

APPENDIX

283/1993 Sb.

LAW

of November 9th 1993

on public (in original version of the law is an expression „state“) prosecution
Amendment: 261/1994 Sb.

Parliament has adopted a resolution on this law of the Czech Republic:

PART ONE

General provisions

§ 1

(1) State prosecution is established as a system of state offices, appointed to represent the state in cases stipulated by the law.

(2) This law modifies the position, competence, internal relationships, organisation and administration of state prosecution; further modifies in particular the position of state prosecutions as individuals, through whom the state prosecution performs its activity, the position of legal expectants and the competence of the Ministry of Justice.

§ 2

(1) The state prosecution, as the representative of the interests of the state is obliged to make use of the means provided to it by the law during performance of its activity.

(2) The state prosecution performs its activity in such a way that its operations are in accordance with the law, quick and effective.

§ 3

Matters entrusted to the competence of the state prosecution may be performed by it alone; another body or individual may not substitute for its activity or represent it in it.

PART TWO

The competence of the state prosecution

§ 4

(1) The state prosecution brings forward indictments in the name of the state in criminal prosecutions and fulfils the obligations to which the code of

criminal procedure 1) commits it in connection with this. It will not bring forward an indictment only in cases stipulated by the code of criminal procedure.

(2) Further competence of the state prosecution in criminal prosecutions is stipulated by the code of criminal procedure.

1) Law no. 141/1961 Sb., on judicial criminal prosecution (code of criminal procedure), in the wording of later regulations.

§ 5

(1) The state prosecution is authorized to put forward a proposal for instituting civic judicial proceedings or enter into civic judicial proceedings already instituted only in cases stipulated by law.

(2) The trial position, authorization and obligations of the state prosecution, which put forward the proposal for instituting proceedings or entered into proceedings, are stipulated by the civic judicial order.

PART THREE

The system of state prosecution

§ 6

(1) The system of state prosecution is made up of the Supreme State Prosecution, high state prosecutions, regional state prosecutions and district state prosecutions; in times of compulsory state military service also higher and lower state field prosecutions.

(2) On the territory of the capital city Prague the municipal state prosecution operates with the competence of a regional state prosecution and the area state prosecutions with the competence of district state prosecutions. On the territory of the city Brno the municipal state prosecution operates with the competence of a district state prosecution.

§ 7

(1) The headquarters of state prosecutions and the area of their territorial competence concur with the headquarters and areas of the courts.

(2) The Ministry of Justice may stipulate exceptions with regard to the headquarters and territorial areas of state prosecutions and establish their subsidiaries by legal regulations.

§ 8

(1) A state prosecution is competent to represent the state in the court in which that state prosecution operates, unless otherwise stipulated by a special law.

(2) Disputes between state prosecutions about competence are decided by the state prosecution most closely higher than both of them.

(3) A higher state prosecution decides on ordering a matter to another, lower state prosecution, if the head state prosecutor is disqualified from dealing with the matter by regulations regulating judicial proceedings.

(4) Higher state prosecutions are competent to decide on legal remedies against the decisions of immediately lower state prosecutions.

§ 9

(1) Higher state prosecutions perform supervision over the activities the of lower state prosecutions in their area; the Supreme State Prosecution over high state prosecutions, the high state prosecutions over regional state prosecutions and the regional state prosecutions over district state prosecutions.

(2) On performance of supervision the higher state prosecutions assess the activity of lower state prosecutions in particular in relation to observation of legal regulations. Every year the lower state prosecutions submit a report on their activity during the expired year to the higher state prosecution; the higher state prosecution may demand a special report at any time.

(3) The Supreme State Prosecutor is authorised to issue an instruction of a general nature for unification and direction of the activity of state prosecution.

§ 10

A higher state prosecution is authorised to give an instruction on a matter to the immediately lower state prosecution in its area. If the lower state prosecution refuses to fulfil the instruction with reference to the fact that it is inconsistent with the law, then the higher state prosecution is authorised to withdraw the matter from the lower state prosecution and act on the matter itself. This also applies in cases where the lower state prosecution is inactive.

§ 11

(1) Leading each state prosecution is its head, named in accordance with the name of the state prosecution as Supreme State Prosecutor, high state prosecutor, regional state prosecutor, district state prosecutor, area state prosecutor or municipal state prosecutor. The head state prosecuttor is represented by his deputy or deputies, in an order determined by the head state prosecutor.

(2) The head or a state prosecution authorised by him acts for the state prosecution.

(3) State prosecutors, acting in individual state prosecutions, are obliged to follow orders from the head of the state prosecution, in which they perform their function, with the exception of orders, which would be in contradiction of the law.

§ 12

(1) The Supreme State Prosecutor is officially superior to the high state prosecutors, the high state prosecutors are officially superior to the regional state prosecutors and the regional state prosecutors are officially superior to the district state prosecutors.

(2) Heads of state prosecutions are officially superior to the state prosecutors working in them.

PART FOUR

The competence of the Minister of Justice

§ 13

(1) The Minister of Justice is officially superior to the Supreme State Prosecutors and supervises the activities of the Supreme State Prosecution. During this supervision he assesses the activity of the Supreme State Prosecution in particular in relation to observation of legal regulations. The Supreme State Prosecution submits a report every year to the Minister of Justice about the activity of the state prosecution in the expired year; the Minister of Justice may demand a special report at any time.

(2) Administration of the state prosecution is conducted by the Ministry of Justice.

PART FIVE

Legal measures guaranteeing the activity of state prosecution

§ 14

Bodies of public administration are obliged to comply with a request from a state prosecution, made within the limits of his competence, without delay, in particular to lend papers and documents and provide necessary explanation.

§ 15

State prosecutors have the right within the limits of the competence of the state prosecution to consult judicial papers, take copies and extracts from them and also demand their loan. The loan of papers cannot be refused, unless it is prevented by serious reasons.

§ 16

(1) Everyone is obliged to appear at the state prosecution on a summons and give explanation necessary to the fulfilment of its tasks.

(2) Giving an explanation can be refused by an individual, who would, by giving one, put himself or a person close to him in danger of criminal prosecution. An explanation can also be refused by a individual, who by giving one would violate a silence imposed or recognised by the state, unless this has been lifted.

(3) An individual appearing on a summons has the right to compensation of expenses necessary and to compensation of lost earnings (hereafter just compensation). Compensation is provided by the state. An individual appearing only in his own interests or for his unlawful acts is not entitled to compensation.

(4) The right to compensation in accordance with paragraph 3 expires if it is not exercised within seven days of the day on which the individual appeared on summons in accordance with paragraph 1; the individual must be notified of this.

(5) If an individual does not appear at the state prosecution without justification or repeatedly without good reason, he can be brought by a police body on the order of the prosecution. A fine of up to 5000 CZK can also be imposed on him; a legal remedy to the higher state prosecution against the decision to impose the fine is admissible within 15 days. The proceedings are conducted in accordance with the administrative code. 2)

2) Law no. 71/1967 Sb., on administrative proceedings (the administrative code).

PART SIX

Appointment of state prosecutors and their working relationship

§ 17

(1) As a state prosecutor can be appointed a citizen of the Czech Republic who is qualified for legal operations, of good character, at least 25 years old on the day of his appointment, with university legal education, who successfully passed his final examinations and who agrees with his appointment to the post and with his assignment to a particular state prosecution.

(2) The professional judicial examination, the judgeship examination, the unified judgeship and lawyership examination, the military legal examination and the state prosecutor examination taken before this law came into effect have the same force as a final examination in accordance with this law.

(3) The Minister of Justice will decide on recognition of other examinations as final examinations in accordance with this law.

§ 18

(1) The Minister of Justice will appoint the state prosecutor for an unlimited period at the proposal of the Supreme State Prosecutor.

(2) The working relationship of the state prosecutor is based on his appointment and arises with passing his pledge into the hands of the Minister of Justice. Part of the appointment is his assignment to a particular state prosecution.

(3) The pledge of the state prosecutor reads: "I pledge my loyalty to the Czech Republic, in performing my duties I will observe the constitution, laws, other legal regulations and will perform my obligations impartially in accordance with them and will maintain silence on matters of official secrets."

(4) Refusal to make the pledge, or making the pledge with reservations results in the working relationship being terminated.

§ 19

(1) The Minister of Justice assigns the state prosecutor to service in a particular state prosecution on the basis of his prior agreement.

(2) The state prosecutor may request a change to his posting. The Minister of Justice will make a decision on his request.

(3) The state prosecutor may be assigned to service in another state prosecution without his agreement if this is required by a legal change to the system of state prosecution or the area of an individual authority.

§ 20

(1) A state prosecutor may, at his agreement, be temporarily assigned to another state prosecution or to the Ministry of Justice to ensure the tasks of the state prosecution. Part of the decision is stipulation of the term of this temporary assignment.

(2) The head employee jointly superior to both state prosecutions makes the decision on temporary assignment, on temporary assignment to the Ministry of Justice the Minister of Justice makes the decision.

§ 21

The working relationship of a state prosecutor ends

- a) on the day of legal force of a verdict sentencing him for a criminal act committed premeditatedly,
- b) on the day of legal force of a verdict exempting him from competence for legal operations or limiting his competence for legal transactions,
- c) on the day when the state prosecutor loses state citizenship of the Czech Republic, on the day he takes the pledge of a member of parliament or senator or of a member of a body of territorial autonomy, on the day of his being

- appointed as a judge or on the day of his admission to a post in the public administration,
- d) on the day of legal force of a dismissal decision at disciplinary proceedings,
 - e) by resigning his post; the working relationship is terminated on expiry on three calendar months following the month in which the written declaration of his resignation is submitted to the Ministry of Justice, unless another agreement has been reached,
 - f) by agreement,
 - g) by the December 31st of the calendar year in which he reached 65 years old.

§ 22

(1) The Supreme State Prosecutor is appointed to his post and removed by the government at the proposal of the Minister of Justice.

(2) Other heads of state prosecutions are appointed and removed by the Minister of Justice.

(3) The working relationship does not end on removal in accordance with paragraphs 1 and 2.

§ 23

(1) The Work Code, 3) applies to the working-legal relationship of state prosecutors, unless this law stipulates otherwise.

(2) Salary conditions of state prosecutors and legal expectants are regulated by the law.

3) Law no. 65/1965 Sb., the Work Code, in the wording of the later regulations.

PART SEVEN The position of state prosecutors

§ 24

(1) During the performance of their positions state prosecutors must proceed responsibly, they must respect and protect human dignity and human rights a freedoms; they must avoid anything which would raise doubts about their objectivity during protection of state interests.

(2) The performance of any other gainful employment is incompatible with holding the position of state prosecutor, with the exception of administration of his own assets and research, educational, promotional or artistic activity, under the assumption that they are compatible with the demands given in paragraph 1.

§ 25

(1) State prosecutors are obliged to remain silent about matters which they found out about in connection with performance of their position, this even after the working relationship has finished.

(2) Only the Minister of Justice can relieve the state prosecutor of this obligation to silence.

§ 26

The state is responsible for any damage caused by an unlawful decision or improper administrative procedure by the state prosecution. A Special law 4) stipulates when, and to what degree the state can reclaim these damages from the state prosecutor.

4) Law no. 58/1969 Sb., on responsibility for damages caused by a decision of a state body or its improper administrative procedure.

PART EIGHT

The disciplinary responsibility of state prosecutors

§ 27

(1) The state prosecutor is disciplinarily responsible for disciplinary misconduct.

(2) Disciplinary misconduct is culpable violation of the official duties of the state prosecutor or behaviour which is contradictory with his position and duties in accordance with § 24 par. 1.

§ 28

(1) The disciplinary senate, which is composed of a chairman and two members appointed by the Minister of Justice from the state prosecutors, decides on disciplinary misconduct.

(2) As soon as a member of the disciplinary senate finds out about the facts, for which he is suspended, he will inform the Minister of Justice without delay. This can also be invoked by the state prosecutor, against whom the proposal for instituting disciplinary proceedings was brought, likewise the body, who submitted the proposal. An objection must be applied without delay, as soon as the cause is discovered. If the Minister of Justice finds out he has cause for suspension he appoints a new member or chairman to the disciplinary senate.

§ 29

Authorised to put forward a proposal for instituting disciplinary proceedings are

- a) the Minister of Justice and the Supreme State Prosecutor against any state prosecutor,
- b) a high state prosecutor against a state prosecutor of the high state prosecution, against a state prosecutor of the a regional state prosecution and a state prosecutor of a district state prosecution in his area.
- c) a regional state prosecutor against a state prosecutor of the regional state prosecution and a state prosecutor of the district state prosecution in his area.
- d) a district state prosecutor against a state prosecutor of the district state prosecution.

§ 30

(1) Against the decision of the disciplinary senate on the proposal for imposing disciplinary measures, unless stated otherwise further on, the plaintiff and the state prosecutor can present a legal remedy within 15 days of the day of delivery of the decision.

(2) The Supreme court rules on the legal remedy. 5)

5) § 2501 and onwards of the law no. 99/1963 Sb., the civil judicial code, in the wording of later regulations (complete wording no. 240/1993 Sb.).

§ 31

(1) On the disciplinary responsibility of state prosecutors is similarly used law no. 412/1991 Sb., on the disciplinary responsibility of judges, in the wording of the law of Czech National Council no. 22/1993 Sb., with the exception of provisions § 1, § 2 para. 1, § 3 para. 3 letters a), b), § 5, § 6, para. 2, para. 4 final sentence, § 7 para. 2 and 3, § 8, § 16 para. 5, para. 7 final sentence, § 18, 19, 22, 23, 25 and 26.

(2) Where in the law stated in paragraph 1 the court is mentioned, this means the state prosecution, by the chairman of the court is meant the head state prosecutor and by the judge is meant the state prosecutor.

§ 32

(1) A state prosecutor who is being prosecuted or against whom are

brought disciplinary proceedings for reasons for which he could be dismissed at the disciplinary proceedings may be temporarily suspended from performance of his duties by the Minister of Justice.

(2) For the term of his suspension from performance of his duties the state prosecutor is due 50% of his salary in accordance with the salary regulation.

The personal bonus and bonus for management are not due to the state prosecutor.

(3) If the circumstances which lead to suspension from performance of duties are terminated the Minister of Justice lifts it. If the criminal prosecution of the state prosecutor ended in an abatement or if the state prosecutor was acquitted by the court of the criminal act or if the working relationship of the state prosecutor was not ended on the basis of the disciplinary proceedings in accordance with § 21 letter d) then the unpaid income is paid.

PART NINE

Legal expectants and expectant practice

§ 33

(1) A legal expectant may be a citizen of the Czech Republic of good character, who is qualified for legal operations and has a university legal education. The legal expectant performs his expectant practice for the purposes of professional preparation for performance of the activity of a state prosecutor.

(2) Expectant practice is performed in a working relationship for a specified period. Expectant practice is for three years; the Minister of Justice may allow exceptions in individual cases, on which shortening of expectant practice may not exceed two years. The Minister of Justice may credit expectant or similar practice in accordance with a special law.

(3) As part of expectant practice the expectant is obliged to take a final examination, which he may retake once if he fails to pass it the first time.

§ 34

(1) Legal expectants are qualified to perform simple tasks of the state prosecutor under his supervision. Details on the tasks performed by legal expectants are stipulated by the Ministry of Justice by legal regulations.

(2) Provision § 25 is applied similarly for the obligation of the legal expectant to maintain silence.

PART TEN

Temporary and final arrangements

§ 35

(1) State prosecutors and investigators of the office of state prosecution, including the military prosecution, appointed to positions in accordance with

present regulations are to be considered as state prosecutors appointed in accordance with this law for the period given in paragraphs 3, 4 and 5 from the day this law comes into effect and on this day their previous working or service relationship ends. This does not apply if disagreement with this process is shown within 15 days of this law coming into effect. State prosecutors, whose working relationship ends in accordance with the previous sentence, are entitled to severance or departure pay in accordance with a special law. (6)

(2) From the day of this law coming into effect the state prosecutors and investigators of the office of state prosecution given in paragraph 1 are considered to be assigned

- a) to the Supreme State Prosecution, if they performed the function of a state prosecutor or investigator of the office of state prosecution of the Attorney General
- b) to the regional state prosecution in the area of the regional office of state prosecution in which they performed the function of state prosecutor or investigator of the office of state prosecution.
- c) to the district state prosecution in the area of the district office of state prosecution in which they performed the function of state prosecutor or investigator of the office of state prosecution.

(3) The Minister of Justice may, within a period of three months of this law coming into effect, decide on a different assignment than that in paragraph 2; if the state prosecutor or investigator of the office of state prosecution does not agree with this assignment then his working relationship ends on expiry of this period. State prosecutors, whose working relationship ends in this way, are entitled to severance or departure pay in accordance with a special law.6)

(4) The Minister of Justice will decide on the assignment of state prosecutors and investigators of the office of the military prosecution to a state prosecution within 30 days of this law coming into effect. If the state prosecutor or investigator of the office of military prosecution does not agree with this assignment then his working relationship ends on expiry of this period.

(5) The working relationship established in accordance with paragraph 1 is a working relationship for a specified period to June 30 1994; this does not affect the provisions of paragraphs 3 and 4. It is however extended to an unspecified period if the Minister of Justice appoints a state prosecutor in accordance with this law in the course its duration. State prosecutors, whose working relationship ended on expiry of the period in accordance with the first sentence are entitled to severance or departure pay in accordance with a special law.6)

(6) Other employees, who were in a working relationship with bodies of the office of state prosecution to the day of this law coming into effect, become employees of state prosecutions on the day of this law coming into effect, in positions corresponding to their previous appointment, in the state prosecutions whose territorial area corresponds to that of the office of state prosecution, in which they worked, and their previous working relationship is ended. This does not

apply if they express disagreement with this process within 15 days of this law coming into effect.

6) Law no. 195/1991 Sb., on severance pay provided on termination of the working relationship, in the wording of the law of the Czech National Council no. 37/1993 Sb.

Law no. 76/1959 Sb., on certain military service relationships, in the wording of law no. 226/1992 Sb.

§ 36

If he fulfils the conditions given in § 17 para. 1 a citizen who has full university legal education and has demonstrated his qualification for performance of the position of state prosecutor by at least six-year legal practice or research or educational activity in the legal field and by passing the final examination, may be appointed state prosecutor up to December 31 1996.

§ 37

Until the law regulating salary conditions of state prosecutors and legal expectants comes into force the salary conditions of state prosecutors and legal expectants will be governed by order of the government of the Czech Republic no. 254/1992 Sb., on salary conditions of state prosecutors, investigators of the office of state prosecution and legal expectants, in the wording of the order of the government of the Czech Republic no. 442/1992 Sb. and government order no. 145/1993 Sb.

§ 38

Tangible property and property rights, including liabilities associated with this property, and other rights and liabilities pass on the day of this law coming in effect from the office of the state prosecution to the Ministry of Justice. This also applies to property in the hands of the office of military prosecution and the rights and obligations associated with it, unless the Ministry of Justice and the Ministry of Defence decide otherwise.

§ 39

The high state prosecution in Olomouc begins its activity on the day when the high court in Olomouc begins its activity; until this time its competence is performed by the high state prosecution in Prague.

§ 40

The Ministry of Justice is authorized to issue a rule of procedure of the state prosecution by public notice.

§ 41

Where other regulations mention the office of state prosecution, state prosecutors and investigators of the office of former prosecution this is, according to the nature of the matter, understood to mean state prosecution and state prosecutors in accordance with this law.

§ 42

The state prosecution can put forward a proposal to institute civil judicial proceedings on the invalidity of a contract on transfer of ownership in cases where the regulations limiting the freedom of its participants was not respected on its conclusion.

§ 43

If disciplinary proceedings against a state prosecutor or investigator of the office of state prosecution, who has become a state prosecutor in accordance with this law, were instituted and not concluded before this law came into effect, then the disciplinary proceedings are taken over and concluded by the disciplinary senate in accordance with this law.

§ 44

(1) Provisions of laws and other legal regulations on a protest by a state prosecutor and on his notice are not taken into consideration.⁷⁾

(2) The course of periods in accordance with § 17 para. 2 of the law on the office of state prosecution ends on the day of this law coming into effect.⁸⁾

(3) Protests by a state prosecutor submitted before the day this law comes into effect are dealt with in accordance with present regulations, except that the state prosecutor acts in the place of the former state prosecutor.

7) e.g. § 250i para. 2 of law no. 99/1963 Sb., § 69 and § 75 para. 3 of law no. 71/1967 Sb.

8) Law no. 60/1965 Sb., on the office of state prosecution, in the wording of later regulations.

§ 45

Law no. 60/1965 Sb., on the office of state prosecution, in the wording of law no. 71/1967 Sb., of law no. 147/1969 Sb., of law no. 29/1978 Sb., of law no. 196/1988 Sb. and law no. 168/1990 Sb. is repealed.

§ 46

This law comes in effect on January 1 1994.

Uhde in his own hand

Havel in his own hand
Klaus in his own hand