



THE CHAMBER OF DEPUTIES

THE MANDATE AND IMMUNITY OF DEPUTIES

THE MANDATE OF A DEPUTY

The mandate of a Deputy consists of the rights and obligations that a Deputy is vested with upon election to the Chamber of Deputies. The mandate of a Member of Parliament (MP) is vested directly in the individual who has been elected (to the Chamber of Deputies or Senate) and guarantees the personal and independent exercise of the rights and obligations associated with it. Article 26 of the Constitution stipulates that *Deputies and Senators shall exercise their mandate in person and in conformity with the oath that they have taken and in doing so they shall not be bound by any instructions*. No legal act or order may in any way restrict the independent exercise of the mandate of an MP. For example, an instruction issued by a political party or Deputies' club regarding an upcoming vote in the Chamber of Deputies does not bind a Deputy. It is entirely up to the Deputy or Senator to decide whether her or she wishes to abide by any direction, instruction or agreement.

Apart from the *independent* exercise of the mandate of an MP, article 26 of the Constitution guarantees the *personal* exercise of such a mandate, i.e. no other person may be entrusted with or granted the power to exercise such a mandate. An act executed by a person other than an MP would not be considered to be an official act executed in the name of an MP and in this sense would be considered null and void. The laws of the Czech Re-

public do not allow for the temporary exercise of the mandate of an MP by another person, although this is allowed in certain other Parliaments.

The mandate of an MP begins on the day of election to the Chamber of Deputies or Senate. The day of election is the day on which elections are held to the given chamber. After elections to the Chamber of Deputies, the Mandate and Immunity Committee is elected at the first meeting of the Chamber and confirms the mandates of individual Deputies. Upon confirmation of the mandate, an MP is required to take an oath of office at the first meeting of the given chamber that he or she attends. This oath is stipulated by the constitution and provides:

"I hereby swear my allegiance to the Czech Republic. I swear to uphold its Constitution and its laws. I swear on my honour that I shall discharge my office in the interest of all the people and according to my best consciousness and conscience."

The mandate of a Deputy terminates in several circumstances: by refusal to take the oath of office, by taking the oath of office with a reservation, by the expiration of the electoral term, by resignation from office (by delivery of an authenticated letter of resignation to the Chairperson of the Chamber of Deputies), by loss of eligibility to exercise the mandate of a Deputy, by dissolution of the

Chamber of Deputies or by the assumption of another function which the Constitution or other law deems to be incompatible with the exercise of the mandate of a Deputy.

Where there is doubt as to whether a Deputy has become ineligible to exercise his or her mandate or where there is doubt as to whether an incompatibility of functions has occurred, the Constitutional Court may be asked to rule on whether the Deputy's mandate has terminated or not. This Deputy, the Chairperson of the Chamber of Deputies or a group of at least twenty Deputies may submit such a question to the Constitutional Court.

Where the mandate of a Deputy has terminated before the expiry of the electoral term, the mandate then vests in the first unelected candidate who was next on the list of candidates of the political party, movement or coalition. The Chairperson of the Chamber of Deputies certifies the vesting



of the mandate in the new Deputy within 15 days of the termination of the previous mandate. If no unelected candidate from the same political party, political movement or coalition is available, the mandate remains unvested for the remainder of the electoral term.

THE IMMUNITY OF A DEPUTY

The immunity of an MP represents an exemption from the general sanctions regime applicable in the Czech Republic and is meant to ensure the independence of legislators. The Constitution provides for two types of immunities. The first type of immunity provides that an MP may not be disciplined for his or her voting in the Chamber of Deputies or Senate (or in any committee or commission thereof) and that no MP may be criminally prosecuted for statements made in the Chamber of

Deputies or Senate. In the case of such statements, MP's are subject only to the disciplinary jurisdiction of the chamber of which they are members.



The second type of immunity represents a general exemption from criminal proceedings whereby no MP may be criminally prosecuted without the prior consent of the chamber of which he or she is member. The request of law enforcement authorities to the Chamber of Deputies or Senate must include a description of the act allegedly committed by the MP as well as the probable legal qualification of this act. In the case of Deputies, no other organ or institution other than the Chamber of Deputies may consent to the criminal prosecution of a Deputy. The Mandate and Immunity Committee of the Chamber of Deputies conducts an inquiry and gathers all pertinent information and allows the Deputy in question to express his or her opinion regarding the request. This committee prepares a report and makes a recommendation to the Chamber of Deputies regarding whether the Chamber should consent to the criminal prosecution of the Deputy in question. The Chamber then votes on the request of the law enforcement authority and if consent is provided, then the immunity of the Deputy is not applicable to the criminal proceedings outlined in the original request. The Deputy may then be taken into custody or sentenced in accordance with regular criminal procedure. The immunity of the Deputy remains unaffected as regards any other criminal proceedings. However, if the Chamber of Depu-

ties refuses consent, then criminal prosecution for the act outlined in the request is excluded forever (even after the termination of the mandate of the Deputy).

An exception to the procedural aspect of the immunity of a Deputy is the provision of the Constitution which provides that an MP may be detained without prior consent of the Chamber of Deputies if he or she has been apprehended when committing a criminal offence or immediately thereafter. The competent authority must immediately report such detention to the Chairperson of the chamber of which the MP is a member. If the Chairperson of the respective chamber does not consent within twenty-four hours to the surrender of the detained MP to a court, the competent authority must release the MP. If the Chairperson of the Chamber of Deputies consents to the detention of a Deputy, the Mandate and Immunity Committee prepares a report for the Chamber of Deputies which decides on the admissibility of criminal proceedings at its first subsequent meeting.

Both types of immunity extend only to criminal proceedings, the immunity of a Deputy does not apply to civil proceedings.

Act no. 78/2002 Coll. introduced a new procedure for dealing with transgressions (minor offences) committed by Deputies. Prior to the enactment of this law, transgressions committed by Deputies could only be dealt with in disciplinary proceedings before the Chamber of Deputies. Today, disciplinary proceedings are only conducted in the Chamber of Deputies if the Deputy requests that the transgression be dealt with in disciplinary proceedings. Where no such request is lodged by a Deputy (similarly as in the case of a Senator or judge), the transgression is dealt with by the appropriate authority in accordance with regular procedure. A Deputy therefore enjoys a certain procedural immunity in the case of transgressions, whereby he is offered the choice of having the transgression dealt with in the regular manner or of requesting that it be dealt with in disciplinary proceedings before the Chamber of Deputies. In disciplinary proceedings, it is the role of the Mandate and Immunity Committee to investigate the case and to conduct the proceedings. The Chamber of Deputies as a whole is only involved where a Deputy chooses to appeal a decision of the committee to the Chamber.

Apart from the above-mentioned immunities, MP's also have special rights when providing testimony under oath. An MP (or former MP) may refuse to give testimony as to facts that he or she

became acquainted with in the course of exercising his or her mandate. The right to refuse testimony is applicable to all official proceedings where an MP or former MP would otherwise be required to give testimony.

A Deputy is obliged to submit to disciplinary proceedings before the Chamber of Deputies. These special proceedings are meant to compensate partially for the immunity regime applicable to Deputies. Disciplinary proceedings may be initi-



ated against a Deputy who is suspected of having committed an act for which he could be criminally prosecuted if he did not have immunity, against a Deputy who has committed a transgression as well as in certain other specific cases. According to the Rules of Procedure of the Chamber of Deputies, disciplinary proceedings may also be initiated against a Deputy who, while making a speech or other statement in the Chamber of Deputies, its bodies or in the Senate, engages in conduct that could otherwise be subject to criminal prosecution. Additionally, disciplinary proceedings may also be initiated where in the course of such a speech or conduct a Deputy insults another Deputy, Senator, Justice of the Constitutional Court or other person authorised by law to attend a meeting of the Chamber of Deputies and its bodies. In the

case of insult, the Mandate and Immunity Committee initiates disciplinary proceedings at the request of the offended party; in all other cases, the Mandate and Immunity Committee initiates proceedings on the recommendation of the Chairperson of the Chamber of Deputies or on its own initiative. After carrying out the necessary inquiry, the Mandate and Immunity Committee either decides on an appropriate disciplinary measure or terminates proceedings. In the case of a statement in the Chamber of Deputies that would otherwise be subject to criminal prosecution or in the case of an insult, the Committee may order the Deputy to apologise or may impose a fine (up to the amount of one monthly salary of the Deputy). In the case of a transgression, the Committee may issue an admonition or impose a fine up to the maximum amount stipulated by law for such a trans-

gression. A Deputy may appeal the decision of the Mandate and Immunity Committee to the Chamber of Deputies.

Apart from disciplinary proceedings, a Deputy may also be sanctioned by means of a measure for maintaining order where he has engaged in improper conduct in the course of a meeting of the Chamber of Deputies. The (acting) Chairperson may issue a warning and in the case of repeated improper conduct the Chairperson may order the Deputy to leave the meeting room for the remainder of the day's session or for a shorter period. The Deputy may appeal the decision of the Chairperson immediately and the Chamber of Deputies shall, as a whole, either uphold or overturn the decision without parliamentary debate. The Deputy who has been ordered to leave shall, however, be provided the opportunity to vote in the Chamber of Deputies.

THE MANDATE AND IMMUNITY OF DEPUTES

- A Deputy shall exercise his mandate independently
- A Deputy shall exercise his mandate in person
- The mandate of a Deputy begins on the day of election and terminates by the expiration of the electoral term or by other defined circumstances
- The immunity is meant to ensure the independence of legislators
- No Deputy may be criminally prosecuted without the prior consent of the Chamber of Deputies