

CZECH REPUBLIC

General questions

1] The Czech Republic has not institutionalized so far the judicial independence in a satisfactory manner though the Constitution and other legislation which declares and protect independence of the judiciary. Administration of justice is based on the dominant position of the Ministry of Justice, the elements of judicial self-government are missing [existing judicial councils are only consultative bodies without any decisionmaking power]. The Constitutional Court ruled several times, that the influence of executive branch of government is excessive and should be changed.

According to the Constitution, the prosecution is administered by a Minister of Justice. There is ongoing discussion concerning the independence of prosecution, which is not seen by many politicians and by some judges as indispensable part of the justice.

2] Judges are nominated to a life-time period of their service which is limited by upper age limit of 70 years. The same applies to prosecutors. To recall a judge or prosecutor is possible only by a decision of a disciplinary panel of the High Court and Supreme Court. Administration of the court is not allowed to interfere anyhow to the independent decisionmaking power and authority of individual judges. Nowadays a new amendment to the Law on Courts and Judges as well as the Law on Judicial Discipline /which includes prosecutors as well/ is being discussed within the Parliament. There will be only disciplinary panels of the Supreme Court where will be also non-judiciary members represented. The right to appeal a disciplinary decision should be abolished.

3] The judges and prosecutors enjoy full freedom of association guaranteed by the Czech Constitution and they may be members of the trade unions, There are two professional associations /Czech Union of Judges and Czech Union of Prosecutors, which both have now minority within both professions. There are only few members of prosecution who are members of the trade union, the judges do not engage themselves in trade unions. Double membership is not excluded. Czech Union of Prosecutors co-operates with the Trade Union, shares information with it and coordinated its activities. The Czech Union of Judges unites now about 1/3 of judges and Czech Union of Prosecutors more than % of prosecutors and trainees. Both Law on Courts and Judges and Law on Prosecution stipulates the obligation of the Ministry of Justice to consult with both professional associations the law projects related in a fundamental manner the competencies of the courts and prosecution and the way it is regulated, the fundamental measures concerning the organization of the courts and prosecutor's offices, the status of judges and prosecutors and administration of the courts and prosecutor's offices. This obligation is however fulfilled in a very formal manner -there are sometimes only few days to comment the law proposals.

4] Public opinion on a judicial independence is on a comparable level with other post-communist countries. People tend to believe much more to the medias than to the courts. Some politicians statements and and "big" media cases the public tends to believe that the judicial independence is on some excessive level, especially when there is a court's decision not meeting the expectation of a general public.

The media create a false picture as if only the judges are independent and the prosecutors are not. The public does not understand that both legal professions apply only the law adopted by the Parliament and not by themselves.

5] The judiciary is a favorite target of criticism and in some cases the media try to influence individual cases. There are however also pending cases of bribery /one bankruptcy judge is subject of a large investigation, there was a case of a government member against whom the investigation has been stopped by prosecutor.

Investigative reporters showed on TV report with a hidden camera about a case of the judge who - in possible financial troubles - was offering internal information for money /the judge afterwards resigned/.

6] The judiciary share within the state budget is around 2% and it has not changed in past years. There were and there are however major investments into new and reconstructed Court buildings in past 19 years - in Prague, Brno, Liberec and in other cities as well and through EU assistance all judges and prosecutors are well equipped with computers.

Status

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7] Recruitment and Education

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Precondition for a office of a judge as stipulated by the Law on Courts and Judges No. 6/2002 Coll. are: citizenship of the Czech Republic, full legal capacity, no criminal record, experience and moral characteristics which guarantee he/she will properly discharge his/her office, age of 30 years, consent to be appointed and assigned to certain court, University degree and judicial exam. For prosecutors the conditions are the same according the Law on Prosecution No. 283/1993 Coll. /consent to be appointed to a certain office/ but the age limit is 25 years. Other condition to be met is that a judge or prosecutor did not work for a former State Security - see Lustration Act No. 451/1991 Coll.

There is no obligatory content of the magistrate's education, only for judicial and prosecution trainees. The education is provided for by the Judicial Academy, which is an entity run by Ministry of Justice with its Board. It has neither autonomous nor independent position. The law stipulates that both judges and prosecutors are obliged to improve by continuous training their professional knowledge necessary for proper discharge of their office. Apart from self-education the courses and other educational activities are offered by Judicial Academy, Regional courts or Regional Prosecutor's Offices. The Judicial Academy offers legal courses as well as courses of applied psychology, sociology, rhetoric, ethics, media training. Some prominent extra-judicial experts are being invited there }for details see link: <http://portal.iustice.cz/soud/soud.aspx?o-7&i=17&k-220&d-74272> .

First appointment of a judge is after his/her oath to a certain District Court. In exceptional cases he/she may be assigned to a Regional, High or the Supreme Court provided he/she had performed lawyer's activities for at least 8 years [for the Supreme Court 10 years].

8] Council for Judiciary

- does not exist in the Czech Republic {see judicial councils - point 1}. 9] Career

The rank is separated from the post. There are no official rules governing the promotion and there are also no legally binding standards for a promotion procedure. The promotion is according to the law made by on the proposal of a Chief Judge of the Regional or higher court or Chief Regional or higher Prosecutor. Office of chief judge, deputy chief judge, chairperson of a court panel of collegia is considered also a career step for a judge /similar applies to prosecutors/. Any transfer of a judge/prosecutor shall take into account the professional competence achieved by a judge/prosecutor.

There are neither rules nor time limits to duration of execution of a particular function /geographical location/. The situation should change for chief judges and their deputies and for chief prosecutors where a time limit should be set - probably two times 6 years.

10] Appraisal

The magistrates are not appraised in the Czech Republic. 11]

Secondment

The judges and prosecutor may be transferred temporarily with their consent to another court or prosecution office for a period not exceeding 3 years {to the Ministry of Justice or Judicial Academy not

exceeding one year.} During the period of temporary assignment a judge/prosecutor have the right to provision appropriate accommodation at the expense of state in the seat of court or prosecution office and a compensation of use of travel expenses /if agreed of his/her use of private vehicle. Without his/her consent he/she may be temporarily transferred for a period of one year.

12] Earnings

Average salary of a judge in the Czech Republic je 80 300,- Czech crowns - i.e. 3 212 EUR per month {it is reached at a district court level after some 20 years of practice}. It varies according to the duration of service and acquired position within judiciary. At the beginning of a judicial career the income is about 45 000 Czech crowns — 1 800,/ EUR.

The salaries of prosecutors reach since 1997 90% of judicial salaries only. The prosecutors are not entitled to a surplus for "representation" designed also for buying legal literature {another 3-5% of the salary} This unusual discrepancy between both judicial professions constitute some kind of misunderstandings. The international standard is the salaries of both profession are equal.

Criminal Law

13] There is a principle of legality of prosecution applied with very unsatisfactory traces of opportunity decision /practically meaningless/.

14] General criminal policy is not officially adopted, in governmental programs some few specific fields are being mentioned.

15] Recently the obligation to inform minister of justice about and individual case exists only when he/she needs it for execution of his duties like a member of the Government {e.g. to respond to the members of Parliament to there questions}. The proposal was made to inform him/her also without any hmitation and to inform the president of the republic on his/her demand. This new definition is very questionable.

Confidentiality of the procedure is stipulated by the Law on Criminal Procedure and and other laws.

16] There is no position of an investigative judge. The prosecutor act as investigator inly in criminal cases of members of Police or of secret services. An all other cases the Police investigators are involved and the prosecutor is responsible to control their activities and may give them instructions in a concrete case.

17] There is no judicial police. The Police investigators and units are from organizational point of view subordinated to the Police presidium and the Ministry of Interior. All criminal announcements are registered both ath the Police and at the local prosecution offices.

18] Citizens act in the criminal proceeding /where the penalty for a crime is over 5 years/ as elected lay judges - for the period of 4 years - in Distric Courts. The are elected by local administrative councils.

19] There is a system of providing legal representation both for accused persons and for victims /in that case only when they do not reach a minimum standards od income/ which are covered by the state.

20] There are specialized bodies within the Czech Police combatting organized crime, drugs and economic crimes and there are also specialized units within higher ranks of prosecution dealing with big economic crimes as well. The frequent changes within those police units are bringing the system less effective that would be desirable.

21] The maximum penalty for a crime is life sentence, extraordinary penalty up to 25 years in extraordinary cases of murders, the "normal" maximum penalty is 15 years. The new Criminal Code project stipulates the penalties up to 30 years, respectively up to 20 years, especially for violent crimes.

Responsibility / Discipline

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a] Disciplinary proceeding and organs are similar for judges and prosecutors. The first instance level disciplinary panel is in the High Courts and appellate disciplinary panel is in the Supreme Court. The disciplinary proceeding may be initiated by chief judge of the respective Court or chief public prosecutor or by a Minister of Justice, who all of them may also appeal the decision. The motion to a disciplinary court has to be brought at least until 60 days after the respective plaintiff learned about the disciplinary offence, at the latest until two years from the time this offence has been committed.

The sanctions are: reprimand, financial sanction - reduction of salary from 10 up to 25% /maximum for one year/, recalling from a function of a judge or prosecutor.

b] Disciplinary panel as described above are for prosecutors composed of judges and prosecutors.

c] Judge or prosecutor involved may lodge appeal against the decision.

23] The law does not enable to enact any binding rules of professional responsibility. Both professional associations have adopted their own ethical rules which are recommendation only.