

## **Questionnaire on the independence of judges and lawyers**

### **Czech Republic**

1. There is no such body at the national level; these arrangements are under the responsibility of heads of courts together with the Ministry of Justice. All judges are appointed by the President of the republic for life time period (more exactly till the age of 70 years).

Selection procedure is governed by the Act on courts and judges (Act. No. 6/2002 Coll.) For more details please consult the attached translation. You may find also relevant sections below.

2. NA

3.

#### **a) selection and appointment:**

Section 63

##### **Appointment of Judges**

Judges shall be appointed by the President of the Republic.

Section 60

#### **Preconditions for Office of Judge and Lay Judge**

(1) A citizen of the Czech Republic (hereinafter a “citizen”), who enjoys full legal capacity and has no criminal record may be appointed as a judge or lay judge, provided that his/her experience and moral characteristics guarantee that (s)he will properly exercise his/her office, and that (s)he has reached at least 30 years of age on the day of appointment and agrees with his/her appointment as a judge or lay judge and assignment to a certain court.

(2) The precondition of lack of criminal record pursuant to paragraph 1 above shall not be satisfied by a person who has been finally convicted of a crime, unless (s)he is considered pursuant to a special regulation or a decision of the President of the Republic not to be convicted.

(3) A precondition for appointment as a judge shall also consist in university education acquired by proper completion of studies in a master’s study program in the sphere of law at a university in the Czech Republic and passing of an expert judicial examination.

#### **b) conditions of service:**

Section 67

##### **Assignment of Judges**

(1) After taking the oath, the Minister of Justice shall assign a judge, on the basis of his/her prior consent, for the exercise of office to a certain District Court, unless a special regulation lays down otherwise. In exceptional cases, the Minister of Justice may assign a judge, on the basis of his/her prior consent, for the exercise of office to a Regional, High or Supreme Court, provided that (s)he has performed lawyer’s activities for at least 8 years, for a Regional and High Court, or for at least 10 years, for the Supreme Court, provided that his/her extensive professional knowledge guarantees proper exercise of office at the relevant court.

#### Section 74

(1) The office of judge and lay judge shall be a public office.

(2) The office of judge shall not be compatible with any office or activities stipulated by law. Except for the office of president of a court or vice-president, a judge may not perform any other functions within the state administration. The office of lay judge shall not be compatible with the office of member of the Parliament and with other activities stipulated by law.

#### Section 75

(1) The state shall ensure independence of judges also through their material welfare.

(2) Salary relations of judges shall be regulated by a special regulation.

#### **c) promotion of judges + d) transfer of judges:**

#### Section 71 **Transfer of Judges**

(1) A judge assigned for the exercise of office to a certain court may be transferred with the consent or at request thereof for the exercise of office to some other court.

(2) A judge, who has carried out legal practice for a period of at least 10 years and his/her professional knowledge and experience guarantee proper exercise of office, may be transferred to the Supreme Court.

(3) A judge, who has carried out legal practice for a period of at least 8 years and his/her professional knowledge and experience guarantee proper exercise of office, may be transferred to a Regional or High Court.

(4) Any transfer of a judge to a court of higher instance shall take into account the professional competence achieved by the judge concerned.

#### Section 72

(1) If a change occurs on the basis of a law in organization of courts or in jurisdiction of courts and proper administration of justice cannot be ensured otherwise, a judge may be transferred to some other court even without his/her consent or request.

(2) Unless a special regulation lays down otherwise, a judge may be transferred pursuant to paragraph 1 above only to another court of the same instance within the jurisdiction of the court of the next instance or to a court of one degree lower instance within the jurisdiction of the court to which the judge has been assigned for the exercise of office at the latest within 6 months of the date of legal force of the Act on the basis of which such transfer is being made. A judge may be transferred to a higher court only under the conditions specified in Section 71 (2) and (3).

(3) A judge may not be transferred repeatedly for the same reason.

(4) A judge who has been transferred pursuant to paragraphs 1 and 2 above shall be entitled to his/her current salary pursuant to the special regulation, if this salary is higher than the salary to which (s)he would be entitled after the transfer pursuant to Section 71.

#### Section 73

(1) The Minister of Justice shall make a decision on a transfer of a judge after discussion with the President of the court to which the judge is being transferred and with the President of the relevant Regional Court in case of a transfer of a judge to a District Court within its jurisdiction, and after discussion with the President of the court from which the judge is being transferred and with the President of the relevant Regional Court in case of a transfer of a judge of a District Court within its jurisdiction. This decision shall not be subject to appeal.

(2) Unless laid down otherwise, the provisions of the Code of Administrative Procedure shall apply to the proceedings and decision-making *mutatis mutandis*.

(3) A judge may be assigned for the exercise of office to the Supreme Court or to the Supreme Administrative Court only with the consent of the President of this court.

### **e) disciplinary proceedings**

#### **Section 86 General Provisions**

A judge, president of court, vice-president of court, president of a panel of the Supreme Court or Supreme Administrative Court shall bear disciplinary liability for disciplinary violations.

#### **Section 87 Disciplinary Violations**

(1) A disciplinary violation shall consist in voluntary breach of duties of a judge, as well as voluntary behavior or conduct impairing dignity of the office of judge or endangering confidence in independent, impartial, professionally competent and fair decision-making by the courts.

(2) A disciplinary violation of president of court, vice-president of court, presidents of panels of the Supreme Court or Supreme Administrative Court shall also consist in voluntary breach of duties connected to function of president of court, vice-president of court, presidents of panels of the Supreme Court or Supreme Administrative Court.

#### **Section 88 Disciplinary Measure**

(1) One of the following disciplinary measures may be imposed on a judge for a disciplinary violation according:

- a) a reprimand,
- b) reduction of salary up to 30 % for a period not exceeding 1 year, and in case of repeated disciplinary violation committed by a judge prior to erasure of the disciplinary violation, for a period not exceeding 2 years,
- c) recalling from office of president of a panel,
- d) recalling from office of judge.

(2) One of the following disciplinary measures may be imposed on a president of court, vice-president of court, presidents of panels of the Supreme Court or Supreme Administrative Court for a disciplinary violation, according to the seriousness of the disciplinary violation:

- a) a reprimand,
- b) withdrawal of an increase in salary coefficient for the function of president of court, vice-president of court, presidents of panels of the Supreme Court or Supreme Administrative Court for a period not exceeding 1 year and in case of repeated disciplinary offense committed by president of court, presidents of panels of the Supreme Court or Supreme Administrative Court prior to erasure of disciplinary measure for a period not exceeding 2 years,
- c) reduction of salary up to 30 % for a period not exceeding 1 year, and in case of repeated disciplinary violation committed by a president of court, vice-president of court, presidents of panels of the Supreme Court or Supreme Administrative Court prior to erasure of the disciplinary violation, for a period not exceeding 2 years,
- d) recalling from office of president of court, presidents of panels of the Supreme Court or Supreme Administrative Court,

(3) A disciplinary measure may be waived if discussion of the disciplinary violation is sufficient.

(4) For more disciplinary offenses of the same judge, president of court, vice-presidents of court, presidents of panels of the Supreme Court or Supreme Administrative Court, discussed in joint case, a disciplinary measure shall be imposed under the provisions relating to disciplinary offense punishable most strictly.

(4) The disciplinary measure consisting in salary reduction under para 1, letter b) and para 2, letter b) and c) shall be applied against the judge, president of court, presidents of panels of the Supreme Court or Supreme Administrative Court punished by such disciplinary sanction as from the first day of the month following the day when the relevant decision imposing the disciplinary measure came into force.

#### Section 88a

The body of state administration of courts that is authorized to submit a proposal for commencement of disciplinary proceedings may deal with minor shortcomings or minor violations by reproaching the judge, president of court, vice-president of court, presidents of panels of the Supreme Court or Supreme Administrative Court for such shortcoming or violation provided, that this is a sufficient measure.

#### Section 89 **Termination of Disciplinary Liability**

Liability of a judge and president of court, vice-president of court, president of panel of the Supreme Court or Supreme Administrative Court for a disciplinary violation shall become terminated if a proposal for commencement of disciplinary proceedings is not submitted within 3 years of its commitment.

#### Section 90

(1) Proceedings concerned with disciplinary liability of judges and president of court, vice-president of court, president of panel of the Supreme Court or Supreme Administrative Court shall be provided for in a special regulation (Act No. 7/2002 Coll. on disciplinary proceedings on judges and state prosecutors).