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## **The responsibility of judges in the Czech Republic**

The legal profession has existed for over two thousand years. From the Greek city – states and the Roman Empire to present day, lawyers have played a vital and active role in the formulation and interpretation of law. Because of their role in society and their close involvement in the administration of law, lawyers are subject to special standards, regulations and – liabilities.

The most prestigious judicial profession is to be a judge. Being a judge embodies strong power and position while at the same time presumes the respecting of the highest personal and moral responsibility.

„ Every right implies a responsibility, every opportunity an obligation, every possession, a duty „, – J. D. Rockefeller Jr.

Sir Winston Churchill, the former British Prime Minister, said :

„ The price of greatness is responsibility“

„ All great things are simple, and many can be expressed in single words: freedom, justice, honour, duty, mercy, hope.“

We would like to deepen legal assurance and justice and for this reason we consider a judges responsibility.

We can define responsibility as an obligation which requires action, this could be moral or legal – legal encompasses three branches - criminal, civil and disciplinary. We value the opinions and recommendations of the Consultative Council of European Judges (CCEJ), it is an advisory body of the Council of Europe and works on issues related to the independence, impartiality and competence of judges.

First I would like to bring to your attention that there is an important difference between the two legal and judicial cultures, between common law

and continental law . In common law culture the judge has a less active role in the proceedings ( we can use the term “ the culture of the hearing” ). This reason makes, by reference, this judiciary slightly more visible and answerable democratically. The “ culture of the paper proceedings” , that dominates in continental law, requires more guarantees of judicial responsibility. That is why we consider extending the guarantees of such responsibility.

There is a major trend in Europe – generally the tension between the power and responsibility of judges, probably the most significant focus is to find the balance between both.

States must give statutory guarantees to judges and they must exhibit high professional standards through their status, conduct and competence.

If we think about ethical or moral responsibility, we have to realize that morality is a system of principles and judgements based on religious and philosophical concepts and beliefs. Morality is not law, even if law reflects or intends to reflect morality.

One of the most contentiously debated topics is if we need a judge’s code of conduct, and if we do, who should draft and adopt it.

It should be known that there is a judges’code of conduct in the Czech Republic. We have 7 principles of professional conduct. This code was approved and adopted on the 16.11.2005 by a delegation of judges, the Union of Czech judges, which accounts for more than 50% of judges .

This code was formulated by the Bangalore principles of judicial conduct in 2002. The code of conduct has some important benefits, it helps judges to resolve questions of professional ethics and informs the public about the standards of conduct it is entitled to expect from the judiciary.

These principles compose of the following:

Independence – it is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial.

Impartiality – is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Integrity – is essential to the proper discharge of the judicial office, the behaviour and conduct of a judge must reaffirm the people’s faith in the integrity of the judiciary.

Propriety – and the appearance of propriety are essential to the performance of all judicial activity.

Equality - ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Competence and diligence - are prerequisites to the due performance of judicial office.

There is no relationship between codes, conduct and disciplinary proceedings. In a serious situation where a breach of the rules of professional conduct has occurred, a judge may be excluded from the Judges Union, but it is “only “ an ethical penalty.

We should consider the three integral parts that constitute legal responsibility, criminal, civil and disciplinary liability.

Criminal liability – is in connection with the exercise of duties. Criminal proceedings against a judge must be authorised by the President of the Czech Republic. Jurisdiction lies with the ordinary courts, according to the procedures of general law.

Civil liability – Where there has been an unlawful decision or a harmful activity, the damage is remedied by the State, which is entitled to bring an action for indemnity if the judge has been found guilty of a disciplinary offence.

Disciplinary liability - of judges is the most contentious of these integral parts.

This issue has been regulated in the form of the following Act courts and judges number 6/2002 Sb. , this Act entered into force on the 1.4.2002.

This Act determines what comprises a disciplinary wrong - it is a voluntary breach of a judge’s duty and other voluntary action where a judge does not adhere to judicial propriety or corrupts faith in the independent, impartial, professional and fair deliberation of the court.

A judge bears the responsibility for his competence and diligence.

There is regulated disciplinary proceedings in the aforementioned code. The Minister of Justice , the President of the Court concerned or the President of the Supreme Court can decide to bring proceedings within two months of becoming aware of the facts, which must not have happened more than two years previously.

The Disciplinary Court composes of five judges appointed by a President of a Court appointed in agreement with the Judicial Council for a period of three years, an opportunity for appeal is possible to the Supreme Court.

The disciplinary sanction could be

- reprimand
- temporary reduction of salary
- suspension from duties as president
- suspension from duties as judge

As I mentioned, being a judge is the most prestigious judicial profession, but it is not only a job, it is a life obligation. It is also regarded as a high honour so deeply ingrained in personal and moral responsibility. Furthermore, it is paramount that a judge has a respect for ethical codes of conduct.

Johann Wolfgang Goethe said :

“ Thinking is easy, acting is difficult and to put one’s thoughts into action is the most difficult thing in the world”.

So we must think about the possibilities of how to deepen any guarantees of a judge’s responsibility. It is indeed necessary to have a good regulation of disciplinary proceedings by Act, because all legal systems need some form of disciplinary system. I uphold the belief that the most efficient way how to deepen such guarantees and how to extend public confidence and respect for the judiciary is to increase the moral liability of judges. To create such an environment within the sphere of the judiciary, whereby any malpractise would be unanimously intolerable would be to create an idyllic situation. It could be the first honour to be a judge and to be a member of the professional Union of Czech Judges.

The path way to the divine system is sure to be a long and treacherous journey.

But S.A.Exupery said : “ Only the journey is worthwhile. It is the only thing that lasts..... “

Thank you for giving your consideration to my thoughts.

