Unity and diversity of the public prosecution services in Europe. A study of the Czech, Dutch, French and Polish systems
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Chapter 7

Czechoslovakia (1947–1990) – the Communist organisation of the Prokuratura and its functions in the criminal process

Before the transplantation of the prototype Soviet prosecution service, the French public ministry and several institutions of the CIC were in force in the Czechoslovakian criminal justice system. In this chapter, first the main political developments after the Second World War (7.1) and their implications for the areas of criminal justice will be examined (7.2). A special focus on the transplantation of the Prokuratura will then cover the legal basis, the structure and the organisation of the institution before and after the federalisation of the regime (7.3). As was the case in the Polish system, the Czechoslovakian Prokuratura maintained broad political supervision over the whole of society by way of general supervision, and of the justice system by way of judicial supervision. The purpose and mechanism of the two supervisory functions and the connections between them will be studied in turn (7.4). After an explanation of the institutional framework of the Prokuratura, attention will be turned to its role in the preliminary phase of the criminal process (7.5) and in the forms of remedies available against decisions taken by the judicial authorities (7.6).
The political structure in Czechoslovakia after the Second World War

7.1.1 Basic historical developments
The building of a free and independent Czechoslovakia began officially in October 1918 when the National Council seized power and left the Hapsburg Monarchy. T.G. Masaryk became the first president of the new democracy. V. Šrobár, representing the Slovak people, advocated for a common State. The first constitution was adopted in 1920. The Czech legal system originated in the Austro-Hungarian Monarchy while the Slovakian regions were influenced by the Hungarian part of the Monarchy. Nevertheless, a unified legal system was established with important input from the Austrian and French legal systems. During the war, the country came under German control until Soviet forces, accompanied by a Czech coalition government headed by Beneš, and American troops, entered Czechoslovakia. From the summer of 1947, the Communists plotted to seize power, which eventually took place in the spring of 1948. Until 1 January 1993, when Slovakia and the Czech Republic became two independent countries, the history of the Slovakian and the Czech legal systems remained unified.

7.1.2 The governing apparatus from 1948 to 1960
Although the new Constitution adopted on 9 May 1948 did not declare the Czech Communist Party as the vanguard of society and was not modelled on a Soviet-style constitution, the State progressively took the Soviet-style – authoritarian and centralised. Power was concentrated in the hands of Gottwald, Chairman of the Communist Party, and the Party presidium (1945–1953) and President of the Republic (1948–1953). Although the 1948 Constitution introduced the principle of an economy based on nationalised industrialisation, in practice it was often breached because it did not much differ from the old Constitution. Too many bourgeois institutions of the 1920 Constitution were maintained within it.

In theory, legislative power was held by the unicameral National Assembly (368 members elected by members of the Communist

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438 Skilling 1962.
439 The Constitution in particular provided for property rights, which was of course contrary to the Marxist-Leninist idea of nationalisation and collectivisation.
Party). The Assembly met very seldom and when it did not meet, the legislative power was wielded by the Presidium. The Presidium consisted of a committee of twenty-four members elected by the Assembly, among whom were the Chairman of the National Assembly, its Vice-Chairmen and other MPs. The National Assembly appointed the President of the State, i.e. the head of the government. The President appointed and dismissed government ministers. The government was accountable to the National Assembly and exercised in practice all legislative authority, as well as executive powers. The government was authorised to create ministries and other public agencies and to issue regulations for the purpose of implementing new laws. The electoral system ensured that MPs were always Communists. Although the Constitution was not a transplant of Stalin’s 1936 Constitution, power was effectively in the hands of the Communists. The government published its decrees as joint resolutions of the Communist Party and the government.

In addition to the Czechoslovak national State bodies, the 1948 Constitution provided specific Slovak national organs. The legislative power in matters of a national or regional character was held by the Slovak National Council (104 members), provided that these matters required special regulation so as to ensure the full development of the material and spiritual forces of the Slovak nation and provided that these matters did not require national (i.e. Czechoslovak) regulation. A board of commissioners held governmental and executive powers. The Czechoslovak government appointed and dismissed members of the board. The board was directly accountable to the government. Concretely, the two nations were under the authority of the central power established in Prague. Laws or regulations of the Slovakian legislative body conflicting with or encroaching on Czechoslovak national laws were considered void. The jurisdiction of Slovakian agencies to enact specific legislation only applied to the extent that the full economic and cultural development of Slovakia required separate regulation. This slight decentralisation was, of course, a mere front, as the Communist Party in Prague was the true legislator and the Slovakian agencies were under the government’s supervision in implementing the Marxist-Leninist theory of the unification of people.
7.1.3 The governing apparatus from 1960 to 1993

In 1960, the 1948 Constitution was repealed and replaced by a 1936 Stalinist Constitution. This ‘Constitution of the Czechoslovak Socialist Republic’ stipulated that the Communist Party was the vanguard of the working class and the leading force in society and the State. It also created a Slovakian National Council and provided Slovakia with some more apparent autonomy, but the Czech branch of the governing apparatus remained the most powerful. In fact, the new Constitution did not bring many changes to the structure of the political institutions. An individual presidency was retained instead of the classic Soviet collective presidency (politburo). In fact, the President of the Republic was also the leader of the Communist Party. In practice, the law merely expressed the will of the Party.

In 1968, an important constitutional modification made Czechoslovakia a federation with two governments and two national councils. In fact, this federation was only a façade and Prague maintained power over these republican bodies. The National Assembly or Federal Assembly appointed the President and the government of the Federation. Each republic had its own unicameral legislative body as well as its own government, judiciary (including a supreme court in each republic) and prosecution service. However, all these institutions remained subordinate to the federal agencies in one way or another. For example, the federal government could invalidate republican government initiatives. A petition against a decision made by a republican Supreme Court could be filed before the federal Supreme Court.

7.1.4 The local level

In addition to federal and national agencies, there were national committees spread over the country and hierarchically organised into parishes (obec), districts (okres) and regions (kraj). These committees were in charge of local government but remained ultimately under the control of the federal government which issued resolutions binding on them. They performed a quasi-judicial function in cases of petty administrative offences (such as verbal insults). Committees were composed of MPs elected for four years by the people (according to Article 3, 1960 Constitution, any citizen over 18 had the right to vote and any citizen over 21 had the right to be elected).

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441 Gsovski & Grzybowski 1959, p. 1000; Bilek 1951.
7.2 The criminal justice system in Communist Czechoslovakia

7.2.1 The system until 1948

Before the war, the Czechoslovakian judicial system was in many respects similar to the Austrian and French systems. In general, Czechoslovakia possessed three final instance judicial courts (i.e. the Supreme Court, the Supreme Military Court and the Administrative Court). Differences existed, however, in the organisation of the judiciary in each nation.\textsuperscript{442} The criminal system consisted of criminal courts (professional and lay judges), military criminal courts, assize courts, juvenile courts and a criminal section of the Supreme Court.\textsuperscript{443} The prosecution service was dependent on the Minister of Justice. The general prosecutor was subordinate to the Minister and the lower prosecutors to their superiors, who were in turn subordinate to the general prosecutor.\textsuperscript{444} An investigating judge was in charge of pre-trial investigations. His decisions could be challenged before an independent court. Prosecutors participated in the criminal process and had the task of bringing charges against a suspect in the public interest. Juries tried serious crimes and offences of a political nature. Jurors decided on the guilt of suspects and a bench of professional judges decided on the penalty. The system offered three judicial levels – first instance courts, courts of appeal and the Supreme Court, which carried out cassation reviews over decisions of lower courts. Between 1945 and 1948, the pre-war judicial system was re-established. Major changes started with the 1948 Constitution.

7.2.2 Important changes in the Constitution and in criminal procedure and criminal law

7.2.2.1 Constitutional reforms from 1948 to 1992

Part VII of the 1948 Constitution preserved several provisions in force from the previous Constitution, stating that the judiciary in all its instances should be separated from the administration (Article 138 § 1) or that proceedings before criminal courts should be based

\textsuperscript{442} E.g. in Slovakia, the appellate jurisdiction in criminal cases could be exercised by two consecutive appellate courts. In Czech regions, there was only one appellate jurisdiction available; see Gsovski & Grzybowski 1959, p. 915.

\textsuperscript{443} Assize courts should here be understood as a jury in criminal matters similar to the French 
\textit{cours d’assises}; see Štajgr 1953.

\textsuperscript{444} Poláček 1953.
upon the principle of public prosecution (Article 144 § 4). Only a few years later the Communists transplanted the Soviet legal and judicial system with several important legal reforms. The first important legal modifications took place in 1952. The Constitutional Act 64/1952 of 30 October 1952 modified the Constitution and introduced:

- the principle of the election of judges (implemented by Act 36/1957) according to which all judges were elected by legislative organs. The elections were decentralised and judges from local courts were elected by the corresponding local legislative organs. Supreme Court judges were elected by the national legislative organ;

- a new judicial organisation under a two-instance system. This system repealed the cassation remedy previously available to parties. Only one form of review, before the immediately superior court, remained available to the parties in a case. Exceptionally, valid and definitive decisions could be challenged by way of extraordinary appeal before the Supreme Court. However, only the general prosecutor or the President of the Supreme Court could use this extraordinary appeal (see 7.2.3.3);

- the Prokuratura as a Soviet-style prosecution service (organised in Act 65/1952) with as its main task the supervision of the strict observance of Socialist Legality by society. The old French-style prosecution service was abandoned;

In addition, the Administrative Court was abolished. The Supreme Military Court was also abolished and its jurisdiction included in the Military Section of the Supreme Court.

Chapter VIII ‘Courts and Public Ministry’ of the 1960 Constitution clearly transplanted the 1952 Constitutional Act stating that the prosecution service would be charged with and empowered to

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445 Article 144 § 4 of the 1948 Constitution provides that: ‘Proceedings at criminal courts shall be based upon the principle of public prosecution. The accused shall be guaranteed the right to be defended by Counsel.’

446 Ústavní Zákon č. 64/1952 Sb. ze dne 30. října 1952 o soudce a prokuratuře.

447 For a definition of Socialist Legality see 5.2.1.1.

448 Rais 1953.

449 Persons affected by abuses of power and violations of law by government agencies could only apply for legal remedy at the public prosecution office. However, administrative offences were collected in an Administrative Criminal Code and tried before National Committees that applied the Administrative Penal Procedure Code.
supervise the strict application and implementation of Socialist Legality at all levels of society. Until the 1952 Constitutional Act, and later the 1960 Constitution, the public prosecution was only mentioned as the base of every proceeding in the criminal courts (Article 144 § 4). The 1960 Constitution confirmed the prosecution service’s independence from the other bodies of the State. Their independence was justified by the fact that the institution was empowered with a supervisory function over other administrations of the State, national committees, courts, economic organisations and citizens. The general prosecutor headed the institution and was accountable to the National Assembly. With the Constitutional Act of Federation adopted on 27 October 1968 in force until 1992, Czechoslovakia became a federation. The prosecution service only became a federal institution but remained within the constitution as an independent institution of the State.

7.2.2.2 Criminal procedure and criminal law

One of the purposes of Communist penal law was to educate people in Socialist Legality as provided in the 1950 CC.

> The protection of the People’s Democratic Republic, its construction of socialism, and the interest of the labourers…the law shall educate [everyone] to an observance of the rules of Socialist community life.450

Czechoslovak criminal law encompassed the Soviet concept of social danger and the principle of analogy.451 An offence is criminal and tried by criminal courts only if it is deemed (i.e. by a prosecutor) dangerous to society and if its elements constitute a criminal offence. A material element (danger to society) and a legal element (elements defined by law) were necessary, and remain so, to define a criminal offence. It was believed that redress of criminal behaviour with a low impact on society could be achieved by means other than criminal prosecution before a court. The concept of Communist education underlined the situation. Therefore, elements of offences could be described in different statutes in addition to the CC, i.e. the Administrative Criminal Code or the statute concerning popular tribunals (Act 38/1961). An identical act could be tried before a criminal court applying criminal procedure if its seriousness required a stricter penalty, or before a national committee or a popular tribunal applying other procedural laws, only if a light penalty was

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450 Gsovski & Grzybowski 1959, p. 998.
451 See for more on these two principles, the Polish situation 5.2.1.
required. This situation was considerably blurred, especially, because until 1961, the CPC did not specifically determine in which cases only criminal courts were competent. In 1961, reforms were undertaken. In criminal law, the legislator decriminalised facts considered less grave in order to enhance the educational rather than the prosecutive role of public institutions.\(^{452}\) A new CC was adopted, which is still in force, although, of course, largely amended.

The previous Austrian criminal procedure was completely repealed. Criminal procedure codes were issued in 1950, 1956 and 1961.\(^{453}\) The issuing of a new code in 1961 did not completely modify the criminal procedure but only simplified it and concentrated the use of criminal proceedings to the most serious offences. In particular, this Code clearly stipulated that criminal proceedings were to be instituted only for offences established by the Criminal Code. Criminal courts had no jurisdiction to try other offences provided by the Administrative Criminal Code or the statute concerning popular tribunals. Prosecutors were obliged to refer a case to a popular tribunal instead of issuing an indictment if they considered that the acts did not constitute a criminal offence (Article 174 § 1 CPC, see 7.5.1.3.3). The seriousness of the acts committed was one of the criteria distinguishing a criminal offence tried by a criminal court from another type of offence tried by a non-criminal court. In 1965 the 1961 Code was also amended by Act 57/1965 that split the preliminary proceedings into two forms of investigation. Investigations were carried out for serious crimes, whereas simplified inquiries were carried out for minor crimes (see 7.5.1.2).

### 7.2.3 The organs and institutions of the judicial system of Communist Czechoslovakia

#### 7.2.3.1 Investigative institutions involved in the preliminary phase of the criminal process

In 1950, the system of investigating judges was repealed. From 1950 until 1956 only prosecutors carried out criminal investigations. In 1956, a special corps of security investigators was created.\(^{454}\) These police investigators were subordinate to the Minister of Interior Affairs. In addition to them, public prosecutors had their own corps of investigators (vyšetřovatelé prokuratury), created by the

\(^{452}\) Přichystal 1962.

\(^{453}\) The current research is based on the 1961 CPC. The most important modifications made by the 1965 amendment are taken into consideration.

\(^{454}\) Gsovski & Grzybowski 1959, p. 684.
1965 Act on the prosecution service (see below 7.3.1). Both types of investigators had a degree in law. When exercising their jurisdiction in criminal proceedings they were supervised by prosecutors.

7.2.3.2 The criminal court system

Criminal courts had jurisdiction to judge criminal offences. Criminal offences consisted of an act or a series of acts defined by law as causing significant social danger (see 7.2.2.2). An act defined in criminal law as a criminal offence could not be tried by a criminal court if it caused only insignificant social danger. The case was judged by one of the new State bodies transplanted from the Soviet system, e.g. a popular tribunal or a local committee.

Although the 1960 Constitution did not define national committees as courts, district national committees were competent in the first instance to hear cases of petty administrative breaches of law (provided for in the Administrative Criminal Code). Decisions made by district national committees could be appealed before a regional national committee. Committees applied administrative penal procedure and not criminal procedure. The 1960 Constitution (Article 98) defined popular tribunals as courts established in small cities and important factories. They were abolished in 1969. These tribunals also had jurisdiction to try minor civil cases. Popular tribunals applied their own specific statute and not the CPC or the CC. Neither a defence attorney nor a prosecutor attended sessions.

The jurisdiction of the courts matched the territorial administrative distribution of the country. In addition to extraordinary courts (military courts and courts of arbitration), common courts (i.e. with a general jurisdiction until 1969) were

- local popular tribunals
- district courts

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455 Matters heard by committees could be, for example, insults or defamation.
456 Bílek 1951. In of the performance of their general supervisory role, prosecutors also had the right to protest against decisions made by committees. In a case of protest, the challenged decision had to be modified by the committee that made it. If the committee refused to grant the modification, the prosecutor could refer the challenged decision to the central government, who took the decision in the last resort.
457 Their jurisdiction was transferred to the district courts; see David & Jauffret-Spinosi 1992, p. 220.
In principle, appeal against

- decisions made by local popular tribunals were filed with district courts
- decisions made by district courts were filed with regional courts
- decisions made in the first instance by regional courts were filed with the Supreme Court

Local popular tribunals were composed of lay judges. Other courts were composed of professional and lay judges. The elections of judges were organised as follows

- local committees elected local tribunal judges
- citizens of the district elected district court judges on the basis of universal, direct and equal suffrage
- regional national committees elected regional court judges
- the National Assembly elected Supreme Court judges

Although the Constitution guaranteed the independence of judges, strong supervision from the prosecution service and an important increase in binding directives issued by the Supreme Court undermined judicial independence. Article 102 of the 1960 Constitution stated that judges were independent and should only act according to their Communist conscience and regularly report on their activities to the people who elected them.

The 1968 Constitutional Amendment created two republican Supreme Courts and two sets of people’s courts and regional courts. Slovak and Czech national committees and councils respectively elected judges for Slovak and Czech regional courts and Supreme Courts. The federal Supreme Court was competent to hear reviews of military cases and extraordinary appeals against valid and definitive decisions of the republican Supreme Courts. The federal Supreme Court would actually be the institution that supervised the complete harmonisation of Socialist Legality by issuing binding guidelines (Article 99 § c, 1960 Constitution as amended by the 155/1969 Act).

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459 Štajgr 1953.
460 Plundr 1957.
7.2.3.3 The extraordinary appeal

One of the typical features of the Communist legal system is the so-called extraordinary appeal. It was possible to review decisions without appeal made by courts and prosecutors for which no appeal had been filed but which were considered illegal.\footnote{A decision without appeal is a decision for which: an ordinary form of review was not possible; alternatively, if possible, the review was not lodged in time or the parties surrendered their right to appeal; alternatively, if lodged, the review was rejected (Articles 139 and 140, 1961 CPC). An illegal decision should be understood as a decision contrary to Socialist Legality, in terms other than the rulings of the Communist Party.} The 1950 CPC created the extraordinary appeal, which remained in force in the 1956 and 1961 CPC.\footnote{Tolar 1950.} It authorised the general prosecutor or the president of the Supreme Court to appeal any decision of any court, even when it was definitive and valid, if they considered that it violated the law. The general prosecutor could challenge any decision made by a lower prosecutor if contrary to the law. In principle, the republican Supreme Courts heard appeals against republican courts and the federal Supreme Court heard decisions of the republican Supreme Court (see below 7.6.3.1).

7.3 The organisation of the Czechoslovakian Communist Prokuratura

7.3.1 The laws on the Prokuratura

After the 1952 Acts (see 7.2.2.1), two important Acts affected the organisation of the prosecution service, its tasks and functions. The 65/1956 Act on the organisation and role of the Prokuratura transformed the prosecution service into a political institution independent from the State administration, or at least from low-level State administration.\footnote{Škoda 1957.} The main purpose of the Prokuratura was to consolidate Socialist Legality and the Communist education of all citizens, as stipulated in Article 2 § 1:

> The prosecution service guards, enforces and strengthens Socialist Legality regardless of local circumstances, secures the unity of legality in the entire territory of the republic and helps in the deepening of Socialist legal thinking and the strengthening of the Socialist relations in society (Author's translation).

The 60/1965 Act repealed the 1956 Act and adapted the organisation of the prosecution service to the amendment of the CPC made in 1965, thus establishing two types of investigations. This act also suppressed the subordination relationship between the regional, district and local offices. From 1965 on, offices were subordinate only to the general prosecutor.

In 1969, the 60/1965 Act was amended to create a federal system with a Czech and a Slovak general prosecutor’s office, and a federal general prosecutor’s office. In spite of its transformation into a federal institution, the Prokuratura remained unified, fulfilling the same task under the supervision of the general prosecutor of Communist Federal Czechoslovakia and of the Czechoslovakian central power in Prague.

Although amended, the 60/1965 Act remained in force until the adoption of the current Czech statute on the State accuse (283/1993 Act). However, in 1990 it underwent a critical amendment (1968/1990 Act) that enhanced, not to say re-established, the prosecutors’ political impartiality in their functions in criminal proceedings. One of the main changes was the suppression of the general supervisory function.

7.3.2 The structure of the Czechoslovakian Communist Prokuratura in the 60/1965 Act as amended in 1969

The prosecution service consisted of (Article 30, 60/1965 Act)

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465 From 1989 on, the State had to redistribute private properties that had been nationalised on a very large scale during the Communist regime. It begs the question whether the general supervisory function of the prosecution service would not have been an efficient institution against corruption and unlawful privatisation that took place at this time.
466 The system had several peculiarities such as
- in Prague, the capital of the CSFR and of the CSR, the tasks of the regional prosecution office were fulfilled by a city prosecution office (městská Prokuratura), while those of the district prosecution office were fulfilled by the local prosecution offices (obvodní prokuratury)
- the tasks of the district prosecution office in the capital city of SSR, Bratislava, were fulfilled by the city prosecution office in Bratislava
- the tasks of the district prosecution office in the cities of Brno, Ostrava, Plzen and Košice were fulfilled by the city prosecution’s office in these cities
• the general prosecutor of the Czech and Slovak Socialist Republic (CSFR), which included the main military prosecution office (Hlavní vojenská Prokuratura)
• the general prosecutor of the Czech Socialist Republic (CSR)
• the general prosecutor of the Slovak Socialist Republic (SSR)
• regional prosecution offices in the territory of the CSR and of the SSR (krajské prokuratury)
• higher military prosecution offices
• district prosecution offices in the territory of the CSR and of the SSR (okresní prokuratury)
• military local prosecution offices
• local prosecution offices (obvodní prokuratury) at the level of the local courts
• city prosecution offices (městská Prokuratura)

The CSR and SSR general prosecutor’s offices consisted respectively of the general prosecutor of the CSR and of the SSR and their deputies. One of the deputies of the Slovakian general prosecutor supervised the Slovak Republic’s State institutions (the National Council, its Presidium and commissions and others). Regional, district and local offices were headed by a regional, district and local prosecutor, respectively, to supervise deputies and investigators.

The seats of prosecution offices matched those of the courts. Prosecutors had jurisdiction to prosecute common crimes. Only a public prosecutor could issue an indictment and represent the State before courts. Nevertheless, common crimes committed by members of the police and investigation forces were prosecuted by the military prosecution service subordinate to the general prosecutor but dependent on the Ministry of Defence.467

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467 The military system of courts and prosecution was repealed in 2002.
7.3.3 Appointment and discipline of prosecutors, and relationships of subordination between them

7.3.3.1 Appointment and discipline of prosecutors

According to the 65/1956 Act, the President of the Republic had the power to appoint and dismiss the general prosecutor at the proposal of the government (vláda). The general prosecutor appointed and could dismiss other prosecutors and was officially only accountable to the government (Article 7, Constitutional Act 64/1952 and Article 2 § 1, 65/1956 Act).

In the 60/1965 Act, as amended, the President of the CSFR appointed and dismissed the general prosecutor of the CSFR on the motion of the Federal Assembly.

The cabinet of the National Council of each republic appointed and dismissed the general prosecutor of the respective republic. The federal general prosecutor could motion the appointment and the dismissal of either of the republics’ general prosecutors (Article 6, 60/1965 Act). The Federal Assembly could propose the dismissal of the general prosecutor of the CSFR to the President of the CSFR and the general prosecutor of the CSFR could propose the dismissal of the general prosecutor of the republic to the cabinet of the National Council of each republic.

The competent general prosecutor appointed and dismissed lower prosecutors, but the first deputy of the general prosecutor had to be Slovakian if the general prosecutor was Czech and vice versa.

In order to be appointed prosecutors, candidates had to

- be Czechoslovakian nationals and at least twenty-four years old
- be graduates of law
- have successfully completed the required internship
- pass the final examination

Statutes and legal regulations, i.e. Socialist Legality, were binding on public prosecutors. Public prosecutors were held responsible for their breaches of duty and could face a disciplinary proceeding established by regulation issued by the general prosecutor. The general prosecutor held disciplinary jurisdiction over prosecutors and investigators. A disciplinary sanction could lead to dismissal.
7.3.3.2 Dependence and independence of the Prokuratura

7.3.3.2.1 Before the federal system (1952 to 1969)

One of the first modifications affecting the institution of the new prosecution service was the suppression of the subordination of the prosecution service to the Minister of Justice, i.e. the right to give binding general or specific instructions. In addition, the independence of lower prosecutors from their superiors, which characterised the pre-war system, was not adapted to the Marxist-Leninist model of a strong central power. The two Acts of 1952 established that all lower prosecutors were subordinate to the general prosecutor only. The general prosecutor had disciplinary power over lower prosecutors and could take over their functions and carry out any of their acts. This is why the law often referred to the general prosecutor as the central institution empowered with the implementation of Socialist Legality, its enforcement and supervision. The general prosecutor, or his deputies, executed the PPS’s function (Article 2 § 2, 65/1956 Act). Article 106 of the 1960 Constitution provided that all the organs of the PPS were subordinate only to the general prosecutor and performed their functions independently of any other local authority.

Of course, this independence from the Minister of Justice did not mean that prosecutors were independent. In fact, the Minister of Justice lost his power of policy decision-making under the Communist system, but the general prosecutor was accountable to the political organ that appointed him. Moreover, the general and the specific directives of the general prosecutor were binding on lower prosecutors. The right to give instructions to the general prosecutor was not provided by law but neither was it prevented. The general prosecutor was completely free to carry out his functions so long as he remained in strict observance of Socialist Legality. Nevertheless, the general prosecutor – i.e. the whole prosecution office – was a State institution. In fact, the general prosecutor received instructions directly from the President of the Republic or the leaders of the Communist Party who were members of the government, and later of the Federal Assembly. The general prosecutor forwarded these instructions to his deputies. A general prosecutor could be

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468 Article 34 of the 65/1956 Act stipulated that prosecutors, investigators and other employees of the prosecution service were employees of the State. Subordination to the State was at least assumed in the administration of the public ministry (Author’s translation).
relieved of his functions following a simple political decision. The law did not prevent lower prosecutors from receiving direct instructions from the central State authority. Lower prosecutors were only independent from the local State authorities, which were, in any case, dependent on the central power.

7.3.3.2.2 During the federal system (1969 to 1993)

In 1968, an amendment to Article 106 stipulated that all organs of the federal general prosecutor’s office were subordinate to the federal general prosecutor. The principle was that the PPS was one institution with jurisdiction over the whole country, headed by the federal general prosecutor. This unity remained a fundamental principle. If the general prosecutors of the two republics were accountable to their respective National Council, in reality, the federal general prosecutor was the real head of the entire Prokuratura. Article 1 § 4 of the 60/1965 Act stipulates that

> The general prosecutor of the CSR and the SSR are subordinate to the general prosecutor of the CSFR when executing accurate supervision and obedience of acts and statutes and other legal regulations created by organs of the CSFR. Other organs of the prosecution service in CSR and SSR are subordinate to the general prosecutor of the CSFR when he or she deems it necessary to give them instruction to act in the compelling interest of the CSFR or because there is a danger of delay or the general prosecutor of the Republic is inactive (Author’s translation).

Officially, the federal general prosecutor was accountable to the Federal Assembly and had to submit reports on his office’s activities. There was no mention of the right of State organs to give instructions to the general prosecutor but this right was obvious since the regime was authoritarian and a decision to dismiss the general prosecutor could be made for purely political reasons. The general prosecutors were obliged to attend the meetings of the assemblies where information and reports could be requested. Requests to inform political organs were binding on general prosecutors (Article 7). The general prosecutor would in fact receive

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469 Interview accordée par le procureur général et le président du Tribunal Suprême 1971.
470 Disciplinary proceedings provided in acts on the prosecution service were meant for lower prosecutors and other staff. The decision to sanction lower prosecutors was in the hands of general prosecutors.
instructions from the presidium of the Federal Assembly or from the President.

In order to supervise the Prokuratura, the general prosecutors issued orders and instructions binding on all deputy prosecutors and investigators. There was no limitation to this subordination. The system was organised as follows:

- the general prosecutor in each republic was subordinate to the federal general prosecutor and received instructions from him with regard to the supervision of the exact application of the federal Socialist Legality (almost 90% of laws and regulations). 471

- lower prosecutors in each republic were appointed and discharged by their respective general prosecutor. They were, in principle, only subordinate to this general prosecutor. However, the federal general prosecutor could give instructions to lower prosecutors if the matter was in the urgent interests of the Federation. 472 In fact, prosecutors had to enforce Party regulations when carrying out their functions in addition to criminal and procedural law, and to implement instructions in accordance with Socialist Legality.

Nevertheless, the general prosecutors of each republic were relatively independent in the administration of their service (for example where the internal organisation and the appointment of staff was concerned).

7.4 The supervisory functions of the Czechoslovakian Communist Prokuratura

7.4.1 Provisions common to general and judicial supervision

7.4.1.1 Legal basis for the supervisory function

Article 104 of the 1960 Constitution referred to the supervisory function of the prosecution. According to the Act on the prosecution service (60/1965 Act), supervision is divided into general supervision and supervision of judicial activity. Judicial supervision mainly covered the following:

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471 Interview accordée par le procureur général et le président du Tribunal Suprême 1971.
472 This could be the case if the general prosecutor of the competent republic did not give an appropriate instruction or when the situation was so urgent that a direct order was more efficient.

- criminal prosecution of persons and supervision of compliance with legality in preparatory proceedings by bodies empowered with the conduct of these proceedings (Chapter 2 subsection 2, 60/1965 Act)
- supervision of the courts and State notaries over the legality of proceedings and decision-making, and participation in proceedings before courts and State notaries (Chapter 2 subsection 3, 60/1965 Act)
- compliance with legality in detention and imprisonment centres (Chapter 2 subsection 4, 60/1965 Act)

7.4.1.2 The purpose and the scope of supervision

7.4.1.2.1 The purpose of supervision

The laws issued in 1952 transformed the position of general prosecutor into a sort of watchdog for Socialist Legality. The general prosecutor was required to investigate all matters reported by individuals or authorities and to supervise the correct and harmonised execution and observance of statutes and other legal regulations issued by the Communists. If a violation of legality was found, the PPS was bound to take the necessary steps to suppress the infringement. It could, therefore, launch a protest proceeding (see below) or if necessary, prosecute before a court. The supervision of all political and economic activity could be undertaken and redress imposed in the case of violations of Socialist Legality. The education of people in accordance with Marxist-Leninist theory and the eradication of capitalism was the first goal of the Prokuratura. Therefore, the general prosecutor and his deputies enjoyed one of the highest positions in the State administration because they were entitled to supervise society, i.e. to trace acts and actions contrary to the Communist goals of the State. The prosecution service protected (Article 2 § 2, 60/1965 Act)

a) the Socialist State, its social order and relationship to the world socialist system;
b) the political, personal, family, employment, social, real estate, property and other rights and interests of the citizens protected by law;

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473 Rais 1953.
474 Czafik 1989.
c) the rights and interests protected by law of State, of agricultural community, social and other organisations;
d) the military readiness of military forces and armed organisations and discipline regulated therein (Author’s translation).

7.4.1.2.2 The scope of supervision

Prosecutors carried out their supervision of the general activity of citizens and the entire administration, as well as the judicial activity and decision-making process of courts throughout the whole territory of the Federation. Therefore, they enjoyed complete independence from any kind of local influence (Article 1, 65/1956 Act, then 2, 60/1965 Act). Nevertheless, they were strongly politicised and entirely dependent on the organs of the Party. Supervision was a form of political control exercised *ex officio* or upon request or complaint. All citizens and organisations were expected actively to support *Prokuratura* activity (Article 2 § 5, 65/1956 Act, then 11, 60/1965 Act). Anyone had the right to challenge any procedure or decision that he deemed to be in breach of Socialist Legality before a prosecutor.

Prosecutors ensured that the State administration (ministries and national committees), courts, economic organisations and citizens secured the observance of Socialist Legality through the correct execution of their tasks and a review of any infringement they may have committed. Supervision could entail, first, the screening of the activity of the above-mentioned bodies, then

- review of the legality of generally binding regulations or acts
- review of the legality of processes and decisions made in individual cases

A prosecutor’s request to an organ to screen and revise its own activity in order to discover any suspected infringement was binding. All prosecutors had the general right to demand files, decisions, regulations or evidence issued by any authority (Article 9, 65/1956 Act and 11, 60/1965 Act). Everyone was required to appear before a prosecutor upon simple request even if no criminal proceedings were instituted. Prosecutors could intervene in a pending decision-making procedure and also initiate proceedings in all areas of law, particularly civil and administrative areas.475

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475 Administrative courts were suppressed in 1952 and the *Prokuratura* was given control of administrative activity.
7.4.2 General supervision

7.4.2.1 Mechanisms of supervision

If the Prokuratura found a breach of law in a pending decision-making procedure, it would issue this authority with a warning, requesting modification of the illegal provision. If the provision was already effective, the prosecutor could serve a challenge on the decision-maker, demanding that the provision be repealed or modified. There was no time limit to the right of supervision. Once the challenge was served, the infringement had to be redressed within thirty days of the day of service. If the authority did not comply with the challenge, the prosecutor would requisition intervention from the authority superior to the perpetrator to enforce the challenge. If the prosecutor challenged a decision of a minister, or of the staff of a ministry, the case was automatically submitted to the government.\(^\text{476}\)

7.4.2.2 Consequences of supervision

A challenge made against a decision did not suspend the execution of this decision. The organ that made the decision could continue or suspend its execution. The Prokuratura only screened a decision and checked whether the law had been respected but did not repeal the decision or modify it. In accordance with the Prokuratura’s educational function in socialism, the perpetrator would have to acknowledge their error and repair it. Prosecutors only took care to ensure that the wrongful decision or action was redressed. If the violation also constituted a criminal offence, the prosecutor would institute criminal proceedings against the persons involved in the decision-making process.

Essentially, the general prosecutor and his deputies sought out and investigated violations of any law and requested its redress, and also prosecuted the decision-maker on these grounds if the action was criminal. All authorities and citizens had to cooperate and denounce suspected violations immediately. Ministers were not outside the scope of the general prosecutor’s supervisory function. Protest against a minister was made before the government. The general prosecutor was therefore present and active during sessions of the government and other executive organs of the State.

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7.4.3 Judicial supervision

Judicial supervision also covered the activity of the courts and the bodies conducting pre-trial proceedings. During preliminary criminal proceedings, prosecutors supervised all the bodies involved that were obliged to request a prosecutor’s decision or instruction before taking action. Prosecutors participated in criminal and civil procedures and court sessions. They supervised the legality of judicial decisions taken during the course of proceedings and hearings.

The general prosecutor had the right to review any court and, of course, any prosecutor’s decision. He could challenge any definitive and valid judicial decision contrary to law by way of extraordinary appeal (see 7.6.3.1). The general prosecutor could suggest to the general assembly of the Supreme Court that it issue directives binding on lower courts, whose purpose was the harmonisation of caselaw. The general prosecutor could participate in Supreme Court sessions, including sessions of its presidency.

7.5 The role of the Czechoslovakian Communist Prokuratura in the preliminary phase of the criminal process

7.5.1 The role of the Czechoslovakian Communist Prokuratura in preparatory criminal proceedings

7.5.1.1 Institutions initiating prosecutions, the principle of legality, mandatory prosecutions and the principle of objective truth

Prosecutors and other investigative organs (see 7.2.3.1) were obliged to prosecute any offence as soon as they learned of it (Article 2, 1956 and 1961 CPC). By offence, the 1956 Code meant any one of a very large number of factual situations sanctioned by the Administrative Criminal Code and the CC. The 1961 CPC allowed the use of criminal procedure only for facts considered to be criminal offences, provided by the CC (see 7.2.2.2).

In the 1956 CPC, only a prosecutor could decide not to institute or to dismiss a preliminary investigation. In the 1961 CPC and, especially after 1965, this power of decision was entrusted to other

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477 Although more attention will be paid to criminal justice, it should be underlined that prosecutors had equivalent rights of supervision as regards the activity of the courts in general.
478 Polášek 1953.
investigative organs. As well as instituting a criminal investigation, prosecutors could transfer the case to a popular court or another organ with disciplinary jurisdiction. Once the investigation was instituted, the prosecutor could only decide to issue the indictment and file it with a court.

According to Article 103 of the 1961 Constitution, the courts had to conduct their proceedings in such a way as to uncover the true circumstances of the case, which would be used as a basis for decisions. Because of this principle of objective truth, organs involved in preliminary proceedings had to establish facts based on reality and not on legal fictions. Facts had to be investigated in a manner consistent with reality and the law.

7.5.1.2 Decisions affecting prosecutions, investigation and inquiry

In the 1961 CPC, in a phase preceding the institution of criminal proceedings (up to one month), the investigative institution could screen the acts denounced or discovered. After the screening of these acts, if it appeared that no criminal offence was suspected, proceedings were not instituted. The decision not to institute the proceedings rested with the investigative organ or the prosecutor. However, it had to be based on one of the grounds provided in Article 11 § 1 CPC (see 7.5.1.4). Instead of dropping the case, the organ could transfer the case to another jurisdiction, such as a popular tribunal, a local committee or any other disciplinary organ (Article 163 § 1 CPC). The investigative organ had no obligation to inform the prosecutor if it decided to drop the case.

If a criminal offence was suspected, the investigative organ or the prosecutor (if facts had been denounced to him directly), officially issued an order to institute proceedings. As soon as the investigative organ discovered facts which substantially indicated that a given person had committed a criminal offence, it issued an order to disclose the charge (Article 165 CPC), notified the suspect (now accused) and within forty-eight hours notified the prosecutor. The order contained a precise description of the acts and their legal qualification.

According to the 1965 amendment of the 1961 CPC, preliminary proceedings were split into

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479 In addition to the civilian system where investigators carried out preliminary proceedings, the Commander of the Army and his investigators carried out proceedings for military crimes.
• inquiries (lasting one month) carried out by investigators from the security corps\textsuperscript{481}

• investigations (lasting two months) carried out by senior investigators from the security corps or investigators from the prosecution services\textsuperscript{482}

In fact, apart from some specific cases, rules applying to investigations also applied to inquiries. A preliminary proceeding was conducted at the initiative of the investigative organs. Unless the law made a decision compulsory for the prosecutor, they took all decisions necessary for the investigation \textit{ex officio}. The 1965 reform gave investigative institutions more autonomy from the prosecution authority once proceedings (especially inquiries) were instituted. Indeed, the investigative institutions made all the decisions concerning proceedings and, for example, could object to the prosecutor’s instructions concerning the legal qualification of an act and the decision for further prosecution (Article 164 § 4 CPC).\textsuperscript{483}

Finally, the prosecution service always maintained the right to take over the proceedings.

After completion of the investigation or inquiry, the investigative organ communicated the file, along with an opinion on further

\textsuperscript{480} Husár 1966.

\textsuperscript{481} The law established forty-six matters for which an inquiry could be instituted (Article 168 § 1 CPC). In principle, unless it was necessary to conduct an investigation (e.g. because the suspect was too young, a preliminary detention was necessary or the facts were complex), inquiries only concerned crimes carrying a maximum three-year custodial penalty.

\textsuperscript{482} Investigators from the security corps, normally subordinated to the Minister of the Interior, were made independent from their superiors when exercising their competence in criminal proceedings. They had to strictly comply with criminal procedural laws.

\textsuperscript{483} Article 164 § 4 CPC stipulated: ‘Except for cases, which, under the present Act, call for the authorisation by a prosecutor, the investigator shall make in his own competence all the decisions concerning the process of investigation and investigation procedures, and shall take full responsibility for their lawful and timely execution. If the investigator does not agree with the prosecutor’s instructions concerning the charges, the definition of the criminal offence and the scope of the charges or with instructions concerning the settlement of the case in pre-trial proceedings, he shall have the right to submit written objections to the latter; if the prosecutor turns down these objections, the investigator shall submit the case to the superior prosecutor who shall either void the instructions issued by a deputy prosecutor or assign the case to a different investigator. In all other cases, instructions issued by the prosecutor shall be binding on the investigator.’ (Author’s translation)
prosecution, forthwith to the prosecutor, who could issue an indictment and file it with the court.

7.5.1.3 The role of the Prokuratura in measures taken during the preparatory proceedings (1961 CPC)

7.5.1.3.1 Provisional custody

Investigative organs could take a suspect into custody on their own initiative without the previous consent of a prosecutor. This could only occur, in cases of emergency, if someone was suspected of a criminal offence and there were reasons justifying preventive detention. The investigative organ had to inform the prosecutor as soon as possible of the provisional custody. If the order for custody was not remanded to the prosecutor within forty-eight hours, the suspect had to be released.

7.5.1.3.2 Provisional detention

Only a judge could order preventive detention, unless it had to take place during the preliminary proceedings (Article 68 CPC). In this case, prosecutors had jurisdiction to order detention. The prosecutor had forty-eight hours to order preventive detention against the suspect remanded to him, otherwise, he was obliged to set him free. The period of detention was initially one or two months. Only a superior prosecutor could, in principle, grant an extension of one month, and the general prosecutor could do so for a longer period.

7.5.1.3.3 Other measures

In principle, the president of a court, a prosecutor or one of the other institutions in charge of preliminary investigations could order the main measures necessary to the investigation (e.g. a house search warrant, seizure of mail or confiscation of belongings). Nevertheless, the authorisation of a prosecutor was needed for measures taken during an investigation which could affect an underage suspect, or for the opening of mail.

7.5.1.4 Exceptions to mandatory prosecution

Until 1965, once proceedings were instituted, only a prosecutor could decide upon their dismissal, unless the trial session had already started. There were only exceptions provided by law that could lead to the dismissal of proceedings.

Proceedings were not instituted or if already instituted, were dismissed if (Article 11 § 1 CPC)
• the President of the Republic granted amnesty or pardon
• the prescribed statute of limitations had lapsed
• compulsory permission to prosecute had not been granted
• the suspect was too young to be criminally liable
• the suspect was deceased
• a previous proceeding had been instituted for the same facts and against the same person, and a court (or a local popular court) had terminated the case with a valid and definitive decision, or when a definitive and valid order to dismiss the case had been issued by a court or a prosecutor, if the decision had not been quashed as the result of a procedure prescribed by law
• or a proceeding had already been instituted against the same person on the same facts and had been terminated by a valid and definitive decision made by another institution empowered with the right to prosecute criminal offences, if the decision had not been quashed as the result of a procedure prescribed by law

In addition to the events provided for in Article 11, and after institution of prosecution, the public prosecutor had to dismiss the case if (Article 177 § 2 CPC)
• it was clear that the suspected events had not taken place
• these facts did not constitute a criminal offence and there were no grounds for remanding the case to a popular tribunal
• it had not been proven that the actions had been perpetrated by the suspect
• the penalty resulting from the proceedings was insignificant in comparison with another penalty that the suspect had already been convicted for in another case
• or the suspect had already been condemned by another national institution or a foreign institution and the prosecutor deemed that condemnation sufficient

If the acts committed by an accused did not cause a grave social danger and he acknowledged his guilt, the prosecutor could transfer the case to another institution (such as a popular court) instead of filing an indictment. This system was used as a moderator to the principle of mandatory prosecution and to reduce the workload of criminal courts. In addition, a prosecutor had to transfer the case to
a popular tribunal if the offence was only a petty offence and the popular tribunal had jurisdiction to try it (Article 177 § 1 CPC).

From 1965, organs other than the prosecutor – such as the investigators of the security corps (see 7.2.3.1) – could dismiss an inquiry, but notice of the decision to dismiss had to be given immediately to the prosecutor supervising the proceedings, who could modify it.

In principle, unless a new suspect or a new fact was discovered, a valid and definitive order of dismissal taken by a prosecutor could only be reversed and a proceeding reopened (see on reopening of proceedings 7.6.3.2).

7.5.2 The role of the Czechoslovakian Communist Prokuratura in the supervision of preparatory proceedings

Before 1965, only prosecutors had the right to supervise (Article 159 § 3 1961 CPC) and give compulsory instructions to other bodies involved in proceedings. The Code did not limit the right to give instructions. Prosecutors also had the right to request any file, document, piece of evidence or report concerning a case. They could take part in an investigation and carry out actions themselves or simply quash decisions taken by other investigative bodies and transfer a case to someone else. Investigative bodies had to notify the prosecutor of their decisions concerning the dismissal of a case or stay of proceedings. The prosecutor had fifteen days to check the legality of a decision. Prosecutors also had a monopoly over certain decisions, and in certain cases investigative institutions needed a preliminary authorisation from a prosecutor to carry out certain acts provided by law. However, during preliminary proceedings, investigative organs were only obliged to refer a matter to the supervising prosecutor every two months from the date of the order that instituted proceedings. The Code did not impose any obligation to communicate or inform a prosecutor between an order to institute proceedings and the end of the two-month period. A suspect or a victim also had the right to ask a supervising prosecutor at any time to screen the performance of an investigative institution and potentially to sanction its mistakes (Article 171 CPC).

After 1965, investigators from the public ministry and from the Minister of the Interior, as well as and officers of the army, were entitled to conduct preliminary proceedings. A prosecutor supervised these investigative organs and could reverse their decisions. The
reform modified the scope of the supervision exercised by prosecutors over the investigative institutions. The latter were not obliged to comply any further with a prosecutor’s instructions on the legal qualification of the acts, the scope of this qualification or the solution to the case. A prosecutor could exercise his right to supervise a matter – every two months for investigations and every month for inquiries. He could decide whether or not to grant an extension of one month (longer extensions had to be granted by the general prosecutor). An investigative organ that refused to comply with a prosecutor’s instruction had to make the refusal in writing. If the prosecutor did not agree with the investigative institution, the case would be forwarded to a superior prosecutor for review. The superior prosecutor could quash the instruction of his deputy or remand the case to another investigative institution. In the case of inquiries, the investigative institutions were not allowed to object to the instructions of the prosecutor.

Supervision of the Prokuratura over preparatory proceedings could also entail superior prosecutors taking disciplinary measures against investigative organs.

7.6 The role of the Czechoslovakian Communist Prokuratura after the preliminary phase of the criminal process

7.6.1 The position of the public prosecutor in the first instance

7.6.1.1 Preliminary judicial control over the indictment

A hearing could only start following a regular indictment issued by a public prosecutor (Article 180 CPC). During a pre-trial conference, the president of the court checked the indictment and the regularity of the preparatory proceedings. He could dismiss or stay the case for reasons provided in Article 177 CPC (see 7.5.1.4) without any hearing. If he found that a different law article was more in conformity with the case, he could remand it to the prosecutor or another institution for further investigation or for a different procedure. A public prosecutor always took part in the preliminary judicial investigation in camera. Until the president of the court

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484 Husár 1966.
485 If the investigative organ was attached to the Ministry of the Interior, this Minister had jurisdiction to conduct disciplinary proceedings. However, a prosecutor always had the right to order a case to pass from an investigator from the Ministry of the Interior to an investigator of the prosecution service.
decided to remand the suspect before the court for hearing, the prosecutor could challenge any other decision. If the case was remanded to him, the prosecutor had one month to comply with the instructions of the court. This time limit could, however, be extended by a superior prosecutor. Until the moment the court validated the indictment, the prosecutor could withdraw this indictment and the preliminary proceedings would continue. After the court validated the indictment, the prosecutor could withdraw the indictment. However, the court still had the right to continue with proceedings.

7.6.1.2 The hearing

If the indictment was valid, the president of the court had to notify the charges 'in due time' to all interested parties in the case. After completion of this notification, the hearing of the court would start (Article 202 CPC). Once the preliminary checks of the indictment were performed, the president of the court decided upon the date of the session. The session was public and the public prosecutor needed to be present in order to explain and verbally support the indictment. The court could only decide upon facts as they were presented in the indictment and take into consideration facts as they were disclosed during the hearing. It was not bound by the legal qualification given by the prosecutor in the indictment. During the session, it was possible for the court to decide to remand the case to the prosecutor for further investigation if it transpired that the suspect had committed another offence.

7.6.2 The position of public prosecutor in the ordinary forms of review

7.6.2.1 The reclamation: review of decisions taken during the preliminary proceedings

A suspect could lodge a reclamation against every appealable decision taken by an investigative institution during the preliminary proceedings, e.g. the order notifying the charges. A decision could be appealed if made in the first instance by a court or a prosecutor and only if the law made reclamation available. Reclamation against decisions taken by the general prosecutor or the Supreme Court was not possible.

Reclamation was available for prosecutors against decisions made by a court in favour of the suspect or not, if the law provided for it, such as
• orders of a court to transfer or dismiss a case, or to suspend a proceeding after completion of the preliminary check of the indictment

• orders of a court to take a suspect into preliminary detention or not (Article 74, 1961 CPC)

A challenge of orders could follow

• an error in any of its statements

• or a breach of provisions governing the proceedings that preceded the adoption of an order, if such a breach could have resulted in an error in any verdict of the order

The period in which to lodge a reclamation was three days from the day of the communication of the order. The communication could take the form of an official written notification or a verbal notification at a hearing. The superior organ to the one which made the order – i.e. the prosecutor for an investigative organ’s orders and the superior prosecutor for a prosecutor’s orders – would judge the reclamation. Alternatively, the same organ could grant the reclamation if the change in the original order did not impinge on the rights of any other party.

If a reclamation was filed with an investigative organ and if, after the three-day period had expired for all authorised parties, the investigative organ did not make a decision upon it, the case was forwarded to the supervising prosecutor or to a superior prosecutor. The appellate court heard reclamations against decisions taken by lower courts.

7.6.2.2 The appeal: review of judgements

Parties to a trial could lodge an appeal against appealable judgements made by the court within eight days of the date of service. While a convicted person or a victim could only lodge an appeal against the parts of a judgement that concerned their rights, the prosecutor could appeal the judgement in any of its parts. An appeal filed by a prosecutor could be to the benefit or to the detriment of the defendant. An appeal application had to state the demands and objections against the judgement. If a prosecutor lodged an appeal, the superior prosecutor had the right to withdraw it. A court with jurisdiction to hear an appeal would check its admissibility before making a new decision. The court of appeal could modify the appealed decision, dismiss the proceedings or remand the case to a prosecutor or to a court of first instance. The
remanded court had to comply with the opinion of the court of appeal.

7.6.3 The position of public prosecutors in extraordinary forms of review

7.6.3.1 The extraordinary appeal

Only the general prosecutor or the president of the Supreme Court was allowed to file an extraordinary appeal with the Supreme Court. The appeal could affect any valid decision (e.g., an order to dismiss a case) or definitive judgement without appeal. The illegality of a decision, or of a proceeding preceding a decision, could provide grounds for such an appeal. This illegality could be justified by a disproportionate penalty with respect to the offence committed by the accused. Indeed Article 266 § 2 CPC provided:

A complaint against a violation of law in the verdict of a sentence may be filed only if the sentence is in obvious disproportion to the level of danger of the act to the society or the conditions of the perpetrator or if the imposed kind of sentence is in obvious contradiction to the purpose of the sentence (Author’s translation).

Only the general prosecutor could challenge valid decisions without appeal made by a prosecutor. If the Supreme Court found that a challenged decision violated the law, it would make a judgement stating the violation and the reasons for the violation. The Supreme Court could quash the decision, or remand it to a court or to a prosecutor, with the instruction to complete it or to issue a new one. The opinion of the Supreme Court was binding on the remanded institution.

If a verdict had been given to the detriment of the accused because the law had been violated (e.g., the accused was convicted instead of acquitted), the Supreme Court could cancel the verdict in whole or in part and, if necessary, remand the case to the appropriate body for a new decision.

If a verdict had been given in favour of the accused because the law had been violated (e.g., the accused was acquitted instead of convicted), the appeal had to be filed within six months of the

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486 Since the Socialist judicial system was in the hands of the Communist Party, the general prosecutor and the President of the Supreme Court only acted as puppets in the hands of the Party. The right given to these two bodies to exercise extraordinary appeal was, of course, meaningless. It was intended only to give the system the appearance of independence.
decision. The Supreme Court would have to dispose of the appeal within six months. If a verdict was cancelled and a new decision necessary, then no change to the detriment of the accused could be taken in the new decision.

7.6.3.2 The reopening of proceedings

In the event that new facts or circumstances were discovered after the issuing of a valid and definitive judgement or a valid decision not to institute or to dismiss proceedings taken by a prosecutor or a court, the court could be requested to reopen proceedings. The reopening of proceedings could also be requested if it was discovered that the prosecutor in charge of the case, or the judge, violated the law and committed a criminal offence during the proceedings. Only the prosecutor had jurisdiction to ask for a reopening that would act against a suspect. A court or any other public organ that discovered new facts or new circumstances had to immediately notify a public prosecutor of the new information. A decision to reopen a case was always made by a court.

7.6.3.3 Pardon

The President of the Republic could grant pardon. Such a decision could affect the institution of preliminary proceedings and the decisions made during preliminary proceedings (e.g. an order for preliminary detention). It could also affect the enforcement of judgements on the merits, with or without appeal (e.g. suspend or postpone the execution of a sentence). The general prosecutor or the Minister of Justice had jurisdiction to carry out pardon proceedings under the supervision of the President.