

The Supreme Court of the Czech Republic

International Department

Liability of Judges – Questionnaire

Network of the Presidents of the Supreme Judicial Courts of the
European Union

1 – Criminal liability

a) Do judges benefit from immunity in criminal matters?

Under the Article 76 paragraph 1 of the Act No. 6/2002 Collection of Law, on Courts and Judges, as amended, “judge can be prosecuted or taken into custody for acts committed when exercising judicial office or in connection with it only with the approval of the President of Republic,” therefore the prosecution of judges is not absolutely excluded. In this case, the interpretation is rather restrictive, especially on crimes committed during the judicial service of a judge. Examples when the President rejected the proposal of prosecution or taking the judge into the custody are not known from the practice.

b) Do judges benefit from privilege of jurisdiction in criminal matters?

Penal immunity protects judges as representatives of judiciary from the wilfulness of executive power. Judges do not have delict immunity. They are only entitled to declare their request not to be prosecuted by the administrative body but by disciplinary court.

c) Do specific criminal rules for judges (corruption, misuse of power...) exist?

There are no specific criminal rules for the judges. These exist generally only for state officials. Under the Criminal Code, state official is especially elected official or another responsible employee of state administration and self-administration, court or other state body or member of armed forces or security service, executor exercising his working activities, drawing the executor reports and exercising

activities on the authority of a court according to special regulation on condition that he participates in fulfilling tasks of society and state and doing so uses the authority entrusted to him within the responsibility for fulfilling these tasks.

There are 2 types of crimes of state officials. In the first group included crimes are as follows: abuse of authority, obstructing a state official negligently, bribe taking, corruption and indirect bribing.

On the contrary, state officials enjoy criminal law protection against attacks conducted against state authority or against themselves. The second group of crimes of state officials contains attacks conducted against state authority and against state official.

Finally the court as an institution enjoys the protection on two facts of the offence: interference with judiciary independence and contempt of court.

2 – Civil liability

a) How many claims are lodged per annum on average? Does statistical data about the success of these claims exist?

The Ministry of Justice of the Czech Republic keeps statistical data concerning civil liability actions.

b) Are claims on civil liability brought against the State or directly against the judge?

This data is not known from the practice of the Supreme Court of the Czech Republic. These claims brought against the State are addressed to the court together with the extraordinary appeal cases.

c) In the case of claims brought against the State:

1. On what terms the State is liable? In particular, is it necessary to prove denial of justice and/or wrong conduct? In the last case, what are the appraisal criterions of wrong conduct?

The state is liable under the Act No. 82/1998 LD., on Liability for damage caused by incorrect decision or wrongful official proceedings when exercising state authority, which has come into force since May 15, 1998

(hereinafter only “the Act”). Until then the Act No. 58/1969 LD., on Liability for damage caused by decision or wrongful proceedings, which had come into force in July 1, 1969, was valid.

On conditions imposed by the above mentioned Act, the state is liable for damages caused by legal decisions taken in civil, administrative and criminal law proceedings as well as for damages caused by wrongful official proceedings. For last about 15 years there has been no example of denial of justice or wrongful conduct of a judge as a ground for the liability of the state for damages in the decision making practice of the Supreme Court of the Czech Republic. Besides actions for damages caused by wrongful proceedings, order of arrest or decision on penalty or protective measures; delays in legal proceedings (first instance and execution proceedings) are mostly the grounds for the state liability.

2. *Can the State recourse against the judge in case of wrong conduct? Who can lodge this recourse and before which court or institution? Does the State resort to the recourse in practice?*

According to the Act, if the state compensates the damage caused by incorrect decision or wrongful official proceedings, it can reclaim the compensation from state officials on condition that they caused the damage by culpable breaching their duty up to the value not exceeding the share of particular person’s infliction on incurred damage. The state is not entitled to exercise this right if the incorrect decision was taken by a state authority, which followed wrongful legal opinion of a respective authority, which had annulled the original prime decision.

Whether the state reclaims the compensation from judges rightfully and successfully could be answered by the Ministry of Justice. Such a situation hasn’t appeared in the practice of the Supreme Court of the Czech Republic yet. The claim of recourse would be the subject of civil law proceedings.

d) In the case of claims directly brought against judges:

1. *Which court or other institution has jurisdiction?*
2. *Are the common rules of civil liability applied? Or is it necessary to prove wrong conduct? In that case what are the appraisal criterions of wrong conduct?*

These examples aren't known from the practice.

e) *Does specific liability insurance for judges exist?*

These examples aren't known from the practice.

3 – Disciplinary responsibility

a) *How many claims on disciplinary responsibility are brought per annum on average? How many of these claims lead to condemnation?*

The Ministry of Justice of the Czech Republic keeps statistical data concerning disciplinary proceedings.

b) *Please describe the disciplinary responsibility regime:*

1. *Who can bring actions before the disciplinary court?*

The Minister of Justice is competent to initiate disciplinary proceedings against any judge. The President of the Supreme Court is competent to initiate disciplinary proceedings against any judge of this court or lower court acting in matters within the jurisdiction of the courts where the Supreme Court can act as the highest judicial authority.

President of the Supreme Administrative Court is competent to initiate disciplinary proceedings against any judge of this court or lower court acting in matters within the jurisdiction of the courts where the Supreme Administrative Court can act as the highest judicial authority.

The President of High Court is competent to initiate disciplinary proceedings against any judge of respective High Court and against any judge of lower court, the President of Regional Court is competent to initiate disciplinary proceedings against any judge of respective Regional Court and against any judge of lower court and finally the President of Local Court is competent to initiate disciplinary proceedings against any judge of respective Local Court and against any judge of other Local Court as well.

2. *Who is in charge of disciplinary prosecution?*

Disciplinary court is responsible for disciplinary proceedings.

3. *Who are the members of the disciplinary court?*

Disciplinary courts act and decide in senates composed of presiding judge and four judges. The President of respective court together with judicial council of this disciplinary court appoints presiding judge, his deputy, members of the senate and five substitutes.

As a disciplinary court judge can only be appointed a judge performing judicial service for at least 7 years and must be impeccable.

The function of a judge of a disciplinary court is incompatible with function of the President of the court or his deputy.

4. *Do legal remedies exist and if so before which appellate body?*

It is possible to appeal against the decision of the disciplinary court to the disciplinary court acting as an appeal court (The Supreme Court of the Czech Republic) within 15 day period starting from the day when the decision of the first instance disciplinary court was delivered to the judge. The appeal has suspensory effect.

5. *Are sessions of the disciplinary court public? Are the rulings published?*

Disciplinary proceedings are held in public and the decisions are published on the Internet.

c) *Please describe the criteria of disciplinary misconduct:*

1. *Do the deontology duties of judges only concern their occupational activity or also their private life?*

Moral credit of a judge concerns his or hers private life as well.

2. *Is it possible to take disciplinary action against judges because of contents or consequences of their rulings?*

It is not possible to take disciplinary action against the judge's decision or its circumstances.

d) What sanctions are provided by law? Which of these sanctions are imposed most frequently in practice?

Under the law, judge can be punished according to the seriousness of disciplinary misconduct by following sanctions:

- warning
- wage-cut up to 25 % for the period of six months maximum and in case of repeated disciplinary misconduct committed before the obliteration of the primary disciplinary misconduct for the period of one year maximum
- suspension from office of the president of senate
- suspension from office of the judge.

The institute of wage-cut is used the most frequently.

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