

THE PUBLIC PROSECUTOR'S OFFICE IN THE CIVIL PROCEEDING IN THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS

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The theme of this contribution is The Public Prosecutor's Office in the Civil Proceeding in the Practice of the European Court of Human Rights. At first sight can somebody think that the institute of public prosecutor's participation in those proceedings is something marginal without a real sense. But this contribution shows us that these ideas are not right.

The base of the legal regulation of the public prosecutor's office's participation in those proceedings is the article 80 of The Constitution of The Czech Republic that sets that public prosecutor's office deals with the criminal cases, so does it in the non criminal cases. Another acts sets in which cases does the public prosecutor's office work.

Another important act is the Public Prosecutor's Office Act that sets that the public prosecutor's office is authorized to file a motion for opening civil proceedings or enter civil proceedings already opened only in cases stipulated by law. The Civil Procedure Code regulates the procedural status, powers and duties of the public prosecutor's office that has filed a motion for opening civil proceedings or entered such proceedings.

On the present is the public prosecutor's office able to enter 13 cases enumerated in the article 35 of The Civil Procedure Code, for example the cases of declaration of death, settlement proceedings or public sales. Another Act sets that the public prosecutor's office is able to file a motion for opening civil proceedings, typically the cases of affiliation proceedings, unlawfulness of strikes or dissolution of a company.

The public prosecutor's office is very important authority that is able to enter or initiate the civil proceeding, but the main condition of that process is the condition of reality of the public

interest. Only the public interest may be the reason for intervention. The condition of the public interest is the protection from the misuse of the power of this authority.

The public prosecutor's office is the authority that deals with the civil proceeding in every moment of its running. It is also the subject that is able to misuse the basic principles of the civil procedure, mainly the principle of equality and the right to rightful proceeding. The important problems is also connected with the proceedings for discretionary remedies, because The Civil Procedure Code does not sets the right of the public prosecutor's office to file a motion for opening proceedings for discretionary remedies.

The public prosecutor's offices in the civil proceedings are the typical signs of the legal regulations of many European countries, both democratic and transforming. The participation of such untypical subject in the proceeding must come into conflict with the basic procedural principles, especially the right to a fair trial in accordance with the article 6 (1) of The Convention for the Protection of Human Rights and Freedoms.

The main aim of this contribution was to prove that the public prosecutor's office is very important authority that helps to protect the public interest. The history had showed us that the public prosecutor's office was the institute that helped the ascendancy with the protection of their position in the society. So, it was the authority that was like the symbol of lack of freedom and against democracy. Today, we can see that the role of the public prosecutor's office has been changed. The public prosecutor's office is the guarantee of the fair trial and the guarantee of the public interest in the proceedings for merits that are mainly important for the society. This legal institute is typical for traditional democratic countries, the same way it is typical for countries that are running through the process of transformation. The Czech history shows us that the Czech public prosecutor's office has changed a lot, from the institute of the protector of the socialist legality to the institute of the protector of the democracy and public interest. Only the powerful and trustworthy public prosecutor's office is able to be effective.

“The powerful public prosecutor's office with the sufficient and effective competences represents the effectual instrument of external control in the scope of implementation of the control function of the state.”

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