

STATUS, ORGANIZATION, ROLE, AND FUNCTION OF THE PUBLIC PROSECUTOR'S OFFICE (PUBLIC PROSECUTORS) IN THE CZECH REPUBLIC

Jana Zezulová⁴⁰

Introduction

Article 80, par. 1 of the Constitution of the Czech Republic characterizes the public prosecutor's office as an organ representing public prosecution in criminal proceedings; it also performs other tasks the law sets forth. By Act No. 283/1993 Coll., on the public prosecutor, in effect since 1 January 1994, the public prosecutor's office has been organized as a system of public offices assigned to represent the state in cases established by law. This system replaced the former office of public prosecution, which was blamed for being too similar to Soviet models, further that it was "omnipotent" (the "guardian of justice" concept), and that it formed a kind of "fourth" power in society (next to the legislative, executive and judicial powers). On the other hand, it is important to note that after the origin of the public prosecutor's office, some of the control mechanisms, which could have prevented privatization crimes and encroachments into the economic sphere ("tunneling", bank collapses, etc.), which occurred in the Czech Republic in the first half of the nineties, were no longer enforced. The so-called universal supervision by the Office of Public Prosecution was discontinued without any replacement. However, as far as this involves the criminal section, the replacement of the Office of Public Prosecution by the public prosecutor's office has not been very apparent because the legal authority of the public prosecutor's office (and public prosecuting attorneys) has remained practically the same.

Status and scope of the public prosecutor's office, particularly in the area of crime

The tasks of the public prosecutor's office established by the Constitution of the Czech Republic, further augmented by Act No. 283/1993 Coll., on the public prosecutor's office, as amended primarily by important legislation conveyed by Act No. 14/2002 Coll., according to which the public prosecutor's office (§ 4):

- Is the organ of public prosecution in criminal proceedings;
- Fulfills other tasks that originate from criminal regulations (particularly supervision over preserving legality in preparatory proceedings);
- Conducts supervision over maintaining legal regulations in places where arrests, imprisonment, deterrent treatment, deterrent or institutional training are performed and in other places where, in accordance with legal authority, personal freedom is restricted (special laws currently amending the supervision over places where arrests, imprisonment, deterrent

⁴⁰ Ms. Jana Zezulová, Ph.D., graduated from the Faculty of Law of the Masaryk University in Brno. She is public prosecutor of the Analytical and Legislative Department of the Supreme Public Prosecutor's Office of the Czech Republic. She was also lecturer in Criminal Law and Criminal Procedure at the Faculty of Law of Masaryk University in Brno.

and institutional training are performed) within the scope, under the conditions, and by the method established by law;

- Has been given the task, in compliance with its legally allotted activities, to participate in crime prevention and to provide assistance to the victims of criminal acts;
- Acts in proceedings other than criminal (this involves a very extensive compendium of capabilities, as a rule, proposals for initiating criminal proceedings, possible involvement in already initiated proceedings, for example, a petition for repudiation of paternity in cases when the period established by law has already expired, if it has been deemed to be in the public interest, or a petition before a panel of judges, if the public interest has been affected in a serious way – these petitions are submitted by the Supreme Public Prosecutor).

The Constitution of the Czech Republic ranks the public prosecutor's office among the organs of executive power, into that part dedicated to the government. It is not ranked among ministries or other executive organs of state power, but the public prosecutor's office stands alongside these bodies. Some opinions (e.g. expressed in commentaries to the Constitution of the Czech Republic) state that the public prosecutor's office is an executive power, which as such respects the policies of the government in the scope of its activities. Therefore, it has been incorporated by law into a department of the Ministry of Justice.

According to other opinions (e.g. an actual commentary to the Law on the Public Prosecutor's Office), it is possible to see it as a *sui generis* body, mixing features of the executive and the judiciary power, a "transition" to judicial power. The trend is definitely toward this position. The public prosecutor's office is not even an administrative office or an organ which could be focused on implementing government policy. Its status in the system of public power is specific. The public prosecutor's office represents an organ for criminal justice. Public prosecutors as those who carry out the tasks of the office (and who by law have already been granted the relevant legal authority by the law not transmitted from a decision by the relevant prosecutor general), are significant agents in criminal prosecution (and, to a limited extent, non-criminal justice). The public prosecutors must ensure protection of the public interest (not the closely related concept of state interest).

In the area of criminal proceedings, this involves prosecution before the court of certain persons justifiably suspected of having committed a criminal act. Also in proceedings before the court (where the public prosecutor otherwise takes the position of a party), the public prosecutor's office defends the public interest. It may not concentrate solely on achieving a judgment against the accused at any price. It may, for example, propose acquittal of the accused, advance evidence on behalf of the accused, or even submit an appeal in his/her favor. Finally, from this standpoint, public prosecutors assume a conspicuous role in that they significantly share in safeguarding human rights and basic freedoms in preparatory proceedings.

Judges active in preparatory proceedings for deciding on serious encroachments on these rights and freedoms also play a very significant role here (in the Czech Republic, there is no such institution like a court of inquiry). The role of public

prosecutors, however, is no less significant. The concept of a court of inquiry (typical, for example, for France, the Netherlands, Belgium, Portugal, Spain, Switzerland and, until the end of 2007, Austria; discontinued in Germany and Italy) was rejected precisely because it was contradictory (the judge investigates and brings up charges for a criminal act, but on the other hand he/she should also guarantee rights and due process), costly, and in preparatory proceedings would cast doubt on the dominant role played by the public prosecutor. If this model were applied with a court of inquiry, the public prosecutor would not bear full responsibility for performing preparatory proceedings, even though he/she would submit the indictment and perform the prosecution before the court.

The Czech Republic has a system in which the public prosecutor plays a decisive role. He/she controls the activities of the police performing investigative work on criminal acts, both from the standpoint of guaranteeing human rights and basic freedoms and respecting laws and other legal regulations. The role of the police from this standpoint is critical (in the Czech Republic, no model exists in which the public prosecutor formally authorizes police officers to investigate; the police have their own special independence and the public prosecutor oversees them). Control of police activities is also implemented for the purpose of speed and efficiency during preparatory proceedings.

In contrast to this – unlike some other amendments – considering the fact that we have a mandatory system with principles of legality (the principle of opportunity is applied only as an exception – although we still have a material conception of the criminal act, which allows an act of an inconsequential nature not to be judged as a criminal act) – the public prosecutor's office does not establish priorities for police activities or principles for applying a punitive policy, nor does it have an influence on the organization of the police. This appertains completely to the Ministry of the Interior. The position of the public prosecutor's office in preparatory proceedings may be expressed by a concise statement: public prosecutors are procedurally, not functionally, the superiors of the police.

In preparatory proceedings a public prosecutor holds the dominant position and is responsible for the course of proceedings in regard to legality, facility, and speed. He/she conducts supervision over police activities, deciding on corrective measures directed against the decisions of police organs. After completing preparatory proceedings, all important decisions lie with him/her – submitting indictments, discontinuing criminal prosecution, approving settlements, withdrawing from criminal prosecution of youth, relegating matters to an infraction or some other administrative delinquency or disciplinary (punitive) offence.

In proceedings before the court, the public prosecutor assumes the position of a party. But it cannot be said that this involves an entirely equal position to the party of the defendant. This does not mean that these two parties to the process should not be equal (then the justice system would not work or the proceedings would be contradictory), but it means the public prosecutor also performs the role of defender of the public interest in proceedings before the court. He/she may not conceal evidence favorable to the accused. In justifiable cases, he/she must even propose the issuance of a plea of not guilty of a criminal act. This takes into account, for example, the fact that the public prosecutor (particularly necessary for youth) may propose the application of some sort of departure, i.e. the conditional cessation of criminal prosecution, settlement, or withdrawal from

criminal prosecution of youth. The Czech procedural system is continental, not Anglo-American (adversarial). In matters before the court, the public prosecutor has increased responsibility acting in the position of a party and must proceed toward the accused with an unbiased and open mind.

Organization of the public prosecutor's office, the position of the Ministry of Justice

According to the Constitution, the administrative organ for the public prosecutor's office is the Ministry of Justice. An amendment to the Act on the Public Prosecutor's Office, the executed Acts No. 14/2002 Coll. and No. 192/2003 Coll., expressly set down the principle that the Ministry of Justice always performs the administration of the public prosecutor's office. This involves organization, personnel, financial and economic affairs, control and revision of economic management, attending to complaints, education, determining crisis management and security tasks, directing and employing information technology.

In any matter and at any time, the Minister of Justice may demand information from anyone in the public prosecutor's office, if the information is required for the performance of tasks by the Ministry or by a member of the government (e.g. inquiries, representing the Czech Republic in proceedings before the European Court for Human Rights). Furthermore, responsible cooperation has been legally established by anyone in the public prosecutor's office in the field of applying Act No. 82/1998 Coll., on responsibilities for damages caused during the exercise of public power by decision or incorrect official procedure.

The Minister of Justice, however, is no longer (as it was prior to Act No. 14/2002 Coll.) functionally superior to the Supreme Public Prosecutor. The Ministry of Justice also no longer performs supervision over the activities of the Supreme State Prosecutor's Office, as it did in accordance with previous amendments. As a result, neither the Minister of Justice nor the Supreme Public Prosecutor or individual public prosecutors may render binding instructions. Only the Supreme Public Prosecutor may issue instructions of a general nature (such as explanatory positions related to resolving specific application problems). This involves interdepartmental organizational regulations related predominantly to the district process (e.g. correct procedure during supervision over preparatory proceedings, the procedure according to the Judiciary Law in matters of youth), and only exceptionally for material rights (establishing the procedure to assess cases for the possession of drugs for one's own use, prosecuting criminal acts committed for racial reasons, etc.).

The system of public prosecutor's offices in the Czech Republic is four-tiered. It consists of 86 precincts (and districts in the capital city of Prague), 8 regional (a judicial region is distinguished from an administrative one – there are 8 judicial regions and 14 administrative ones – the district of the capital city of Prague is a region both administrative and judicial), two superior (in Prague and Olomouc) and the supreme organ of the system – the Supreme Public Prosecutor's Office. The main work of the public prosecutor's office is performed by the district and regional public prosecutors. While the precinct public prosecutor's offices act universally in all criminal matters, the action of the regional public prosecutor's office (the Municipal Public Prosecutor's Office in Prague) has in its domain

more serious criminal acts (e.g. murder, grand theft, and harmful, economic, financial and property crimes accompanied by great damages or performed with a special qualified method). In the first stage, the superior public prosecutor's office operates only exceptionally (for some criminal acts in the field of banking and financial crime with damages of a minimum 50 million CZK, i.e. around 1.7 million Euro, criminal acts directed against the financial interests of the European Union, etc.). The Supreme Public Prosecutor's Office performs supervision over the activities of the superior public prosecutor's office, determines the legal relationship with foreigners (with the exception of direct relations), etc. It may also revoke (this involves the exclusive legal authority of the Supreme Public Prosecutor's Office) unlawful decisions of lower public prosecutors on discontinuing criminal prosecution and delegating matters to some other organ in cases of infraction, some other administrative delinquency or a punitive (disciplinary) offence. In no way is the position of the Supreme Public Prosecutor similar to the system characteristic, for example, of Germany or Austria, where there is an Attorney General entirely separate from the system of prosecuting attorneys (and he/she fulfills tasks only in proceedings on extraordinary corrective measures – in the Czech Republic, this involves an appeal and a complaint for violation of the law). The Supreme Public Prosecutor's Office is the actual superior member of the entire system of public prosecutors.

Conclusion

As noted above, the public prosecutor's office (or public prosecutors) plays a significant role in criminal (preparatory) proceedings. This has been underscored after substantive amendment to the Rules of Criminal Procedure in 2001 (which is occasionally noted as a re-codification of the criminal procedure, because it includes practically three hundred changes in the valid Rules of Criminal Procedure, some of which have been very significant).