgment has been served authorized persons are able to file an appeal. "Authorized persons" in accordance with the Criminal Procedure Code are: the parties, the defence counsel, the legal representative of the accused and the injured party. Also the public prosecutor may file an appeal either to the detriment or to the benefit of the accused. An appeal has to be filed with the court which rendered the judgment in first instance.

The court of first instance will serve the opposing side with a copy of the appeal with the opportunity to reply to the appeal within 8 (eight) days of the service of the copy. The court of first instance then sends the appeal, the reply and all related files to the court of second instance. The court of second instance takes its decision in a session of the panel or in a hearing. The court of second instance is able to dismiss an appeal as belated or inadmissible; reject an appeal as unfounded and affirm the judgment of the court of first instance; annul the judgment and return the case to the court of first instance for retrial and decision; or modify the judgment of the court of first instance. An appeal against a judgment of a court of second instance can be filed with the Supreme Court of Kosovo but only in the following instances:

- if a court of second instance has imposed a punishment of long-term imprisonment or has affirmed the judgment of a court of first instance by which such punishment was imposed;
- if a court of second instance after conducting a hearing has made a different determination of the factual situation from the court of first instance and based its judgment on such factual determination; or
- if a court of second instance has modified a judgment of acquittal by the court of first instance and rendered instead a judgment of conviction.

The Supreme Court considers the appeal in a session of the panel; a hearing does not take place.

The basic power and the main function of the state prosecutor are the investigation of criminal offences and the prosecution of their perpetrators. The state prosecutor is an impartial institution and acts in accordance with the Constitution and the law. The organization, competencies and duties of the state prosecutor are defined by law. Concerning criminal crimes, the state prosecutor has the power to:

- undertake the necessary measures connected with the detection of criminal offences and the discovery of perpetrators and to undertake investigative actions while directing or supervising the investigation in preliminary criminal proceedings;
- file and present the indictment or summary indictment before the competent court; and to
- file appeals against decisions of the court that have not become final and to file extraordinary legal remedies against final decisions of a court.

The Kosovo Prosecutorial Council is a fully independent institution, which ensures equal access to justice for all persons in Kosovo. The Kosovo Prosecutorial Council recruits, proposes, promotes, advances, transfers, and disciplines prosecutors in a manner provided by law.

Mandatory representation is provided according to the Criminal Procedure Code:

- if the defendant is mute, deaf, or displays signs of mental disorder or disability and is therefore incapable of effectively defending him or herself;
- at hearings regarding detention on remand and throughout the time when the defendant is in detention on remand;
- if indictment has been brought against a defendant for a criminal offence punishable by imprisonment of at least 8 (eight) years; and
- for proceedings under extraordinary legal remedies when the defendant is mute, deaf, or displays signs of mental disorder or disability or a punishment of long-term imprisonment has been imposed.

According to the Criminal Procedure Code a person who has been arrested by the police authorities has the right to legal representation. The competent court decides on the granting of a public defender. A public defender can be granted for defendants who are accused of a crime which can be punished with a prison sentence of at least 8 (eight) years. Moreover, granting a public defender is possible due to special requirements of the case. The costs for the support of a public defender are carried by the public budget. All police stations, courts and detention centres are legally required to enable an arrested person contact to a lawyer.

The Criminal Procedure Code guarantees an accused person several rights which are necessary for his/her defence. The defendant has the right to make statements on all the facts and evidence, which incriminate him/her, and to state all facts and evidence favourable to him/her. Further the defendant has the right to examine or to have examined witnesses against him/her and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him/her. The defendant or his/her representative has

the right to request the recording of evidence. It is the duty of the state prosecutor to present the facts on which he/she bases the indictment and all necessary evidence for these facts. The defendant and the state prosecutor have the status of equal parties. The suspect and the defendant have the right to be assisted by a defence counsel during all stages of the criminal proceedings.

The injured party has the right to file a property/civil/damages claim in criminal proceedings. During all stages of the criminal proceedings, the injured party has the right to draw attention to all facts and to propose evidence which has a bearing on establishing the criminal offence, on finding the perpetrator of the offence or on establishing his/her property claims. Further the injured party has the right to inspect the record and documents and objects that serve as evidence. In the main trial, the injured party has the right to propose evidence, to put questions to the defendant, witnesses and expert witnesses, to make remarks or give other statements, present clarifications concerning their testimony and to file motions. In case the state prosecutor withdraws the indictment, the criminal procedure will be concluded. In a judgment pronouncing the accused guilty the court may award the injured party the entire civil/property/damages claim or may award him/her only part of it and refer the injured party to civil litigation for the remainder. If the data collected in the criminal proceedings do not provide a reliable basis for either a complete or a partial award, the court will instruct the injured party that he/she may pursue the entire property claim in civil litigation.

It is hardly possible to determine the exact duration of a criminal trial – it differs from case to case. The Criminal Procedure Code merely states that fair criminal proceedings have to be conducted within a reasonable time. However a more precise definition or time limitation is missing.

In legal disputes the unsuccessful party generally bears all the costs. According to the Criminal Procedure Code such costs for example are: the costs of witnesses, expert witnesses, interpreters, specialists, technical recordings, transportation costs or the costs of a site inspection. Every judgment and ruling which discontinues criminal proceedings contains a decision on who will cover the costs of the proceedings and the amount of the costs. If the court finds the defendant guilty, he/she must reimburse the costs of the proceedings; when criminal proceedings are terminated or when a judgment is rendered, which acquits the defendant or rejects the charge the costs are paid from budgetary resources.

According to Law No. 04/L-017 on Free Legal Aid, under certain circumstances Kosovo citizens are able to claim legal aid for civil, criminal, labour and administrative matters before courts and authorities.

The attorney fees are basically determined by the Kosovar Bar Association. An English-language version can be found on its website: [http://www.oak-ks.org/repository/docs/1.EXSTRAT\\_from\\_Tarifs\\_895441\\_715118.pdf](http://www.oak-ks.org/repository/docs/1.EXSTRAT_from_Tarifs_895441_715118.pdf). However, experience has shown that many lawyers charge higher fees. In principle all fees are based on the possible jail sentence, divided into four stages: (i) up to 3 (three) years; (ii) up to 5 (five) years; (iii) up to 10 (ten) years; and (iv) more than 10 (ten) years. Basic charges for a defence range from EUR 100 up to EUR 200. For every extra hour the attorney is entitled to charge an additional 30% of the basic charge. The costs for actions, such as a criminal private prosecution or an examination application, start at EUR 130 and go up to EUR 360. For appeals and all other extraordinary remedies, attorneys are entitled to charge EUR 200 up to EUR 530 depending on the possible jail sentence.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
<b>SUMMARY</b>		
<b>APPROXIMATE DURATION</b>	It is hardly possible to determine the exact duration of a criminal trial. It differs from case to case.	The Criminal Procedure Code merely states that fair criminal proceedings have to be conducted within a reasonable time. There is no precise definition or time limitation.



APPROXIMATE COSTS		According to the Criminal Procedure Code, costs may include, for example, the costs of witnesses, expert witnesses, interpreters, specialists, technical recordings, transportation costs and the costs of a site inspection.
COURT FEES	The unsuccessful party generally bears all the costs.	
ATTORNEYS' FEES (NET)	The fees are determined by the Kosovar Bar Association.	
JURY TRIALS	There are no jury trials in Kosovo. The first instance trial is chaired by an individual judge, while the second instance proceedings are chaired by a three-member panel of judges. The Supreme Court considers an appeal in a panel session.	
CLASS ACTIONS	No.	
DOCUMENT PRODUCTION	The parties to a dispute have the right to access and inspect the case files.  In the main trial, the injured party has the right to propose evidence, to put questions to the defendant, witnesses and expert witnesses, to make remarks, give other statements and present clarifications concerning their testimony and to file motions.  The private prosecutor and the subsidiary prosecutor have the same rights as the public prosecutor, excluding those rights belonging to the public prosecutor as a public official.	
MANDATORY REPRESENTATION BY COUNSEL	Mandatory representation is provided for a defendant according to the Criminal Procedure Code: <ul style="list-style-type: none"><li>▪ if the defendant is mute, deaf, or displays signs of mental disorder or disability and is therefore incapable of effectively defending him/herself;</li><li>▪ at hearings on detention on remand and throughout the time when he or she is in detention on remand;</li><li>▪ If indictment has been brought against him or her for a criminal offence punishable by imprisonment of at least eight years; and</li><li>▪ in proceedings under extraordinary legal remedies when the defendant is mute, deaf, or displays signs of mental disorder or disability, or a punishment of long-term imprisonment has been imposed.</li></ul>	
PRO BONO SYSTEM	According to Law No. 04/L-017 on Free Legal Aid, under certain circumstances Kosovo citizens are able to claim legal aid for civil, criminal, labour and administrative matters before courts and authorities.	

This chapter was written in cooperation with Pallaska & Associates L.L.C., Pristina, Kosovo  
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POLAND

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## **HANDLING BUSINESS CRIME IN POLAND**

In cases of business crimes, the perpetrator may often be subject to civil and criminal liability. For this reason, criminal proceedings are often conducted parallel to civil litigation. Taking part in criminal proceedings against a perpetrator may be an effective way of obtaining evidence and gaining an advantage over the opposing party. Evidence gathered in the course of criminal proceedings may also be submitted to the civil court, unless it contains classified information.

Judges presiding over business crime cases often lack relevant business experience and market knowledge. This is mainly caused by insufficient training programs and, most of all, by the fact that there is no specialization of judges, i.e. no special court divisions handling only economic offences. As a consequence, even for experienced attorneys it is often difficult to predict the final outcome of a case.

The Act on Liability of Collective Entities of 28 October 2002 allows a penalty to be imposed on a legal entity, if: (i) an officer or employee of the company has been convicted of a crime specified in the act (e.g. bribery, offences against trade) or the committing of such a crime has been determined in any proceedings; (ii) the crime was committed in connection with the activities of the entity; (iii) the offence was committed due to at least lack of due diligence in the choice or supervision of the person who committed the offence or due to the improper organization of the company; and (d) the crime was or could be beneficial (either economically or non-economically) to the entity.

The catalogue of penalties includes: (i) a fine up to the amount of PLN 5 million (approximately EUR 1,2 million), but no more than 3% of the yearly income of the entity; (ii) mandatory forfeiture; and (iii) optional bans imposed for a period between 1 to 5 (one to five) years, e.g. prohibition on the use of public aid or subventions, prohibition on advertising and prohibition on participation in public tenders. As the procedure to hold a company liable is rather burdensome, the Act on Liability of Collective Entities is rarely applied in practice.

The two main stages of criminal proceedings are preliminary proceedings and court proceedings, which are commenced by submitting an indictment act to court.

Preliminary proceedings are obligatory in cases of offences prosecuted *ex officio*. The main purpose of preliminary proceedings is to gather and record evidence. These proceedings are divided into two stages, i.e., proceedings *in rem*, the purpose of which is to clarify whether an offence has been committed and proceedings *in personam*, conducted against a specific suspect. Preliminary proceedings can be conducted by the prosecutor, by the police (in minor cases), or other authorities (in specific cases). The organizational structure of the public prosecutor's office and the police, unlike that of the courts, provides for divisions specializing in economic offences.

If the preliminary proceedings are not discontinued and on the basis of evidence gathered the prosecutor is of the opinion that there are high chances that a crime was committed, the prosecutor prepares an indictment act and submits it to the competent court. Court proceedings in Poland are composed of two instances. Additionally, a cassation to the Supreme Court can be filed against a final and binding judgment rendered by the appellate court.

During the preliminary proceedings stage, the prosecutor and the police are the most relevant players. In the case of economic offences it is, however, also worth mentioning:

- the Polish Financial Supervision Authority (*Komisja Nadzoru Finansowego*), a public authority overseeing the capital market and banking sector;
- the Office of Competition and Consumer Protection (*Urząd Ochrony Konkurencji i Konsumentów*) whose main role is to safeguard compliance with competition law; and
- the Tax Audit Offices (*Urzędy Kontroli Skarbowej*) which are competent with respect to ensuring the payment of tax liabilities.

The above-mentioned institutions are authorized to conduct investigations within the scope of their statutory competences and often discover facts that may lead to the initiation of preliminary proceedings. Moreover, pursuant to the Polish Code of Criminal Procedure, the Prosecutor General (*Prokurator Generalny*) and the Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*) are authorized to file a cassation in criminal proceedings.

Under Polish regulations on criminal procedure, the aggrieved party is authorized to act as an auxiliary prosecutor along with or instead of the prosecutor (in case the prosecutor refuses to initiate or discontinues the preliminary proceedings).

The outcome of criminal proceedings can be of key importance for civil litigation for a couple of reasons. Firstly, a criminal court may order in its ruling that the convicted person must remedy the damage caused by committing the offence. As a result, a party awarded damages in a criminal case cannot claim them again in the civil proceedings. Secondly, the findings contained in a final condemnatory sentence of a criminal case are binding for the civil court as to the fact of the accused having committed the offence. In such cases, it is completely up to the civil court to estimate the damage incurred by the victim (claimant).

The approximate duration of preliminary proceedings in Poland is 18 (eighteen) months. Court proceedings last on average an additional 2 (two) years.

The notification of suspicion of a criminal offence having been committed is not subject to any fee. Only specific motions of the convicted party (e.g. motion for suspension of the sentence) are subject to fees. Moreover, the filing of a cassation is subject to a court fee, the amount of which depends on the type of court which rendered the judgment subject to cassation.

As indicated above, the scope of court fees in criminal proceedings is very limited. Therefore, the costs incurred by the parties are mostly composed of attorney fees, travel expenses, and other costs, e.g., remuneration of private experts.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
<b>SUMMARY</b>		
<b>APPROXIMATE DURATION</b>	<i>Preliminary proceedings:</i> approx. 18 months. <i>Court proceedings:</i> approx. 24 months.	The duration of preliminary and court proceedings depends on the location of the court. Courts in smaller cities usually have a smaller case load and thus the proceedings are more expeditious.
<b>APPROXIMATE COSTS COURT FEES</b>	<p>The criminal proceedings are generally free of charge. However, if a party is convicted to imprisonment, a fee of PLN 60 to PLN 600 must be paid at first instance (depending on the judgment) and in the case of a fine, 10% to 20% of the fine, but not less than PLN 30.</p> <p>If the appeal filed in favour of the accused is not taken into account, the court will charge the same fee for the appeal proceedings.</p> <p>Filing of a cassation is subject to a court fee in the amount of PLN 450 (in case of cassation against the judgment of a district court) or PLN 750 (in case of cassation against the judgment of a regional court).</p>	

<b>ATTORNEYS' FEES</b>	<p><i>Simple Case:</i> EUR 5,000 to EUR 10,000.</p> <p><i>Complex Case:</i> EUR 10,000 to EUR 20,000.</p>	In practice, hourly rates in the amount of ca. EUR 250 and reimbursement of costs are preferred, as the amount of work is difficult to assess in advance.
<b>JURY TRIALS</b>	Cases concerning business crimes are usually heard by only one judge, but jury trials may occur in complex cases (panels are composed by one judge and two jurors, or two judges and three jurors).	
<b>CLASS ACTIONS</b>	No.	
<b>DOCUMENT PRODUCTION</b>	The prosecutor and the police may order any person to produce documents necessary for the purpose of criminal proceedings. The same may be done by the court. Evidence gathered in the course of criminal proceedings can be submitted to the civil court, unless it contains classified information.	Litigants often use or try to use criminal proceedings to obtain evidence.
<b>MANDATORY REPRESENTATION BY COUNSEL</b>	Representation by counsel is mandatory in cases subject to a long imprisonment sentence or if the sanity of the defendant is questionable or if he/she is physically impaired.	
<b>PRO BONO SYSTEM</b>	Yes. Legal aid is provided for persons who cannot afford the cost of legal representation.	

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ROMANIA

## **HANDLING BUSINESS CRIME IN ROMANIA**

In Romania, it is considered that the business crime phenomenon has been on a downward trend over the past few years. However, although the number of companies that have reported such problems has decreased since 2005, the amount of money involved in frauds has doubled.

Studies have shown that over 36% of Romanian companies were victims of business crimes in the past two years. On average, every Romanian company participating in the study was a victim of over seven economic crimes in the past two years. Average losses incurred by the companies have doubled during this timeframe. The total reported loss due to business crimes amounts to USD 13.7 million, meaning approximately USD 450,000 per affected company; twice the average amount registered in 2005.

Companies most affected by this phenomenon are large ones, with over 5,000 employees (62%), while companies with less than 200 employees were less affected (36%). The statistics show that insurance and retail are the most affected industries, with 57% of companies in these industries affected, followed by 44% of companies in the automobile industry, and up to 27% in the pharmaceutical industry being affected.

The most frequently used fraud methods reported by Romanian companies are: asset misappropriation (23%), copyright infringements (15%), accounting frauds and corruption (10%). With over USD 5.5 million spent on dealing with business crimes in the past two years, this segment is treated very seriously by the Romanian public authorities.

Business crimes are regulated in the Romanian Criminal Code ("RCC") as well as in other special laws such as Law No. 241/2005 for the prevention and fight against tax evasion.

The RCC and other relevant laws regulate crimes such as: profiteering, measurement fraud, quality fraud, disclosure of economic secrets, trademark counterfeiting, circulating counterfeited products, unfair competition, non-compliance with regulations regarding import and export, embezzlement, non-compliance with regulations regarding import and export.

In Romania, in accordance with the Romanian Criminal Procedure Code ("RCPC") a criminal case is comprised of four major phases: the criminal investigation, the preliminary room proceedings, the trial and the enforcement of the final decision. In order to initiate a criminal investigation, the judicial authorities can be notified either by a criminal complaint or by denouncement, by the notification of other authorities or they can start the investigation *ex officio*.

The criminal investigation can be started *in rem*, when the perpetrator is unknown, or *in personam*, when the identity is known to the police. If the police consider that it has enough evidentiary support, it will charge the perpetrator with the crime. When the criminal investigation is finalized, the prosecutor may order the following solutions: (i) send the case to court for trial; (ii) return the file to the police for further investigation; (iii) reach and conclude a plea bargain with the defendant; or (iv) not bring the case to trial.

Following the completion of the criminal investigation, if the prosecutor decides to send the case before the court, the preliminary room proceedings are initiated. These proceedings consist of verifying the competence of the court and its legal referral, as well as verifying if the evidence was legally administrated and if the criminal investigation was conducted according to the law. The duration of these proceedings shall not exceed 60 (sixty) days.

Once the preliminary room proceedings are finalized the preliminary chamber judge can either (i) send the case before the court; or (ii) send the case back to the prosecutor in order to complete the investigation, if the judge considers this necessary. In the event the case is sent to trial and the court, subpoenas are sent to the parties and the prosecutor. The first instance case is comprised of: (i) prior measures (the appointment of the judges, ensuring the defence, drafting and displaying the hearing list); and (ii) the hearing, the deliberation and the delivery of the judgment.

First instance decisions may be challenged with an appeal which is the only ordinary remedy provided by the RCPC.

The Courts of Appeal judge the appeals filed against the decisions issued in first instance by the Local Courts and Tribunals. These decisions, except the ones referring to the retrial of the cause can be challenged with cassation appeals (*recurs in casatie*). The cassation appeal is judged by the High Court of Cassation and Justice which verifies if the decisions were issued in compliance with the applicable rules of law. The grounds on which the cassation appeal can be admitted are limited (e.g. in case the defendant was convicted for a deed that is not provided for by the criminal law, the punishments was given in other limits than those permitted by the law, etc.).

The RCPC provides for two other extraordinary remedies that serve the purpose of repairing errors contained in final criminal court decisions. These extraordinary remedies are: the challenge for annulment (*contestatie in anulare*) and the extraordinary appeal (*revizuire*).

Another legal remedy is the challenge (*contestatia*) which can be filed in cases expressly mentioned in the code (i.e., the decision issued by the judge during the criminal investigation by which a person is ordered to be taken into custody). A decision issued once the challenge is heard cannot be subject to any remedy.

The Romanian prosecution body competent to solve business crimes consists of prosecutors organized in the Public Ministry, whilst the police and other investigating bodies have the competence of carrying out investigation activities, but only under the strict supervision of a prosecutor.

Specific corruption crimes such as bribery or exertion of influence are, in strictly regulated situations, prosecuted by a special body organized within the Public Ministry – the National Anticorruption Division. Other economic and financial crimes such as IT criminality, organized crime and racketeering, money laundering, terrorism and others are prosecuted by the Directorate for Investigating Organized Crime and Terrorism.

According to the RCPC, the injured person is the person who suffered a physical, material or moral injury by the offense. The injured person is not a party in the criminal trial however he/she has the right to become a civil party until the indictment document is read aloud in court.

The injured party has the following rights:

- the right to an attorney;
- the right to be informed regarding its rights;
- the right to file applications, raise preliminary issues and submit final pleadings;
- the right to examine the criminal file and to be informed about the status of the case;
- the right to request certain evidence to be taken;
- the right to be heard; and
- the right to examine the defendant, experts and witnesses.

If the injured person chooses to become a civil person, its financial losses may be recovered directly through the criminal case. If the victim does not want to recover damages this way and files a separate claim in front of civil courts, then the decision in the criminal case shall have *res judicata* authority in the civil case with respect to the existence of the felony, the defendant and the establishment of guilt.

With respect to interim injunctions, the RCPC provides for two categories of measures. The first category includes actions that apply strictly to cases when the defendant has medical problems and represents a danger to society: mandatory medical treatment and forced medical hospitalization. The second type of interim measures may be

taken when there is the need to prevent concealment, destruction, disposal or removal of the assets engaged in the trial, such as seizure of assets and accounts.

The duration of criminal cases in Romania can vary from 2 (two) years up to 5 (five) or even 7 (seven) years, depending on the number of remedies used. The long duration of criminal cases is a serious issue in Romania, especially in the criminal investigation phase.

It is extremely difficult to assess what the overall costs for a criminal case will be. In Romania, criminal cases are exempted from stamp duty. The most significant costs are incurred by procedures related to gathering evidence, such as wiretapping, DNA testing and experts, in case the court orders surveys and also by the administering of other types of evidence such as witnesses or other material evidence.

Judicial expenses arising from the criminal case are forwarded either by the state or by the parties. In case of conviction, the defendant has to pay the judicial expenses forwarded by the state/other party with the exception of interpreters and legal aid, these costs being always borne by the state. If there is more than one defendant, the court will decide the allocation of costs, depending on their share in incurring the expenses.

The judicial expenses are born as follows:

- In case of acquittal:
  - by the injured person , if the costs were caused by this person;
  - by the civil party, if the claim for damages was rejected completely, proportional with the expenses caused by this party;
  - by the defendant, if though acquitted, it was ordered by the court to pay damages;
- In case of termination of the criminal case:
  - by the defendant, if measures were taken to replace criminal liability or a cause for impunity exists;
  - by both parties, in case of reconciliation of the parties;
  - by the injured party, in case of a waiver or if the complaint was submitted too late;
  - by the party who signed the mediation agreement, if criminal mediation intervened.

In case of appeal/cassation, the judicial expenses are to be borne by the losing party. If the case does not go to trial, the legal expenses shall be borne by the party who made the complaint.

### **Criminal Liability of a Legal Entity**

Legal entities (with the exception of the state and public authorities which conduct an activity which is not subject to a private domain) are liable for criminal offences committed in achieving the object of their activity or in the interest or in the name/behalf of the legal entity if the criminal offence was deliberately committed.

The liability of the legal entity does not exclude the liability of the natural person who contributed in any manner to the commitment and perpetration of the criminal offence.

According to Article 137 of the RCC (in force from 1 February 2014), a legal entity committing a criminal offence is subject to a fine which may vary between RON 3,000 and RON 3,000,000 (approximately between EUR 7.500 and EUR 700,000).

Additional sanctions provided by the RCC may be the following: dissolution of the legal entity, the suspension of the activity of the legal entity, publishing of the conviction decision, closing of business units, prohibition to participate to public tenders or placing under judicial supervision.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
<b>SUMMARY</b>		
<b>APPROXIMATE DURATION</b>	<i>Complex cases/criminal investigations: 6 months to 1 year; preliminary room proceedings: 60 days; first instance: 6 months to 1 year; second instance: 6 months.</i>	
<b>APPROXIMATE COSTS</b>	Criminal cases are exempt from stamp duties according to Romanian law.	
<b>JURY TRIALS</b>	Not available.	
<b>CLASS ACTIONS</b>	Not available.	
<b>DOCUMENT PRODUCTION</b>	Various, such as testimonies of the defendant, of the injured person, of the civil party or of the party who may be held liable for the monetary side of the case, witnesses' testimony, written documents, audio and video recordings, photographs, material means of evidence (object of the crime), technical and medical reports and other surveys.	
<b>MANDATORY REPRESENTATION BY COUNSEL</b>	The perpetrator is entitled to assistance by a counsel during the criminal investigations and the trial. It is mandatory if the perpetrator faces the risk of life sentence or a sentence of 5 or more years in prison, or if he/she has mental problems, is underage, is held in custody, or is otherwise unable to represent him or herself.	
<b>PRO BONO SYSTEM</b>	Yes.	

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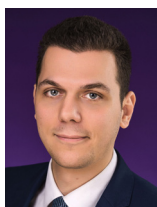


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**SERBIA**

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## **HANDLING BUSINESS CRIME IN SERBIA**

Business crime as a legal field in Serbia is still within the boundaries of general Criminal Law. However, efforts are being made to develop the group of criminal offences against commerce within the separate section of the Serbian Criminal Code. Namely, in 2016, new criminal offences were introduced to this group at the initiative of the Serbian Government expanding the number of criminal offences from 25 to 29. The aim of these amendments was to adapt the existing incriminations, which used very dated language, to modern times and also to introduce more contemporary criminal offences in the field of business crime. Thereby, 8 new criminal offences were introduced or amended, including, fraud, insurance fraud, embezzlement, abuse of good faith, abuse in privatizations, conclusion of restrictive agreements, passive and active bribery, and more. The provisions, introducing the new criminal offences against commerce and amending the existing ones, come into effect on 1 March 2018.

The Law on Responsibility of Legal Entities for Criminal Offences came into force several years ago, on 4 November 2008, and this law mainly contains procedural rules for deciding on the responsibility of legal entities; primarily, the rules to derogate or complete the application of the Law on Criminal Proceedings. As mentioned above, criminal offences themselves are proscribed by the Criminal Code of the Republic of Serbia.

The proceedings in criminal cases consist of pre-criminal, preliminary criminal and main criminal proceedings. The public prosecutor is the authorized prosecutor for criminal offences tried *ex officio*, whereas a private prosecutor is authorized for criminal offences tried by private claim. According to Article 35 of the Law on Responsibility of Legal Entities for Criminal Offences, the proceedings may be initiated against the legal entity, its responsible person or both, in which case the proceedings are to be held jointly. The state and other authorities, persons and legal entities have a duty to report criminal offences of which they become aware. Not reporting a criminal offense may be considered a criminal offence.

In the pre-criminal proceedings the public prosecutor is in charge of the investigation, although the police also have extensive investigative authority. In preliminary criminal proceedings an indictment is raised against the accused. If the court accepts this indictment, the main criminal proceedings are initiated.

The main criminal proceedings are composed of the preliminary hearing and the main hearing. The main hearing is a central part of criminal proceedings and the presentation of evidence is its key feature. After the weighing of evidence, the court decides on the matter by way of a verdict. The final part of the main hearing is the reading of the verdict. The verdict may dismiss the indictment, or acquit or convict the accused.

An appeal is a regular legal remedy against the verdict which can be filed by the prosecutor, the accused, his/her defender, or the injured party within 15 (fifteen) days after delivery of the verdict. The appeal is first filed with the first instance court for review of procedural preconditions. The first instance court may reopen the main hearing if the conditions are fulfilled. The first instance court then delivers all file documentation to the second instance court for review. If the court in the second instance overturns the acquitting verdict of the first instance court, an appeal is also allowed against such second instant verdict. Extraordinary legal remedies against final court verdicts are the reopening of criminal proceedings and a request for protection of the law.

Of course, a pivotal role in criminal proceedings belongs to the public prosecutor. According to Article 43 of the Law on Criminal Proceedings, the public prosecutor is in charge of pre-investigation proceedings, conducting the investigation, deciding on initiating criminal prosecution, raising the indictment and filing appeals and extraordinary legal remedies against court decisions.

The police and other relevant authorities involved in pre-investigative proceedings have a duty of compliance with requests of the public prosecutor and of informing him or her of every action undertaken in this respect. Failure to comply with such requests may lead to disciplinary action.

The injured party has a focal role as well. It may participate in the proceedings as an injured party, as an injured party prosecutor, or as a private prosecutor. An instrumental right of the injured party in criminal proceedings is the right to submit a property claim. A property claim may be a claim for damages, return of possession or setting aside of a specific legal transaction.



As an injured party prosecutor, the injured party represents the indictment and assumes the rights of the public prosecutor in this regard, with the exception of those rights which the public prosecutor has as a state official. As a private prosecutor, the injured party represents a private claim before the court. Interestingly, the accused against whom a private criminal claim was raised may submit a counterclaim against the private prosecutor.

As illustrated above, the injured party has significant authority in criminal proceedings. It may indicate facts and propose evidence, and has a right to inspect files and objects of evidence. During the hearings, the injured party may be in attendance or it may have a lawyer present as representative. If the public prosecutor withdraws from criminal prosecution, the injured party may take over.

Moreover, by way of submitting a property claim, an injured party may claim damages and reclaim financial losses without having to undergo litigation. In addition, it may submit propositions and evidence for its property claim. The injured party may also request an interim injunction in order to secure the property claim.

However, if the injured party chooses to initiate litigation against a criminal offender, the civil courts are bound by the criminal court's convicting verdict on the existence of the crime as well as the criminal liability of the offender. Notwithstanding certain limitations concerning confidential information, documents obtained in criminal proceedings may be used in later litigation.

There are currently no available statistics that would show the average time span of any part of criminal proceedings in business crime cases as the criminal offences vary in difficulty and the time span would greatly depend on a number of factors including, for example, the quantity of evidence.

With respect to costs, other than court fees, costs of criminal proceedings are comprised of fees and expenses for witnesses, court interpreters, experts, expert advisors, translators, transportation costs for officials and the accused, possible medical expenses of the accused if he or she was incarcerated, necessary expenses of the defence lawyer, the private prosecutor or injured party prosecutor and other costs.

When the court finds the accused guilty, it will order him or her in the verdict to reimburse the costs of the criminal proceedings. If the criminal proceedings are discontinued or the accused is not found guilty, the court budget or the private prosecutor will bear the costs of proceedings. The private prosecutor may agree on sharing the costs with the accused if the private claim is withdrawn.

From a public law perspective, business crime can be observed as a constant combat of the state against corruption and malpractice in business transactions. For example, under the Law on Public Companies, general managers of public companies are not able to hold posts in political parties. In relations between private parties, a criminal conviction eases the process of claiming damages as may be seen further below.

Other than the above, a noteworthy novelty from a wider business crime perspective is a Central Record of Measures which operates as of 1 June 2016 which provides an online record of decisions, verdicts, and other documents by which state authorities issued measures in criminal, misdemeanour, or any of a large number of administrative proceedings conducted under Serbian law, thereby increasing the transparency of doing business in Serbia. This public record contains information on sanctions issued by a number of Serbian authorities and required a joint effort of the Serbian Business Registers Agency, the Serbian courts, the National Bank of Serbia, but also the tax authority and over 30 other inspectorates.

The measures included in this record include any prohibitions and limitations to performing business activities and also of the ability to dispose of company funds or of shares/stock in commercial entities. This record also contains valuable information on revocation of any licences. With respect to individuals, this record contains information of those prohibited from acting as responsible persons for companies and entrepreneurs, within the meaning of Serbian law, although the scope of information provided is subject to data protection and criminal record regulations. The Central Record of Measures, therefore, provides a valuable single point of reference where the public and interested parties, usually prospective or current business associates, can inquire as to the conduct of certain persons in Serbian commerce, whether they have been issued any of the above measures or otherwise fail to comply with Serbian business law.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
<b>SUMMARY</b>		
<b>APPROXIMATE DURATION</b>	Varies.	<ul style="list-style-type: none"> <li>Official statistics are currently unavailable. In practice however, criminal proceedings tend to be very lengthy and may go on for years.</li> <li>In some simple cases, a minimum duration would be 2 years, and in more complex cases the investigation proceedings alone may last up to 5 years.</li> </ul>
<b>APPROXIMATE COSTS</b>	Varies, both with respect to court fees and attorneys' fees.	It is difficult to estimate costs in criminal proceedings due to their indeterminate length but also due to other factors depending on the complexity of a given case.
<b>JURY TRIALS</b>	There is no jury in a traditional sense.	In the first degree, the court tries the case in a panel of one judge and two lay judges for criminal offences punishable by 8 to 20 years imprisonment, and two judges and three lay judges for criminal offences punishable by 30 to 40 years imprisonment.
<b>CLASS ACTIONS</b>	No.	Traditional tools of multiparty practice such as joinder and disjunction of proceedings are applied.
<b>DOCUMENT PRODUCTION</b>	Documents are obtained by the competent authorities or are submitted by the parties themselves, <i>ex officio</i> or upon request of a party in the proceedings.	<ul style="list-style-type: none"> <li>If a person or state entity refuses at the request of authorities to voluntarily surrender a document, it will be obtained by a decision of the court.</li> <li>If the original of a document was destroyed, is missing or is for any other reason impossible to obtain, a copy of the document will be obtained.</li> </ul>
<b>MANDATORY REPRESENTATION BY COUNSEL</b>	Limited.	<ul style="list-style-type: none"> <li>Criminal proceedings are generally held by oral hearings. The indictment is orally presented by the prosecutor. The injured party may orally submit its property claim. Oral presentations are in the majority of circumstances established as a right, rather than a duty</li> <li>The prosecutor's closing argument must contain an assessment of the evidence, conclusions derived from presented facts, an indication of relevant provisions in criminal and other laws, as well as extenuating and aggravating circumstances to be taken into consideration, and a proposition of type and extent of criminal sanctions..</li> </ul>

		<ul style="list-style-type: none"> <li>▪ The <i>ex officio</i> defence counsel has a duty to present the closing argument, unless the defendant expressly objects. The defendant has the right to declare whether he or she accepts the defence counsel's closing argument as well as to correct it and supplement it.</li> <li>▪ Only an attorney can act as a defence counsel.</li> </ul>
<b>PRO BONO SYSTEM</b>	Yes.	<ul style="list-style-type: none"> <li>▪ A defendant who is unable to pay counsel fees and expenses due to his/her financial status is assigned a defence lawyer upon request, if the criminal charges may result in incarceration for longer than three years or if such appointment of counsel is considered just. The costs of defence in this case are borne by the court budget.</li> <li>▪ The defence lawyer is appointed by the president of the court from a list provided by the Bar.</li> <li>▪ Representation may be assigned to an injured party prosecutor, if the criminal charges may result in incarceration for longer than five years, if it is in the interest of the proceedings and if the party is unable to bear the costs of its representation.</li> <li>▪ In certain criminal cases, the defendant must have a lawyer representing him or her. If the defendant, for any reason, is without representation, an <i>ex officio</i> counsel will be assigned to him or her by court decision from the list provided by the Bar.</li> </ul>

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# SLOVAK REPUBLIC

## **HANDLING BUSINESS CRIME IN THE SLOVAK REPUBLIC**

Despite the fact that according to publically available data business crime only represents less than 1% of all crimes dealt with by Slovak authorities, its growing sophistication and the substantial damages caused motivated the legislator to introduce various innovative methods for its suppression. The Special Criminal Court and the special prosecutor's Office dealing with, *inter alia*, cases of corruption are the leading examples of these efforts.

A common problem with business crime in Slovakia is that it often remains undisclosed. The primary reason for this is the ineffectiveness of the respective authorities in revealing and investigating this form of criminal activity. Further, it is often the case that companies are reluctant to admit the failure of their internal controls or consider the potential reputational harm too severe and, as a consequence, try to conceal the offences. For this reason the number of reported business crime cases represents only a fraction of the overall criminal activity of this kind.

The investigation of criminal offences is undertaken by police bodies, investigators and prosecutors. Providing that the results of an investigation warrant further action, judicial criminal proceedings are initiated on the basis of an indictment filed by a prosecutor.

The judicial proceedings comprise of (i) the pre-trial stage; and (ii) the proceedings before the court. The pre-trial stage starts with the opening of an investigation and ends with, *inter alia*, the filing of an indictment, reference of the case, suspension, or (conditional) staying of criminal prosecution before laying an indictment.

Once an indictment has been filed, court proceedings are initiated. After a non-mandatory preliminary hearing of the indictment, the main hearing before the District, Regional, Specialized or Supreme Court (depending on the nature and stage of the case) is opened. Criminal cases are heard in an open court, however in exceptional circumstances public attendance can be excluded.

At the main hearing the prosecutor presents the indictment. Subsequently, evidence is taken by the court on the basis of witness statements and expert testimonies, and by questioning the accused. If there are no other motions for evidence examination or if the court rules that no other evidence will be taken, the presiding judge of the panel declares the evidence examination for closed and gives the floor for final addresses. After the prosecutor's final address, the representatives of the injured party and the defendant have the floor. After the final addresses are presented and prior to leaving for their final conference, the presiding judge of the panel grants the defendant the last word.

The court rules in a judgment whether the defendant is found guilty or acquitted from the indictment. An appeal may be lodged against a sentence.

It should be noted that as of 1 July 2016, the Slovak Republic has introduced Act No. 92/2016 Coll. on Criminal Liability of Legal Entities, as amended according to which even legal persons may be subject to criminal sanctions and may be found guilty of criminal offenses explicitly stipulated in the said act.

The investigation of criminal offences is in the competence of police bodies, investigators and prosecutors. In court proceedings, the prosecution is conducted by a prosecutor or a special prosecutor. The difference between the two is that while the first one can be considered "general", meaning he/she appears before a "regular" court, the special prosecutor only deals with cases falling under the authority of the Specialized Criminal Court (e.g., corruption, organized crime). The supervision of all prosecutors is carried out by the Prosecutor General.

The prosecutor has the authority to supervise the observance of the law prior to the commencement of prosecution and in the pre-trial proceedings (*inter alia*, to give binding instructions for the investigation). Further, the prosecutor is authorized to file an indictment, order the seizure of the accused person's property, or secure the injured party's title to damage compensation.

With respect to court proceedings, as a general rule, District Courts serve as first instance courts (Regional Courts being the courts of appeal); however in certain cases, Regional Courts also serve that purpose (with the

Supreme Court being the court of appeal). In cases of corruption, for instance, the court of first instance is the Specialized Criminal Court (with the Supreme Court being the court of appeal).

Cases with a potential penalty of up to 8 (eight) years imprisonment are decided by single judges, while cases above that threshold are dealt with by a panel of judges. Appeals are always decided by a panel of judges.

The injured party is authorized to take an active part in the proceedings. The most important rights of the injured party are, *inter alia*, the right to (i) consent to criminal prosecution of the accused party (in respect to specific crimes); (ii) file motions for the taking of evidence; (iii) have access to files; (iv) attend the court hearing; (v) give an opinion on the submitted evidence; (vi) present a closing speech; and (vii) apply for legal remedies with regard to the part of the judgment dealing with damage.

As indicated, the injured party has the right to submit a motion asking the court to sentence, in its judgment, the accused party to compensation for the damage caused by its criminal act. Such motion must be submitted no later than at the main hearing before the taking of evidence.

Despite the fact that the Slovak Criminal Procedure Code stipulates that the court in its judgment may sentence the accused party to damage compensation, the practice is that the injured party is in most cases referred by the criminal courts to seek damage recovery in civil proceedings as generally further examination of evidence is expected to be required in these instances.

In light of the foregoing, the number of cases where damage was recovered in criminal proceedings is far less than those where damage was recovered in civil proceedings. Importantly, however, having a prior sentencing judgment does make the damage recovery in civil proceedings considerably easier.

Further, if there are reasonable grounds to believe that the settlement of the injured party's claim for damages inflicted as a result of a crime will be impeded or frustrated, it is possible to secure the claim by issuing an attachment order on the corresponding part of the accused's property.

As regards the duration of the proceedings, this is determined by two major factors – the complexity of the case and the authority in charge ("regular" courts vs. the Specialized Criminal Court and the Special Prosecutors Office). The proceedings before the Specialized Criminal Court are generally shorter. Simple cases are generally resolved within months (typically; 2 (two) months pre-trial stage, 6–18 (six to eighteen) months court proceedings in first instance, 6–12 (six to twelve) months for second instance proceedings), while complex cases often take years to investigate and decide (up to 2 (two) years pre-trial stage, 2–4 (two to four) years court proceedings in first instance, 1–2 (one to two) years for second instance proceedings).

The overall costs incurred by the defendant over the course of criminal proceedings are extremely individual and depend on the complexity of the case, the number of instances, and the defence counsel appointed.

The costs of criminal proceedings, including sentence enforcement proceedings, are borne by the Slovak Republic. The defendant bears his/her own costs. There is generally no right for reimbursement of costs incurred by the defendant.

If the defendant was found guilty in a final sentence, he/she is obliged to reimburse the Slovak Republic for (i) any costs incurred by his/her remand in custody; (ii) the fee and cash expenditures of the counsel assigned by the Slovak Republic unless the defendant is entitled to a free defence counsel; (iii) the costs incurred for serving an imprisonment sentence; and (iv) a lump sum for other costs borne by the Slovak Republic. Further, the defendant is required to reimburse the costs incurred by the injured party in connection with damage recovery in the course of the criminal proceedings.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
<b>SUMMARY</b>		
<b>APPROXIMATE DURATION</b>	<p><b>Simple cases:</b> <i>first instance</i> (pre-trial stage): up to 2 months; <i>court proceedings</i>: 6–18 months; <i>second Instance</i>: 6–12 months.</p> <p><b>Complex cases:</b> <i>first instance</i> (pre-trial stage): up to 2 years; <i>court proceedings</i>: 2–4 years; <i>second instance</i>: 1–2 years.</p>	Specialized criminal court cases are generally shorter.
<b>APPROXIMATE COSTS</b>  <b>COURT FEES</b>  <b>ATTORNEYS' FEES (NET)</b> <i>SIMPLE CASE</i>  <i>COMPLEX CASE</i>	<p>There are no court fees. The costs of criminal proceedings, including sentence enforcement proceedings, are borne by the Slovak Republic. The defendant bears his/her own costs, except in a situation that warrants pro bono representation.</p> <p><i>First instance:</i> representation at two interrogations with duration of 2 x 2h, preparation of two briefs 4h + 6h, participation at two court hearings with a duration of 2 x 2h, preparation of hearings/meetings with client, witnesses, correspondence with client: In total EUR 10,000 to EUR 15,000; <i>second instance:</i> One brief, one hearing: EUR 6,000.</p> <p><i>First instance:</i> participation at a large number of interrogations, face-to-face confrontations, preparation of 4 complex briefs 4h, 2 x 6h, 8h, preparation of hearings/meetings with client, witnesses, correspondence with client. In total from EUR 30,000 upwards; <i>second instance:</i> One brief, one hearing: EUR 15,000 and upwards.</p>	<p>If the defendant is found guilty in a final sentence, he/she is obliged to reimburse the Slovak Republic:</p> <ul style="list-style-type: none"> <li>▪ the costs incurred by his/her remand in custody;</li> <li>▪ the fee and cash expenditures of the counsel assigned by the Slovak Republic unless the defendant is entitled to a free defence counsel;</li> <li>▪ the costs incurred by serving an imprisonment sentence;</li> <li>▪ a lump sum for other costs borne by the Slovak Republic; and</li> <li>▪ the costs incurred by the injured in connection with damage recovery in the course of the criminal proceedings.</li> </ul>
<b>JURY TRIALS</b>	There are no criminal jury trials in Slovakia.	
<b>CLASS ACTIONS</b>	Limited.	<ul style="list-style-type: none"> <li>▪ The Slovak Code of Criminal Procedure does not specifically regulate class actions. However, it provides for joint proceedings in respect to criminal offences committed by the accused and all the persons accused of interrelated criminal offences.</li> <li>▪ The court may jointly hear cases the indictments for which were filed separately, hold joint proceedings and make a joint decision.</li> </ul>



<b>DOCUMENT PRODUCTION</b>	Limited. <ul style="list-style-type: none"> <li>▪ The burden of proof is on the side of prosecution.</li> <li>▪ The defendant is not required to submit documents which would be to his/her detriment. However, a person who has an item (document) in his/her possession relevant to criminal proceedings is required to surrender it upon request of the police, prosecutor or the court. Such an item (document) may be seized upon an order issued by a prosecutor, investigator or the police.</li> </ul>
<b>MANDATORY REPRESENTATION BY COUNSEL</b>	<p>During the pre-trial proceedings the accused person must be represented by a counsel (i) if he/she is remanded in custody, serves an imprisonment sentence or is held for observation at a medical institution; (ii) if he/she is deprived of legal capacity or his/her legal capacity is restricted; (iii) in case of a particularly serious felony; (iv) if he/she is a juvenile and/or an escaped prisoner; (v) if the court or the prosecutor in pre-trial proceedings deem it necessary because they are in doubt whether, in view of his/her physical or mental handicap, the accused is capable of proper defence, or; (vi) in case of extradition proceedings.</p> <p>In the sentence enforcement proceedings (in which the court decides in an open court hearing), a counsel is mandatory when the accused person (i) is deprived of or has a restricted legal capacity; (ii) is a juvenile released on parole who, at the time of the open court hearing, is younger than 18 years of age; (iii) is remanded in custody; or (iv) if there are any doubts concerning the ability of the accused person to properly defend himself/herself.</p> <p>In the proceedings held in respect of complaints alleging the breach of law and proceedings involving the motion for a new trial, counsel representation is mandatory (i) if the accused person is remanded in custody, serves an imprisonment sentence or is held for observation at a medical institution; (ii) is deprived of legal capacity or his/her legal capacity is restricted; (iii) if the case concerns a particularly serious felony; (iv) if the accused is a juvenile who, at the time when the complaint alleging the breach of law or the motion for a new trial is heard in an open court hearing, is less than 18 years old; (v) if there is any doubt concerning the accused person's ability to properly defend himself/herself; and (vi) if the proceedings are conducted against a sentenced person who died.</p>
<b>PRO BONO SYSTEM</b>	Yes. There is legal aid for people who can't afford a defence counsel.

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**SLOVENIA**

## **HANDLING BUSINESS CRIME IN SLOVENIA**

While business crimes represent only approximately 15% of all detected crimes, the damage caused by these crimes amounts to approximately 80% of all damage caused by criminal activity in the country. This development is reflected in the creation of specialized authorities competent for the investigation and prosecution of complex crimes.

Legal entities can be held liable for criminal offences, together with or independently of the responsible physical persons (usually management). The penalties for legal entities found guilty of a criminal offence range from pecuniary penalties to the cessation of the legal entity, if the entity was mainly used for the purpose of committing criminal offences. Criminal procedure against a legal entity is usually combined with the legal procedure against the responsible person of the legal entity.

A complaint that a crime has been committed can be made or transferred to the competent public prosecutor, either before or after the police have collected the evidence they deem to be relevant for the proceedings. After that the public prosecutor will either:

- dismiss the complaint if it deems the evidence to be insufficient; or
- in case of crimes with a maximum statutory penalty of up to 3 (three) years: bring a charges proposal (*obtožni predlog*); or
- in case of all other crimes: bring formal charges without an investigation or request that the investigative judge conducts an investigation.

After the public prosecutor has brought a charges proposal or formal charges and the indictment becomes final, a pre-trial hearing usually takes place in which the accused makes a statement regarding his or her guilt.

The main trial is public. The criminal procedure is, in principle, inquisitorial, which means that the trial is led by the judge, who is seeking to establish the material truth. After the trial, the verdict and – if applicable – the penalty is delivered orally and publicly. The court has 15 (fifteen) days to prepare a written verdict, which is served to all parties in the proceedings, and, where applicable, the victim and the injured parties.

Each first instance verdict can be appealed within 15 (fifteen) days after service of the judgment. The public prosecutor can appeal in favour as well as to the detriment of the accused. A non-appealed judgment becomes final. A second instance judgment becomes final upon its delivery, unless

- the highest penalty has been pronounced (30 (thirty) years or life-long imprisonment);
- the appeals court reached its verdict based on different facts than the first instance court; and
- the appeals court convicted the accused after the first instance court acquitted him/her.

In these three instances, the parties have the right to file an appeal to the Supreme Court.

Extraordinary remedies are also available to a limited scope.

The National Investigation Bureau, a specialized unit of the police, was established in 2009. It is responsible for the investigation of crimes, which demand the co-operation of various state offices, complex crimes the investigation of which requires specialized knowledge, crimes with an international element, crimes that have gravely harmed state finances or that have led to high illegal monetary gains and crimes allegedly committed by public officials. Despite the specialization of the National Investigation Bureau, it remains subordinate to the prosecutors and investigative judges in the same way as other police units in the country.

Several district prosecution divisions (*okrožna državna tožilstva*) have prosecutors which are solely responsible for business crime. In November 2011 a specialized public prosecution division was also formed and is responsible for the prosecution of organized crime, terrorism, corruption and other complex crimes.

The public prosecutor may authorize the secret observation of a person. When more intrusive methods are used (video or audio recording) or if they are used against people, who are not suspects, only the investigative judge can authorize this. There are statutory maximum time limits for secret observations.

The public prosecutor may authorize the fake giving and receiving of gifts and the fake giving and receiving of bribes.

The investigative judge may further authorize the monitoring of a suspect's financial data/activity, his/her communication data, including monitoring of computer systems, eavesdropping and observations with technical devices and entry into foreign premises. These investigative methods are limited to certain crimes, including certain business crimes.

The police may detain a suspect for up to 48 (forty eight) hours. After that (and sometimes even before) the investigative judge needs to authorize detention.

The public prosecutor may steer the work of, *inter alia*, the police, as well as bodies dealing with taxes, customs, financial operations, shares, competition, money laundering, corruption, drugs and inspections, with binding instructions, expert opinions and suggestions for collecting data and other measures within their competence, in order to find the suspect and to determine whether the suspect shall be prosecuted.

The public prosecutor is authorized to conduct plea-bargaining with the alleged perpetrator, with a mandatory legal assistance of attorney.

In case an indictment becomes final, the criminal proceedings continue as outlined above.

During the investigation of crimes, which are prosecuted *ex officio*, the victim can give suggestions regarding evidence to be collected in order to identify a crime, its perpetrator and to determine the sum of the victim's (civil) indemnification claim.

During the trial, the victim can suggest evidence and put questions to the accused, witnesses and experts. The victim is, subject to limitations applicable when he/she is also a witness, allowed to consult the file and evidence.

If the public prosecutor discontinues the investigation or prosecution of a crime that is prosecuted *ex officio*, he or she must inform the victim, who can then prosecute in his/her own name. At trial, the victim can bring an indemnification claim. If the accused is found guilty, the criminal court can recognize the entire claim or recognize the claim in part or refer the victim to the civil court. The civil court is bound by a criminal court's finding of guilt. The victim can also approach the civil court if the accused is found not guilty, since the civil court is not bound by an acquittal in criminal proceedings.

The available statistics combine all criminal proceedings. The majority of cases at the first instance take between 1 (one) and 2 (two) years. More than half of the cases at the second instance take less than 3 (three) months.

The costs for proceedings include expenses for witnesses, costs of external viewings, fees and expenses of experts, interpreters and professionals, transportation expenses for the accused, costs incurred in investigating the accused or the arrested person, transportation and travel expenses for officials, medical expenses for the accused while in detention and expenses for child delivery, court tax, fees and necessary expenses for defence counsel, necessary expenses for the private prosecutor and the injured party acting as prosecutor and for their representatives, necessary expenses of the injured party and his/her legal representatives, and the fees and expenses of those.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
<b>SUMMARY</b>		
<b>APPROXIMATE DURATION</b>	<i>First instance:</i> Most criminal proceedings take 1 year or between 1 and 2 years; <i>second instance:</i> Approx. 3 months.	<ul style="list-style-type: none"> <li>▪ After the investigation has produced enough evidence for an indictment, an indictment hearing will take place.</li> <li>▪ There is the possibility of conducting a plea bargaining agreement.</li> <li>▪ After the indictment hearing, a trial date is set. It is encouraged for trials to not take more than one day; however, in complicated cases trials can last for months (usually because of various forms of more or less successful delaying techniques).</li> <li>▪ The trials are public and their course is dictated by an inquisitorial judge who is required to find the material truth, although the criminal procedure, especially the main hearing consist of many elements of criminal adversarial procedure.</li> </ul>
<b>APPROXIMATE COSTS</b>  <b>COURT FEES</b>  <b>ATTORNEYS' FEES (NET)</b> <i>SIMPLE CASE</i>          <i>COMPLEX CASE</i>	<p><i>First instance</i> fees which apply in case of final convictions to prison sentences: EUR 70 to EUR 1,400; <i>unsuccessful appellate proceedings:</i> EUR 35 to EUR 2,800.</p> <p><b>Attorneys' Fees for the representation of an individual in a criminal case with the maximum statutory penalty of 3 years:</b> studying file, presence at investigate steps, representation in preindictment proceedings, defence in first instance, representation at main trial in first instance (one day in court), representation in second instance (no days in court): EUR 575 to EUR 695 (every additional day in court costs from EUR 120 to EUR 240).</p> <p><b>Attorneys' Fees for representation of an individual in a criminal case with the maximum statutory penalty of 15 years:</b> EUR 600 to EUR 740 (every additional day in court costs from EUR 140 to EUR 280).</p>	<ul style="list-style-type: none"> <li>▪ Litigation costs include the costs of an attorney and court fees. Both are borne by the state (as far as acknowledged by the judge and up to the statutory amounts) if a not-guilty verdict is rendered.</li> <li>▪ In case of a conviction, the accused has to pay the court fee upon the finality of the verdict.</li> <li>▪ It is not uncommon for the attorney and the client to agree on different remuneration, however, this has no bearing on what is being reimbursed.</li> </ul>
<b>JURY TRIALS</b>	There are no criminal jury trials in Slovenia.	
<b>CLASS ACTIONS</b>	There are no class actions in Slovenia.	
<b>DOCUMENT PRODUCTION</b>	Both parties can present and suggest evidence. The court might produce evidence <i>proprio motu</i> .	<ul style="list-style-type: none"> <li>▪ Slovenian criminal trials are mixed; combining both inquisitorial and inquisitorial elements of criminal trial. Which means that while both</li> </ul>

		<p>parties can make suggestions as to what evidence to use (e.g., whom to call as witness), the judge is free to accept or deny suggestions by both parties. He/she can also gather evidence <i>proprio motu</i>.</p> <ul style="list-style-type: none"> <li>▪ When deciding, the judge is not bound by any evidentiary rules and can decide at his/her own discretion how much weight to attach to individual pieces of evidence.</li> </ul>
<b>MANDATORY REPRESENTATION BY COUNSEL</b>	<p>Depending on the mental and physical state of the accused and the maximum statutory penalty imposed for a crime, representation by counsel becomes mandatory either from the very first hearing or later on during the proceedings.</p>	<p>Representation by a Counsel is not mandatory, except in the following cases:</p> <ul style="list-style-type: none"> <li>▪ from the first hearing if the suspect/accused is deaf, mute, or otherwise incapable of defending him or herself;</li> <li>▪ from the first hearing if the maximum statutory penalty is 30 years or life imprisonment;</li> <li>▪ from the first hearing if prolonged arrest could be imposed;</li> <li>▪ if, at the first hearing before the investigating judge, the public prosecutor announces that he/she will prosecute the suspect and ask for arrest or another measure the purpose of which is to ensure the suspect's/accused's presence during trial, prevent repetition of the crime and to ensure successful conduct of the proceedings, until the judge has decided upon the request for such a measure;</li> <li>▪ during the entire time that measures for the deprivation of liberty are implied;</li> <li>▪ when being served the indictment for a crime the statutory maximum penalty for which is 8 years or more;</li> <li>▪ while engaging in plea bargaining.</li> </ul>
<b>PRO BONO SYSTEM</b>	<p>Yes. There is legal aid for people who cannot afford the costs of legal proceedings.</p>	

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UKRAINE

## **HANDLING BUSINESS CRIME IN THE UKRAINE**

As is the situation in most countries, business crime is a matter of increasing concern in Ukraine. Considering the growth of the digital business environment, cybercrime will continue to increase with particular fraud hotspots likely to be Ukraine's governmental agencies as well as banks, other financial institutions, insurers, and retailers. Other frequently committed business crimes include corruption, accounting fraud, tax evasion, money laundering, copyright related crimes and smuggling of goods.

Ukraine has stepped up its attempts to develop its criminal legislation to prevent and to fight business related crimes. Developments and progress in this regard have also been significantly affected by international pressure on Ukraine.

Ukraine is a member of the Group of States against Corruption (GRECO), which is the Council of Europe's anti-corruption monitoring body. Further, as a member of the Council of Europe, Ukraine and its law and practice are subject to the influence of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

Ukraine currently recognizes criminal liability both for individuals and legal entities (including companies). The criminal liability for legal entities was introduced only recently (in 2014) in the course of the implementation of the recommendations of GRECO and MONEYVAL, as well as the implementation of a number of international treaties to which Ukraine is a party. Under Ukrainian criminal law, legal entities may be liable, *inter alia*, for crimes of money laundering, acts of terrorism and illegal warfare, war propaganda, genocide, various illegal actions with weapons, violent seizure of state power, bribery and improper influence on officials of companies and state bodies, abuse of power, kidnapping or hostage taking committed by authorized representatives of such legal entities on their behalf or in the interest of such legal entities.

The current Criminal Procedure Code of Ukraine ("CPC") came into effect on 20 November 2012 and replaced the prior law which had been in effect since the 1960's. Criminal proceedings include the following stages:

### **Pre-trial investigation**

In general, criminal proceedings are initiated by (i) the reporting of a criminal offence to an investigator or a prosecutor; or (ii) an investigator or a prosecutor discovers the fact of crime commission. Investigation shall be officially commenced within 24 (twenty four) hours upon the report of or discovery of a crime.

The way of initiation of criminal proceeding depends on whether a particular crime is subject to public, private or public-private accusation. For example, bringing criminal charges on business crimes such as the illegal use of trademarks and commercial names, interference with lawful commercial activity, causing bankruptcy, unlawful collection, use or disclosure of commercial or banking secret information, unlawful use of insider information, unlawful actions with electronic data, abuse of official authority (in case the above actions haven't caused any aggravating consequences) are matters of private accusation and can be initiated exclusively upon a complaint by an injured party.

During the pre-trial investigation an investigator undertakes all the measures necessary to discover all elements of the crime. After a pre-trial investigation is finalized and subject to sufficient evidence of crime, the case is handed over to a prosecutor for the prosecutor to verify and approve the conclusion of a formal criminal charge, and to send the case to court.

### **Judicial proceedings**

During the course of judicial proceedings and court hearings, courts directly examine all the evidence in the case, question the accused persons and witnesses, analyse the conclusions of experts, review and analyse protocols and other documents, and consider other evidence relevant to the case. Such direct evidence examination by courts, rather than by investigation authorities at the pre-trial investigation stage, was introduced by the CPC and aims to overcome the possibly inappropriate influence on investigation authorities during the pre-trial investigation.

Both the accusing side (prosecutor, victim or civil claimant and their legal representatives) and the defence side (the accused, defence attorney or civil defendant and legal representative) enjoy equal procedural rights under the law, including the right to file objections, submit evidence and to appeal procedural decisions and the final court verdict. A trial by jury was introduced by the CPC and is now available for an accused (at his/her discretion) facing a potential life sentence. However, most crimes punishable by a life sentence are not business crimes, though such crimes may accompany business crimes in certain situations.

In addition, the CPC introduced a significant new concept in Ukrainian criminal procedure which is the opportunity to conclude (i) a reconciliation agreement between the suspect (or accused) and the victim in which the parties agree upon certain compensation; and (ii) a plea bargain, i.e. an agreement between the prosecutor and a suspect (or an accused) on the admission of guilt in return for the prosecution arguing for a more lenient sentence. Either of these agreements can be entered into at the pre-trial stage or during the judicial proceeding, but in any case before the court begins to deliberate its verdict.

### **Challenging a verdict of a court**

A verdict of a court of first instance can be appealed within 30 (thirty) days after being passed. A court of appeal is limited by the issues raised in the appeal and can only review the case beyond these limits in exceptional circumstances and provided that this does not worsen the situation for the accused.

Verdicts and other decisions of courts of appeal may be appealed further within a 3 (three) month period to the court of cassation. The court of cassation examines the case within the limits of the cassation appeal, does not have the right to examine evidence and consider certain circumstances of the case which were decided by the lower courts. Instead, the court of cassation verifies whether the lower courts applied procedural and substantial legal provisions in a correct way.

In addition, a court verdict that has already entered into legal force may be reviewed if new circumstances important for the case were subsequently discovered that may warrant overturning it.

The key authorities involved in criminal proceedings are the investigation authorities, prosecutor offices and courts.

### **Investigator**

As mentioned above, an investigator has the right to initiate criminal proceedings in cases of public accusation. An investigator is a key authority at the pre-trial investigation stage, during which he or she undertakes all the measures necessary to discover all elements of the crime, including finding evidence, verifying existing evidence (including that provided by the victim), verifying the grounds for the crime, identifying a person(s) who committed the crime, etc. An investigator must also undertake investigation measures that can prove the innocence of the suspect and other measures requested by the defence side.

Pre-trial investigation is generally handled by police investigators, although certain types of crimes may be investigated by other, more specialized agencies, such as, *inter alia*, the Security Service of Ukraine, which conducts investigations into acts of terrorism and crimes against state security, and the tax authorities which conduct investigations of tax-related crimes.

### **Prosecutor**

Similar to an investigator, a prosecutor also has the right to initiate criminal proceedings in cases of public accusation. At the pre-trial investigation stage, a prosecutor generally controls the investigation process and approves the conclusion of a formal criminal charge before sending the case to court.

At the judicial proceedings stage, a prosecutor generally represents state interests during a trial. If the state prosecutor decides not to proceed with the prosecution of the alleged perpetrator the victim may assume prosecution in the case.

## **Court**

Although control over the investigation process is carried out by a prosecutor, with the effect of the new CPC certain control functions at this stage were transferred to courts. In particular, specially appointed investigative judges in the courts of general jurisdiction consider complaints filed against any illegal actions or omissions committed by investigators or prosecutors.

In addition, a prior approval by the investigative judge is required for certain investigation actions and restraint measures, including the arrest of a suspect, seizure of property, imposition of monetary penalties, bringing a person to court, suspension of an accused person from his or her job, granting to an investigator temporary access to certain objects or documents, temporary suspension of an accused person from using a special right (e.g., right to conduct entrepreneurial activity, driver's license, etc.), and temporary retrieval of property.

When the investigation is finalized and provided there is sufficient evidence of crime, the case is sent for judicial proceedings. Criminal cases in Ukraine are considered by courts of general jurisdiction.

Business crimes frequently entail not only criminal but also civil liability. A victim or a suffering person has the right to compensation for damage suffered as a consequence of a crime. For this, a filing of a civil lawsuit within the same criminal proceedings or a separate lawsuit within separate civil proceedings should be conducted by the victim.

Criminal courts may issue preliminary injunctions against defendants. A civil claimant has the right to request an imposition of a property seizure in order to secure a civil claim within a criminal case or within separate civil proceedings.

If a victim opts for separate civil law proceedings (rather than bringing a civil lawsuit within the same criminal proceedings), the guilt of the person that committed a crime, if established by a verdict in the criminal proceedings, does not have to be proven again in the civil proceeding.

Pre-trial investigation against an individual normally should not exceed 2 (two) months but may be extended in certain circumstances up to a maximum of 12 (twelve) months. There is no precise term during which the trial proceedings should be finished, but the CPC requires that such term should be reasonable. Depending on the complexity of the case, the trial may take from 1 (one) month to 1 (one) year or even longer.

There are no fees for reporting criminal offenses or initiating criminal proceedings. There are, however, the following procedural expenses:

- the cost of legal services; a suspect/accused bears the cost for his/her defence attorney, except where a defence attorney is appointed to represent the suspect/accused at the state's expense as:
  - this is obligatory but the suspect/accused failed to retain a defence attorney;
  - this is requested by the investigator, prosecutor or investigative judge at their discretion; or
  - the suspect/accused is unable to pay for a counsel.
- the cost of legal representation of the victim, civil claimant and civil defendant is borne by those parties individually;
- costs related to transportation to the place of pre-trial investigation or court proceedings (e.g. transportation, accommodation costs, daily allowances and earnings lost) incurred by a suspect/accused or their defence attorney is borne by the suspect/accused. Such costs incurred by legal representatives of other participants in the criminal proceeding are borne by the persons whom they represent; and

- costs related to the involvement of witnesses, experts, translators and specialists are generally borne by the party that requested their involvement in the criminal case. In certain cases such cost may be borne by the state, in particular when an expert examination was undertaken at the order of the investigative judge or of the court.

In the case of a conviction verdict, the court charges the convicted person for all the procedural expenses incurred by the victim.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
<b>SUMMARY</b>		
<b>APPROXIMATE DURATION</b>	General rules of criminal proceedings apply to business crimes and include the pre-trial stage and the stage of judicial proceedings	Criminal proceedings for a business crime may be initiated either by reporting the criminal offence to investigators of competent authorities or by a prosecutor, or by the discovery of a crime by an investigator or a prosecutor, depending on whether the crime is subject to public, private or public-private accusation.
<b>APPROXIMATE COSTS</b>	There are no fees for reporting criminal offenses or initiating criminal proceedings.	
<b>PROCEDURAL COSTS</b>	The following procedural expenses are recognized as related to criminal proceedings: <ul style="list-style-type: none"> <li>▪ legal services costs;</li> <li>▪ costs related to transportation to the place of pre-trial investigation or court proceedings;</li> <li>▪ costs related to the involvement of witnesses, experts, translators and specialists; and</li> <li>▪ costs related to the delivery and storage of various objects and documents necessary for criminal proceedings.</li> </ul>	
<b>ATTORNEYS' FEES</b>	The services of a defense attorney provided to the suspect by the state in cases prescribed by law are free of charge. The fees for a defense attorney in other cases may vary significantly depending on a lot of things. A rough estimate for a simple case would be from EUR 2,000 to EUR 10,000 for representation at pretrial investigation and from EUR 5,000 to EUR 20,000 for representation at court hearings in the first instance court.  In the case of a conviction verdict, the court will charge the accused for all of the procedural expenses incurred by the victim.	
<b>JURY TRIALS</b>	A trial by jury was introduced by the new Criminal Procedure Code of Ukraine and is now available for the accused (upon his/her request) facing a potential life sentence.	<ul style="list-style-type: none"> <li>▪ If the accused opts for a jury trial, he or she must file a motion during the preliminary court hearing requiring a trial by jury.</li> <li>▪ Although a life sentence is generally not envisaged for business crimes, it may apply in certain cases if a business crime is committed simultaneously with a more serious crime, such as murder.</li> </ul>

<b>CLASS ACTIONS</b>	Criminal proceedings may be initiated with respect to several suspects. There can also be several victims of the crime. However, if several victims seek to bring civil claims, each victim needs to bring his/her own separate civil claim.	Investigation case files with respect to several persons suspected of committing the same crime as well as investigation case files on several crimes suspected of being committed by one person can be united into one case either at the pre-trial stage or at the judicial proceedings stage.
<b>DOCUMENT PRODUCTION</b>	Limited.	The investigator must undertake investigation measures that he/she deems appropriate as well as measures requested by the defence side.
<b>MANDATORY REPRESENTATION BY COUNSEL</b>	Legal representation of the suspect and by a defence attorney is obligatory in specific cases envisaged by the Criminal Procedure Code of Ukraine or if requested by the investigator, prosecutor or investigative judge.	<ul style="list-style-type: none"> <li>▪ If the state prosecutor declines to prosecute, the victim may assume prosecution.</li> <li>▪ The plaintiff's side is represented by the state prosecutor.</li> </ul>
<b>PRO BONO SYSTEM</b>	<p>Yes. A defence attorney must be provided to the suspect free of charge when, e.g., the participation of a defence attorney is obligatory or is requested by the investigator, prosecutor or investigative judge and the suspect failed to involve one, or when the suspect cannot afford a defence attorney.</p> <p>It should be noted that unlike the previous code, the new Criminal Procedure Code requires that only a certified attorney (advocate) should act as defence counsel in criminal proceedings.</p>	

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