

Competence Public Prosecutor's Office in criminal proceedings

Criminal proceeding is the central point of activities of Public Prosecutor's Office, and the Public Prosecutor's Office is directly bound to exercise this competence by the Constitution of the Czech Republic. Even though the competence of the Public Prosecutor's Office is focused mainly on criminal proceedings, this competence is stipulated in the Act on Public Prosecutor's Office only very briefly. It is in fact a reference to the Code of Criminal Procedure, which is implied by the wording:"

[...] is a body of public suit

in criminal proceedings and fulfils other tasks stipulated by the Code of Criminal Procedure

“. Until the amendment of the Act on Public Prosecutor's Office, implemented by the Act no. 14/2002 Coll., came to full force and effect, its Section 4 (1) stipulated that the Public Prosecutor's Office files indictments in criminal proceedings on behalf of the state and fulfils the duties associated therewith, which are imposed by the Code of Criminal Procedure. Presently the quoted provision is formulated restrictively, however, its merits remain the same, because it still applies that

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The public prosecutor acts in the position of an authority involved in criminal proceedings,

whereas he has statutory powers in all stages of criminal proceedings. The public prosecutor is equipped with certain procedural rights and at the same time there are corresponding procedural obligations imposed to him.

In pre-trial proceedings the public prosecutor is the dominant body – in this relation we use the term “dominus litis“. The public prosecutor performs supervision over upholding legality. In order to clarify the case and ascertain the perpetrator, the public prosecutor is entitled to instruct the police authorities to perform actions within its statutory powers. In order to investigate matters of fact implying that a criminal offense has been committed, the public prosecutor may require files, documents, materials and activity reports from the Police Authority. Moreover he may revoke and assign cases from the Police authority, he must process requests of the person, against whom the proceeding is being conducted without undue delay, and requests of the aggrieved party to rectify delays and flaws in the procedure of the Police authority (Section 157a of the Code of Criminal Procedure – “CPC”). While performing supervision in pre-trial proceedings, the public prosecutor is entitled to give binding instructions to investigate criminal offenses, to participate actions taken by the Police authority in pre-trial proceedings or to perform individual action himself, to remit the case to the Police authority with his instructions to supplement it, to repeal decisions and measures taken by the Police authority, if they are unlawful or unsubstantiated and replace these decisions and measures by his own.

Only the public prosecutor is entitled to perform certain actions in pre-trial proceedings. These include: decision to forward the case to another authority (Section 171 of the CPC), decision to discontinue criminal prosecution (Section 172 of the CPC), decision to suspend criminal prosecution (Section 173 of the CPC), he may also file an indictment, decide on conditional discontinuation of criminal prosecution (Section 307 of the CPC), on settlement (Section 309 of the CPC) and on the release from custody.

Furthermore, the public prosecutor is entitled to order or cancel freezing of property of the accused person, secure the claim of the aggrieved person for compensation, and order exhumation of a corpse. The public prosecutor is entitled to request data that is subject to banking secrecy, data from the register of securities and some personal data and data acquired in the course of tax administration (Section 8 (2) of the CPC), to order monitoring of a bank account or account at the Securities Center (Section 8 (3) of the CPC), freezing of money at a bank account or account kept by other entities, freezing of registered securities (Section 79a, 79b, 79c of the CPC), seize real estate, other assets and substitute values (Section 79d, 79e, 79f of the CPC), freeze the property of the accused person in order to secure claim of the aggrieved person (Section 47, 48 (2) of the CPC), seize property of the accused person (Section 347 of the CPC), order interception of consignments (Section 86 (1) of the CPC) and grant a consent with burial of a corpse when there is a suspicion of a criminal offense (Section 115 of the CPC). The public prosecutor decides on interventions into civil rights: he is entitled to order surrender of an item (Section 78a (1) of the CPC), order removing an item from possession of persons (Section 79 (1) of the CPC), personal search (Section 83b (1) of the CPC), interception of consignments (Section 86 (1) of the CPC), monitoring of consignments (Section 87b (1) of the CPC). The public prosecutor files a motion for the court to take the accused person into custody (Section 69 (1) of the CPC) or to issue an arrest warrant (Section 69 (1) of the CPC), to order a house search (Section 83 (1) of the CPC). The public prosecutor grants a consent to the Police authority to apprehend a suspect (Section 76 (1) of the CPC), to issue an order to remove an item from the possession of a certain person (Section 79 (1) of the CPC), to order personal search (Section 83b (1) of the CPC). When using operative search means, the public prosecutor grants a written authorization of simulated transfer (Section 158c (2) of the CPC), surveillance of persons and items (Section 158d (2) of the CPC) and the public prosecutor of the High Public Prosecutor's Office files a motion to a High Court judge to authorize the use of an agent.

Prior to the initiation of criminal prosecution the public prosecutor is obliged to accept notifications implying that a criminal offense has been committed (Section 158 (2) of the CPC. In case the police authority fails to finish investigation a notice within the time limits stipulated in Section 159 (1) of the CPC, the public prosecutor is entitled to extend the time limits and to instruct the Police authority to perform certain actions. The public prosecutor may repeal a resolution of the Police authority to discontinue a case within 30 days following its service, eventually also replace it by his own decision. The public prosecutor grants his consent to the Police authority with temporary discontinuation of criminal prosecution (Section 159b of the CPC) and with eventual extension of time limits therefor. The public prosecutor is entitled to decide on initiation of criminal prosecution, despite the fact that generally in most cases this is done by the Police authority, who has this statutory power.

In the course of shortened pre-trial proceedings, i.e. proceedings where the maximum penalty does not exceed 5 years and the suspect was apprehended directly in the course of commission of the act or immediately thereafter or if it can be expected that the suspect will be put on trial within 14 day at the latest (one can imagine a thief caught directly during the act), the public prosecutor is entitled to file a motion for punishment to the court (Section 179c (2) of the CPC), on the basis of a report submitted by the Police authority

. If the Police authority does not do so, the public prosecutor will be entitled to adjourn the case, remit it to another authority for disciplinary or other proceedings or proceedings on a misdemeanor, to return the case to the Police authority to take additional actions, or in the event the legal assessment of the deed has changed to a criminal offense which cannot be handled in shortened pre-trial proceedings, the public prosecutor may hand the case over for initiation of criminal prosecution. After assessment of the circumstances of the case, the public prosecutor is entitled to extend the time period for concluding pre-trial proceedings, order the police authority to initiate criminal prosecution, eventually to hand the case over to the authority competent to conduct investigation.

By filing an indictment (or a motion for punishment) the public prosecutor gives an incentive to the court to commence trial proceedings, in the course of which the public prosecutor advocates the indictment (or motion for punishment). The public prosecutor is obliged to attend the main trial, at the beginning of which he recites the indictment and in the end he delivers his final statement. He is entitled, with on his own initiative or upon a request of the presiding judge, to obtain other evidence to support the indictment, which has not been obtained or produced yet, he may propose producing the necessary evidence that has not been proposed in the indictment, and to produce this evidence in trial with a consent of the presiding judge.

Recently the public prosecutor has been entrusted with significant powers within the framework of negotiating agreements on guilt and punishment. The public prosecutor is the sole authority involved in criminal proceedings authorized to initiate the negotiation, either upon a petition of the accused person, or without such petition. Subsequently he participates in the whole negotiation process and submits the agreement to the court for approval.

The public prosecutor is entitled to **file a complaint** against each resolution of court, for the benefit and also to the detriment of the person concerned. He may do so against the will of any of the persons entitled to file such complaint.

The public prosecutor is entitled to **file an appeal** against a judgment for the reason wrongness of any statement contained therein. He may file the appeal either for the benefit or to the detriment of the defendant. In case the public prosecutor is not in the position of appellant, he is always entitled to comment on the appeal in public session of court and to make proposals for producing evidence.

Competence to file an extraordinary appeal pertains to the Prosecutor General, he may do so on his own initiative or upon a petition of a Regional or High Public Prosecutor.

Furthermore, the public prosecutor is entitled to **file a motion for a new trial both for the benefit and to the detriment of the accused person**

In proceedings involving minors the public prosecutor has an obligation to be present at all times not only in main trial, but also in public sessions (Section 234 (2) of the CPC, Section 64 (2) of the Act no. 218/2003 Coll. on Juvenile Justice). Proceedings against a fugitive may be initiated by the court also on the basis of a petition of the public prosecutor, which may be filed as soon as in the indictment, but also later after the indictment is filed (Section 305 of the CPC).

In proceedings before a sole judge, i.e. in simplified proceedings in cases, in which shortened pre-trial proceeding was conducted, the criminal prosecution is initiated as late as by service of the motion for punishment of the public prosecutor to the court. After the decision on refusing the motion for punishment becomes final and effective, and if the conditions for conducting simplified proceedings are not met, the matter is remitted to pre-trial proceedings and the public prosecutor will order conducting an investigation. In the course of main trial in simplified proceedings, reading official records of explanations provided by persons and on the performance of other steps is conditioned also by the consent of the public prosecutor.

Deciding on procedural divergence in pre-trial proceedings pertains in the exclusive decision-making power of the public prosecutor. In case the statutory conditions are met, the public prosecutor may decide in pre-trial proceedings, with a consent of the accused person, on conditional discontinuation of criminal prosecution (Section 307 of the CPC) and on the approval of settlement (Section 309 of the CPC). In enforcement proceedings the public prosecutor proposes changes in the manner of serving the sentence of imprisonment, conditional release from imprisonment, waiver of protective treatment and release from protective treatment or its termination.

The public prosecutor has a variety of powers within the framework of legal cooperation with foreign countries.

Competence of the Public Prosecutor's Office in non-criminal area

Article 80 of the Constitution of the Czech Republic does not preclude statutory regulation that would entrust the Public Prosecutor's Office with powers to protect public interest in proceedings conducted before courts and other authorities in non-criminal area, in addition to the priority representation of the state in criminal matters. The basis of operation of the Public Prosecutor's Office in other than criminal proceedings is Section 4 (1) (b) of the Act on Public Prosecutor's Office. The scope, conditions and manner of such operation are stipulated in various laws. The non-criminal competence of the Public Prosecutor's Office is stipulated in two forms:

- one is participation of the Public Prosecution in non-criminal proceedings before a court on the basis of its own motion for initiation of proceedings or on the basis of entering proceedings initiated by a motion of another petitioner or *ex officio* by the court, and only in cases provided for by the law (Section 5 of the Act on Public Prosecutor's Office),

- second is supervision of the Public Prosecution over compliance with the law in places, where personal freedom of persons is being restricted according to statutory provisions, and in the extent and under the conditions and in the manner stipulated by the Act on Public Prosecutor's Office (Section 4 (1) (b)).

The Public Prosecutor's Office is entitled to file a motion to initiate proceedings in matters of

a) judicial care of minors [Section 8 (2) in matters referred to in sub-section (1) (b) of the Act no. 292/2013 Coll.], in cases of

- imposing a special measure of child care,
- institutional care,
- suspension, limitation or deprivation of parental responsibilities or performance thereof,
- determination of date of birth.

b) protection against domestic violence [Section 8 (2) in matters referred to in sub-section 1 (c) of the Act no. 292/2013 Coll.],

c) legal capacity [§ Section 8 (2) in matters referred to in sub-section (1) (d) of the Act no. 292/2013 Coll.],

d) declaration of death [Section 8 (2) in matters referred to in sub-section (1) (e) of the Act no. 292/2013 Coll.],

e) declaration of admissibility of admitting or keeping a person in a medical treatment facility [Section 8 (2) in matters referred to in sub-section (1) (f) of the Act no. 292/2013 Coll.],

f) declaration of inadmissibility of keeping a person in a social services facility [Section 8 (2) in matters referred to in sub-section (1) (g) of the Act no. 292/2013 Coll.],

g) determination of illegality of a strike or lock-out (Section 21 and 29 of the Act no. 2/1991 Coll.),

h) determination of invalidity of an ownership transfer contract in cases, where the provisions limiting the freedom of the parties were not complied with in the course of making and entering into the contract (Section 42 of the Act no. 283/1993 Coll., as amended),

i) imposing a measure according to Section 90 of the Act no. 218/2003 Coll.,

j) supervision over compliance with applicable legislation in case of execution of institutional care or protective care, as far as a petition for

- cancelling the imposed institutional care,

- cancelling the imposed protective care,

- imposing protective treatment to children placed in a facility on the basis of an institutional treatment order [Section 39 (2) (e) of the Act no. 109/2002 Coll.],

k) winding up a company with liquidation (Section 93 of the Act no. 90/2012 Coll.).

The Prosecutor General is entitled to file a motion:

- **against a decision of an administrative authority, if there is a serious public interest in doing so (Section 66 (2) of the Administrative Judicial Procedure Code).**

The Public Prosecutor's Office is entitled to file an action for nullity of a court decision according to Section 231 (2) of the Civil Procedure Code in cases they may enter into or where they may file a motion for initiation of the proceedings. If the Public Prosecutor's Office has not entered the proceedings, in which the contested decision was issued, it may file the action within the time limit given to the parties of the proceedings, if it enters the proceeding at the same time. This action is deemed to be an extraordinary legal remedy.

The Public Prosecutor's Office is entitled to enter ongoing proceedings pursuant to Section 8 (1) of the Act on Special Trial Proceedings

a) in adoption matters, namely into the part of proceedings, where it is decided, whether the consent of parents with the adoption is necessary,

b) in matters of judicial care for minors, as far as

- imposition of a special measure concerning the upbringing of the child is concerned,
- institutional care,
- suspension, limitation or deprivation of parental responsibilities or execution thereof,
- determination of the date of birth,

are concerned

c) matters of protection against domestic violence,

d) legal capacity,

e) declaration of death,

f) determination of the date of death,

g) matters of adjudicating

- admissibility of accepting or keeping a person in a medical care facility, or

- inadmissibility of keeping a person in a social services facility,

h) replacement of certain lost or destroyed legal documents,

i) certain issues concerning legal entities (Section 85 and following of the Act on Special Trial Proceedings).

According to Section 7c of the Act no. 182/2006 Coll., on Insolvency and Manner of its

Resolution, as amended by the Act no. 294/2013 Coll., the Public Prosecutor's Office is entitled to enter the insolvency proceedings, including moratorium and associated incidental disputes. According to Section 69 of the Act no. 182/2006 Coll., as amended by the Act no. 294/2013 Coll., the Public Prosecutor's Office that has entered insolvency proceedings, and incidental dispute or moratorium, is entitled to file, in addition to regular legal remedy (appeal), also an extraordinary legal remedy (extraordinary appeal), if such a remedy is admissible against the decision of the insolvency court.

According to Section 77 of the Act no. 304/2013 Coll., on Public records of Legal Entities and Natural Persons, the Public Prosecutor's Office is entitled to enter proceedings in matters of public records (i.e. Record of Associations, Record of Foundations, Record of Institutions, Record of Home Owner's Associations, Commercial Record and Record of Publicly Beneficial Companies).

The Prosecutor General's Office may enter pending proceedings at the Supreme Court on recognition of final and effective foreign decisions in matters of marriage divorce, statutory marital separation, declaration of marriage as null and void and determination whether a marriage exists or not, if at least one of the parties to the proceedings was a citizen of the Czech Republic (Section 51 (2) of the Act no. 91/2012 Coll.).

In case a civil proceeding is initiated, in cases provided for by the law, by a motion of the Public Prosecutor's Office, then the Public Prosecutor's Office is a party to these proceedings as the petitioner. Procedural rights and obligations of the Public Prosecutor's Office arise from its position the proceedings, which is a result of exercising its procedural competence to file a motion to initiate the proceedings.

If the Public Prosecutor's Office has entered, in cases provided for by the law, into proceedings initiated by another petitioner or *ex officio* by the court, then it is entitled to take all steps a party to the proceedings may take, with the exception of steps that may be taken solely by a party to the legal relationship in question. Consequently, the Public Prosecutor's Office that participates in non-criminal trial proceedings by virtue of entering into such proceedings, is not entitled to take steps associated with subjective substantive-law right of a party to a substantive-law relationship. The competences of the Public Prosecutor's Office are limited by the fact that they may not dispose with the subject matter of the proceedings. The Public Prosecutor's Office is not entitled to change the motion for initiation of the proceedings or to withdraw it, if it did not file it. The Public Prosecutor's Office is not entitled to agree on a settlement (Section 99 (1) of the Civil Procedure Code), to recognize a claim (Section 153a of the Civil Procedure Code). It is also not competent to take other substantive-law steps within the proceedings, e.g. to waive a claim, to raise a compensation objection, to argue a claim has been statute-barred or to raise an objection of relative invalidity. The principle that the Public Prosecutor's Office is entitled to take all procedural steps any party to the proceedings can take, with the exception of steps that may be taken only by a party to a legal relationship, should be understood also in view of the time period, in which the Public Prosecutor's Office enters the proceedings. This is why the Public Prosecutor's Office is entitled only to such procedural steps that may be taken in time it entered the proceedings and in subsequent proceedings, not to steps that could have been taken only in the phase before it entered the proceedings. Without an express statutory legitimation the Public Prosecutor's Office is not entitled to lodge an extraordinary legal remedy.

The Public Prosecutor's Office does not represent any party in the proceedings it has entered and it is not dependent on their procedural status. In case the Public Prosecutor's Office has entered proceedings that ended by a final and effective meritorious decision, than in this moment its participation in the proceedings is concluded. The Public Prosecutor's Office will leave the proceedings if it finds that the public interest no longer requires its further participation in the trial proceedings. The Public Prosecutor's Office will enter a pending proceeding at the court of the first instance or an appeal court if it believes that its participation is substantiated by a public interest. It may enter the proceedings simultaneously with lodging an appeal, if the period for filing an appeal has not expired to all parties to the proceedings.

The Public Prosecutor's Office exercises supervision over compliance with the law in places, where custody, sentence of imprisonment, protective or institutional treatment or security detention is being executed, in the extent and under the conditions stipulated by the law. A special legal enactment that defines in more detail the extent and conditions of exercising the supervision, is the Act no. 293/1993 Coll., on the Execution of Custody, Act no. 109/2002 Coll., o. the Execution of Institutional or Protective treatment in School Facilities, and the Act no. 129/2008 Coll., on the Execution of Security Detention and on the Amendment of Certain Associated Acts.