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 8
The Czech Republic – the current organisation and functions of the prosecution service in the criminal process

The collapse of Communism in Czechoslovakia in the late 1980s not only brought many changes to the organisation of State powers but also led to the separation of the Czech Republic from Slovakia. It was only after this split that critical modifications of the Czech PPS took place (8.1). As is the case in Poland, the Soviet features affecting the criminal justice system, such as the two-instance system, have now been repealed (8.2). Since 1993, and especially after a critical amendment in 2002, the PPS has progressively acquired its current organisational structure (8.3). The functions of public prosecutors now focus on criminal prosecution, and general supervision has been repealed. The principle of compulsory prosecution is in force in the Czech Republic, and public prosecutors play a fundamental role during the preliminary phase of the criminal process (8.4). With regard to forms of review, similar developments to those in Poland, such as the suppression of the extraordinary appeal, took place in the Czech Republic (8.5).
8.1 Major changes brought into the Constitution regarding the prosecution service of the Czech Republic and the new prosecution service Act

The new Constitution of the Czech Republic, adopted after the Velvet Revolution, came into force on 1 January 1993.\(^{487}\) It stipulates (Article 80) that

1/ A public prosecutor’s office represents the public prosecution in criminal proceedings; it also executes other tasks if the law so provides.

2/ The status and jurisdiction of the public prosecutor’s office are defined by law.

Interestingly, it is the third chapter of the Constitution concerning the government that includes the prosecution body and not the fourth chapter, on judicial power. This constitutional position establishes the prosecution as a body of the executive. However, this does not mean it is subordinate to the Minister of Justice in areas of criminal policy and criminal proceedings. The judicial position of the prosecution service is in theory independent from that of the government. As far as it is necessary in a country where the principle of compulsory prosecution is in force, the prosecution itself determines the trends in criminal policies and does not officially receive instruction on their implementation (see 8.4.1.1 for more on the compulsory prosecution principle).

After the collapse of Communism but before the division of Czechoslovakia, the 60/1965 Prosecution Service Act remained in force. However, it was radically amended during this period of transition by an important Act in 1990.\(^{488}\) The PPS remained the organ tasked with the general supervision of the execution and observance of statutes and other legal regulations by ministries, public administrative bodies, national committees and citizens. Nevertheless, Socialist Legality (Socialistická zákonnost), guarded, enforced and strengthened by prosecutors, became ‘legality’ (zákonnost). The amendment suppressed all previous links with the protection and strengthening of Communism. From the general supervision of the courts’ decision-making processes the role of the prosecution is now limited to the execution of investigative rights during preliminary criminal proceedings and the attendance before courts of a prosecution representative. Subsequent, critical

\(^{487}\) At the time of writing an official translation of the 1992 Constitution was available at <http://test.concourt.cz/angl_verze/constitution.html>.

\(^{488}\) Zákon č. 168/1990 Sb., kterým se mění a doplňuje zákon o prokuratuře.
modifications of the criminal law and criminal procedure have taken place. In particular, criminal liability is now based on guilt, the principle of analogy is inadmissible, criminal law has acquired an additional role in protecting people and society, and the principle of legality has become well-defined.\textsuperscript{489} The President of the Republic remained the organ appointing and dismissing general prosecutors, who were previously accountable to the Federal Assembly. The Presidium of the National Councils remained the organ appointing and dismissing the national general prosecutors, who were accountable to the National Councils.

In 1993, a new Act on the prosecution service was adopted and came into force on 1 January 1994. The PPS was established as a system of State offices, appointed to represent the State in cases stipulated by the Act (former Article 1 § 1, 1993 Act). Articles 12 and 13 stipulated that

- the Minister of Justice was officially superior to the general public prosecutors (the general prosecutor and his deputies)
- the general public prosecutor was officially superior to the higher public prosecutors
- higher public prosecutors were superior to regional public prosecutors
- regional public prosecutors were superior to district public prosecutors

Since 1993, several amendments have modified this Act. The most important amendment, adopted in 2002, completely changed the organisation of the prosecution.\textsuperscript{490} It repealed the subordination of the prosecution to the Minister of Justice who since then has only administrated the prosecution service. Under the previous system,

\textsuperscript{489} The Constitutional Court decided on 21 December 1993 (PL. US. 19/93): 'According to Czech criminal legal theory, the criminal nature of an act is understood to encompass the possibility of being prosecuted for a criminal act, of being found guilty and of being punished. The basis for criminal responsibility is the criminal act, which is defined by means of a precise description of its characteristics and also by what is referred to as its objective characteristics, namely, the danger the act poses to society. It is the expression of the principle \textit{nullum crimen sine lege} (no crime without law) or \textit{sine culpa} (without fault).' (Author's translation)

\textsuperscript{490} The present paper is based on the 1993 Act as amended by the 2002 Act, Zákon č. 14/2002 Sb., kterým se mění zákon č. 283/1993 Sb., o státním zastupitelství, ve znění pozdějších předpisů. All quotations from the 1993 Act as amended are the author’s unofficial translation. Terms in parenthesis are always added by the author.
Prosecutors, whatever their rank, were appointed on motion of the general prosecutor. However, the 2002 amendment decentralised the right to propose the appointment of lower prosecutors from the general prosecutor to the heads of the local offices. This amendment made the public ministry more independent from the executive power. The definition of the prosecution service within the Constitution as an institution of the executive power subsequently appears questionable. The new Act on the prosecution service is a compromise between the classical notion of a prosecution service as a body of the executive and the new ideas flowing in from other European countries advocating a public prosecution service independent from the executive power.

From 2002, the public ministry became a system of State authorities intended to represent the State by protecting the public interest (veřejný zájem) in matters vested in the public prosecution service (Article 1 § 1 as amended). Article 4 of the 1993 Act establishes the service’s jurisdiction as follows:

1/ The public prosecution service to the extent, under the conditions and in a way provided by law:
   a) Is the organ of the public prosecution in criminal proceedings and fulfils other tasks emanating from the Criminal Procedure Code;
   b) Exercises supervision over the compliance with the legal regulations in detention facilities, imprisonment, protective treatment and protective and institutional education, and in other places where personal freedom is constrained by legal permission;
   c) Acts in fields other than criminal proceedings;
   d) Exercises other tasks if a separate statute so provides.

2/ The public prosecution service takes part, in compliance with its competence set by law, in the prevention of criminality and provides support to victims of criminal acts.

Reference to the safeguard of legality disappeared. The Constitution stipulates that fundamental rights and freedoms are protected by the judiciary. It should be underlined that the PPS is not part of the judiciary, therefore, the task to protect fundamental rights and freedoms follows from Article 2 of the 1993 Act:

1/ When exercising its competence, the public prosecutor’s office is obliged to use means provided to it by law;

2/ When exercising its competence, the public prosecutor’s office ensures that every action it takes complies with statute, that it is rapid, professional and effective; that it
exercises its competence impartially, and while doing so it respects human dignity and the equality of all before the law, while ensuring the protection of basic human rights and freedoms.

8.2 The current Czech criminal justice system

8.2.1 The first instance

Unless the law provides otherwise, ninety district courts (Okresní soud) have jurisdiction over minor crimes and cases concerning sums of less than CZK 50,000. Eight regional courts (Krajský soud) have jurisdiction over serious crimes for which a sentence of more than five years' imprisonment is possible and cases concerning sums of more than CZK 50,000. Regional courts are also competent to hear certain cases when stipulated by law. According to Article 18 CPC, criminal proceedings are instituted in the district of the court where the crime was committed. If this place is unknown or if the crime was committed abroad, the jurisdiction of the competent court may be determined by the place of domicile, work or residence of the accused. The Czech system has no investigating judge. The police conducts investigations, sometimes with the public prosecution. Depending on the circumstances of the case and the gravity of the offence committed, the CPC sets out

- normal proceedings with an investigation and a decision to prosecute further before a district or a regional court. The court terminates the proceedings with a judgement (rozsudek)
- shortened preliminary proceedings (two weeks) with a hearing before a single judge in a district court. These proceedings apply to offences for which the law imposes a maximum term of three years' custody if the suspect was caught in flagrante delicto, thus in the act of committing a felony or immediately afterwards. The judge terminates the proceedings with a judgement
- proceedings before a single judge that applies to offences for which the law imposes a maximum of five years’ imprisonment. Without a hearing, the judge may issue a criminal order (trestní příkaz) and impose a limited punishment (such as a ban on activity for five years or a pecuniary penalty)

8.2.2 The appeal level and the Supreme Court

In principle, regional courts have jurisdiction to hear appeals filed against decisions taken by district courts in the first instance within
their jurisdiction. Two high courts (Vrchní soud) have jurisdiction to hear appeals filed against decisions taken by regional courts in the first instance within their respective jurisdictions. The high courts also have jurisdiction to hear special cases in disciplinary proceedings against judges and prosecutors commenced in the first instance by the competent court or prosecutor.

As the supreme judicial body, the Supreme Court in Brno, ensures the uniformity and legality of decision-making through extraordinary remedies in cases specified by the law on court proceedings. The Supreme Court decides within the reasons stated in the appellate measure. It also gives advice about the interpretation of laws and other legal regulations, as well as international treaties. The Supreme Court also decides on appeals filed against appellate courts in disciplinary proceedings against judges and prosecutors.

8.2.3 Types of decisions

During the criminal process, there are different types of judicial decisions taken by the various authorities involved in the course of the process. Their classification is useful to determine if a decision can be challenged and if so, by which means.

- decisions (rozhodnutí) include different types of judicial decisions that can be issued by a court *ex officio* or on motion of a public prosecutor, such as a custody decision concerning a person against whom criminal prosecution has been initiated. The CPC further distinguishes
  - cases expressly provided by law, a court should decide by issuing a judgement (rožsudek). The normal form of review against judgements is the appeal (odvolání).
  - cases where the law does not provide that a decision upon a legal matter during the process should be taken by way of judgement, it is taken by way of an order (usnesení). The normal form of review against an order is the complaint (stížnost). The courts may decide by way of resolution or order while the police bodies and the public prosecutors

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491 The Supreme Court (Nejvyšší soud České republiky) should not be confused with the Constitutional Court (Ustavní soud) in Brno that reviews the compatibility of legislative acts and treaties with the Czech Constitution.

492 A judgement becomes valid and final (pravomocný) and thus enforceable (vykonateľný) unless the law provides otherwise if it cannot be reviewed according to the law or the law finds it reviewable but no appeal was lodged within the prescribed time limit, the entitled parties explicitly waived their right to appeal, withdrew their appeal or their appeal was denied.
always decide by way of resolution or order unless otherwise provided by law.493

- verdicts or statements (výrok), constituting the findings or the statement of a court included in the judgement
- criminal orders (trestní příkaz), a special type of judicial decision against which protest is possible (odpor see 8.2.1 and 8.5.2.2)

8.3 The organisation of the current Czech PPS

8.3.1 The designation of the prosecution service in the 1993 Act and in the Criminal Procedure Code

The new Act designates the prosecution service as the State accusation service (státní zastupitelství). It is defined as the system of the State administration established to represent the State by protecting the public interest in matters vested in its competence. The reason for the adoption of German terminology for the public prosecutor (der staatsanwalt) was merely an ideological measure to break with forty years of Communism. Neither the term public prosecutor nor prokurator is used in the new statute or the CPC.

8.3.2 The Minister of Justice and the administration of the public prosecutors’ offices

Article 11 § 1, 2/1969 Act on the establishment of ministries and other central administration authorities of the Czech Republic establishes the Ministry of Justice as the central agency of the State administration for courts and prosecution services.494 The Ministry of Justice is the central body empowered with this administration. As head of the Ministry, the Minister of Justice supervises the effective fulfilment of the tasks vested in the prosecution service but only within the limits strictly set by Part 4 of the 1993 Act. The authority of the Minister affects the administration of the prosecution as an institution of the State. The wording does not introduce any connection with the conduct of criminal proceedings. Article 13a of the 1993 Act stipulates that the duty of the administration of the public ministry is to

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493 An order becomes valid and final if it cannot be reviewed according to the law, if the law finds it reviewable but no complaint was lodged within the prescribed time limit, or if the entitled parties explicitly waived their right to appeal, withdrew their complaint or their complaint was denied.

Create conditions for the due performance of its powers, namely in respect of personnel, organisation, economy, finances and training, and to supervise the due performance of duties entrusted to the public prosecutor’s office in a method and scope regulated below.

The Ministry of Justice administers the prosecution offices directly or through the heads of these offices. The head of each office is superior to the prosecutors and the other employees within that office. These heads can issue binding instructions to their deputies. The 1993 Act accurately determines the scope of competence for the heads of the office, who are ultimately responsible to the Minister of Justice. The administration of the offices covers:

- securing the organisation of the office, with regard to the distribution of the workload amongst the available prosecutors and other employees of the office
- securing the work of the prosecution office in the area of employment
- securing financial and material support for the offices
- setting the scope for the budget for regional and district offices
- directing and checking the administration of the prosecution offices through their respective head, and observing the work of the administration service within each prosecution office
- dealing with complaints against the actions of prosecutors according to the 1993 Act
- setting the methodology for choosing and accepting legal trainees, directing and organising legal traineeships, securing the final exams and organising the professional education of other employees

It will be shown below that the prosecution service is subordinate neither to the Minister of Justice nor to the government in the exercise of its judicial competence. In principle, the Minister of Justice cannot interfere with the work of the prosecution service in the exercise of its competence in criminal proceedings. However, it is impossible to believe that interference never occurs (see 8.3.4.2).

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495 In the general prosecutor’s office, the Minister of Justice needs the agreement of the general prosecutor.
8.3.3 The structure of the Czech prosecution service

8.3.3.1 The new structure of the public ministry from 1993

The prosecution service consists of several units:

- the general prosecutor’s office in Brno (Nejvyšší státní zastupitelství)
- the higher prosecution offices of Prague and Olomouc (vrchní státní zastupitelství)
- eight regional prosecution offices (krajská státní zastupitelství). In Prague the competence of the regional prosecution service is exercised by the city prosecution office
- eighty-nine district prosecution offices (okresní státní zastupitelství). In Brno the competence of the district prosecution office is exercised by the city prosecution office
- during a military emergency, high and low field prosecution services (vyšší a nižší polní státní zastupitelství)
- a board for the protection of State secrets (repealed since 1 January 2006)

The 1993 Act establishes a pyramidal hierarchy between the units of the prosecution service as follows (Article 11a)

- the general prosecutor is superior to all higher public prosecutors
- the higher prosecutors are superior to regional prosecutors within their jurisdictions
- the regional prosecutors are superior to district prosecutors within their jurisdictions
- the head of each unit is superior to all prosecutors active in his unit

8.3.3.2 The distribution of competences within the prosecution service and concerning the prosecution functions

Prosecution functions are the monopoly of public prosecutors. No other institution can substitute for them. A superior public prosecutor’s office is authorised by law to intervene in cases within the jurisdiction of an inferior public prosecutor, where the method and scope conform to the 1993 Act (Article 3 § 2, 1993 Act). The
23/1994 Order of the Minister of Justice establishes the internal organisation of the prosecutors’ offices. Prosecutors are organised according to their rank in the organisation and to the territorial judicial areas where they perform their functions. The seats and territorial jurisdictions of prosecutors’ offices correspond to the seats and territorial jurisdictions of the courts. According to the principle of unity, the public prosecution service has a general competence to represent the State before the court within its jurisdiction, unless otherwise provided by law (Article 7, 1993 Act). In addition to the head of their office, only the superior prosecution office with territorial jurisdiction, as set out above, may supervise the lower prosecutors in lower offices. It is also the nearest superior office. The head of each office dispatches matters to prosecutors within his or her office according to specialisation, unless the matter concerns a specialisation provided by law to a specific office. For example, higher offices are competent for the prosecution of serious economic and financial crimes. The superior office supervises this distribution of competences on an annual basis. The nearest superior prosecutor’s office decides on jurisdictional disputes between public prosecutors. The nearest superior public prosecutor’s office may decide to withdraw and/or charge another lower prosecutor’s office with a case if the head of the affected office is disqualified from hearing the case by the application of procedural rules. In general, only a superior prosecution office can intervene within the limits set by the 1993 Act in the handling of matters for which lower offices are competent.

8.3.3.3 The supreme prosecution office

The jurisdiction of the supreme office corresponds to that of the Supreme Court. It is headed by the official superior to the two higher offices. Eight departments (the secretariat, penal proceedings, extraordinary remedies, legislation and analysis, non-penal matters, international cooperation, administration, and serious economic and financial crimes) make up the supreme office in Brno. The general prosecutor heads the office with a number of deputies. Under the supervision of the general prosecutor, three deputies head

- the department dealing with international cooperation and matters of grave economic and financial crime, divided into
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- an international office, including a section for legal relations with foreign countries and a section for Eurojust and the European Union
- an office to handle serious economic and financial crime
- the department for criminal matters and legislation, divided into
  - an analytical and legislative office with sections handling legislation and IT
  - a criminal office with a section for criminal proceedings and a section for review proceedings of internal complaints
- the department for non-criminal and administrative matters, divided into
  - a non-criminal office with a section tasked with the protection of children, the supervision of detention centres and bankruptcy cases
  - an administrative office with a section for financial and human resources and a section for day-to-day operations

The general prosecutor supervises the unity of the internal organisation of the public prosecutors' units and the unified exercise of the duties of the prosecution service. For this purpose, the office publishes instructions and guidelines concerning the type of sentence to request or suggest in different types of cases. These general instructions also permit adaptation to changing circumstances during proceedings.

The general prosecutor handles extraordinary appeals, the revision of cases and international judicial cooperation in criminal cases during preparatory proceedings. He is also empowered by law with specific tasks in fields of law other than criminal law. He administers the office and

- manages the office in personnel and organisational matters
- ensures the expertise of prosecutors working in his office
- deals with complaints as provided by the 1993 Act

8.3.3.4 The higher, regional and district offices

Higher prosecutors head the higher offices supported by two deputies. A higher prosecutor’s jurisdiction corresponds to the jurisdiction of the higher courts in Prague and Olomouc. The higher office of Prague comprises six departments (the secretariat, penal proceedings, legislation and analysis, administration, and serious economic and financial crimes), whereas the office of Olomouc comprises five departments, lacking that of legislation and analysis.
Higher offices supervise the regional offices within their respective jurisdictions. Branches of the higher office of Olomouc have been set up in Brno and Ostrava to supervise preparatory proceedings in serious economic and financial crimes committed in the area of the regional public prosecutors' offices in Brno and Ostrava. The higher prosecutors also administer the higher prosecution office within their jurisdictions.

Regional and district public prosecutors respectively head regional and district offices. These offices represent the State in proceedings before the regional and the district courts respectively. A regional public prosecutor supervises all district prosecutors' offices within the regional jurisdiction. A specialised department tasked with the investigation and simplified preparatory proceedings against offences committed by members of the police and other intelligence officers has been established in one district office in each region. The regional prosecutors administer regional and district public prosecutors' offices within their jurisdictions. The administrative director of each regional office is also empowered with specific tasks, such as the economic, material and financial management of regional and district offices. Prosecutors in district offices administer their office in accordance with the superior regional office’s directives. There is no structural assembly of prosecutors, nevertheless, meetings are organised between the different offices in order to discuss important issues.

8.3.4 Appointment and subordination of public prosecutors

8.3.4.1 Appointment of members of the public ministry

Depending on the prosecutor’s rank, the government or the Minister of Justice appoints prosecutors for life. A citizen of Czech nationality may be appointed a public prosecutor if he or she is over twenty-five years old on the date of appointment, has achieved legal magisterial university education in the Czech Republic, has no criminal record and has successfully passed the final examination. The government appoints and dismisses the general prosecutor at the motion of the Minister of Justice. In contrast to lower ranking prosecutors, there are no express conditions grounding the dismissal of a general prosecutor. The Minister of Justice appoints and dismisses

- deputies of the general prosecutor at the general prosecutor’s motion
- the higher public prosecutors at the general prosecutor’s motion
the chief regional public prosecutors at the motion of the general prosecutor or higher public prosecutor with jurisdiction over the region

the chief district public prosecutors at the motion of the general prosecutor or of the regional prosecutor with jurisdiction over the district

the deputies of the higher, regional and district prosecution offices at the motion of the superior prosecutor whose deputy is concerned

8.3.4.2 Some important rights of the Minister of Justice in the appointment of prosecutors

The Minister of Justice

- appoints public prosecutors to a particular prosecutor’s office with his approval
- may transfer the prosecutor to another office of the same or higher instance upon approval or at his or her request
- may transfer the prosecutor to a lower office only upon his approval

There is no direct subordination between prosecutors and the Minister of Justice because the Minister of Justice does not give instructions concerning the exercise of the functions and jurisdiction of the public prosecution. The general prosecutor’s office submits an Annual Report on the public prosecution’s activities to the government through the Ministry of Justice (Article 18 § 7, 1993 Act). Nevertheless, it seems reasonable to believe that the Minister of Justice can exercise a certain influence through his power over appointments, budget or the organisation of offices. In particular, the Minister of Justice may dismiss prosecutors for serious breaches of duty as prosecutors or failures in the administration of their offices (Article 10 § 4, 1993 Act). A breach of duty as a prosecutor may only lead to dismissal at the motion of

- the general prosecutor for higher prosecutors
- the higher prosecutor for regional prosecutors
- the regional prosecutor for district prosecutors
- the competent superior for deputies of higher, regional and district prosecutors
If the breach of duty concerns the administration of the office, the Minister of Justice as the central organ of the administration of the prosecutors’ offices can start *ex officio* disciplinary proceedings (Article 13i, 1993 Act).

Criminal policy is established by the PPS and the principle of compulsory prosecution (see 8.4.1.1) ensures that no instruction is required from the Minister of Justice to implement criminal policy. The Minister of Justice does not have a right to intervene in pending criminal proceedings. If he does so, he is acting outside the scope of his functions and this cannot be subject to democratic control. As with all other ministers, he is accountable only to the government which, in turn, is controlled by parliament. All members of parliament have the right to interpellate the head of the government or its ministers.  

8.3.4.3 The subordination of lower prosecutors to their superiors and the hierarchical supervision of public prosecutors

Prosecutors are subordinate to their direct superior in the exercise of their duties within the structure and hierarchy established by the Act (Article 11a). The general prosecutor is not the head of the entire institution and cannot intervene directly in specific cases. Nevertheless, the general prosecutor has a somewhat stronger position because he has the right to harmonise criminal policies by way of the following preventive and corrective measures (Article 12, 1993 Act)

- issuing instructions (*pokyny*) with general binding force on all public prosecutors in order to unify and streamline their actions
- expressing opinions (*stanoviska*) on the activities of public prosecutors’ offices in order to unify the interpretation of statute and other legal regulations
- issuing orders (*nařízení*) to the general prosecutor’s office or a public prosecutor’s office authorised by the general prosecutor, to check finished cases over which the office had jurisdiction and to impose remedial measures in case of faults made by the service (internal supervisory remedies)

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497 Article 72 of the 1993 Constitution stipulates that the Chamber of Deputies shall discuss a proposal for a vote of no confidence in the government only if it is submitted in writing by no less than fifty deputies. Passing the proposal requires the consent of an absolute majority of all deputies.
• applying to the Supreme Court to express an opinion on the interpretation of a statute or other legal regulation if there appears to be disunity in the jurisprudence of the courts

• entrusting public prosecutors with the supervision of detention centres

• submitting annual reports on the activities of the public ministry to the Minister of Justice

• recommending that the Ombudsman exercises his power for the protection of the public interest

Of these rights, the right to impose remedial measures on finished cases should be stressed. This remedy affects cases that have been definitively dropped or dismissed (see 8.4.2.1.2) and where no regular remedy, such as an appeal, is available. It is unclear whether this right also affects cases once the indictment is filed with a court. The remedy may take the form of a binding order to continue proceedings, to carry out a specific action or to issue a decision. It is not a disciplinary remedy.

Supervision (dohled) is the exercise of authority provided by the 1993 Act in order to secure the management and control of relations between the different levels of public prosecutors’ offices and within specific prosecutor’s offices when carrying out the functions of the public prosecution office (Article 12c, 1993 Act). The nearest higher prosecution office is competent to exercise supervision over actions of the nearest lower prosecution offices within its jurisdiction when they handle matters within their competence. This supervision is performed by way of written general or specific instructions binding on the lower office. The nearest superior prosecutor’s office is entitled to bring under a unified authority the actions of prosecutors concerning several matters of a particular type. It may remove a case from the lower office and dispose of it itself, including when the inferior office has been passive or permitted unjustifiable delay in the procedure. The head of an office supervises the actions of prosecutors working in that office when they are dealing with matters falling within the office’s competence. Although in this case instructions do not have to be written, they are nevertheless binding on deputies. The general prosecutor’s office has a particular right of supervision to harmonise criminal policies (Article 12g § 2 and 12h, 1993 Act). In the exercise of its competence, the general prosecutor’s office is entitled to request from any prosecution office information on particular actions performed by prosecutors.
exercising the jurisdiction of his office. The general prosecutor’s office can also request to see files kept by lower offices. Unless the request affects the higher prosecution offices directly subordinated to the general prosecutor’s office, this right can never lead to intervention in the way a lower office deals with a pending case. The general prosecutor’s right to review cases only affects proceedings that are already closed.

8.3.5 Limits to subordination

8.3.5.1 Principles of unity, indivisibility, indifference and substitution

When a public prosecutor performs his functions, his acts are considered to be acts of the office and not of a specific person (Article 23, 1993 Act). The personality of the prosecutor is irrelevant as regards the validity of the act. A prosecutor should act within the competence allocated to him by his superior, but this allocation is not binding outside the scope of the office hierarchy. Therefore, a prosecutor acting in the name of the office binds his office even if he was not authorised by his superior.

A public prosecutor may be temporarily transferred to another office for a period of up to three years. Such transfers require the approval of the prosecutor and are only made possible to ensure the due performance of the duties of the prosecution service. The decision to temporarily appoint a prosecutor to another office is made by the chief prosecutor of the office, being the immediate superior of both affected offices. The general prosecutor decides on temporary transfers to the general office. In other cases, the Minister of Justice’s decisions follow the consideration of the general prosecutor.

8.3.5.2 Instructions contrary to the law

If an instruction issued by a superior office is contrary to the law, the lower prosecution office is not obliged to follow it. In such cases, the lower office must immediately inform its superior office in writing of its reasons for refusal. If the superior office does not agree with the refusal and insists on the instruction, it may take over the case (external supervision provided in Article 12d § 2, 1993 Act).

A subordinated prosecutor is obliged to follow the instructions of the head of his office unless the instruction in a particular case is contrary to the law. If the superior gave such an instruction orally, he must confirm it in writing upon the request of the deputy. If the prosecutor refuses to follow the instruction, he must immediately
inform the prosecutor who issued the instruction in writing. If the superior sustains his instruction, he will present the case to the head of the prosecution office who may cancel the instruction. If the head does not cancel the instruction, he remands the case to the prosecutor who issued the instruction. If it was the head who issued the instruction, he takes over the case. During a court session, the competent prosecutor is bound by the instructions of the head of the office or those of the prosecutor designated by the head, unless new circumstances arise (internal supervision provided in Article 12e § 4, 1993 Act). The statute on the prosecution service clearly provides that the prosecutor is not bound by the instruction. However, this provision must not be overstated as a prosecutor must always remain loyal to his superior and, if possible, inform him of the new circumstances. Moreover, a prosecutor must always uphold the law and change the instruction upon a fair assessment of the new legal situation.

8.3.6 Other rights and duties and the independence of Czech prosecutors

The status of official prosecutor binds a trainee from the day he or she is appointed. The following oath is sworn before the Ministry of Justice (Article 18 § 3, 1993 Act)

I swear on my honour and conscience to protect the public interest and to always act in accordance with the Constitution and the laws of the Czech Republic, as well as the international agreements the Czech Republic is bound by; to respect human rights, basic liberties and human dignity and to keep the confidentiality of facts I shall learn in connection with the execution of the public prosecutor’s powers, even after termination of the execution of this office. In the execution of the public prosecutor’s powers and in my personal life I shall protect the dignity of my profession.

Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms implies that prosecutors, when discharging their duties, are generally obliged to comply with every statute in a rapid, professional and effective manner.\textsuperscript{496} They are also obliged to discharge their duties impartially, with respect for human dignity and the equality of all before the law, and to protect

\textsuperscript{496} The Czech Republic signed the Convention on 21 February 1992 and ratified it on 18 March 1992. It entered into force on 1 January 1993 and became part of Czech law.
basic human rights and freedoms (Article 2 § 2, 1993 Act). This means that they must act in compliance with the principles provided by statutes governing the prosecution office, but also that they must carry out their tasks professionally, honestly, responsibly, impartially, equitably and without undue delay (Article 24 § 1, 1993 Act). Therefore, a public prosecutor must

- educate himself continuously and improve his knowledge for the proper performance of his functions
- demonstrate due respect towards other prosecutors and other persons practising the law, and withhold from inappropriately impugning the character of other legal professionals

Prosecutors are not banned from becoming members of political partie;, nevertheless, they must avoid anything that could undermine or cast reasonable doubt on their compliance with their professional obligations or that could endanger the dignity required of a public prosecutor. Therefore, they

- may not be influenced by the interests of political parties, public opinion or the media when exercising their functions
- must exercise their functions without economic, social, racial, ethnic, sexual, religious or other prejudice and must abstain from demonstrating any personal sympathies, affection or negative attitudes
- should improve their professional, legal and other knowledge necessary to execution of their duties
- must maintain due respect towards other public prosecutors and other legal professionals
- must maintain confidentiality in matters coming to their knowledge through the execution of their duties. This obligation remains in force even after their other duties have been discharged or terminated
- must not permit their functions to be misused for the enforcement of private interests
- must not act as arbitrators in legal dispute settlements, represent parties in judicial proceedings, or act as proxies of the injured
parties. They cannot be party to judicial or administrative proceedings unless in the cases provided for by the law.\textsuperscript{499}

Public prosecutors are obliged to comply with these obligations while in office and also within their private lives. Within the scope of his or her competence and for the purpose of his legal activities, a prosecutor may

- request any file or document from any ministry, other State authority, territorial self-governing authority or private authority. The authority requested must comply without delay
- request the same authority to provide any necessary explanation without delay
- ask courts to consult judicial files and provide copies. The court requested may refuse only if there are serious reasons to do so
- summon any person to appear at the public prosecutor’s office and provide the necessary explanation. The person requested must obey

\section*{8.3.7 Discipline of prosecutors and penal responsibility}

\subsection*{8.3.7.1 Penal responsibility of Czech prosecutors}

Public prosecutors are not immune from penal responsibility and are liable for any criminal offences they may commit. If the nature of the crime committed impedes the continuation of the prosecutor’s function, the prosecutor convicted upon a final judgement is disqualified (Article 26, 1993 Act). In addition, a superior may always institute a disciplinary proceeding against a prosecutor sentenced for a criminal offence upon a final judgement.

\subsection*{8.3.7.2 Disciplinary responsibility of Czech prosecutors}

Disciplinary proceedings against judges and prosecutors are similar and regulated by a specific Act.\textsuperscript{500} With regard to prosecutors, anyone has the right to lodge a complaint about delays in the performance of the duties of public prosecution or about misbehaviour on the part of prosecutors or other employees of the office (Article 16b, 1993 Act). The superior of the affected

\textsuperscript{499} Such as legal representation, cases where this is allowed by special law, or cases where another party is represented in proceedings, to which the prosecutor is also a participant.

\textsuperscript{500} Zákon č. 7/2002 Sb., o řízení ve věcech soudců a státních zástupců.
prosecutor, which is the Minister of Justice when the complaint is lodged against the supreme office, is in principle competent to settle the complaint and if necessary to institute and carry out disciplinary proceedings. The affected prosecutor may challenge the decision of his superior before the Supreme Court, which has exclusive jurisdiction over cases involving the discipline of judges and prosecutors. A disciplinary violation can be

- a deliberate violation of the public prosecutor’s duties
- deliberate behaviour or conduct diminishing trust in the public prosecutor’s office or damaging the reputation of and unbecoming to the dignity of the public prosecutor’s position (Article 28, 1993 Act)

A prosecutor is liable for two years. If no disciplinary proceedings are instituted within the two years following the discovery of the offence, the prosecutor’s responsibility expires (Article 29, 1993 Act). Removal from office or transfer to another office is possible as the result of disciplinary proceedings, but proceedings for disciplinary offences can also lead to

- reprimand
- reduction in salary
- dismissal

In addition to disciplinary proceedings, minor offences can be dealt with by a superior official merely setting out the offence committed in writing. The report of the offence is added to the professional file of the affected prosecutor.

8.4 Functions of the Czech PPS in the preliminary phase of the criminal process

8.4.1 General principles of the preliminary proceedings of the criminal process

8.4.1.1 The principle of compulsory prosecution

The principle of compulsory prosecution as provided by Article 2 § 3 CPC is binding on public prosecutors as follows

Prosecutors shall have the duty to prosecute all criminal offences of which they are aware; an exception shall only be permitted by a law or under a promulgated international treaty.
Article 158 CPC applies the principle to police forces, obliging them to take all possible steps to discover facts indicating that a suspected criminal offence was indeed committed and to discover the offender. The obligation to prosecute is binding on the police from the moment they suspect a criminal offence was committed. Compulsory prosecution also implies that proceedings are held *ex officio*. Proceedings commenced by the competent body do not depend on any authorisation, unless otherwise provided by law (see 8.4.1.2). According to Article 2 § 4 CPC

> Unless the present Act provides otherwise, the bodies active in criminal proceedings shall act *ex officio*; they shall hear criminal cases without any undue delay…

There are several exclusively statutory exceptions to the principle. These exceptions can be relied upon to explain a refusal to initiate proceedings or the dismissal of proceedings. The police have a right to drop a matter before the commencement of proceedings and to dismiss them once in progress. A prosecutor may only dismiss proceedings once they have been investigated. Grounds for refusal to institute or dismiss proceedings are similar, to a certain extent. Article 11 of the Code stipulates that criminal prosecution is not admissible and cannot be instituted or if already instituted, cannot continue and must be dismissed if

- the President of the Czech Republic grants pardon or amnesty
- the statute of limitations applies and prevents prosecution
- the prosecution is pursued against a person enjoying privileges and immunities under domestic or international law
- the prosecution is pursued against a person who may only be lawfully prosecuted on the basis of authorisation which has not been obtained from the competent body
- the prosecution is pursued against a minor with no criminally liability
- the prosecution is conducted against a deceased defendant, or a person declared deceased
- the prosecution is pursued against a person whose previous prosecution for the same offence resulted in a final court judgement or had been lawfully dismissed, unless such a decision was nullified in the prescribed manner by a court sentence or another organ competent to prosecute criminal offences
• the prosecution is pursued against a person against whom previous prosecution for the same act had been closed by a final and valid judgement approving a transaction, unless such a decision was declared void in the ensuing proceedings

• the prosecution is pursued against a person against whom previous proceedings for the same act were closed by a final decision on assignment of a matter on the suspicion that the act is an administrative offence, other administrative delict or disciplinary offence, unless such a decision was overturned in the ensuing proceedings

8.4.1.2 The principle of compulsory consent of the injured party

In certain matters provided by the Criminal Code, the competent organ may only institute or continue prosecution already instituted upon the consent of the injured party (Article 163 CPC). Without this consent, the prosecution cannot be continued unless certain conditions are met, e.g. the victim is unable to give his consent or is under the age of fifteen (Article 163 a CPC).

8.4.1.3 Phases of the preliminary proceedings

The police, the public prosecutor or other established public organs (e.g. the Financial Analysis Department or the Customs Administration) may discover, or suspect the existence of, criminal facts. The first phase following this discovery or announcement of facts is the so-called ‘verification and securing of facts’ (objasňování a prověřování skutečností). During this pre-investigative phase, the charges and the suspect are unknown. The police take steps and inform the public prosecutor by means of a written report included in the criminal file. The first phase ends with a police report submitted to the prosecutor. The second phase starts with an official act disclosing charges and instituting criminal proceedings. This launches the criminal investigation (vyšetřování). The phase ends with a final police report submitted to the prosecutor requesting the continuance of the prosecution or some other decision. The prosecutor takes the next decision and may file an indictment, dismiss the case, decide to transfer it to another body or settle it. The public prosecutor is, in principle, the only organ competent to file the indictment and represent the public prosecution before a court (Article 180 § 1 CPC). For minor offences (carrying up to three years’ imprisonment), the CPC organises simplified preliminary
proceedings. There is no investigation and only a short ten-day investigative phase. This phase can result in a summons for the suspect to appear in court, with a judge sitting alone, unless the prosecutor opts for a dismissal or when an investigation becomes necessary.

8.4.2 The role of the Czech prosecution service in pre-investigations and preparatory criminal investigations

8.4.2.1 The first phase – pre-investigative proceedings, uncovering of the criminal acts and police investigation

8.4.2.1.1 The pre-investigative phase

The police corps or the PPS have jurisdiction to start pre-investigations. They are both obliged to accept a notice on the facts indicating that a crime might have been committed. Article 12 § 2 CPC provides that police bodies refer to the Czech police bodies. In addition to the main police corps, the military police can also bring proceedings against a member of the armed forces and the prison security police. However, if a police corps other than the Czech police – i.e. the Security Information Service or the Office of Foreign Relations – takes measures or performs an act, this body must inform the Czech police without delay. If there is a jurisdictional dispute between two police corps, the public prosecutor settles the conflict with a binding opinion (Article 158 § 10 CPC). The police are subordinate to the Minister of the Interior, who appoints and dismisses the chief of police. The chief of police appoints and dismisses the director of the various police services. The purpose of pre-investigation is to find out whether a criminal offence was committed and to try to identify the offender. The police are mainly involved in this phase and the public prosecutor is absent. First, there must be suspicion that a criminal offence has been committed. The police suspect an offence (Article 158 CPC)

- *ex officio* (i.e. if a suspect was caught in *flagrante delicto*, in the act of committing a felony or immediately afterwards)
- on report of an offence (*trestní oznámení*)
- on the motion of another body or person suspecting an offence (*podnět jiných*)

501 This thesis will only study the proceedings available for more severe offences.
From the moment of this suspicion until the first report of the crime and possible charges, the police must undertake all necessary immediate acts. Police forces are entitled to demand explanation, conduct inspections and interrogations and seize any files or other documents necessary. In principle, it is not possible to hold someone in detention during this period. Only a court may order detention after the suspect is charged with an offence. However, if necessary, the police can take someone into custody. Custody cannot last more than forty-eight hours. The prosecutor has an additional twenty-four hours to file a motion with the district court disclosing the charge and requesting detention. The recent CPC modifications oblige the police body to inform the competent public prosecutor immediately or within forty-eight hours of notice of a crime. Once informed, the prosecutor is obliged to check that pre-investigation was undertaken within the legal time limit. The public prosecutor instructs and supervises the police body during this phase. The prosecutor checks the report and instructs the police to modify its legal content, if necessary.

Based on this suspicion, Article 12 § 10 CPC establishes possible ways to officially commence preliminary proceedings:

- the creation of a record of the steps to be taken (i.e., interrogation, search for explicable evidence, detention of the suspect)
- the taking of such steps if they cannot be delayed or repeated, and if they precede the creation of such a record

According to this Article, the date mentioned in a record will be the start of preliminary criminal proceedings. This date could be that of the urgent steps taken or that of the report itself. The police can take steps before they hand the final report over to the prosecutor. In principle, the police communicate official reports concerning these steps to the public prosecutor during this period. These reports cannot be used as evidence in judicial proceedings unless the law

502 The workload of public prosecutors has risen significantly following the introduction of this obligation to report every single notice of a crime. According to the official statistics of the general prosecutor’s office, in 2005 there were 18,387 reports of crimes in the 4th district of Prague while in South Bohemia (district of České Budějovice) there were 6,719 reports.

503 Article 160 § 4 stipulates that an act is undelayable (urgent) if, with regard to the danger it implies, or the destruction or loss of evidence affecting the criminal proceedings, it cannot be postponed until criminal proceedings have been instituted. The act is unrepeateable if it cannot be performed in court.
provides otherwise.\textsuperscript{504} The pre-investigation phase should be completed within

- two months, if within the jurisdiction of a single judge without preparatory proceedings
- three months, if within the jurisdiction of the district court
- six months, if within the jurisdiction of the regional court

The public prosecutor can extend the time limit and decide to modify the steps the police need to take. The police must keep the competent prosecutor informed of the completion of their tasks within the time limit. The competent prosecutor is always entitled to supervise the police and issue instructions (see 8.4.3).

8.4.2.1.2 Refusal to start or continue preparatory proceedings

During the screening of the facts, the public prosecutor or the police can drop the matter and refuse to start preparatory proceedings (\textit{usnesení o odložení věcí}). The dropping of the matter might be definitive or temporary. If the reasons for dropping proceedings no longer exist, criminal prosecution must be instituted immediately.

According to Article 159a CPC, the police and public prosecutors have the same right to decide to drop a case. The competent body orders the dropping (\textit{odložení}) of a matter by way of an informal decision if there is no suspicion of a ‘criminal’ offence. If more appropriate, the matter can also be

- transferred to a competent body for hearing as an administrative offence or misdemeanour
- transferred to a different body for disciplinary (\textit{kázeňské}) or other proceedings (\textit{kárné})

By formal order (\textit{usnesení}) open to review, a definitive dismissal of a matter must be made if

- criminal prosecution is unacceptable according to Article 11 CPC (see 8.4.1.1)
- the public prosecutor or the police body failed to discover facts entitling them to institute prosecution (Article 160 CPC)

\textsuperscript{504} According to Article 158a CPC, an exception to this rule is available if an interrogation is urgent and cannot be repeated afterwards. In this case, a judge must be present during the interrogation if it is to be used as evidence in judicial proceedings.

\textsuperscript{505} The decision to transfer the matter is informal and cannot be challenged.
The competent body may also order a definitive dismissal by way of a formal order if

- the sentence that may result from the prosecution is insignificant compared to the sentence for another act the accused has already been charged with

- the act committed by the accused had already been settled by another body in a disciplinary manner, or by a foreign court or agency, and this decision was considered satisfactory

The police refer the order communicating the refusal to start or to drop proceedings to the prosecutor within forty-eight hours, and notifies the victim, if known. The temporary dropping (dočasné odložení) of a matter may only occur with the agreement of a public prosecutor if it is necessary for clarification of criminal activities committed in the context of a criminal conspiracy or another deliberate criminal act or for ascertaining the identity of the perpetrators (Article 159b CPC). A case may be dropped temporarily for a period of two months unless the public prosecutor authorises an extension. In this case, the police will postpone the start of a criminal prosecution – they do not have to comply with time limits and inform the parties. This kind of process could be helpful for the police to avoid arousing the suspicions of suspects before sufficient evidence is collected to start a prosecution. In addition, interrogations do not need the authorisation of a judge during the screening phase, where time is often of the essence.

8.4.2.2 The second phase of proceedings

8.4.2.2.1 The decision on commencement of prosecution (Výrok usnesení o zahájení trestního stíhání) and investigation

Once facts uncovered and reasonably substantiated by a pre-investigation indicate that a criminal offence has been committed by a particular person, the police or the prosecutor must immediately commence investigation against that person unless prosecution is not admissible for reasons provided by law (Article 160 § 1 CPC). The decision on prosecution must contain

- the description of the act for which the person is prosecuted

- the legal definition of this act

- the exact personal details of the accused
The decision is in principle taken by the police and served on the
different parties. The police must inform the public prosecutor within
forty-eight hours. This decision starts the second phase of the
preparatory criminal proceedings, the investigation and the
prosecution. The suspect or the victim can challenge this decision by
way of a complaint (stížnost). The date of this act stops time
counting for the statute of limitations for prosecuting crime.

8.4.2.2.2 The investigation

Unless otherwise provided by law, the section of the Czech police
concerned with criminal matters conducts the investigation, after
which the indictment is filed and the case is transferred to another
body, ordering definitive or conditional dismissal, or a settlement
without trial (Article 161 CPC). If a body other than the police carries
out the pre-investigation, the case must be handed on to the regular
police. Otherwise the police will conduct the investigation on their
own initiative. They have the same powers and rights as in the pre-
investigation phase. The purpose of the investigation is to find the
necessary evidence to clarify all the basic facts about the offence
which are important for the assessment of the case, the identity of
the perpetrator and the effects of the criminal offence. If acts are
made in accordance with the law during the pre-investigation phase,
they do not have to be repeated during the investigation period.
Nevertheless, acts such as interrogations must be repeated because
they need the decision of a judge in order to be used in judicial
proceedings. The police are fully responsible for acts carried out
during the investigation. With the exception of decisions that need
the approval of a public prosecutor, the police take all decisions
alone (Article 164 § 5). During and after the investigation, only a
public prosecutor may take certain decisions such as

- ordering the dismissal, conditional dismissal or suspension of a
criminal prosecution (see below 8.4.2.2.3), and the transfer of
the matter to a different body if the findings of the investigation
indicate that no criminal offence was committed

- filing an indictment with the court
- applying to the court for an extension of detention
- setting the accused free
- ordering the seizure of an accused’s property or cancelling such
an order
• securing the injured party’s right to damages or cancelling this security
• ordering the exhumation of a corpse
• proposing the extradition of an accused from a foreign country
• performing preliminary investigations in proceedings on extradition to a foreign country

The police body closes the investigation when it is deemed complete. Thereafter they send the file to the public prosecutor with one of the following motions

• to file an indictment and a list of proposed evidence with the court
• to transfer the case to another body if there is no criminal offence but an administrative or disciplinary breach of the law
• to dismiss the prosecution
• to temporarily drop the prosecution
• to conditionally dismiss prosecution
• to settle the case without trial

If the investigation was directly performed by a public prosecutor, a superior public prosecutor of the immediately higher office supervises its legality. The lower prosecutor, however, maintains the right to file the indictment and does not need the approval of the superior prosecutor to take decisions such as

• the transfer of the case
• the dismissal of the case
• the suspension of the case
• the conditional dismissal of the case
• settlement without trial

If a matter involves a member of one of the police corps – the Czech police, the Security Information Service or the Office of Foreign Relations – only a public prosecutor is empowered to conduct the investigation. The same legal provisions apply as in a normal police investigation but decisions that normally needed the approval of a prosecutor no longer do so.
8.4.2.2.3 Decisions to end the prosecution

After the start of the investigation, the prosecutor has the right to dismiss a case (zastavení trestního stíhání) on the same legal basis as dropping it during the screening period (see 8.4.2.1).

The prosecutor may also suspend prosecution (Article 172 § 2 c)

If, considering the importance of the protected interest infringed by the act, the manner of the commission of the act and its effects or the circumstances in which the act was committed, and considering the behaviour of the accused after the commission of the act, it is apparent that the goal of the criminal proceedings has been achieved.\(^{506}\)

In the following cases, the public prosecutor must suspend the prosecution (Article 173 CPC)

- if the case cannot be duly clarified because of the absence of the accused
- if the accused is unable to understand the criminal prosecution because of mental illness, which manifested itself after the commission of the acts
- if the accused cannot appear before the court because of a severe illness
- if the accused is subject to extradition or expulsion to a foreign country or if an application has been lodged for expulsion or extradition

If the reason for suspension ceases to exist, prosecution must continue. The injured person has a right to challenge the order to dismiss prosecution issued by the competent authority by way of appeal before the superior prosecutor (Article 172 CPC).

The prosecutor may also decide to dismiss the case. Although the decision to dismiss is a plea of res judicata, the general prosecutor may ex officio or on demand of the injured or other person, cancel the decision within three months of the effective date of the decision and order the respective prosecutor to continue prosecution. From a

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\(^{506}\) This provision is applied very rarely, often in cases of defamation. Prosecutors do not apply to decrease the workload and circumvent the principle of compulsory prosecution. In fact, this article is comparable to the definition of social danger as a material element of a criminal offence. An act is not a crime if the social danger is insignificant (Article 3 CC). Prosecutors tend to refer to the latter definition rather than to 172 § 2c. This new provision gives, however, more power to prosecutors to divert a case once charges have been disclosed and served on the accused.
practical point of view, this procedure also permits the unification of practices with respect to a claim from the accused (Article 174a CPC).

If the result of the investigation provides sufficient reason to prepare an indictment, the police hand over the case to the prosecutor who may file an indictment. The indictment can only be filed for acts described in the decision on commencement of prosecution. A prosecutor must always apply the law and follow his personal convictions based on consideration of all aspects of the case when he files an indictment and represents the State (Article 180 CPC).

In addition, the CPC (Articles 307 & 308) provides the right for the prosecuting authority to propose a conditional dismissal of the case for a period of six months to two years. This is possible when the offence committed carries a sentence of imprisonment of up to five years. The accused must acknowledge that he committed the offence and repair the damage caused by the act or conclude an agreement for the payment of compensation within the term of probation with the injured party, or take other measures necessary to repair the damage. Other restrictions may be imposed on the accused. If the accused complies with the conditions, the public prosecutor will decide that the dismissal is definitive.

If an offence of the same type has been committed, the public prosecutor may choose a settlement out of court if the victim and the accused agree on such a settlement (Article 309). The accused must acknowledge his guilt and repair the damage caused by the act. If the agreement comes into force, the prosecution is dismissed and the case ends.

Both proceedings – conditional dismissal and out-of-court settlement – are available to the court as possible conclusions of a hearing. The accused, the victim and, if the decision is made by a court, the public prosecutor, have the right to file complaint against such decisions.

8.4.3 The role of the Czech prosecution service in the supervision of preliminary proceedings

8.4.3.1 The obligation to provide information

The police must undertake all the necessary steps that prevent a criminal offence from taking place and lead to the clarification and verification of the facts reasonably indicating that a criminal offence was committed – such as interrogating the suspect. The police may undertake unrepeatable or urgent steps without informing the prosecutor. However, afterwards, the police must draft a record of
these steps without delay and send it to the prosecutor (Article 158 § 3 CPC). If the police decide to drop the matter by application of Article 159a or 159b CPC (see 8.4.2.1.2), they must inform the prosecutor within forty-eight hours of the relevant order. For steps that are not urgent or unrepeatable, the police must produce an official report, a copy of which must be sent to the public prosecutor within forty-eight hours of the start of the proceedings (Article 158 § 5 CPC). In addition to this police duty, there is a duty – that is binding on all public authorities – to inform the public prosecution or the police of facts indicating the commission of a criminal offence (Article 8 CPC). The same authorities must provide help if required by bodies active in criminal proceedings.

8.4.3.2 Supervision of preparatory proceedings

As a general provision, in the heading to the chapters concerning criminal proceedings, the CPC stipulates that (Article 157 § 2)

A public prosecutor, in order to examine facts indicating that a criminal offence was committed, is entitled to:

a) request from the police corps files, including files by which criminal proceedings were instituted, documents, materials and reports on actions undertaken when examining the notification of the offence;

b) withdraw any matter from a police corps and take measures to transfer the matter to a different police corps;

c) temporarily delay the institution of criminal prosecution.

From the beginning of proceedings, the competent public prosecutor has full powers over cases that come to the attention of the police. In preliminary proceedings, the competent prosecutor is dominus litis. If he is informed, he can – and must, if it comes to delays and the authorisation of the detention of suspects – exercise supervision over criminal proceedings from the beginning. Prosecutors check the legality of the police investigation, including the conformity of the procedure with the protection of human rights and fundamental freedoms. This duty is set down in provisions of the 1993 Act and in respective provisions of the CPC (Article 157, 174 et seq.). Article 157a CPC also stipulates that the suspect and the injured party have the right to ask the public prosecutor at any moment during preparatory proceedings to repair delays or errors in police actions. Article 174 CPC organises prosecutors’ rights to supervise criminal pre-trial proceedings once charges have been served and the investigation started. Prosecutors are entitled to
• give binding instructions (pokyny) for the investigation of criminal offences
• request files, documents, materials and reports on criminal acts from the police body to review the early commencement of the criminal prosecution and the observance of due procedure
• participate in the performance of procedures by the police corps, personally conduct individual procedures or the entire investigation, and issue a decision in any case, while acting in the course of these actions pursuant to the provisions applicable to the police. A complaint against this decision is admissible as the prosecutor is acting in the capacity of a police corps
• return the case to the investigator with instructions for additional investigations
• cancel unlawful or unjustified decisions and measures taken by the police, which he may replace with his own decisions – within thirty days of the notification of an order to drop the matter
• order other persons active in the police body to perform the acts

8.4.3.3 The position of the general prosecutor in the supervision

Article 174a CPC authorises the general prosecutor to
• cancel an illegal order issued by a lower public prosecutor to dismiss a case or to transfer the matter, within three months of its taking effect
• request, by reason of the cancellation of illegal orders, files, documents, materials or reports and the performance of screening of them

If the general prosecutor cancels an order for dismissal, the public prosecutor who decided the case in the first instance, continues the proceedings. The legal opinion expressed by the general prosecutor is binding. The lower prosecutor is obliged to undertake the act and supplementary steps ordered.

8.4.3.4 The complaint (stižnost) or appeal against orders

Articles 141 to 150 CPC organise the procedure of complaint against orders made during preliminary proceedings (see for more 8.5.2.1). Orders issued by the police organs may always be challenged before the competent public prosecutor. Orders issued by public prosecutors or a court may only be challenged if the law permits,
before the superior prosecutor or the superior court respectively. Unless the law stipulates otherwise, a complaint does not halt the challenged order. The scope of a decision of the authority on a complaint is not limited by the grounds of the complaint. Nevertheless, reformation in peius is prohibited.

8.5 The role of the Czech PPS after the preliminary phase of the criminal process

8.5.1 The position of the public prosecutor in the first instance

8.5.1.1 The preliminary verification of the indictment and conference

The presiding judge of the competent court reviews the indictment before the main hearing starts and may order a preliminary hearing of the indictment if he considers that

- another court has jurisdiction over the matter
- the matter should be transferred because it is not a criminal offence but an act that could be evaluated by another body as an administrative offence or as a disciplinary offence
- there are circumstances justifying the dismissal of prosecution, that is, if
  - it is beyond any doubt that the act, on the grounds of which the criminal prosecution was instituted, did not occur
  - this act was not a criminal offence and there are no grounds to transfer the case
  - it is not proven that the act was committed by the accused
  - the criminal prosecution is inadmissible because one of the conditions provided for in Article 11 CPC is met (8.4.1.1)
  - the accused was of unsound mind while committing the act in question and thus not criminally liable
  - culpability for the act no longer existed
- there are circumstances justifying the suspension of prosecution if
  - the case cannot be duly clarified due to the absence of the accused
  - the accused cannot appear before the court because of a severe illness
• the accused is unable to understand the meaning of the criminal prosecution due to mental illness manifesting itself after the commission of the act
• the accused is subject to extradition to a foreign country or expulsion, or an application for transfer has been lodged, or the accused was extradited or expelled
• there are circumstances justifying the conditional dismissal of criminal prosecution
• the acts in the indictment should be judged pursuant to another provision of the CC than the one applied by the prosecution
• the pre-trial proceedings were not executed according to the law and, especially, when the regulations guaranteeing the right to defence were violated or the pre-trial proceedings were not executed according to the law, or procedural rules were infringed in a significant manner, in particular provisions securing the rights of the defence, and such violation of the procedural rules could not be remedied in the proceedings before the court
• basic factual circumstances in the matter were not clarified to the degree necessary to permit a decision on the matter

The presiding judge of a district court has three weeks to perform the verification and the presiding judge of a regional court has three months. The purpose of the preliminary verification is to examine whether (Article 181 CPC)
• the court has substantive and territorial jurisdiction to hear the matter
• there were any grave procedural infringements in the preliminary proceedings that cannot be rectified in the court hearing
• basic facts were clarified in the pre-trial proceedings sufficiently to permit the conduct of the main hearing and the taking of a decision

Within the time limit prescribed by law, the presiding judge decides to hear the indictment in conference or to directly order a trial. The preliminary hearing of the indictment takes place in closed session unless the presiding judge of the panel decides otherwise. After this hearing, the court may
• transfer the matter to the competent court
• transfer the matter to another body
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- dismiss the criminal prosecution
- suspend the criminal prosecution
- remand the case back to the prosecutor for additional investigation to clarify facts or, if it is necessary, to correct serious procedural errors that cannot be remedied during the hearing
- decide on approval of a settlement without a complete hearing
- transfer the case to a single judge in circumstances provided by law
- serve the indictment on the parties and order the main hearing

The public prosecutor, the accused and, in certain circumstances, the victim may challenge the order of the court taken on preliminary hearing of the indictment by way of complaint (stížnost). If the court decides to remand the matter to the prosecutor, its decision indicates

- the proceedings that must be completed
- the facts that need clarification
- the steps that must be taken

Once the prosecutor has complied with the terms of the court's decision, he or she may issue a new indictment. A preliminary hearing of this new indictment may be held.

8.5.1.2 The first instance hearing and the participation of the State prosecutor at the hearing

The presiding judge of the panel orders the date and time of the main hearing. The hearing is public and starts with the president's announcement of the case. The hearing must always be held in the presence of the prosecutor who read the indictment. The examination of the defendant follows the reading of the indictment. Afterwards, the prosecutor and the other parties have the right to question the accused and summon witnesses. The public prosecutor then gives his closing address. The last word is always for the accused or his counsel. The court must always arrive at a decision based on the act identified in the indictment and the facts examined during the hearing. However, the indictment is not binding on the court with regard to the legal qualification of the act. After the hearing, the court may decide to
remand the case back to the prosecutor for additional investigation if the results of the main hearing indicate that

- there is a substantial change in the circumstances of the case occasioning the need for further investigations for clarification of the case
- the defendant also committed another criminal act and the prosecutor was requested to return the case to the police for investigation
- transfer the case to another court or body
- dismiss the criminal prosecution
- conditionally dismiss the prosecution and approve a settlement without sentence
- suspend the criminal prosecution
- make a judgement finding the accused guilty or acquitting the accused

If the court remands the case back to the prosecutor, it must reason this step and order additional investigations to be carried out. The prosecutor is bound by this order. The court may decide to acquit the defendant, based on evidence presented during the hearing by the public prosecutor and supplemented by the court at the other party’s request, if (Article 226 CPC)

- it was not proved that the act the defendant was prosecuted for occurred
- this act is not a criminal offence
- it is not proved that this act was committed by the defendant
- the defendant bears no criminal liability for reasons of mental illness
- there is no longer any culpability for the act

Before the beginning of the main hearing, the prosecutor may withdraw the indictment until the court retires for deliberation. After the start of the hearing, he may only do so if the defendant does not insist on continuing the proceedings. If the indictment is withdrawn, the matter returns to the preliminary proceeding stage.507

507 An exception exists if the indictment is filed with a motion to dispose of the case by penal order proceedings presided over by a single judge. In this case, withdrawal is possible until the penal order is served. Upon withdrawal, the penal order is
8.5.2 The position of the public prosecutor in ordinary forms of review

8.5.2.1 The complaint (stížnost)

The complaint is the ordinary form of review used against orders (usnesení) issued in the course of preliminary proceedings by a court, a public prosecutor or a police corps (Article 141 to 150 CPC). Where provided by law, a complaint is also available against other types of judicial decision, such as a custodial decision (rozhodnutí o vazbě). In principle, the complaint is filed with the superior of the body that issued the order. However, in certain cases

- orders issued by a police corps can always be challenged by way of complaint before a superior police officer unless the order requires the authorisation of the prosecutor. In this case, the superior officer may accept the complaint only with prior authorisation of the prosecutor

- orders made by a court or a public prosecutor can only be challenged when authorised by law and if the matter was decided in the first instance. A complaint against a court order is filed with the same court that initially made the order. A complaint against a prosecutor’s order is filed with the same prosecutor

- orders issued by a public prosecutor from the general prosecutor’s office can only be challenged when authorised by law and if the matter was decided in the first instance. Complaints may be filed with the general prosecutor

- orders of the general prosecutor may be challenged by way of complaint only when by law a court is competent to decide on a complaint. Complaints may be filed with the Supreme Court

Unless the law provides otherwise, only the person directly affected by an order may file a complaint. Such a complaint must be filed within three days of the date of receiving notification of the order. A public prosecutor may file a complaint against orders issued by the courts even if the complaint is in the defendant’s favour. The superior prosecutor of the complainant prosecutor has the right to withdraw the complaint filed by his deputy.

Possible grounds for complaint are cancelled and the case returns to the preliminary proceedings (Article 314g § 4 CPC).
• an error in any statement of the orders
• a breach of provisions governing the proceedings that preceded
  the adoption of the order if such a breach could have resulted in
  an error in any statement of the order
• there are new facts and evidence that can be used to support
  the complaint

If the superior body does not dismiss the complaint, it may
• reverse the contested order, and if the matter calls for a new
  decision, it shall
  ▪ decide on the matter in its own capacity
  ▪ or instruct the body whose decision is contested by the
    complaint to re-examine the matter and take a new decision
• remand the case back to the prosecutor for additional
  investigation
• execute the order or instruct the subordinate body to do so

The deputy is bound by a legal opinion expressed by his superior

8.5.2.2  The protest (odpor)

Decisions taken by a single judge, when provided for by law (see
8.2.1), are called criminal orders (*trestní příkaz*). They have the force
of a sentencing judgement. The accused, the persons authorised to
file an appeal in his favour and the prosecutor can file a protest
against a penal order within eight days of its service. A protest that is
validly filed cancels the penal order and the case is then judged at a
main hearing.

8.5.2.3  The appeal (odvolání)

The appeal is the ordinary remedy against definitive judgements
made at the first instance. The following persons may challenge a
judgement by way of appeal
• the prosecutor, on the grounds of the incorrectness of any
  verdict
• the defendant, on the grounds of the incorrectness of the verdict
  directly affecting him, his relatives in a direct line of descent, his
  brothers and sisters, adoptive parents, adoptive child or spouse
• a participant, on the grounds of the incorrectness of a verdict of
  seizure of property
• an injured party, claiming damage compensation for the incorrectness of the damage compensation verdict

An appeal is always possible for such categories of persons in the face of a breach of the provisions applicable to the proceedings that precede the judgement, and if this breach could have caused the verdict to be incorrect. Only the public prosecutor may file an appeal to the detriment of the defendant against a judgement. The appellate court may deny an unjustified appeal and sustain the judgement. Alternatively, it may
• suspend criminal prosecution
• cancel the judgement and re-examine the case in its entirety or in part
• cancel the judgement and remand it to another body if the first instance court should have done so
• dismiss the prosecution
• cancel the judgement and remand the case to the first instance court
• if a verdict is incomplete, sustain the judgement and remand the case to the first instance court that must supply the missing verdict
• remand the case back to the prosecution service for additional investigation

8.5.3 The position of the public prosecutor in extraordinary forms of review

8.5.3.1 The cassation appeal (dovolání)

The following categories of persons can challenge a decision delivered by a court at the second instance
• the general prosecutor, at the motion of the regional or higher prosecutor, or ex officio for incorrectness of any verdict of a court decision (výrok rozhodnutí soudu) favourable or prejudicial to the defendant

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508 This can happen in particular if the factual findings fall so far short that it is necessary to repeat the main hearing or to obtain extensive and difficult supplements to the evidence.
the defendant, for the incorrectness of a court decision directly affecting him

The following decisions delivered by a court in the second instance can be appealed by cassation

- a judgement where the accused was found guilty, and the sentence or protective measure imposed or the sentence waived (1)
- an acquittal (2)
- an order to dismiss the prosecution (3)
- an order to transfer the matter to another body (4)
- an order imposing a protective measure (5)
- an order conditionally dismissing the prosecution (6)
- an order approving a settlement (7)
- an order by which an ordinary appeal was denied or refused against a judgement or a resolution as provided for in cases 1 to 7 (8)

According to the cassation principle, an appeal is admissible only on strict grounds provided by law (Article 265b CPC). These are

- a sentence of life imprisonment
- a court incompetent in the subject matter or a court improperly composed, unless a panel or a higher court instance passed judgement rather than a single judge
- an excluded body decided on the matter; this reason does not apply if the person lodging the extraordinary appeal was aware of this in the original proceedings and failed to object before the second instance body
- the defendant did not have defence counsel appointed although one should have been appointed by law
- requirements for the presence of the defendant at the main hearing or in the public session failed to be observed
- the accused was criminally prosecuted where such prosecution was inadmissible by law
- a decision was made to transfer the matter to another body, to dismiss the criminal prosecution, to conditionally dismiss the
criminal prosecution or to approve a settlement, without having fulfilled the conditions for such a decision

- the decision is based on an erroneous legal classification of the act or other erroneous substantial legal classification
- the defendant was given a type of sentence inadmissible by law or a sentence was imposed that exceeded the sentence limits set in the CC for the specific criminal act for which he was convicted
- a decision was taken to suspend a sentence or suspend a sentence with supervision, without the conditions set by law for doing so having been met
- a decision was taken to impose a protective measure without the conditions set by law for doing so having been met
- a particular verdict is missing from a decision or a verdict is incomplete
- an ordinary form of review against a judgement or resolution in cases 1 to 7 above was refused, without the legal procedural conditions for such refusal having been met

The time limit for filing a cassation appeal is, in principle, two months from the date of delivery of the decision challenged. The cassation appeal is brought to the Supreme Court. If the general prosecutor files the appeal, he indicates whether he files in favour of the accused or otherwise. The presiding judge of the court verifies the content of the appeal and may request the removal of insufficiencies where necessary. The Supreme Court can deny the appeal if it is inadmissible or unsubstantiated. If the Supreme Court grants the appeal, it can abrogate a challenged decision and require a new decision. In principle, the Supreme Court only considers the application of the law in the particular case; it does not judge facts, which is the role of lower courts. Therefore, if necessary, the Supreme Court instructs the body that issued the challenged decision to issue a new decision. The Supreme Court’s instruction is in principle not binding. In a review, the Supreme Court can consider factual points only if the legal conclusions of the lower instance court display extreme discrepancies with the factual points of the case. The Supreme Court may cancel the challenged decision or the preceding erroneous proceedings, in whole or in part. It may cancel only a part of the verdict and if a new decision is necessary, it may refer it to the court or the prosecutor that delivered the challenged
decision or conducted the erroneous proceedings. If the error lies only in an incomplete verdict, the Supreme Court may order the relevant court to complete the decision. The Supreme Court cannot cancel a decision and

- find the defendant guilty of an act for which he was acquitted or for which the proceedings were dismissed

- find the defendant guilty of a more serious criminal act than the one for which he was found guilty in the challenged decision

- sentence the accused to over fifteen years imprisonment if such a sentence was not imposed by the challenged decision or in connection with the judgement of the first instance court

No legal remedy against a Supreme Court cassation appeal decision is available except retrial proceedings (see 8.5.3.3).

8.5.3.2 Complaint for breach of law (stížnost pro porušení zákona)

The Minister of Justice can file a complaint for breach of law with the Supreme Court against a final decision of a court or public prosecutor which

- breached the law
- was based on incorrect proceedings

A complaint filed against a decision is only possible if the sentence is obviously disproportionate to the level of danger to society presented by the act or the personal circumstances of the convicted defendant, or if the type of sentence imposed is in obvious contradiction to the purpose of the sentence. The Minister of Justice is obliged to disclose whether the complaint is filed in favour of the defendant or otherwise. If the Supreme Court grants the complaint and finds that the law was violated, it declares by judgement that the law was violated by the challenged decision or a part of the proceedings that preceded it. The judgement does not affect the effectiveness of the challenged decision.

If a verdict prejudicial to the accused has been made through violation of the law – such as when the defendant was convicted rather than acquitted – the Supreme Court could cancel the verdict or part of it and if necessary remand the case to the appropriate body for a new decision.

If a new decision is necessary, the Supreme Court will order a rehearing of the case. Its opinion is binding. The Supreme Court cannot
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- find the accused guilty of an act for which he was acquitted or for which the proceedings were dismissed
- find the accused guilty of a more serious criminal act than the one for which he was found guilty in the challenged decision
- impose a custodial sentence of over fifteen years or life imprisonment

8.5.3.3 Reopening proceedings (obnova řízení)

Criminal prosecution against a person may be reopened and continued on application of an authorised person if it ended in

- a final judgement
- a final criminal order
- a final order dismissing criminal prosecution
- a final order of conditional dismissal\(^{509}\)
- a final order approving a settlement
- a final order transferring the matter to another body

The following persons are authorised to file the application

- the public prosecutor (the prosecutor is the only person authorised to apply to the detriment of the defendant)
- in addition to the defendant, any of the persons permitted to file an appeal in his favour (see 8.5.2.3)

If the decision ending criminal prosecution was made by a court, retrial may be allowed only if facts or evidence previously unknown to the court emerge, and

- it would justify another decision on guilt
- it would entitle the injured party to damage compensation
- if the original sentence imposed is obviously disproportionate to the level of danger to society presented by the criminal act
- the original sentence imposed is in obvious contradiction to the purpose of the sentence

\(^{509}\) In addition to an application for the reopening of proceedings, proceedings conditionally dismissed may be reopened through the application of specific provisions of the CPC concerning conditional dismissal (Articles 307 and 308).
• it would justify a sentence
• it would result in finding that the reasons for dismissing the proceedings were absent and that it is appropriate to continue proceedings

If the decision ending criminal prosecution was taken by a final order of the public prosecutor for dismissal, settlement without trial, conditional dismissal or transfer of the matter to another body, retrial may be allowed if
• facts or evidence previously unknown to the public prosecutor emerge
• it would result in a finding that the reasons for the decision were absent
• it is appropriate to seek an indictment against the accused

A reopening of proceedings is possible against any of the preceding decisions if the final judgement finds that the police, the public prosecutor or the judge in the original proceedings breached their duties by acting in such a way as to constitute a criminal act. In principle, the court that would be competent to rule on the indictment is also competent to decide on the application to reopen proceedings ended by a prosecutor’s decision. The court that ruled in the first instance is competent to decide on the application in other cases. It may deny reopening proceedings mainly if
• culpability for the act is no longer present
• the President of the Czech Republic orders the dismissal of the criminal prosecution\(^\text{510}\)
• the accused has died
• an unauthorised person filed the application
• the decision applied for is not one of the decisions against which reopening proceedings is possible
• the necessary grounds for reopening do not exist
• If permission to reopen proceedings is granted, the preparatory proceedings continue if the proceedings ended with a final order of dismissal, settlement without trial, transfer or conditional

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\(^{510}\) See 8.4.1, the right of the President of the Republic to grant pardon (Article 11 § 1 a).
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dismissal. Otherwise, the court continues the proceedings on the basis of the original indictment unless it was decided to remand the case to the public prosecutor for additional investigation.

8.5.3.4 Pardon

The provisions of the CPC did not change (see 7.6.3.3).