



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 perform their duties personally in accordance with their oath of office; in addition, they shall not be bound by anyone's 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 political group 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 they wish 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 Republic 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 their 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 session 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 they attend. This oath is stipulated by the the Article 23 of the Constitution:

“I pledge loyalty to the Czech Republic. I pledge that I will uphold its Constitution and laws. I pledge on my honor that I will carry out my duties in the interest of all the people, to the best of my knowledge and conscience.”

The mandate of a Deputy terminates in several circumstances: by refusing 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 office 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 their mandate or where there is doubt as to whether an incompatibility of offices 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 their 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 they are a 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 authority 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 their 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 concerning any other criminal

proceedings. However, if the Chamber of Deputies refuses consent, then criminal prosecution for the act outlined in the request is excluded.

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 they have been apprehended when committing a criminal offence or immediately thereafter. The law enforcement 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 relevant 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 resolving misdemeanours (minor offences) committed by Deputies. Prior to the enactment of this law, misdemeanours committed by Deputies could only be dealt with in disciplinary proceedings held in the Chamber of Deputies. Today, disciplinary proceedings are only conducted in the Chamber of Deputies if the Deputy requests that the misdemeanour be dealt with in disciplinary proceedings. Where no such request is lodged by a Deputy (similarly as in the case of a Senator or a judge), the misdemeanour is dealt with by the appropriate authorities in accordance with regular procedure. A Deputy therefore enjoys a certain procedural immunity in the case of transgressions, whereby they are offered the choice of having the misdemeanour resolved in the regular manner or of requesting that it be dealt with in disciplinary proceedings in the Chamber of Deputies. In disciplinary proceedings, it is the role of the Mandate and Immunity Committee to investigate the matter 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 concerning information

that they became acquainted with during the course of exercising their 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 in the Chamber of Deputies. These special proceedings are meant to partially com-



pensate for the immunity regime applicable to Deputies. Disciplinary proceedings may be initiated against a Deputy who is suspected of having committed an act for which they could be criminally prosecuted if they did not possess immunity, against a Deputy who has committed a misdemeanour, 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 if during the course of such a speech or conduct a Deputy insults another Deputy, Senator, Justice of the Constitutional Court or another person authorised by law to attend a session of the Chamber of Deputies and its bodies. In the case of an 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 misdemeanour, the Committee may issue an admonition or impose a fine up to the maximum amount stipulated by law for such a misde-

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

Apart from disciplinary proceedings, a Deputy who has engaged in improper conduct during the session of the Chamber of Deputies may be subject to a sanction aimed at maintaining order. The (acting) Chairperson may issue a warning and, in the case of repeated improper conduct, the Chairperson may order the Deputy to leave the assembly hall 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 their mandate independently
- A Deputy shall exercise their 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