Overview of Bulgarian Criminal Procedure in White-Collar Crime Cases

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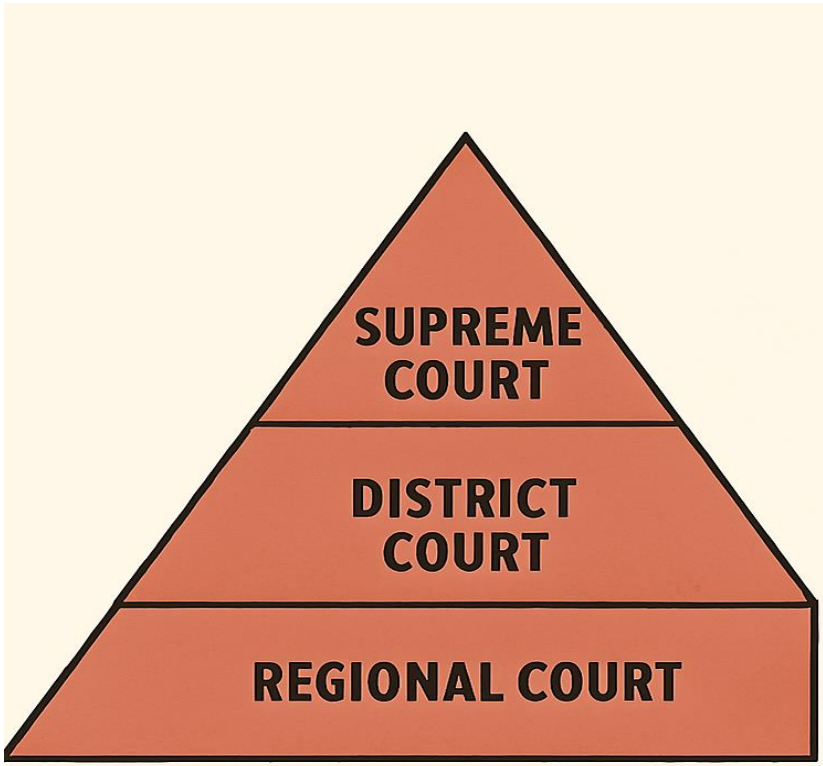


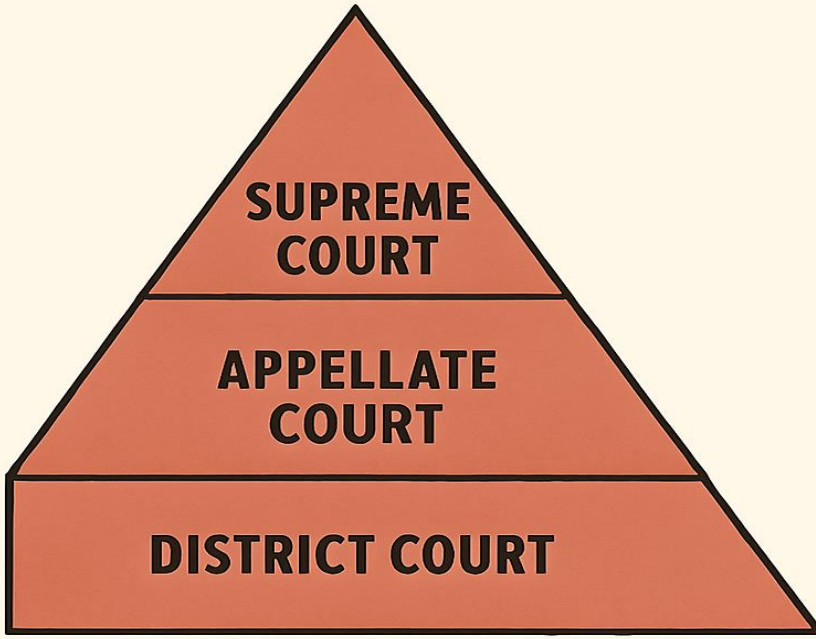
Bulgarian Legal System



- Bulgarian legal system - part of the continental European legal family
- Codification of criminal procedure - **Criminal Procedure Code (CPC)** - main source of criminal procedural law
- As a EU and Council of Europe member state Bulgaria adheres to the **Charter of Fundamental Rights** and the **ECHR**; these instruments are directly applicable and superior to domestic legislation
- Mixed type of criminal procedure (inquisitorial pre-trial phase and adversarial trial phase)

Three-tier Court System





Participants in Criminal Proceedings

- Judges (Court)
- Public prosecutor
- Investigative official
- Defendant
- Interested legal entity
- Defense counsel
- Victim (injured party)



Judges



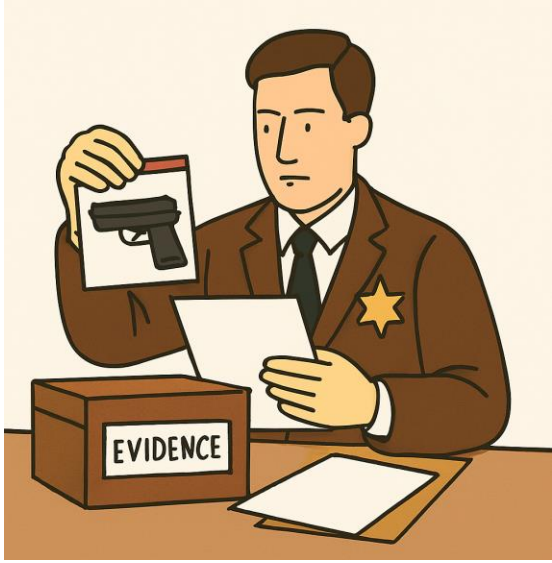
- First instance court: professional (career) and lay judges
  - Form a unitary body
  - Equal judicial powers
- Second and third instance court – panel of 3 career judges
- Obligation to establish the material (objective) truth ⟹
- The court is **active fact-finder** (obligation *ex officio* to undertake all necessary acts including collection of evidence)

Public Prosecutors



- Part of the judiciary (full judicial status)
- Exclusive power to bring criminal charges before the courts
- Must act objectively and impartially, establishing both aggravating and mitigating circumstances
- Direct and supervise investigative officials

Investigative Officials



- **Investigators** – part of the judiciary; handle more complex cases
- **Investigative police officers** – officials of the Ministry of Interior; conduct about 97% of investigations
- **Investigative customs officials** – handle customs-related offences
- In urgent cases, **any police or customs officer** may perform investigative acts

Defendant



- A person formally charged when sufficient evidence exists
- **Rights** include: prompt information about charges and the supporting evidence in a language s/he understands; legal counsel at all stages of criminal proceedings; right to remain silent; right to translation/interpretation, etc.
- **Mandatory defense** applies in cases such as: serious crimes (min. 10 years imprisonment), lack of Bulgarian language skills, detention, conflicting interests among co-defendants, trial in absentia, or indigence

Coercive Measures



- **Measures securing appearance and preventing further criminal activity:**
  - Prohibition against changing one's place of residence without prior authorization
  - Bail
  - House arrest
  - Detention (in pre-trial phase – max. 1.5 year; 8 months or 2 months)
- **Other coercive measures:**
  - victim protection measures
  - prohibition against leaving the country (travel ban);
  - removal from office;
  - appearance before the court by way of force, etc.

Defense Counsel



- **Attorneys-at-law** or **close relatives** (children, parents, grandparents, or spouse) of the defendant
- From the very first moment of charging or arrest
- No limitation as to the number of defense counsels that a defendant may engage
- Full confidentiality of their meetings and communications

Interested Legal Entity

- "Corporate defendant" – the legal entity which has benefited from the crime committed by the defendant
- The prosecutor, in an annex to the indictment, describes, *inter alia*, the offence, the existence of a causal link between the offence and the benefit for the legal entity, as well as the type and amount of the benefit, and makes a reasoned proposal to the court for the imposition of a sanction on the legal entity.
- Participates as a party to the court proceedings with its own rights
- In its judgment, the court rules on the prosecutor's proposal
- The interested legal entity may appeal the judgment



Victims



- In pre-trial phase: **injured person** and **injured legal entity**.
- In trial phase: **private accessory prosecutor** and/or **plaintiff** (**civil claimant),** seeking compensation for material and moral damages.
- Right to legal representation.

Rules of Evidence



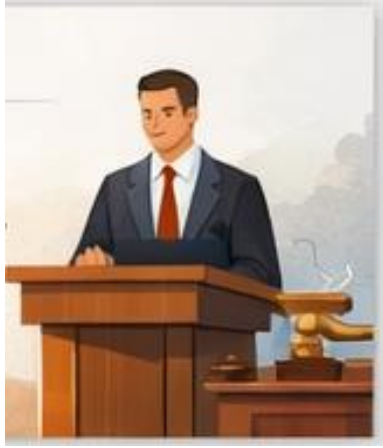
- **Burden of proof** lies with the prosecution and investigative bodies.
- **Standard of proof** for conviction: beyond any doubt.
- **Evidence** – any relevant fact, lawfully established.
- Evidence may be collected only after criminal proceedings are instituted.
- **Investigative acts**: examination/interrogation (of defendant, witness), forensic examination, inspection, search, seizure, investigative experiment, identification of persons and object, and special surveillance techniques.
- **Judicial authorization** is required for searches, seizures, body inspections (without consent), and special surveillance techniques.
- Illegally obtained evidence is inadmissible.

Pre-Trial Phase



- **Opening criminal proceedings**
  - Prosecutor **must** initiate proceedings when reasonable grounds (i.e. sufficient data) for believing that a crime has been committed, exist
  - In urgent cases investigative officials may begin criminal proceedings by performing certain investigative acts
- **Investigation -** involves gathering of evidence and conducting other procedural acts
  - When sufficient evidence has been gathered, the alleged perpetrator is formally charged by the investigative official (with the prior consent of the public prosecutor)
  - Defendant is informed of charges and rights; first mandatory interrogation
  - At the end of the investigation, the evidence are disclosed to the injured person and the defendant and they may request additional actions

Pre-Trial Phase



- **Prosecutor's Decision**
  - Terminate the case
  - Suspend the case
  - File with the court an indictment, a plea agreement proposal or a proposal for exemption from criminal liability with the imposition of an administrative penalty (rarely in white-collar crime cases, but still possible for some of them)

Trial Phase



- **Preliminary Hearing**
  - Court may return the case to the prosecutor if substantial procedural violations in the pre-trial phase are found
- **Main Hearing**
  - **Collection of evidence**: parties examine defendant, witnesses, and experts; court has the right to ask questions as well
  - Defendant may remain silent; if testifying, no obligation to tell the truth
  - Court reads records of the investigative acts conducted in the pre-trial phase
  - After judicial investigation is closed, parties deliver **closing arguments**
  - Defendant has the right to a **final statement** ("last word")
  - Court deliberates in secret and announces the **judgment** publicly

Appeals



- **Second instance**: reviews the case for factual and legal errors; verifies all issues *ex officio*
- **Supreme Court of Cassation**: final appellate instance; reviews only legal issues

Differentiated (Simplified) Procedures:
Abbreviated Judicial Investigation

- Defendant admits all facts in the indictment
- Court does not collect new evidence
- Sentence of imprisonment is reduced by **one third**

OR

- All parties agree not to examine some/all witnesses

and/or experts and their testimonies/expert opinions from the pre-trial phase to be used by the court

- No sentence reduction



Differentiated (Simplified) Procedures: **Plea Bargaining**



- Only **sentence bargaining** is allowed; charge bargaining is prohibited
- All material damages must be compensated or secured
- May be initiated after the investigation is completed and before the end of the judicial investigation
- Agreement is signed by prosecutor, defense counsel, and defendant
- Court verifies voluntariness, understanding of charges, and legality

Approved agreement has the effect of a final conviction

Thank you

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