Czech Union of Judges

1st Study Commission 2009
“Ways to identify and classify criteria, objective and subjective, by reference to which the independence of the judiciary may be assessed.”

(1) Does your country’s judiciary include prosecutors (or equivalent)? If so, do prosecutors benefit from the same guarantees of judicial independence as other judges?

Position of the office of state persecutor belongs to the most critical points of judicial system in the Czech Republic. According to our Constitution State prosecutors creates a part of executive power. General prosecutor is nominated as well as appointed by government. Formally dependent system works much better in practical matters. So, public prosecutors do not benefit from exactly the same guarantees of judicial independence as judges. Interesting seems to be a development in our country. Step by step the position of judges goes to the worst. E.g. tenure of office of presidents of courts had been limited despite the previous act on judges (some members of Senate – chamber of Parliament – started the case before the Constitutional Court with proposal to abolish that regulation as it is in conflict with the principle of independence of judges). It is necessary to take in your consideration that now president of every court are appointed for limited time exclusively by decision of political body (Minister of Justice, President of the Czech Republic on proposal of minister of Justice) and “voice of Judiciary” practically doesn’t exist.

(2) How would you define “judicial independence” in the context of the political and social system of your country today?

As we stress many last years “judicial independence” in context with political tendency practically can be called in question in the Czech Republic. Many relevant competencies affecting really independent performance of judicial power remain in hand of Minister of Justice without a participation of judges (nomination as well as appointment by President of Republic on proposal and contra-sign of Premier/ of judges, completely all economical questions, controlling system with problematic using of electronically evidence and so on). Formally the Czech political system is based on respect to the principle of checks and balances between the three powers, factually not. In our country there are two “strong” powers (executive and legislative) and one also formally independent, but without effective instruments to ensure its own independence. The principal task is formulation what “administration of Judiciary” means in respect to the principle of independence of Judicial Power.

(3) Which objective criteria would you identify as indicating that the judiciary of your country is independent and why?

Secure status as a judge in various positions (judge, president of the court, economical independence) together with constitutionally conform system of Administration of the Judiciary create guaranties for Judiciary in the level under the Constitution. In the Czech

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1 Act No 314 from the year 2008 of Collection of Law
2 According to the opinion of some judges there is not only concept of Administration with independent body (Supreme council for Judiciary). E.g. also stronger and more secure and responsible position of president of courts belongs to ideas how support independence of Judiciary. Especially power of president of supreme courts should be promoted.
Republic such guaranties doesn’t exist. Of course, Constitutional as well as law regulations formally follow the standard level in Europe.

(4) Which subjective criteria would you identify as indicating that the judiciary of your country is independent and why

They are many, but there is one according my opinion the most important. Personality of judges must be fundamentally changed. It presents a process what can take a generation. Of course, first of all that process should start. Instead that the Czech judicial doctrine repeats the same fault - supports careerism, supremacy of executive power and permanent calling in doubt of relevant guaranties of individual feeling judges to be independent without apprehension for its professional future.

Lack of correct personality of judges influences also public opinion on Judiciary. Until judges start to present themselves more courageous and responsible they will not be supported by general public. Without a support of public an independence of judiciary remains maximally formal.

(5) If you have to identify the three most important criteria for indicating judicial independence in your country, what would they be and why?

In the Czech Republic (according to my opinion also in other middle and east European countries) in that respect we can identify

1/ personality of judge (ethical principles shared by judges)
2/ adequate doctrine of Administration of Judiciary
3/ enough time for that changes (no temptation to get everything at once), so

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4/ first of all stabilization of the existing democratic judicial system – quite curious (but symptomatic) after last 20 years – without politically conditioned populist news

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Jan Vyklíčky