

CZECH UNION OF JUDGES

1st Study Commission

The Role and Function of the High Council of Justice or Analogous Bodies in the Organization and Management of the National Judicial System

Situation in the Czech Republic

According to the Constitution or at least the law any institution in a highest level representing the independence of the Judicial power doesn't exist in the Czech Republic. Of course, the independence of judges themselves in dealing with cases is not directly endangered or even called in question.

Concerning the position of the Judiciary any development has not been achieved in the Czech Republic. Modern conceptions of administration of the Judiciary are not acceptable for Czech political subjects. So, until now the Czech Judicial Doctrine is based on the 150 years old model of bureaucratic and strongly centralist system of administration, where all competencies are in hands of political subject – Minister of Justice (directly or through presidents of courts who are absolutely subordinated to the minister). In such meaning there is not space for judges to participate in administration of the judiciary.

According to the Act on court and judges “judicial councils” have been established in majority of courts. These bodies are composed exclusively of judges elected by their peers - but their “power” is very weak. They only assist to the president of the court as the consultative subject. In fact they do not have any relevant position and in some courts they were not established as a needless and useless institution. In their position councils are often interpreted as a dangerous virtual possibility of judges to administrate their affairs. Czech “judicial councils” can be politically misused as “an evidence” that judges are not able to administrate their affairs correctly. In fact such unfair argumentation would cover all examples when the State fail to create a necessary condition for courts to work properly.

Instead of official “councils” judges elect informally their “representation” better reflecting consensual environment in respective courts.

Position of the Czech Judiciary seems to be destabilized (partly as a consequence of political pressure and partly because of failure of the judiciary itself in a sensitive moments of a development in last twelve years. Credibility of the Judiciary in our Society is very low).

Leading political principle in this area is – Any kind of self-administration of the Judiciary, any judicial councils with the power which nowadays belongs to the minister of Justice are not acceptable because it is in conflict with the political responsibility for correct performance of the Judiciary.

To give a more complete information it is necessary to say that there is a significant number of judges who don't share an idea of judicial council in the Czech Republic. This fact reflects a specific experiences we have with creating of the similar institutions – all council in our country represents the worst functioning bodies. It seems to be “a blind alley” in the Czech circumstances.

Significant number of judges are in favor of perfectly formulated guaranties of stable position as well as promotion of judges and their protection in the law (the best directly in the Constitution).

October 2003

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